

Case Summary

HKSAR v NG Gordon Ching-hang (吳政亨) & Ors
HKSAR v TAI Yiu-ting (戴耀廷) & Ors

HCCC 69/2022; [2024] HKCFI 3298

(Court of First Instance)

(Full text of the Court's Reasons for Sentence in English at

https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=164370&currpage=T)

Before: Hon Andrew Chan J, Hon Alex Lee J and Hon Johnny Chan J

Date of Reasons for Sentence: 19 November 2024

Sentencing – conspiracy to commit subversion – NSL 22(1)(3) and ss. 159A and 159C of the Crimes Ordinance, Cap. 200 – general principles on sentencing of NSL offences applied – argument that NSL 22(1)(3) offence was less serious than those under NSL 22(1)(1), (2) and (4) was rejected – Pre-NSL conduct relevant to assessment of seriousness and extensiveness of the conspiracy charged and the respective roles of defendants

Penalty bands under NSL 22 – not to be strictly applied to conspiracy charge – penal provisions should be interpreted strictly and narrowly – penalty bands of reference value – s. 109 of SNSO has no retrospective effect

Impossibility of offence as mitigation – not for Court to speculate on whether the Scheme will succeed

Ignorance of law as mitigation – discount allowed for mistaken belief

about lawfulness of the Scheme – not applicable to defendants who were themselves lawyers

Background

1. A total of 47 defendants were charged with one count of Conspiracy to Commit Subversion, contrary to NSL 22(1)(3) and ss. 159A and 159C of the Crimes Ordinance, Cap. 200 (“CO”). The Particulars of Offence alleged that the 47 defendants, between 1 July 2020 and 7 January 2021 in Hong Kong, conspired together and with other persons, with a view to subverting the State power, to organise, plan, commit or participate in, by unlawful means, namely advocating, engaging or participating in a scheme with a view to abusing his or her powers and functions entrusted under BL 73 after being elected to be a member of the LegCo for the purposes of: (para. 2 of Reasons for Verdict¹)

- (a) obtaining a controlling majority in the LegCo to indiscriminately refuse to pass any budgets or public expenditure to be introduced by HKSARG regardless of their contents or the merits of their contents;
- (b) compelling the CE of HKSAR to dissolve the LegCo under BL 50 so as to paralyse the operations of the Government;
- (c) ultimately causing the CE to resign under BL 52 entailed by the dissolution of the LegCo and the refusal to pass the original budget by the new LegCo (“the Scheme”).

2. As regards the 45 defendants who were convicted either on their own plea or after trial, mitigation was advanced on behalf of 44 of them. Having heard submissions from both the prosecution and the defence, the Court handed down its Reasons for Sentence on 19 November 2024.

Summary of the Court’s Reasons for Sentence

¹ Full text of the Court’s Reasons for Verdict in English at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=160373&currpage=T

A. General principles on sentencing of NSL offences

3. The Court summarised the principles on sentencing in *HKSAR v Lui Sai Yu* (2023) 26 HKCFAR 332 by the Court of Final Appeal and *HKSAR v Ma Chun Man* [2022] 5 HKLRD 246 by the Court of Appeal. Although the NSL did not provide for how cases were to be classified into the serious or minor categories, since it was the legislative intent of the NSL to converge and be complementary with local laws, when the courts dealt with this issue, the local legal principles on sentencing were applicable. Effect should be given to the NSL's offence-creating provisions as well as common law principles on sentencing. When the courts assessed the seriousness of the circumstances of the case, the prime focus was on the offender's acts, as well as the actual consequences, potential risks, and possible influence entailed. Reliance should not be placed on sentencing examples of the mainland courts. (paras. 20-23)

B. Ruling on legal issues

(a) Applicability of Penalty Bands under NSL 22

4. Defendants submitted that as the penalty band under NSL 22 had no application because the offence of conspiracy was different from the substantive offence: in the case of conspiracy, the agreed course of conduct might never be carried out, yet the offence of conspiracy had been committed once the agreement was made. The sentence ought to reflect the exact criminality and its consequences. The applicable penalty provision should therefore be s. 159C of the CO. (para. 2)

5. The prosecution submitted that when the law was amended in 1983 to provide for the same penalty for conspiracy, the legislative intent showed clearly that the purpose was to allow the Court to impose the same punishment in respect of attempts, conspiracies and incitements as

they might impose in response of the substantive offence. The common law offence of conspiracy was codified in Hong Kong by the Crimes (Amendment) Ordinance in 1996. The penalty under s. 159C of CO was to “bring the penalty for conspiracy into line with that of the substantive offence.” As such the prosecution submitted that s. 159C of CO should be construed in such a way that the penalty for the conspiracy and for the substantive offence (including the maximum and minimum) should be the same. The Court however noted that the present 159C only mentioned the maximum. (paras. 8-9)

6. The Court was of the view that in respect of the present case in which all the defendants faced was only a conspiracy charge, the penalty banding as prescribed in NSL 22, whilst of reference value, should not be strictly applicable. Penal provisions should be interpreted strictly and narrowly. NSL 22 made no mention of the offence of conspiracy. NSL 23 provided clearly penalty for accessory offences such as incitement, aiding and abetting. NSL 30 mentioned a more severe penalty for those who conspired with foreign country or institution in committing NSL 22. (paras. 10-13)

7. The wordings of s. 159C were very specific and without any ambiguity. It mentioned the maximum only. Nowhere was the term minimum penalty being mentioned. That however did not preclude the Court from looking at how the legislative body viewed the gravity of the offence. (para. 14)

8. The majority of defendants agreed that the Court could make reference to the penalty banding, depending on each defendant’s role and circumstance, in order to determine the starting point for each individual defendant. (para. 15)

9. The Safeguarding National Security Ordinance (6 of 2024) (“SNSO”) was a piece of domestic legislation enacted in March 2024 by

the Legislative Council in Hong Kong. The NSL was however a piece of national legislation enacted in 2020 by the National People's Congress in Beijing. The two legislative bodies were different entities occupied their respective positions at wholly different levels. It would be difficult to see how a local piece of legislation could be used to ascertain the legislative intent of the National People's Congress. (para. 18)

10. Further, the provisions of the SNSO had no retrospective effect. As such, the Court was of the decision that s. 109 of the SNSO was of little assistance in this particular case. (para. 19)

(b) Impossibility of the offence as mitigation

11. Some of the defendants submitted that the ultimate consequences of serious interfering in, disrupting or undermining the performance of duties and functions of HKSAR Government was bound to fail because the participants simply failed to secure sufficient seats. (para. 24)

12. It was not for the Court to speculate whether the Scheme would ultimately succeed; what the Court was sure was that all the participants had put in every endeavor to make it a success. In order to succeed, the organisers and participants might have hurdles to overcome, that however was expected in every subversion case where efforts were made to overthrow or paralyse a government. The Court therefore rejected the proposition that the Scheme was doomed to fail and that a lighter sentence should be imposed. (paras. 25 and 30)

(c) Ignorance of the law as mitigation

13. Some of the defendants submitted that they were reassured by D1 on many occasions and they did not know the Scheme was an unlawful one. The Court accepted that to be the case for some of the defendants, but notable not for D1 and D35 who were lawyers and also absolutely

adamant in pushing for the implementation of the Scheme. To them whether the Scheme was lawful or not was neither here nor there. They sold their idea to others. As to those who pleaded “ignorance of the law” as mitigation, the Court was satisfied that they might have been misled by D1 into thinking that the Scheme was not unlawful. (paras. 31-32)

(d) Pre-NSL conducts

14. The Court accepted that what the defendants had agreed to do was not criminal until after the enactment of the NSL. However, they remained willing parties to that agreement and continued their participation in the Scheme after it had been rendered criminal by the NSL. Although the charge period only commenced on the 1 July 2020, this Court could not be prohibited from looking into facts or circumstances prior to the charge period in order to assess the seriousness and extensiveness of the conspiracy charge as well as the respective roles of the defendants in the Scheme. The Court however emphasized that the defendants were not sentenced for any of their individual acts prior to the NSL. (para. 34)

(e) Seriousness of NSL 22(1)(3)

15. The Court did not agree that the seriousness of NSL 22 offences could be discerned from the descending order of the provisions in the Article. Firstly, the same penalty was applicable to all limbs of NSL 22 without distinction. Secondly, if there were in fact any differences in seriousness among the four limbs under NSL 22, it would be difficult to understand why the four limbs were not arranged in the order of their seriousness as counsel for some defendants had suggested that NSL 22(1)(3) was the least serious one. Thirdly, it was unhelpful to compare the relative seriousness of the four limbs of NSL 22. The seriousness of the offence depended on many factors: the degree of planning, the

ways and means employed, the number and extent of the attacks, the number of people involved, the potential harms generated, the actual outcomes and consequences. It had to be a holistic assessment, after a careful consideration of all the circumstances. (paras. 35-36)

16. Candidates for the Primary Election were essential character of the Scheme. They lent their support to and actively participated in the Scheme. They were categorised into the “active participant” category. Had the Scheme been carried out to the very end, the adverse consequences would be far reaching and no less serious than overthrowing the Government of the HKSAR. (para. 37)

C. Individual sentencing

D1 Tai Yiu-ting

17. In determining the criminality of the conspiracy offence, the Court took note of the elaborate planning of the Scheme and the seriousness of the offence. D1 was not only the initiator of the Scheme, but also an organiser of the Primary Election. He held the extreme view of “Ten Steps to Mutual Destruction”. In essence, D1 advocated for a revolution. It was his article that caught the attention of the pro-democracy camp. He was the mastermind behind, hence could well be placed in the “principle offender” category. D1 might not be the one standing in the Primary Election or the actual LegCo election, he however provided the necessary platform for those who intended to exercise the vetoing power under the Scheme. In order to succeed, D1 agreed with D5 in staging the “Say No to Primary Dodgers” campaign. He did not cease his involvement after the Primary Election. (paras. 32 and 41-43)

18. The Court further took in account facts and circumstances prior to 1 July 2020 as the backdrop only in coming to the assessment of D1’s

criminality. The Court also took note of the penalty band and noted the minimum sentence for a principal offender would be one of 10 years imprisonment and that the maximum would be life imprisonment. (paras. 44-45)

19. After a careful consideration of D1's role, a notional starting point of 15 years imprisonment was adopted. The only mitigation in D1's case was his early plea of guilty. The customarily one-third discount would be given. D1 was sentenced to 10 years' (120 months) imprisonment. (paras. 46-47)

D2 Au Nok-hin

20. D2 was one of the organisers and his degree of participation in the Scheme was more or less the same as D1. The notional starting point would similarly be one of 15 years (180 months) imprisonment. He pleaded guilty to the charge at the committal and gave evidence for the prosecution in the trial. Given the importance of his evidence, a 50% discount was granted. (paras. 49 and 52)

21. D2 withdrew from the Scheme and tried to persuade D3 to do so. An additional 5% credit was granted, which would also include the discount for his ignorance of the law and his past contribution to public service. (para. 52)

22. D2 was sentenced to 6 years and 9 months' (81 months) imprisonment. (para. 53)

D3 Chiu Ka-yin Andrew

23. The Court found that D3 was a "principal offender" in that he was one of the organizers of the Scheme. In view of the seriousness of the offence, D3's important role and the extent of involvement in the matter,

15 years' (180 months) imprisonment was adopted as the starting point of his sentence. In so doing, the Court had also taken into account the non-violent nature of the Scheme and the fact that the Scheme, for reasons beyond the control of the defendants, was unable to proceed further and was eventually unsuccessful. (paras. 57 and 59)

24. A 50% discount was granted to D3 for his timely plea and material assistance to the prosecution which reduces his sentence to 7 years and 6 months. (90 months) The Court was prepared to accept that D3 might have been misled by D1 as to the lawfulness of the Scheme and a deduction of 3 months was given. An additional 3 months reduction was granted for D3's public service records. (paras. 58 and 60-61)

25. D3 was sentenced to 7 years' (84 months) imprisonment (para. 62).

D4 Chung Kam-lun

26. D4's culpability fell within the category of "principal offender". He was one of the organisers, albeit he was less involved than D1, D2 and D3. A starting point of 12 years' imprisonment (144 months) was adopted. Given the guilty plea of D4 and the extent of assistance to the authority provided by D4, a reduction close to 45% was given. 3 months' reduction each for his ignorance of the law and past public service was given. D4 was sentenced to 6 years and 1 month's (73 months) imprisonment. (paras. 68-72)

D5 Ng Gordan Ching-hang

27. D5 was neither an organizer of the Primary Election nor a candidate. At the time D5 launched the "Say No to Primary Dodgers" Campaign, he was not yet a party to the Scheme. D5 became a party to the Scheme through his communication and contacts with D1, even though his identity was not known to the other parties. After the enactment of the

NSL, D5 continued to embrace the idea of “mutual destruction”, this is to say, to cause a serious interference in, disruption or undermining of the performance of the duties and functions of the Government, should the Government refuse to accede to the Five Demands. Moreover, he willingly and intentionally continued to facilitate the Scheme by putting pressure on others. (para. 74)

28. The Court found D5 to be an “active participant”. Starting point of 7 years and 6 months (90 months) imprisonment was adopted for D5. In so doing, the Court had already taken into account, among other things, that D5 was not after any personal gain and that the Scheme did not involve any use of violence. The Court gave a 3 months reduction for the possibility that D5 might have been misled by D1 and acted in the mistaken belief as to the lawfulness of the Scheme. D5 was sentenced to 7 years and 3 months’ (87 months) imprisonment. (para. 75-77)

Candidates for Hong Kong Island

29. D6-D11 were found by the Court to be “active participants” of the offence. Except D7, a starting point of 7 years (84 months) imprisonment was adopted for D6, D8-D11. For D7, his starting point was 8 years (96 months) imprisonment because of his more proactive role in relation to the Scheme as evidenced by his involvement in the drafting of the Inked Without Regret Declaration (“IWR Declaration”). In fixing the starting point, the Court took into account that the Scheme did not involve any use of violence. However, the Court did not accept that the Scheme was “impossible”. (para. 82)

(i) *D6 Yuen Ka-wai Tiffany*

30. One-third discount (of 28 months) was granted for her timely guilty plea; and a 3-month deduction for her possible mistake as to the

lawfulness of the Scheme. A 2-month deduction was granted for her public service. (paras. 82 and 84-85)

31. As regards D6's previous conviction of taking part in an unauthorised assembly for which she was sentence to 4 months' imprisonment on 6 May 2021, the Court took the view that it related to a separate and distinct offence. Considering totality in the round, the Court did not consider it appropriate to make any upward or downward adjustments of her present sentence. D6 was sentenced to 4 years and 3 months' (51 months) imprisonment. (paras. 83 and 86-87)

(ii) D7 Leung Fong-wai Fergus

32. The Court granted D7 a one-third discount (32 months) for his timely guilty plea; a 3-month deduction for his possible mistake as to the lawfulness of the Scheme; and another 2-month deduction for his public service as a District Council member. D7 was sentenced to 4 years and 11 months' (59 months) imprisonment. (paras. 89-90)

(iii) D8 Cheng Tat-hung

33. D8 was not yet a fully qualified lawyer and had no legal experience; the Court was prepared to accept that he had been misled by others and gave him 3-month deduction. A further 3-month deduction for his relatively longer public service as a District Councillor was granted. D8 was sentenced to 6 years and 6 months' (78 months) imprisonment. (para. 92-93)

(iv) D9 Chui Chi-kin

34. The Court granted D9 a one-third discount (of 28 months) for his timely guilty plea; 3 months for his possible mistake as to the lawfulness of the Scheme; and 3 months for his relatively longer public service as a

District Councillor. Regarding his health condition, the Court was of the view that there was nothing to suggest that he cannot receive adequate and proper medical attention and treatment in prison. The Court was not satisfied that his health condition is of such an exceptional nature or degree as to merit any reduction in sentence. (paras. 95-96)

35. Regarding D9's two previous sentences passed on 16 October 2021 in relation to an unauthorized assembly, the Court considered the matter in the round and decided that no adjustments should be made to the present sentence. D9 was sentenced to 4 years and 2 months' (50 months) imprisonment. (paras. 97-98)

(v) D10 Yeung Suet-ying Clarisse

36. D10 was convicted after trial. The Court gave her a 3-month deduction for her possible mistake as to the lawfulness of the Scheme. In view of her public service as a District Councillor as well as her contribution to local cultural polices and charitable works, the Court granted her an additional 3 months reduction. D10 was sentenced to 6 years and 6 months' (78 months) imprisonment. (paras. 100-101)

(vi) D11 Pang Cheuk-kei

37. D11 was convicted after trial. The Court gave her a 3-month deduction for her possible mistake as to the lawfulness of the Scheme. For his voluntary public services, before and after charge, the Court granted him a 3 months reduction. D11 was sentenced to 6 years and 6 months' (78 months) imprisonment. (paras. 103-105)

Candidates for Kowloon West

(i) D12 Sham Tsz-kit

38. D12 was found to be an “active participant” of the offence. A starting point of 7 years’ imprisonment (84 months) was adopted. A full one-third discount was given for his guilty plea. The Court further gave 3 months reduction for D12’s ignorance of the law and 2 months reduction for his past public service as a District Councillor. D12 was sentenced to 4 years and 3 months’ (51 months) imprisonment. (paras. 108 and 111-113)

39. The Court took the view that whether D12 would be granted remission was a matter for the Commissioner, not a matter to be taken into consideration by the sentencing court. (para. 109)

(ii) D13 Mo Man-ching Claudia

40. D13 was found to be an “active participant” of the offence. A starting point of 7 years’ imprisonment (84 months) was adopted. Given the guilty plea of D13, a full one-third discount was given. The Court further gave 3 months reduction each for her past public service and ignorance of the law. The health condition of D13’s husband is not a matter that could militate against the sentence to be passed on D13. She was sentenced to 4 years and 2 months’ (50 months) imprisonment (paras. 117-121)

(iii) D14 Ho Kai-ming Calvin

41. D14 was convicted after trial and found to be an “active participant” of the offence. A starting point of 7 years’ imprisonment (84 months) was adopted. The Court gave 3 months reduction for D14’s ignorance of the law and 2 months reduction his past public service as a District Councillor. As D14 was convicted after trial, no further discount was given. D14 was sentenced to 6 years and 7 months’ (79 months) imprisonment. (paras. 125-129)

(iv) D15 Fung Tat-chun Frankie

42. D15 was found to be an “active participant” of the offence. A starting point of 7 years’ imprisonment (84 months) was adopted. Given D15’s guilty plea, a full one-third discount was given. A further 3 months reduction for his ignorance of the law was given. D15 was sentenced to 4 years and 5 months’ (53 months) imprisonment. (paras. 135-138)

(v) D17 Wong Pik-wan

43. D17 was convicted after trial and found to be an “active participant” of the offence. A starting point of 7 years’ imprisonment (84 months) was adopted. The Court gave 3 months reduction each for her ignorance of the law and her past public service. D17 was convicted after trial; there was no other effective mitigating factor. D17 was sentenced to 6 years and 6 months’ (78 months) imprisonment. (paras. 142-145)

(vi) D18 Lau Chak-fung

44. D18 was found to be an “active participant” of the offence. A starting point of 7 years’ imprisonment (84 months) was adopted. Given D18’s guilty plea, a full one-third discount was given. A further 3 months reduction for his ignorance of the law was given. D18 was sentenced to 4 years and 5 months’ (53 months) imprisonment. (paras. 150-153)

Candidates for Kowloon East

(i) D19 Wong Chi-fung

45. The Court accepted that D19 was an “active participant” of the

offence. 7 years (84 months) would be adopted as the starting point. Given the guilty plea of D19, a full one-third discount was given. He did not raised in his mitigation that he committed the offence under a mistake of the law and hence no reduction was given under this head. Given D19's criminal record, he was not considered a person of good character. D19's previous convictions had no direct relationship with the present case. The Court did not think further reduction should be given because D19 could not have all the offences sentenced in the same proceedings. The sentence passed on D19 would not have a crushing effect on him. D19 was sentenced to 4 years and 8 months' (56 months) imprisonment. (paras. 155 and 158-161)

(ii) D20 Tam Man-ho Jeremy Jansen

46. D20 was found to be an "active participant" of the offence. A starting point of 7 years' imprisonment (84 months) was adopted. Given D20's guilty plea, a full one-third discount was given. The Court gave 3 months each for his ignorance of the law and his past public service. D20 was sentenced to 4 years and 2 months' (50 months) imprisonment. (paras. 167-170)

(iii) D21 Li Ka-tat

47. D21 was found to be an "active participant" of the offence. A starting point of 7 years' imprisonment (84 months) was adopted. Given D21's guilty plea, a full one-third discount was given. The Court gave 3 months for his ignorance of the law and a further 2 months reduction for his past contribution as a District Councillor. D21 was sentenced to 4 years and 3 months' (51 months) imprisonment. (paras. 175-178)

(iv) D22 Tam Tak-chi

48. D22 was found to be an “active participant” of the offence. A starting point of 7 years’ imprisonment (84 months) was adopted. Given D22’s guilty plea, a full one-third discount was given. He did not raised in his mitigation that he committed the offence under a mistake of the law and hence no reduction was given under this head. (paras. 184-185)

49. D22 was convicted in the District Court of seven counts of seditious offences and three counts of public order offences. He was sentenced to a total of 40 months’ imprisonment. The Court of Appeal dismissed his appeals against conviction and sentence. The Court in present case accepted that some of the seditious words uttered by D22 in the District Court “sedition” case were related to the Primary Election. Some of those “sedition” charges were committed between 4 and 19 July 2020. Although the gravamen of the offence of “Uttering seditious words to the public” and “Conspiracy to commit subversion” were different, as those “sedition” charges and the present charge were committed in close proximity, the Court applied the totality principle in sentencing D22 as if this case and the District Court case were heard together. Given the fact that D22 had already completed his sentence in the District Court “sedition” case, the Court would give a reduction of 3 months to reflect the totality of the 2 matters. (para. 186)

50. D22 was sentenced to 4 years and 5 months’ (53 months) imprisonment. (para. 187)

(v) D23 Wu Chi-wai

51. D23 was found to be an “active participant” of the offence. A starting point of 7 years’ imprisonment (84 months) was adopted. Given D23’s guilty plea, a full one-third discount was given. The Court gave 3 months reduction for his ignorance of the law. As reduction in imprisonment terms had already been given to D23 in respect of his

previous convictions, no further reduction was given to D23 in this case for his past contribution and public service. The previous convictions were unrelated to the present case; the application of the totality principle did not call for a further reduction. D23 was sentenced to 4 years and 5 months' (53 months) imprisonment. (paras. 192-199)

(vi) D24 Sze Tak-loy

52. D24 was convicted after trial and found to be an "active participant" of the offence. A starting point of 7 years' imprisonment (84 months) was adopted. Given D23's guilty plea, a full one-third discount was given. The Court gave 3 months reduction for his ignorance of the law and a further 2 months reduction for his past public service as a District Councillor. D24 was sentenced to 6 years and 7 months' imprisonment (79 months). (para. 203)

Candidates for New Territories West

(i) D25 Chu Hoi-dick Eddie

53. Based on D25's role in the Scheme, 7 years (84 months) was adopted as the notional starting point. A full one-third discount was given for his guilty plea. A further 3 months was given for his ignorance of the law. The Court did not think further discount could be given for his past service given that he had two criminal records. No doubt that ought to have been taken into consideration in the past. D25 was sentenced to 4 years and 5 months' (53 months) imprisonment. (paras. 212-213)

(ii) D26 Cheung Ho-sum

54. D26 was placed in the "active participant" category; but the Court found him more than just a mere participant to the Scheme as he initiated the IWR Declaration with D7 and D37. The IWR Declaration was

meant to be an undertaking to ensure the success of the Scheme. As such the notional starting point was set at 8 years' (96 months) imprisonment. A full one-third discount was given for his guilty plea. An additional 3 months was given for his ignorance of the law. Two months was also given for his past public service. D26 was sentenced to 4 years and 11 months' (59 months) imprisonment. (paras. 216-217 and 219)

(iii) D27 Wong Ji-yuet

55. The Court accepted that D27 was an "active participant" in the Scheme. 7 years (84 months) was adopted as the notional starting point. Given her guilty plea, a full one-third discount was given. An additional 3 months was given for her ignorance of the law. The riot case to which D27 pleaded guilty pre-dated the present case. The two cases had no direct relationship to each other and related to two distinct and separate incidents. The Court considered the issue of totality and a concurrent sentence was not imposed. D27 stands convicted was sentenced to 4 years and 5 months' (53 months) imprisonment, to be served consecutively to the sentence imposed on her in the riot case. (paras. 221 and 223-225)

(iv) D28 Ng Kin-wai

56. Based on D28's role in the Scheme, 7 years (84 months) was adopted as the notional starting point. A 20% discount would be given for his late plea. D28 was sentenced to 5 years and 7 months' (67 months) imprisonment. (paras. 230-231)

(v) D29 Wan Siu-kin Andrew

57. The Court found D29 to be an "active participant" in the conspiracy. 7 years (84 months) was adopted as the notional starting point. Given the

guilty plea of D29, a full one-third discount would be given. It was not raised in the mitigation that D29 committed the offence under a mistake of the law, hence we gave no reduction under this head. No additional reduction was given on the ground of positive good character. Application of the totality principle did not call for a further reduction. D29 was sentenced to 4 years and 8 months' (56 months) imprisonment. (paras. 235-242)

(vi) D30 Kwok Ka-ki

58. D30 was "active participant" in the Scheme. Factoring in the non-violent nature of the Scheme, 7 years' (84 months') imprisonment was adopted as the starting point. Full one-third discount (28 months) was granted for timely plea which also covered D30's post-arrest cooperation with the Police. Additional deduction of 3-month deduction was given for his possible mistake as to the lawfulness of the Scheme. 3-month deduction was granted for D30's long-term public service. D30 was sentenced to 4 years and 2 months' (50 months) imprisonment. (paras. 243-244 and 246-247)

(vii) D31 Ng Man-yee Carol

59. Based on D31's role in the Scheme, 7 years (84 months) was adopted as the notional starting point. A full one-third discount was given for D31's guilty plea. An additional 3 months as also given for her ignorance of the law. D31 was sentenced to 4 years and 5 months' (53 months) imprisonment. (paras. 252-254)

(viii) D32 Tam Hoi-pong

60. Based on D32's role in the Scheme, 7 years (84 months) was adopted as the notional starting point. A full one-third discount was given for D32's guilty plea. The Court also gave 3 months and 2 months each

respectively for D32's ignorance of the law and past community work in environmental and animal care. D32's health issue did not cause extra hardship and could not justify any further discount. D32 was sentenced to 4 years and 3 months' (51 months) imprisonment. (paras. 259-261)

Candidates for New Territories East

(i) *D33 Ho Kwai-lam*

61. D33 did not address the Court on mitigation. For the role that D33 participated in the Scheme, 7 years (84 months) was adopted as the notional starting point. D33 was convicted after trial. As no mitigation was put forward, D33 was sentenced to 7 years' (84 months) imprisonment. (paras. 263-264)

(ii) *D34 Lau Wing-hong*

62. The Court accepted that given the overall circumstances of D34's role and involvement, he was placed in the "active participant" category. The riot case in which D34 pleaded guilty predated the present case. The two cases had no direct relationship and concerned two separate matters. The Court did not impose a concurrent sentence. Based on D34's role in the Scheme, 7 years (84 months) was adopted as the starting point. A full one-third discount was given for his plea. The Court also gave 3 months for his ignorance of the law. D34 was sentenced to 4 years and 5 months' (53 months) imprisonment, to be served consecutively to the sentence imposed on his riot case. (paras. 265 and 267-269)

(iii) *D35 Yeung Alvin Ngok-kiu*

63. D35 took a pro-active and leading role in the Civic Party's participation of the Scheme. Factoring in the non-violent nature of the

Scheme, 8 years (96 months) imprisonment was adopted as the starting point. 3-month deduction was granted for D35's long-term public service. No reduction was granted for D35's mother declining health and subsequent demise. No deduction should be given to D35 on ignorance of law. D35 was sentenced to 5 years and 1 month's (61 months) imprisonment. (paras. 32 and 270-274)

(iv) D36 Chan Chi-chuen Raymond

64. D36 was convicted after trial and placed in the "active participant" category. 7 years (84 months) was adopted as the notional starting point. The Court gave 3 months each for his ignorance of the law and his past public service. D36 was sentenced to 6 years and 6 months' (78 months) imprisonment. (paras. 277 and 279-280)

(v) D37 Chow Ka-shing

65. D37 was convicted after trial and placed in the "active participant" category. D37 was one of the initiators of the IWR Declaration, which pointed to the fact that D37 was putting every effort in binding the participants to ensure its success. The Court was of the view that the IWR Declaration did constitute as aggravate factor in this case. 8 years (96 months) was adopted as the notional starting point. 3 months was given for his ignorance of the law. D37 was sentenced to 7 years and 9 months' (93 months) imprisonment. (paras. 282-283 and 285-286)

(vi) D38 Lam Cheuk-ting

66. For the role D38 participated in the Scheme, 7 years (84 months) was adopted as the notional starting point. 3 months was given for his ignorance of the law. His past contribution to public work had been taken into account in previous sentences for previous convictions. As

D38 was convicted after trial, no further discount was given. D38 was sentenced to 6 years and 9 months' imprisonment (81 months). (paras. 290-291)

(vii) D39 Fan Gary Kwok-wai

67. For the role D39 participated in the Scheme, 7 years (84 months) was adopted as the notional starting point. Given D39's guilty plea, a full one-third discount was given. 3 months each for D39's ignorance of the law and past public service contribution was also given. D39 was sentenced to 4 years and 2 months' (50 months) imprisonment. (paras. 296-297)

(viii) D40 Lui Chi-hang Hendrick

68. For the role D40 participated in the Scheme, he was placed in the "active participant" category. 7 years (84 months) was adopted as the notional starting point. Because of his guilty plea, a full one-third discount was given. 3 months and 2 months each respectively was given for his past contribution or service to the community and ignorance of the law. D40 was sentenced to 4 years and 3 months' (51 months) imprisonment. (paras. 302-303)

(ix) D41 Leung Kwok-hung

69. For the role D41 participated in the Scheme, 7 years (84 months) was adopted as the notional starting point. 3 months would be given for his ignorance of the law. As D41 was convicted after trial, no further discount was given. D41 was sentenced to 6 years and 9 months' (81 months) imprisonment. (paras. 307-308)

(x) D42 Lam King-nam

70. The offence of which D42 was convicted was very serious in nature. Community service was inappropriate in such case. The non-prejudicial statements given by D42 were of little usefulness in this case. His evidence in court also added nothing to the prosecution case. As such, the Court declined to call for a community service order suitability report. (para. 311)

71. For the role D42 participated in the Scheme, 7 years (84 months) was adopted as the notional starting point. D42 only pleaded guilty before the commencement of the trial. As such he was only entitled to 20% discount. 3 months and 2 months each respectively would be given for his ignorance of the law and his service in sourcing and providing protective equipment during the COVID pandemic. D42 was sentenced to 5 years and 2 months' (62 months) imprisonment. (paras. 312-314)

(xi) D43 Or Yiu-lam Ricky

72. For the role D43 participated in the Scheme, 7 years (84 months) was adopted as the notional starting point. 3 months and 2 months each respectively would be given for his ignorance of the law and past contribution to public service. As D43 was convicted after trial, no further discount would be given. D43 was sentenced to 6 years and 7 months' (79 months) imprisonment. (paras. 318-319)

Candidates for District Council (Second) and Health Services

(i) D44 Shum Lester

73. D44 was a candidate for the District Council (Second) Constituency and found to be an "active participant" in the Scheme. 7 years' (84 months) imprisonment was adopted as the starting point. The Court granted D44 a one-third discount (of 28 months) for his timely guilty

plea. D44 did not raise “ignorance of law” as a mitigation factor and no reduction was given in this regard. D44’s previous convictions were related to a separate and distinct offence and applying the totality principle, no adjustments should be made for his present sentence. D44’s sentence was reduced to 4 years and 6 months’ (54 months) imprisonment. (paras. 320-321, 323 and 325-328)

(ii) D45 Wong Pak-yu

74. D45 was a candidate for the District Council (Second) Constituency and found to be an “active participant” in the Scheme. 7 years’ (84 months) imprisonment was adopted as the starting point. The Court granted D45 a one-third discount (of 28 months) for his timely guilty plea; a 3-month deduction for his possible mistake as to the lawfulness of the Scheme. An additional 2-month deduction was granted for mitigation submitted. D45’s sentence was reduced to 4 years and 3 months’ (51 months) imprisonment. (paras. 320-321, 323 and 331-332)

(iii) D47 Yu Wai-ming Winnie

75. D47 was a candidate of the Heath Services Constituency. That D47 was “latecomer” to the Scheme did not call for a lower starting point because the defendants were punished for their respective participation in the Scheme during the charge period. 7 years’ (84 months) imprisonment was adopted as the starting point. D47 was convicted after trial. The Court gave D47 a 3-month deduction for her possible mistake as to the lawfulness of the Scheme. D47 was sentenced to 6 years and 9 months’ (81 months) imprisonment. (paras. 320, 323 and 335-337)