

## Case Summary (English Translation)

### HKSAR v Zeng Yuxuan (曾雨璇)

WKCC 2389/2023; [2023] HKMagC 12

(West Kowloon Magistrates' Courts)

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

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=155131&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=155131&currpage=T))

Before: Mr. Peter Law, Principal Magistrate

Date of conviction: 11 September 2023

Date of sentence: 12 September 2023

*Sentencing – attempting to do or making preparation to do an act or acts with a seditious intention – s. 10(1)(a) of the Crimes Ordinance – plan to display the huge banner on a sensitive day would enhance its impact – incisive content of the banner – planning and arrangements already reached a stage of readiness for execution – offences with a seditious intention of whatever degree were serious – starting point of 9 months imprisonment – reduced by one third to 6 months imprisonment for guilty plea*

### Background

1. The Defendant came to Hong Kong in August 2022 to study law at the Chinese University of Hong Kong. (para. 11) She faced two charges, namely: (1) doing an act or acts with seditious intention, contrary to s. 10(1)(a) of the Crimes Ordinance, Cap. 200; and (2) attempting to do or making preparation to do an act or acts with a seditious intention, contrary to s. 10(1)(a) of the Crimes Ordinance, Cap. 200. Between about 8 May 2023 and 1 June 2023, the Defendant, together with a person known as “Zhou Fengsuo” and other persons (para. 1), attempted or made preparation to mount a 9m x 3m huge banner onto the circular footbridge at Yee Wo Street in Causeway Bay at

6.40 p.m. on 4 June 2023. Its overall content, including the words and the image concerned, had the seditious intention to bring into hatred or contempt or to excite disaffection against the Central Authorities. (para. 16) She pleaded guilty to the second charge, whereas the first charge was withdrawn by the prosecution. (para. 1)

## **Summary of the Court's Reasons for Sentence**

### ***A. Facts of the Case***

2. Danish Jens Galschiøt sculpted a pillar-shaped sculpture engraved with multiple seemingly human figures. It was dubbed by some as the “Pillar of Shame” (“Pillar”) (para. 2) Since 2023, a campaign named “Banner Manifestations” (“Campaign”) had been initiated on a website created in the name of Jens Galschiøt, with the aim to protest against the seizure of the Pillar as a case exhibit in the course of investigation by the Hong Kong police; such seizure was described as “kidnapping”. (para. 3) The Campaign involved the mass printing of a banner depicting a coloured image of the Pillar (“Banner”), which included the words shown on the Pillar base and a slight addition of text similar to that on the sculpture base. (para. 4) The organiser called on people of different geographical locations to publicly display the Banner in different cities when staging June 4<sup>th</sup> events. (para. 5)

3. On 1 June 2023, the police seized from the Defendant's residence, *inter alia*, the following items: (para. 6)

- (a) the Banner in the size of 1.5m x 0.6m with signature and a handwritten serial number;
- (b) the Banner in the size of 9m x 3m with signature and a handwritten serial number;
- (c) a printed letter purportedly signed by Jens Galschiøt; mentioning that media should be notified of any activity, in order to get the most attention;
- (d) another letter appealing for payments, including the printing cost and delivery cost of the Banner and so on.

Under caution, the Defendant admitted that the above two Banners were sent by parcel from her foreign friend Zhou Fengsuo. (para. 7) As shown in the personal profile of a Twitter account “周锋锁 Fengsuo Zhou”, Zhou Fengsuo was “89 64 Tiananmen 8964 Founder of Humanitarian China, Tiananmen leader 1989, Executive Director of Human Rights in China”. (para. 10(1))

4. The Defendant’s operation plan recorded in her mobile phone indicated that she planned to display the said 9m x 3m huge Banner on the circular footbridge at Yee Wo Street in Causeway Bay at 6.40 p.m. on 4 June 2023. (para. 9)

### ***B. Sentencing***

5. The defence’s mitigation submission and the Defendant’s handwritten mitigation letter stated that: (paras. 12-15)

- (a) The Defendant originally intended to commemorate the June 4<sup>th</sup> Incident in Hong Kong, and then contacted the person concerned to obtain the Banner upon learning of the Campaign online. Apart from that, she gave no further support to the Campaign.
- (b) The Defendant acted alone, without any form of cooperation with, or acting upon the instructions of, the organiser.
- (c) The Defendant had all along kept a low profile; she only notified 2 non-mainstream online media without prior publicity or additional use of more seditious posters. The Defendant neither intended to engage spontaneous public participation on the day of 4 June, nor incited any violence.
- (d) The Defendant might well have multiple action plans to display the Banner at the early stage, but ultimately opted to do so by what was commonly known as the “flash mob” approach.
- (e) She was arrested and the plan eventually fell through without any impact on society. (para. 15)
- (f) The Defendant was a university student who had just arrived in Hong Kong without any political influence. Her original intention was to spark a debate by bringing up the June 4<sup>th</sup>

Incident, rather than wholly and mainly stirring up hatred. (para. 15)

- (g) Given that the June 4<sup>th</sup> Incident took place over 30 years ago, the Defendant's plan, even if realised, would have little potential influence, risks and imminence on society. (para. 13)
- (h) The image on the Banner resembled a discussion of a historical event by pointing out the government's mistakes, but highly seditious words were selected to demonstrate in a negative way hatred and the consequences of provoking hatred. (para. 14)

6. The Court held that seditious offences were of a preventive nature. Doing acts with a seditious intention in any manner was serious. Failure in prevention would impact not only a minority but entail grave consequences for society as a whole. In assessing the gravity of the offence, regard must be given to the overall circumstances, including (but not limited to): the prevailing social conditions, the offender's acts, objectives, whether the offender was acting on the spur of the moment or in a planned manner, thoroughness of the plan, scale, frequency, target, number of participants, any involvement of overseas participation, tools of crime, incisiveness of message, any involvement of violence, timing of release, influence of persons involved, potential risk for crisis posed by the release and so on. (para. 19)

7. The Court, having regard to the overall circumstances of the case, was of the view that the facts of the case were serious. The content of the Banner was incisive, but the resulting potential risk for crisis was relatively low. (para. 36) The Court observed, *inter alia*, that: (paras. 20-36)

- (a) The Campaign was an international operation, the impact of which was collective rather than limited to a particular city. (para. 20)
- (b) The relevant person Jens Galschiøt was an overseas figure of international stature and influence, renown and appeal. (para. 21) The other overseas figure concerned, Zhou Fengsuo, not only mailed the tools of crime from overseas, but was also, as indicated by his social media platform, considerably involved

in the Campaign overseas. (para. 22)

- (c) The Defendant's plan to display the Banner on a sensitive day, as opposed to an ordinary day, would enhance its impact. (para. 23)
- (d) The Defendant's target viewers were mostly like-minded persons who would resonate with such messages and were a group which were relatively more susceptible to sentimental arousal. (para. 24)
- (e) The Defendant was by no means merely acting on her own. Despite her modest personal influence, the Defendant was among those responding to and participating in the international Campaign; her role was to carry out the Campaign in Hong Kong. (para. 26) The Defendant, albeit not the instigator, did play a significant role in response to and participation in the Campaign. (para. 33) Everyone involved, including the Defendant, made their share of contribution to the final outcome and propaganda impact. (para. 26)
- (f) With the organiser's production of serial-numbered banners in different sizes, and even instructions given to the participants, that was an elaborated plan. (para. 25) The Defendant did not act on the spur of the moment, but rather went through elaborate and comprehensive planning and arrangements, including receiving the Banner, arranging the execution, conducting on-site inspection and taking measurements, purchasing the necessary tools, advance stay in a nearby hotel, disguising as a tourist in easily concealable clothing, notifying the Campaign organiser and certain news media (overseas ones included) for an enhanced influence both domestically and externally, and even planning for contingency in event of failure, and so on. (para. 27) While the plan fell through given the Defendant's arrest, (para. 32) all the planning and arrangements had reached a stage of readiness for execution. (para. 29)
- (g) The display on a busy street of the huge 9m x 3m Banner visible from afar could enhance the propaganda effect. (para. 28)
- (h) The content of the Banner did not advocate violence or incite further unlawful actions. (para. 31)

- (i) The Defendant committed the offence on the second charge whilst on police bail upon the first charge. (para. 30)
- (j) On the execution of the plan, despite the limited duration of display, the adverse impact of propaganda by the planned means would definitely be far greater than that of an individual or a few people posting posts on social media for an extended period of time where individuals or groups of individuals “echo one another”. (para. 34)
- (k) The content of the materials itself was incisive and sentimentally provocative. Yet the content of the Banner, which centred around the June 4<sup>th</sup> Incident over 30 years ago, added no novelty, and as such the potential risk for sudden arousal of intense sentiments would not be too high. This could not be compared with the events that occurred in recent years. (para. 35)

8. The Court held that offences involving seditious intention, of whatever degree, were serious ones and warranted deterrent sentences save in exceptional circumstances. (para. 38) The Defendant’s eventual failure was simply a result of her arrest, which thus did not justify any further reduction in sentence. The Court adopted 9 months as the starting point, and reduced the term by one third to 6 months’ imprisonment for her guilty plea. (paras. 38-39)