

Case Summary (English Translation)

HKSAR v Leung Kui Ming Kurt (梁俱銘)

WKCC 3796/2023; [2023] HKMagC 14

(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=156043&currpage=T)

Before: Mr. So Wai-tak, Chief Magistrate

Date of conviction: 6 October 2023

Date of sentence: 6 October 2023

Sentencing – “offence of importing seditious publications” – contrary to s. 10(1)(d) of the Crimes Ordinance, Cap. 200 – importing 18 seditious publications into Hong Kong by parcel from the United Kingdom – picture books of “Sheep Village” series for children – intending to instil and advocate hatred or contempt or to excite disaffection against the Central Government in the minds of children – cross-border factor – forward-looking and preventive nature of offence – 6 months as the starting point – sentence reduced to 4 months for guilty plea

Background

1. The Defendant was charged with one count of “importing seditious publications”, contrary to s. 10(1)(d) of the Crimes Ordinance, Cap. 200. (para. 1)
2. The Defendant, together with an overseas person, imported seditious publications, namely 18 books, being 3 copies each of 6 books by the name of “羊村守衛者”, “羊村十二勇士”, “羊村清道夫”, “羊村投票日”, “羊村建築師” and “羊村日報” respectively, into Hong Kong by parcel from the United Kingdom on 7 March 2023, which were

discovered and intercepted by the Customs and Excise Department of Hong Kong. (paras. 2 and 4)

3. The seditious publications in question were picture books of the “Sheep Village” series for children; the theme was to present, through the hostile relationship between “Sheep Village” and “Wolves Village”, the plot of the sheep’s oppression and persecution by evil wolves, with the objective to bring readers into hatred or contempt or excite disaffection against the Central Authorities and/or the Government of the Hong Kong Special Administrative Region. (para. 3)

Summary of the Court’s Reasons for Sentence

4. The maximum penalty for a first offender of the offence of “importing seditious publications” was a fine of HK\$5,000 and imprisonment for 2 years. 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 offences, so as to determine the offender’s culpability. Moreover, the Court had to give regard to the pre-emptive nature in the gravamen of these offences, 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. 7)

5. The seditious publications in the case targeted at children, with a target readership of as low as four years old. The picture books centred around various social events, with plots and contents ridden with distorted concepts and substantial untruthful messages, intending to instil and advocate hatred or contempt or to excite disaffection against the Central Government in the immature minds and hearts of children. The culpability was relatively serious, given the possible trans-generational impact. (para. 8)

6. In addition, the present case involves cross-border element. The act of importation would in effect facilitate and encourage persons overseas to continue to produce, print or publish seditious publications, resulting in the continued dissemination of messages endangering national security. (para. 9)

7. In sentencing, the Court must give regard to the forward-looking and preventive nature of the offence, which aimed to prevent and eliminate the resurrection of seditious ideas. (para. 10)

8. The Court held that the subject items were of no commemorative or collectible value, and were available on the Internet for public downloading or subscription. Nonetheless, the Court accepted that the Defendant was not the instigator as he did not initiate any request for the importation of the said items, and that his commission of the offence was a one-off incident. (para. 11)

9. Having considered the circumstances of the case, *modus operandi*, context, subject of the incitement, cross-border element and so on, the Court adopted 6 months as the starting point for sentence. Absent any valid grounds for mitigation other than the discount for guilty plea, the Defendant was sentenced to 4 months' imprisonment. (paras. 12-13)