

Case Summary (English Translation)

HKSAR v CHOW Hang-tung (鄒幸彤)

HCCC 155/2022; [2026] HKCFI 398

(Court of First Instance)

(Full text of the Court's Reasons for Ruling in Chinese at

https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=176470)

Before: Hon Alex Lee, Johnny Chan and Anna Lai JJ

Date of Hearing and Ruling: 3 November 2025

Date of Reasons for Ruling: 21 January 2026

Criminal law – offence of endangering national security – offence of incitement to subversion – D4 applied for quashing of the indictment – alleging missing details, not constituting an offence, duplicity and abuse of judicial process – Court stated that political views had nothing to do with the legal issue – Court held that the charge and its particulars were sufficient – “by unlawful means” with a view to subverting the State power – whether the prosecution’s case and evidence sufficed to convict the defendant were matters for trial – “ending the leadership of the Communist Party of China” violated the Constitution – whether it satisfied the requisite “unlawful means” would be left to trial – lack of particular time, place and person would not render the charge invalid – whether there was incitement depended on the natural effect of words and acts – particulars of the incitement offence needed not specify the mens rea elements individually – mens rea must be proved to criminal standards at trial – prosecution alleged multiple acts being part of the same transaction – continuing to advocate the same agenda and unlawful purpose – charging only one single offence was a reasonable approach – previous cases differed from the present one in nature and facts – relying solely on independent evidence related to the present case – not constituting

double jeopardy or abuse of process – Court reiterated adjudication based on evidence and law – trial not allowed to become a tool for political suppression

Background

1. CHOW Hang-tung (D4), the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (“HKA”) (D1), LEE Cheuk-yan (D2) and HO Chun-yan (D3) were jointly charged with one count of “incitement to subversion”. The charge alleged that they “...between the 1st day of July, 2020 and the 8th day of September, 2021, both dates inclusive, in Hong Kong, incited other persons to organise, plan, commit or participate in acts by unlawful means with a view to subverting the State power, namely overthrowing or undermining the basic system of the PRC established by the Constitution of the PRC, or overthrowing the body of central power of the PRC.” (paras. 1-2)

2. D4 applied for quashing of the indictment. The Court dismissed D4’s application, having regard to D4 and the prosecution’s written and supplemental submissions in court, case authorities, particulars of offence, further particulars of offence, as well as rr. 3 and 4 of the Indictment Rules (Cap. 221C). (para. 5)

Major provision(s) and issue(s) under consideration

- NSL 22 and 23
- Indictment Rules (Cap. 221C) rr. 3 and 4

3. D4 advanced 4 grounds in her application for quashing of the indictment:

- (a) the indictment lacked sufficient particulars;
- (b) the content of the indictment did not constitute an offence known to the law;

- (c) the indictment violated the rule against duplicity; and
- (d) this prosecution constituted an abuse of judicial process. (para. 3)

4. The Court noted that D4 went to great lengths in her submissions to express her political views and positions. The Court highlighted that the political views and positions she advanced had nothing to do with the charge or issues in this case, and that the Court would only consider and deal with the legal issues relevant to this application. (para. 6)

Summary of the Court's reasons for ruling

(a) Whether the indictment provided crucial particulars of the charge

5. As for whether the indictment provided crucial particulars of the charge, the prosecution indicated that the indictment satisfied the requirements in rr. 3 and 4 of the Indictment Rules. The prosecution, upon request of D4, had separately provided particulars of the charge and further particulars of the charge. The relevant particulars were as follows:

- (a) The prosecution stated that “acts by unlawful means” involved in the present case referred to acts by any unlawful means with a view to subverting the State power. All acts with a view to subverting the State power were unlawful. “Unlawful means” needed not involve acts by force or quasi-force, while acts with subversive intention *per se* and inciting others to commit such acts were necessarily unlawful. The prosecution alleged that all Ds had incited others to subvert the State power by exciting public aversion and hatred towards the State power and advocating “ending one-party dictatorship”, and their acts as mentioned above were necessarily unlawful;
- (b) The prosecution’s position was that the four elements of inciting other persons to “organize”, “plan”, “commit” or “participate in” applied to the present case. It was also pointed out that after the

NSL came into effect, HKA and D2 to D4 continued to maintain the organization of HKA as a body corporate, including the acts of holding public events, publishing or continuing to publish publications or online content, operating the premises of June 4th Massacre Memorial Association, receiving media interviews and making public speeches relating to HKA; persisted in and sustained the organization of HKA; advocated to others the said agenda of “ending one-party dictatorship”; incited others to join or endorse HKA; further propagated to others HKA’s organization and agenda; and supported HKA’s activities and funding, and so on;

(c) The prosecution alleged that after the NSL came into effect, HKA and D2 to D4 continued to conduct the said relevant acts; and

(d) The prosecution’s position was that both “overthrowing or undermining the basic system of the PRC established by the Constitution of the PRC” and “overthrowing the body of central power of the PRC” applied to the present case, and the Court might convict all Ds if satisfied with either limb. The relevant factual basis was the same as the above. The prosecution also clearly pointed out that the unlawful means involved in the case was “ending the leadership of the Communist Party of China, which violated the Constitution of the PRC (especially Article 1 and the Preamble)”. The prosecution also stated that the opening submission had included the relevant legal principles. (paras. 7-8 and 16)

6. Having regard to rr. 3 and 4 of the Indictment Rules, the Court found that, whilst the charge in this case covered a rather broad scope, the prosecution by virtue of the indictment, its particulars of offence and opening submission already provided as a whole had given such sufficient and reasonable information to all Ds for knowing the allegations against them. All Ds must have been well aware of the facts to address during the defence case at trial, and must have considered how to rebut the prosecution’s allegations and prepare their defence evidence. As for whether the prosecution’s case and evidence sufficed to support the charge, those were matters for trial. (paras. 17-18)

7. The Court stated that “ending the leadership of the Communist Party of China” was undoubtedly an agenda against the Constitution, and whether an agenda against the Constitution satisfied the requisite “unlawful means” for the offence would certainly be a significant issue at trial. Regarding D4’s contention that the prosecution had failed to establish how the alleged incitement prompted others to “end the leadership of the Communist Party of China”, the Court held that whilst missing details such as time, place and person might be a relevant consideration, this was not essential for proving the charge. The Court noted that the subject slogan in *HKSAR v Tong Ying Kit* [2021] HKCFI 2200 likewise did not specify any particular time, place or person. What mattered was the requirement for the prosecution to prove that the natural and reasonable effect of Ds’ conduct was capable of constituting the meaning of incitement as alleged. Accordingly, the Court dismissed D4’s complaint on failure to provide crucial particulars of offence in the indictment. (paras. 19-22)

(b) Whether the stated content in the indictment constituted an offence known to law

8. Regarding the second ground, D4 asserted that the words and acts alleged against her by the prosecution did not involve any specific instructions for action, and that the prosecution must include in the particulars of offence the *mens rea* element of the alleged incitement against her. The Court concurred with the positions set out in *HKSAR v Jariabka Juraj* [2017] HKLRD 266 and *HKSAR v Lau Wing Kun & Another* CACC 524/1999, as relied upon by the prosecution, that the prosecution was not required to specifically list in the particulars of the incitement offence the *mens rea* element pertaining to the subject acts. It was essential for the prosecution to establish the charge by proving the *mens rea* element required by the offence in strict accordance with the standards in criminal trials. (paras. 23-27)

9. According to the Court, the issues raised by D4 – whether the agenda of “ending the leadership of the Chinese Communist Party” and its related remarks/acts constituted an offence, whether an offence element

could be constituted in the absence of specific target acts, the boundary between thought and conduct, the freedom of thought and conscience under the Bill of Rights, and so on – were essentially related to whether D4 had indeed committed the offence in the present case. These were matters to be dealt with at trial. The prosecution’s approach in its response submission on the application for quashing the indictment, by not addressing/refuting D4’s arguments individually, was a correct one. The Court dismissed D4’s complaint that the stated content in the indictment did not constitute an offence known to law. (paras. 28-30)

(c) Whether duplicity existed

10. D4 complained that the prosecution’s allegation of her incitement spanned one year and two months, covering locations throughout Hong Kong, which compelled her to analyse/explain each occasion and every remark to the Court, thereby creating enormous difficulties to her defence. On the other hand, the prosecution submitted that its evidence comprised multiple remarks or posts made by the respective defendants at different times and locations on various occasions and in diverse contexts, and that the opening submission and trial bundles already demonstrated evidence of the defendants’ overall and/or individual conduct which constituted the present charge. In the Court’s view, the prosecution case, whilst involving multiple acts by the defendants, was that they could be regarded as part of the same transaction; the Court at trial must therefore examine whether those facts of acts could be regarded as part of the same transaction. Without prejudice to fairness, the principle in *DPP v Merriman* [1973] AC 584 applied: charging one single offence did not constitute duplicity. The Court further noted that, as seen from the opening submission and trial bundles, D4 and others still continued to advocate the same agenda of “ending one-party dictatorship” even after the commencement of the HKNSL. The Court thus found it reasonable for the prosecution to allege that these various acts could be regarded as sharing the same unlawful purpose. (paras. 31-37)

11. The Court further noted that the defence might identify from the

opening submission and trial bundles the constituents of the incitement to subversion as alleged by the prosecution, and contest each of the acts. The mere fact that the charge involved multiple acts taking place at different times on different occasions by different persons did not constitute a ground for duplicity. The crux lay in the prosecution clearly specifying which acts it alleged constituted incitement to subversion. The Court also held that as seen from the evidence in the opening submission and trial bundles, the various acts demonstrated continuity at the material times. Whether the offence was a continuing one and whether the defence would raise different defences for incidents occurring on various occasions were matters for trial (*Barton v DPP* (2001) 165 JP 779). At this stage, these various acts should not be prosecuted under distinct charges. When taking a step back, the issue of duplicity, even if it existed, could also be resolved by the prosecution amending the indictment to charge each act or subject matter separately; this would not render the indictment invalid. (paras. 38-42)

(d) Abuse of judicial process and double jeopardy

12. D4 was the defendant in the following two concluded criminal cases: *HKSAR v Lai Chee Ying and Ors* [2021] HKDC 1547 and *HKSAR v Chow Hang Tung* [2022] HKMagC 1. D4 argued that the prosecution's reliance upon the incidents involved in those two cases as part of the evidence in the present case was a violation of the legal principle against double jeopardy and an abuse of judicial process. The Court held that with the prosecution's provision of sufficient details and clear articulation of its case in the indictment, opening submission and trial bundles, D4 was fully aware of the prosecution's allegations; that the Court must ultimately rule on the allegations based on the evidence in court; hence, no abuse of judicial process existed. As regards double jeopardy, the prosecution had made clear that it would not rely on the relevant convictions against her. The prosecution would adduce independent evidence to prove the parts related to the charge in this case. The Court would not draw any adverse inference against her for her disclosure of those two cases. (paras. 43-48)

13. The Court held that the offence of “incitement to knowingly take part in an unauthorised assembly” in those two cases was, in principle, irrelevant to the crux of the present case, namely, whether D4’s words and acts had incited subversion. The Court accepted the prosecution’s submission that the occurrence of the current case after the implementation of the HKNSL rendered the entire matter more serious than the other two cases. With the involvement of distinct criminal facts and individuals, there was no impropriety in the prosecution further bringing this case against her after the prosecution of those two cases. (paras. 49-50)

14. According to the prosecution, the relevant evidence in *Lai Chee Ying and Ors* served to prove that public statements regarding the objective of “ending one-party dictatorship” made by D4 and others onsite and online at the June 4th rally in 2020 pertained to the meaning of “ending one-party dictatorship” at the material times of this case, as well as the purpose and intent of the defendants’ use of such wording. As for *Chow Hang Tung*, the prosecution submitted that the statements relied upon in this case did not concern any content of the articles involved in that case. Therefore, the Court was satisfied that there existed no double jeopardy as alleged by D4 in this case. (paras. 51-52)

15. The Court emphasised that it would adjudicate solely based on evidence and relevant legal principles, and would not allow the trial to become, as D4 suggested, a tool for political suppression in the name of law or an abuse of judicial process. (para. 54)

16. None of the grounds for D4’s application to quash the indictment was made out. Hence, the Court rejected her application and noted that the grounds advanced by her did not satisfy the standard or the special and exceptional circumstances required for the Court to order a permanent stay of proceedings. (paras. 56-57)