

Case Summary (English Translation)

HKSAR v Chu Kai-pong (諸啓邦)

WKCC 5138/2023; [2024] HKMagC 2

(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=157420&currpage=T)

Before: Mr. So Wai-tak, Chief Magistrate

Date of conviction: 4 January 2024

Date of sentence: 10 January 2024

Sentencing – doing an act or acts with seditious intention – ss. 10(1)(a) and 10(2) of the Crimes Ordinance – possession of seditious publications – sentencing factors – wandering in public places wearing clothing printed with seditious words – deterrence the paramount consideration in sentencing – preventing blind imitation and resurrection of the idea of “achieving justice by violating the law”

Background

1. The defendant was charged with three offences: (1) “Doing an act or acts with seditious intention”, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200) (Charge 1); (2) “Possession of seditious publications”, contrary to s. 10(2) of the Crimes Ordinance (Cap. 200) (Charge 2); and (3) “Possession of an identity card relating to another person”, contrary to s. 7A(1A) of the Registration of Persons Ordinance (Cap. 177) (Charge 3). The defendant pleaded guilty to Charges 1 and 2 while the Court allowed the prosecution to withdraw Charge 3. (para. 1)

Summary of the Court's reasons for sentence

A. Facts of the case

2. Around 12:32 pm on 27 November 2023, the defendant left his residence in Sha Tin wearing a long-sleeved T-shirt printed with “Free Hong Kong 光復香港 時代革命 (*English translation: Liberate Hong Kong Revolution of Our Times*)” and took a public bus to the Hong Kong International Airport in Chek Lap Kok, New Territories in Hong Kong. He arrived at and entered the airport at about 3:05 pm. Having passed the departure hall, the departure security screening area, shops, toilets, etc. in various public places, he was stopped and searched by the police around 4:59 pm when he was about to board the flight at boarding gate 205. (paras. 2 and 3)

3. The defendant was at that time wearing two T-shirts, one long-sleeved T-shirt printed with the words “Free Hong Kong 光復香港 時代革命”; and one short-sleeved T-shirt printed with the words “Hong Kong Independence 香港獨立” (Charge 1). From his backpack and recycling bag, the police seized a total of three black flags printed with “光復香港 時代革命 Free Hong Kong · Revolution Now”; one T-shirt printed with “Free Hong Kong 光復香港 時代革命” (Charge 2); and one photograph of the defendant holding a flag printed with “Free Hong Kong · Revolution Now 光復香港 時代革命”. (para. 4)

4. Under caution, the defendant stated that: (para. 5)

- (a) “Liberate Hong Kong Revolution of Our Times” had the meaning of transforming Hong Kong into an independent entity; returning to the period under the British colonial rule; and extricating from the governance of the Central Authorities;
- (b) “Hong Kong Independence” had the same meaning as well;
- (c) “Revolution” meant people adopting the “real actions” taken during the 2019 social turbulence in Hong Kong to achieve the above aims;
- (d) His purpose of wearing the T-shirts with seditious prints was to gain public recognition of his beliefs;
- (e) The items printed with seditious messages that he was wearing

and possessing were bought in Taiwan in October 2023.

5. The Court of First Instance of the High Court ruled in another criminal case on 27 July 2021 that “Liberate Hong Kong, Revolution of Our Times” carries the meaning of separating the HKSAR from the People’s Republic of China and is capable of inciting others to commit secession. The reasons for verdict were not only available for public access on the Judiciary’s website, but also widely reported. (para. 7)

B. Sentencing

6. No sentencing guidelines have been laid down for the offence of “doing an act or acts with a seditious intention” by the higher courts. On Charge 1, the maximum penalty for a first offender was a fine of HK\$5,000 and 2 years’ imprisonment, whilst that for Charge 2 was a fine of HK\$2,000 and 1 year’s imprisonment. (paras. 12 and 13)

7. In sentencing, the Court had to take into account the circumstances of the case, including the context in which the offences were 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 specific 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. 13)

8. The Court took into account the *modus operandi*, scale, time, potential risks posed to national security, intention and purpose in relation to the defendant’s commission of the offences, including: (paras. 14-16)

(a) Given the limited time span for the defendant to travel from

residence to the airport wearing the T-shirts printed with seditious words, the ability to disseminate information was low compared with other means (such as the Internet), and the permeability was not high either.

(b) The defendant's walking in crowded public places wearing clothing printed with seditious words was a knowing, lawless and blatant act, which was not an isolated incident. Such circumstances were more serious than those of mere forwarding messages.

(c) The defendant asserted "revolution" as a means to achieve HKSAR independence and to strip away the legitimate governance of the Central Authorities. He advocated conduct in breach of peace and public order to realise his assertions, which seriously undermined national unification and territorial integrity, and dealt a further blow to the gradually peaceful atmosphere of the community. Sentencing must deter the ignorant from blind imitation and prevent others from advocating secessionist messages, so as to prevent any resurrection of the idea of "achieving justice by violating the law".

9. The Court held that the starting point for Charge 1 was four and a half months' imprisonment and for Charge 2, three months' imprisonment. Apart from the one-third discount in sentence for guilty plea, the defendant had no other mitigating grounds for any further reduction in sentence. On Charge 1, the defendant was sentenced to three months' imprisonment, and two months' imprisonment for Charge 2. Having regard to totality in sentencing, the Court ordered the sentences for the two charges to run concurrently, and the defendant was sentenced to a total of three months' imprisonment. (para. 17)