

Case Summary (English Translation)

HKSAR v John Joseph, also known as Wong Kin Chung (黃健聰)

DCCC 210/2023; [2024] HKDC 640

(District Court)

(Full text of the Court's reasons for sentence in Chinese at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=159822&QS=%2B%7C%28DCCC%2C210%2F2023%29&TP=RS)

Before: HH Judge E Lin

Date: 11 April 2024

Sentencing – conspiracy to incite the commission by other persons of the offence of secession – NSL 20 and 21 – ss. 159A and 159C of the Crimes Ordinance – sentencing factors – circumstances of a serious nature – six online platforms – distorting history to incite others to commit secession and undermine the State – international element – the lower limit of the sentencing band shall be not less than five years – no evidence available for invoking any of the three mitigating conditions under NSL 33

Background

1. The Defendant was convicted on his own guilty plea for one count of “conspiracy to incite the commission by other persons of the offence of secession”, contrary to NSL 20 and 21 and ss. 159A & 159C of the Crimes Ordinance (Cap. 200). (paras. 1-2)

Summary of the reasons for sentence

A. Facts of the case

2. The Defendant, between 1 July 2020 and 1 November 2022, in the

name of “the Chairman of Hong Kong Independence Party”, conspired with others to incite others to commit secession and undermine the State by managing six online platforms and uploading thereon a total of 42 posts (35 of which were published after the commencement of the NSL). (para. 3)

3. Hong Kong Independence Party (“HKIP” hereinafter) was a political party formally registered in the UK in 2015, with the main aim of “supporting self-determination for people of Hong Kong , awakening them to the importance of having their independent national identity” and the goal of “awakening the Hong Kong nation, regaining national self-esteem, returning to the British Commonwealth and becoming an independent state”; the purpose of its establishment was to “promote international attention to China’s various acts that were in total breach of the Joint Declaration, support Hong Kong independence, extricate from China’s colonial rule, return to British Commonwealth and embark on the road to independence and state-building”. (para. 12)

4. The six online platforms or social media created in the name of HKIP were as follows: (paras. 15-26)

- (a) HKIP Website (“Media 1”): An open letter to the UK Government was posted on 22 July 2020, indicating that the party was a Hong Kong group, which started their work in 2019 to advocate Hong Kong independence and termination of the Joint Declaration, with the aim of “saving lives of Hong Kong children, Xinjiang Uyghurs and everyone”.
- (b) HKIP Facebook account (“Media 2”): The profile stated that HKIP’s goal was to seek Hong Kong independence so that the HKSAR could “return as a British Commonwealth nation”.
- (c) HKIP Twitter account (“Media 3”): The profile stated that actions should be taken to provide nations around the world with justification to re-organise the “Eight-Power Allied Forces” for invasion in order to “liberate Hong Kong”.
- (d) HKIP Instagram account (“Media 4”): The profile stated that the Sino-British Joint Declaration should be terminated; that the UK should be held accountable; that the three treaties by virtue of

which the UK gained control of part of Hong Kong's territory should be reinstated; "extrication from communism and decolonisation"; "liberate Hong Kong"; and that the HKSAR should "return as a British Commonwealth nation".

- (e) HKIP Telegram channel ("Media 5"): The profile contended that Hong Kong should follow the paths of the three Baltic states to independence, and should hold the UK, which had ruled Hong Kong for 156 years, accountable.
- (f) HKIP Telegram group ("Media 6"): It was advocated and contended therein that people of the HKSAR should authorise the UK to terminate the Sino-British Joint Declaration and to deal with China's serious breach of the agreement, "extrication from communism and decolonization"; and that the US should terminate the United States-Hong Kong Policy Act by ceasing to treat the HKSAR differently from China in areas such as trade, finance and culture.

5. The 42 posts in question were available on the HKIP website and the other five media under its administration. The content of the posts centred on encouraging the people of Hong Kong to resist the governance by the HKSAR Government and China, establishing a provisional government overseas, advocating independence, and even requesting "a return under the UK government's command as one of the independent British Commonwealth nations". (para. 27)

B. Sentencing

6. The Defendant admitted conspiring with others, and hence was as culpable as the other co-conspirators. The crux of this case was whether the conduct of the Defendant and the other accomplices fell within one of the two sentencing bands set out under NSL 21. In assessing the circumstances of the case, the court must determine whether the circumstances of the present case were of a serious nature or of a minor nature, and then decide the sentence to be imposed. NSL 21 clearly sets out a specified range of sentence within each tier, namely that if the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment

of not less than five years but not more than ten years; if the circumstances of the offence committed by a person are of a minor nature, the person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction. However, the lower limits of the sentencing bands prescribed by NSL 21 are mandatory. The court's discretion is only confined to a penalty within the acceptable band, which is to be adjusted based on the facts of the case, and the imprisonment shall not be less than five years if the circumstances of the offence are of a serious nature: see *HKSAR v Lui Sai Yu* [2023] HKCFA 26. (paras. 5-7 and 9)

7. The 42 posts involved in this case were available on the HKIP website and the other five media under its administration for a period of 28 months, which was a planned operation. The Defendant distorted history, demonised the Chinese Government and turned to foreign countries for help to destroy the HKSAR and the Chinese Governments by political means or simply by force. He also called upon in Hong Kong those who were prepared to give their lives to be “martyrs” and raised funds to hire mercenaries to overthrow the HKSAR Government by force. He even advocated a request for foreign coalition invasion into Hong Kong. (para. 27)

8. Having considered the following factors, the Court held that the present case was of a serious nature; based on the facts of the case, a starting point of 78 months' imprisonment should be adopted: (paras. 27-33)

- (a) admitted facts of this case;
- (b) number of platforms involved;
- (c) number of followers and number of the potentially affected: over a thousand people were following the media in question, whose posts would make many people think foreign backing was available, who would then be summoned by the distorted logic, sketchy and shallow slogans in the posts and attempt to destroy by violence the social order of the HKSAR and the fruits of the majority's hard work;
- (d) Event background: during the subject period, the HKSAR

Government was exhausted in addressing and controlling the social events arising since the second half of 2019 and tackling the ensuing plague;

- (e) international dimension involved: The Defendant's posts provided a talking point at an international level for foreign politicians to denounce, boycott and even suppress China or the HKSAR in the interests of their own countries on the pretext of helping Hong Kong; and
- (f) content of the posts: For a period as long as 28 months, the Defendant strongly advocated the use of political means and violence by foreign countries to restrain China, and used the platforms under his control for inciting hatred against China and Hong Kong amongst the people of Hong Kong, inciting others to overthrow the Hong Kong Government by violent means, and promoting Hong Kong independence.

9. The Court held that based on the facts of the case the Defendant could not rely upon any of the conditions set out under NSL 33 for reducing the sentence to one below the minimum penalty of the corresponding band for his offence. Under arrest, the Defendant basically shirked all the acts involved. The Defendant returned to Hong Kong for the purpose of visiting his mother; this could not be said as a voluntary surrender, nor did he voluntarily discontinue the commission of the offence. As regards HKIP, the political organisation once registered, the Defendant's excuse of unfamiliarity with its details could hardly be regarded as his voluntary surrender and confession. As for the other accomplices, he merely said that he did not know them or already forgot their identities, without providing any information at all for possible tracking. Moreover, the Court did not see itself having the power to consider the three conditions under NSL 33 together to reduce the sentence on a discretionary basis by reason of their cumulative effect. In any event, the Defendant did not adduce actual evidence on any of the three conditions for invoking the mitigating provisions. Therefore, the Court held that the grounds of sentence reduction under NSL 33 were not applicable. (paras. 37-40)

10. The only valid mitigating ground in the present case was the

Defendant's guilty plea. Under normal circumstances, a guilty plea shall warrant a one-third discount in sentence; but since NSL 21 has set the sentencing band as well as its lower limit for offences with circumstances of a serious nature, the exercise of the Court's discretion could only be confined to reducing the sentence of 78 months' imprisonment to the minimum term prescribed under NSL 21, namely 60 months' imprisonment. (paras. 41-43)

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