

## Case Summary

### HKSAR v Lai Man Ling (黎雯齡) and Others

DCCC 854/2021; [2022] HKDC 1004

(District Court)

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

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=147148&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=147148&currpage=T))

Before: HH Judge W. K. Kwok

Date: 10 September 2022

*Sentencing – conspiracy to commit sedition regarding seditious publication under ss. 10(1)(c), 159A and 159C of Crimes Ordinance (Cap. 200) – harm of seditious publications to children's minds – wide extent of publication – conspiracy for substantial period – timing of publication – unstable political and social conditions in Hong Kong – starting point of 21 months' imprisonment*

#### Background

1. The five defendants were executives of the 1<sup>st</sup> Executive Council of the General Union of the Hong Kong Speech Therapists (“GUHKST”) which had published three picture books with the titles “羊村守衛者”, “羊村十二勇士” and “羊村清道夫”. They were convicted after trial of one charge of conspiracy to print, publish, distribute, display and/or reproduce seditious publications, contrary to ss. 10(1)(c), 159A and 159C of the Crimes Ordinance, Cap. 200 (“the CO”). The facts of the case could be found in the Reasons for Verdict [2022] HKDC 981.

2. The Court held that each of the three books was a publication with the seditious intention as particularized in s. 9(1)(a), (c), (d), (f) and (g) of the CO, and that the publishers had the same seditious intention when

they published the books. The books were printed, published, etc. as a result of the conspiracy between the five defendants together with others, and all of them intended to carry out the conspiracy and in so doing, each of them had the required seditious intention.

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

3. Counsel for D5 referred to *Fei Yi Ming v The Crown* (1952) 36 HKLR 133 and submitted that the court in that case only imposed a fine on the defendants. The Court pointed out that if counsel suggested that no sentence of imprisonment had been imposed for sedition in Hong Kong prior to 1 July 1997, his submission would be wrong, citing Tsang Tak Sing's case\*. (para. 28)

4. After saying that the sentence to be imposed depended on the defendants' culpabilities in the offence and the harm caused by them, the Court took the following matters into account in sentencing the five defendants. (paras. 29)

(a) The harm caused by the defendants as a result of their offence

- (i) The defendants were to be punished because of the harm or risk of harm that was or would be resulted to the mind of children. The harm caused by the defendants must be identified at the outset.
- (ii) The defendants should never have led the children to think, through the story books, that Hong Kong and PRC (being the sheep and wolves respectively in the books) were completely unrelated to one another, or that the Central Authorities were doing anything illegal or illegitimate when PRC resumed exercising its sovereignty over Hong Kong.
- (iii) The defendants had done a brainwashing exercise with a view to guiding the very young children (aged 4 and above) to accept their views that PRC had no sovereignty over HKSAR which was not part of PRC.

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\* Editor's note: The Court referred to the discussion of this case in Fu Hualing et. al. (eds), *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny*, at p. 288, footnote 50.

- (iv) There was clear evidence that fear, hatred, discontent and disaffection had been instilled in the minds of the children. In fact, there was no need to have evidence of this kind. If a child was told that if he did not fight, he would lose all he had and might even be killed, there was undoubtedly only one answer from him.
- (v) The harm caused by the defendants' crime was the harm and possible harm to the children in their mindset, and once they had internalized this mindset, the seed of instability would be sown in the PRC and HKSAR.
- (vi) Further, the defendants mobilized other persons, including parents of the children, to impart ideas which should never have been imparted onto the children. (para. 30)

(b) Extent of publication – The three books were published in the form of hardcopies, e-edition and video version. Hardcopies were distributed free of charge to the public by placing them inside shops, district counsellors' offices and organizations. The e-edition and video version were published via the social media accounts of GUHKST. The extent of publication was wide. (paras. 5 and 31)

(c) Duration of the conspiracy – The conspiracy lasted for a substantial period of time and was brought to an end only by the arrest of the defendants. (para. 32)

(d) When the publications were done – The publications were done at the time when the political and social conditions in HKSAR were extremely unstable. Despite the promulgation of the NSL on 30 June 2020, the defendants continued to publish the books, and the first book was still promoted or used during the Parent-Children Reading Together Session on 20 June 2021. (para. 33)

5. The defendants said the books were intended to be true records of the events so that the facts would not be lost, and that facts had to be preserved to prevent “brainwashing” of children by the authorities through the anticipated patriotic education in school. In response, the Court posed a series of rhetorical questions to the defendants urging them

to consider whether they had really put the truth before the children, while noting that no one in Europe could in exercise of his freedom of speech deny the existence of Holocaust<sup>†</sup>. (paras. 36-39)

6. The Court found that the defendants were equal participants in the conspiracy and sentenced all of them on the same basis. The maximum sentence for the offence, upon first conviction, was a fine at level 2 and imprisonment for 2 years. As the gravity of this case was more serious than *HKSAR v Cho Suet-sum Chloe and Another* [2022] HKDC 119, the Court adopted a starting point of 21 months' imprisonment. The only mitigating factors were their clear record and that they had been cooperative in limiting the scope of the trial to the minimum. Thus, the Court reduced the sentence by two months and each defendant was sentenced to 19 months' imprisonment. (paras. 35 and 40-43)

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<sup>†</sup> Editor's note: This position is a result of laws against Holocaust denial in the European countries concerned.