

## Case Summary (English Translation)

### **HKSAR v Yuen Ching-ting (袁靜婷)**

WKCC 2602/2023; [2023] HKMagC 13

(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=156030&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=156030&currpage=T))

Before: Mr. So Wai-tak, Chief Magistrate

Date of conviction: 26 October 2023

Date of sentence: 3 November 2023

***Sentencing – offence of “doing an act or acts with seditious intention” – contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200) – publishing, displaying and continuing to make available on widely used social platforms 13 seditious posts – advocating secessionist and anti-government ideas – pre-emptive nature in the gravamen of the offence – penalty must give regard to the combined effect of prevention, suppression and imposition of punishment – culpability was a continuous one – two months’ imprisonment***

### **Background**

1. The defendant pleaded guilty to one count of “doing an act or acts with seditious intention”, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200). (para. 1)

### **Summary of the Court’s reasons for sentence**

#### ***A. Facts of the case***

2. The defendant, between 7 September 2018 and 8 March 2023, held registered accounts on the two social platforms Facebook and Instagram,

and published, displayed and continued to make available 13 seditious posts, the content of which advocated secessionist and anti-government ideas. She knew that her posts were accessible to others; she also had the right to delete the posts but did not do so. (paras. 2-7)

***B. Sentencing considerations***

3. The maximum penalty for a first offender for the offence of “doing an act or acts with seditious intention” was a fine of HK\$5,000 and 2 years’ imprisonment. In sentencing, the Court had to take into account the circumstances of the case, including the context in which the offence was committed, and the *modus operandi*, frequency, scale, subject of the incitement, risks and consequences etc. in relation to the offence, so as to determine the offender’s specific culpability. (para. 10)

4. The Court had to give regard to the pre-emptive nature in the gravamen of this offence, which aimed to prevent the perpetrator from doing seditious acts to cause, excite, incite or infect others to form or identify with the perpetrator’s beliefs, thereby realising his assertions by unlawful means. Therefore, the Court had to give primary consideration to deterrence in sentencing, so as to nip in the bud the spread and infiltration of such ideas advocated by the seditious acts in society, and the ensuing risks and consequences of breaching the peace. (para. 10)

5. In light of the following factors, ensuing risks and culpability etc. in relation to the offence, the Court was of the view that the sentence must take into account the effect of prevention, suppression and imposition of punishment, and accordingly adopted 3 months’ imprisonment as the starting point: (paras. 11-17)

- (a) The defendant published, made available and continued to make available, through two widely used social platforms, a total of 13 messages, in the forms of posts and pictures, which had a seditious intention. Where an offence was committed with the Internet, unlawful messages could be swiftly and widely disseminated with substantial sustainability and perpetuity.

(para. 11)

- (b) As regards the risk of dissemination, the two accounts involved in the case had 473 friends and 657 followers respectively. These numbers were not large, but 12 out of the 13 posts in question were open to public for browsing at will. The dissemination of these messages was not limited to the persons associated with the accounts. One of the posts contained text messages in Japanese, expressing the urge for Hong Kong independence, so that Japanese-literate residents in Hong Kong could have access to the seditious messages in question. (para. 11)
- (c) As regards the gravity of the offence, the Court had to take into account the facts and overall circumstances of the case; the maximum penalty for the charge was necessarily one of the considerations. (para. 12)
- (d) The Court accepted that the content of the defendant's posts was not of much originality, rather in the form of slogans without using radical words or triggering heated discussions; and that the frequency of publishing 13 posts in total over about four years was not regarded as high. Hence, her culpability was less than that in most cases. That said, the defendant's culpability was continuous and not confined to the very moments when the posts were uploaded, but rather lay in "making available and continuing to make available" such posts; she had the right to delete the posts in question, but she did not do so. (para. 14)
- (e) The defendant was aware that the messages in question involved inciting others to reject the legitimate governance by the Central People's Government and causing disaffection, which were precisely the provisions for sedition offence and there was no uncertainty about it. She did not delete or withdraw any messages in question after the prosecution for the same type of conduct. (para. 15)
- (f) The defendant repeatedly disseminated over a considerable time messages that undermined the State's territorial integrity, and advocated Hong Kong's independence and separation from the State, rendering it possible to incite the ignorant by osmosis and posing the risk of realising the agenda by unlawful means. (para.

16)

***C. Sentencing***

6. Having considered the defendant's personal circumstances, risk of recidivism, culpability and defence's submissions, the Court sentenced the defendant to two months' imprisonment after the discount for her guilty plea. (paras. 17-18)

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