



Submission on the Local Legislation to Implement the National Anthem Law

Mister/ Madam Speaker,

I am writing in response to the legislative implementation of the national anthem law on behalf of Savantas Policy Institute. Recognizing that the national anthem law has been included in Annex III of the Basic Law, Hong Kong is legally bound to either legislate the national anthem law locally or promulgate the current version of the law as it is applied in Mainland China. Savantas Policy Institute takes the position that it is Hong Kong's constitutional duty to legislate the national anthem law locally.

The national anthem, along with the national flag and the national emblem of China, are symbolic representations of the nation's dignity. It is reasonable to shield these symbols from malicious and degrading usage through legislation. Currently, there are laws in place that prohibit the desecration of the national flag and the national emblem. To breach these laws can result in fine and imprisonment of up to three years.

Some concerned and skeptical citizens may allege that these laws to protect national symbols constitute an encroachment on the people's freedom of expression. Yet Hong Kong's Court of Final Appeal has settled this issue with its judgement on 15th December 1999 (HKSAR v Ng Kung Siu & Another {1999} 2 HKCFAR 442 {December 1999}). To quote the conclusion of the judgement:

"It is possible -- even if by no means easy -- for a society to protect its flags and emblems while at the same time maintaining its freedom of expression.

This is possible if its flag and emblem protection laws are specific, do not affect the substance of expression, and touch upon the mode of expression only to the extent of keeping flags and emblems impartially beyond politics and strife. In my view, our laws protecting the national and regional flags and emblems from public and wilful desecration meet such criteria. They place no restriction at all on what people may express. Even in regard of how people may express themselves, the only restriction placed is against the desecration of objects which hardly anyone would dream of desecrating even if there was no law against it. No idea would



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be suppressed by the restriction. Neither political outspokenness nor any other form of outspokenness would be inhibited.”

This seminal ruling that illustrates the legislation’s balance between the ordre public and the freedom of expression has been affirmed again in the case of HKSAR v Koo Sze Yiu & Ma Wan Ki in 2014.

A similar logic is applicable in the current case of the national anthem law. It is within the maintenance of the ordre public to safeguard national symbols such as the national anthem from degradation. According to currently available information, the criminalization of such an act does not restrict the opinion one may choose to express. The only restriction it imposes is the manner of expression, and such restriction should be limited and clearly defined as it was in the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance.

As established in the National Flag and National Emblem Ordinance, the national anthem law should make the act of degrading the national anthem a crime of specific intent. Only those who willfully and deliberately degrade the national anthem should be criminalized, provided that they do not have a reasonable excuse. This will help to alleviate the public’s concern that they may breach the law without meaning to do so. By illustrating the intended meanings of different dictions in the law that may lend itself to different interpretations, the public can understand the law clearly and feel assured that there is nothing to fear.

The government should also strive to enunciate any wording in the legislation that may lend themselves to misunderstanding, such as “willful” or “derogatory”. Concerns can only be assuaged by the government through the open illustration of the legislation’s content to the general public.

Beyond the criminalization of degrading national symbols, the government should strive to improve the public’s knowledge of these national symbols through education, so that the future generation can have a greater understanding of their country, and realise that respecting their own country comes as an integral part of their civic duty. After all, to shield our national symbols through legal protections is only the means; the end is to uphold the dignity of the nation. Such an end can only be achieved when each and every national of our nation embrace our identity with dignity and pride.

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