

LegCo Question No. 1
(Oral Reply)

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"Subject to the actual answer
given at the Council Meeting"

Meeting Date : 25 April 2007

Asked by : The Hon Leung Kwok-hung Replied by : Secretary for Security

Question :

Early last month, the Police objected to the League of Social Democrats holding a public procession in the evening of the tenth of last month, on the grounds that the procession might cause serious traffic inconvenience and pose a threat to public safety. In the said evening, the Police even deployed hundreds of police officers to stop the League from holding the procession, and warned those present that the Police could arrest them under the Public Order Ordinance should they insist on holding the procession. In this connection, will the Government inform this Council:

- (a) given that there were past cases in which the Police did not stop the holding of public processions to which they objected (but reserved the right to institute prosecution afterwards), why the Police adopted a different practice in handling the aforesaid procession, and whether guidelines have been issued to front-line police officers on the handling of public processions to which the Police object;
- (b) in respect of each of the past five years, of the respective numbers of public processions and public meetings to which the Police objected, a breakdown of such numbers by the reasons for objection, the respective numbers of public processions held in the evening to which the Police objected and did not object (including processions commencing in the afternoon), the basis on which the relevant decisions were made, as well as the reasons for objection; and
- (c) whether it will consider amending the Public Order Ordinance by repealing the provisions empowering the Police to object to the holding of public processions and public meetings, so as to give effect to the right to peaceful expression of views enshrined in the International Covenant on Civil and Political Rights?

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Reply:

Madam President,

Like other metropolitan cities, Hong Kong has legislation to regulate public meetings and processions. The purpose of such legislation is to maintain a proper balance between protecting an individual's freedom of expression and right to assembly, as well as safeguarding the broader interest of the community. In this connection, the Police have always been committed to facilitating the conduct of lawful and peaceful public meetings and processions.

Our reply to the three parts of the question is as follows —

- (a) In handling any public meetings or processions, the aim of the Police is to strike a proper balance between protecting an individual's rights and the broader interest of the community.

The Police would not allow a procession to continue if they have already raised objection to it. Nevertheless, some of the organizers might proactively contact the Police, suggesting changes to the number of participants, routing, time or venue, in order to reduce the inconvenience that might be caused to the public. If the Police assessed that the changes proposed by the organizers could suitably address the reasons for their original objection, the Police would allow the organizers to continue with their procession. Taking 2002 to 2006 as an example, the Police raised objections to 6 cases of notified processions. Among them, organizers of 3 cases subsequently reached agreement with the Police on the routing or number of participants and hence the Police allowed the processions to continue. As for the remaining 3 cases of processions to which objections were raised, the organizers cancelled their activities eventually.

Regarding the public activity scheduled to be held in the evening of 10 March this year (Saturday) as referred to in the question, it consisted of two parts, namely a public meeting and a public procession. The Police did not object to the part concerning a public meeting. But for the procession, as the proposed routing would run through very busy road sections and the procession was scheduled to start in the evening peak hours, the Police objected to the procession on public safety and public order grounds and suggested the organizers to advance the procession to the afternoon of the day. However, the suggestion was not accepted by the organizers, who subsequently appealed to the Appeal Board on Public Meetings and Processions (the Appeal Board).

After hearing the grounds of appeal put forward by the organizers, the Appeal Board dismissed the appeal on 7 March.

I would like to point out that, as far as public meetings and processions are concerned, all Police officers have been instructed to discharge their duties in accordance with the law in a fair and just manner. In addition, as we reported to the Panel on Security of the Legislative Council on 22 February 2006, the Police have promulgated the "*Guidelines on the approach to the Public Order Ordinance in relation to public meetings and public processions*" among frontline Police officers. The Guidelines clearly explain the meaning of important terms under the Public Order Ordinance (POO), supply additional guidance on the terms used on the limits to Police discretion, and enhance the consistency of the criteria with the Basic Law's requirements of legal certainty.

- (b) Over the past five years (i.e. from 2002 to 2006), a total of 11 110 public meetings and processions were held in Hong Kong. During this period, only in respect of 5 meetings and 6 processions did the Police raise prohibitions / objections. A detailed breakdown is at Annex.

The Police do not have ready figures on the number of public processions held in the afternoon and / or evening. According to limited records available, from 2004 to 2006, the Police received notifications on 137 processions which were to start at 6:00 pm or thereafter. Although these processions were to be held in the afternoon / evening, their actual routing, number of participants, as well as the day of the week on which they were to be held were different from those of the event mentioned in the question. After assessing the risk of these cases, the Police did not raise objection to them as the Police had reasons to believe that the events would pose no serious threat to public order and public safety.

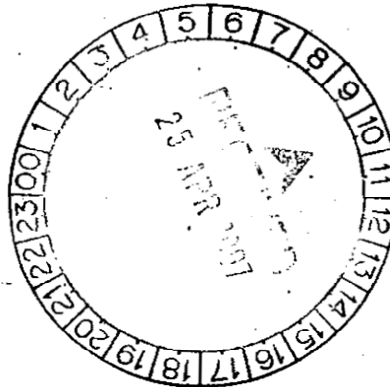
I would like to reiterate that the hour that a procession is held is only one of the considerations of the Police. The premise is to strike a proper balance between protecting an individual's rights and the broader interest of the community.

- (c) At the constitutional level, Article 27 of the Basic Law guarantees the freedom of association, of assembly, of procession and of demonstration, while Article 17 of the Hong Kong Bill of Rights gives domestic effect to the provisions of Article 21 of the International Covenant on Civil and Political Rights (the Covenant). The provisions of the POO in respect of the right to assembly were

specifically framed with a view to conformity with Article 21 of the Covenant. All decisions made under that Ordinance are subject to the Basic Law, Article 39 of which provides that the provisions of the Covenant as applied to Hong Kong shall remain in force.

Furthermore, in *Leung Kwok Hung & others v Hong Kong Special Administrative Region*, the Court of Final Appeal also observed that the right of peaceful assembly involved a positive duty on the part of the Government to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully. It also accepted that the present system is both necessary and proportionate, and it therefore satisfies the constitutional obligations and requirements.

In view of the above, we have no plan to amend the part in the POO relating to the discretion of the Commissioner of the Police to object to the holding of public meetings and public processions.



Breakdown of Figures on Police's Prohibitions / Objections to Public Processions and Public Meetings between 2002 and 2006

Reason / Basis for Prohibition / Objection	2002		2003		2004		2005		2006	
	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions
(1) Causing serious inconvenience and obstruction to traffic and / or road users	1	2	0	0	0	0	0	0	0	0
(2) Posing danger to the safety of participants of the events, members of the public and Police officers on duty	0	0	0	1	0	0	0	0	0	0
(3) (1) and (2) above occurring together	1	2	0	0	0	0	0	0	0	0
(4) Breach of Police's conditions by event participants	1	0	0	0	0	0	0	0	0	0
(5) The Police have reasons to believe that serious breach of the peace may occur during the event	2	1	0	0	0	0	0	0	0	0

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Reason / Basis for Prohibition / Objection	2002		2003		2004		2005		2006	
	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions
Total	5*	5#	0	1#	0	0	0	0	0	0

Note: * Among the above 5 public meetings which were prohibited by the Police, two of them were allowed to continue as the organizers changed the number of participants.
Among the above 6 public processions which were objected by the Police, the organizers of two of them changed the routing and one changed the number of participants, and the processions were allowed to continue.