

For information
16 June 2007

**Bills Committee on the
Statute Law (Miscellaneous Provisions) Bill 2007**

**Amendments to the Public Order Ordinance (Cap. 245)
and the Societies Ordinance (Cap. 151)**

Purpose

At the Bills Committee meeting on 7 June 2007, some Members asked the Administration to provide a written response in respect of the following issues –

- (a) the concepts of “public order” and “public order (*ordre public*)” respectively; and
- (b) whether there have been changes to the Police’s processing of notification of public meetings and processions under the POO arising from the Court of Final Appeal (CFA)’s judgment on the case “*Leung Kwok Hung & Others v HKSAR*” (the case) on 8 July 2005, and in this connection, whether the Police’s objection to the notification given by the League of Social Democrats in February 2007 in respect of its public procession planned for 10 March 2007 was the result of the severance of “public order” (in the law and order sense) from “public order (*ordre public*)” in the relevant provisions of the POO.

“Public order” and “public order (*ordre public*)”

2. The term “public order (*ordre public*)” appears in the English text of the POO and the SO. In the Chinese text it is simply “公共秩序”, without any further qualification corresponding to “(*ordre public*)”. In its judgment relating to the case, the CFA explained the concepts of “public order” and “public order (*ordre public*)”. The relevant extracts are at Annex. Briefly, according to the CFA, the concept of “public order” means “public order in the law and order sense, that is the maintenance of public order and prevention of public disorder”. The concept of “public order (*ordre public*)” includes public order in the law and order sense but is not so limited. The CFA finds that it is an imprecise and elusive concept and its boundaries cannot be precisely defined. It includes what is necessary for the interest of the collectivity as a whole.

3. Under the POO, “public order (*ordre public*)” is one of the grounds upon which the Commissioner of Police (CP) may exercise his discretion to object to public meetings and processions. By deleting the reference to “*ordre public*” from the English text, the citizens’ right to peaceful assembly is enhanced since CP’s discretionary power is by law limited to public order in the law and order sense. However, the Police have all along been applying the term “public order (*ordre public*)” in the law and order sense in their daily operation. Thus deletion of the reference to “*ordre public*” from the English text does not have any substantive effect on Police operations in practice.

Police’s processing of notification of public meetings and processions under the POO

4. The Police always endeavour to facilitate the organization of peaceful public meetings and processions. There have been no substantive changes to the procedures in the processing of notifications. Nonetheless, the Police have issued more detailed operational guidelines to underline the need for, e.g., increased communication with the organizers and more detailed explanation to the organizers of the Police’s concerns. The same applies to the handling of the case of the League of Social Democrats in February/March 2007.

**Security Bureau
Hong Kong Police Force
Department of Justice
June 2007**

**Extracts from the CFA Judgment on
Leung Kwok Hung & Others v HKSAR
(FACC Nos. 1 & 2 of 2005)
Paragraphs 68 to 72**

68. The concept of “public order (ordre public)” operates at the constitutional level in Hong Kong. This is because art. 39(2) of the Basic Law requires any restriction of rights and freedoms to comply with the ICCPR as applied to Hong Kong, and the concept is specified in a number of ICCPR articles as a legitimate purpose for the restriction of rights, including the right of peaceful assembly.

69. There is no doubt that the concept of “public order (ordre public)” includes public order in the law and order sense, that is, the maintenance of public order and prevention of public disorder. But it is well recognised that it is not so limited and is much wider. See for example, *Ng Kung Siu* at 457 F-H, *Police v. Beggs* [1999] 3 NZLR 615 at 630; *Nowak* on art. 19 at p. 355-6 (para. 45), and on art. 21 at p. 380-1 (para. 24).

70. But the concept is an imprecise and elusive one. Its boundaries beyond public order in the law and order sense cannot be clearly defined. *Ng Kung Siu* at 459I-460A. “[It] is a concept that is not absolute or precise and cannot be reduced to a rigid formula but must remain a function of time, place and circumstances”: Chapter 12 by Kiss on “Permissible Limitations on Rights” in Henkin (ed.): *The International Bill of Rights* (1981) 290 (“*Kiss*”) at 302.

71. The Siracusa Principles state that it :

“may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (ordre public).” (para. 22)

The Principles also state that it must be interpreted in the context of the purpose of the particular human right which is limited on this ground (para. 23). The discussion by *Kiss* strikes the same chord in referring to

what is necessary to the collectivity. He concludes his discussion in the following terms (at 302) :

“In sum: [public order (*ordre public*)] may be understood as a basis for restricting some specified rights and freedoms in the interest of the adequate functioning of the public institutions necessary to the collectivity when other conditions, discussed below, are met. Examples of what a society may deem appropriate for the *ordre public* have been indicated: prescription for peace and good order; safety; public health; esthetic and moral considerations; and economic order (consumer protection, etc). It must be remembered, however, that in both civil law and common law systems, the use of this concept implies that courts are available and function correctly to monitor and resolve its tensions with a clear knowledge of the basic needs of the social organisation and a sense of its civilised values.”

The other conditions referred to in this passage relate to the requirement of legal certainty (with expressions such as “provided by law”, “prescribed by law”, “in conformity with law” and “in accordance with law” found in the ICCPR) and the requirement of “necessary in a democratic society”. *Nowak* is to similar effect in stating:

“... in addition to the prevention of disorder and crime, it is possible to include under the term *ordre public* all of those ‘universally accepted fundamental principles, consistent with respect for human rights, on which a democratic society is based’”. (at 356, para. 45; see also at 381 para. 24)

72. It may readily be appreciated that notions such as “the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded”, “in the interest of the adequate functioning of the public institutions necessary to the collectivity” and “universally accepted fundamental principles, consistent with respect for human rights, on which a democratic society is based” are notions which by their nature are somewhat vague.