

Case Summary

HKSAR v Chow Hang Tung (鄒幸彤) and Others

WKCC 3633/2021; [2023] HKMagC 4

(West Kowloon Magistrates' Courts)

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

https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=151163&currpage=T)

Before: Mr. Peter Law, Principal Magistrate

Date of Sentence: 11 March 2023

Sentencing – failure to comply with Commissioner of Police's notice to provide information contrary to s. 3(3)(b) of Sch. 5 to IR – defendants showing dogged determination not to comply – sentencing to reflect law's determination to safeguard national security and send a message of not condoning violation – obstruction to provision of information defeating whole purpose of Sch. 5 measure – need for punitive and sufficiently deterrent sentence – immediate custodial sentence generally inevitable – political rationale irrelevant to mitigation

Background

1. The three Defendants (D1, D2 and D5) were at all material times office-bearers of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China. They were convicted after trial of failure to comply with the Commissioner of Police's notice to provide information, contrary to s. 3(3)(b) of Sch. 5 (Rules on Requiring Foreign and Taiwan Political Organizations and Agents to Provide Information by Reason of Activities Concerning Hong Kong) to the Implementation Rules for Article 43 of the NSL ("IR").

2. The facts of the case could be found in the reasons for verdict [2023] HKMagC 2 dated 4 March 2023.

Summary of the Court's reasons for sentence

3. This was the first case under s. 3(3)(b) of Sch. 5 to the IR. There was no legal precedent on sentencing for such offence. The maximum penalty was imprisonment for 6 months and a fine of \$100,000. (paras. 1 and 8)

4. Being a foreign agent was not a criminal offence. The Defendants were sentenced solely for their failure to comply with the notice to provide information served under s. 3(1)(b) of Sch. 5. (para. 9)

5. The Court adopted the same starting point of 4.5 months' imprisonment for all three Defendants after considering the whole matter and each Defendant's case separately: (para. 14)

(a) Sentencing for offences relating to national security had to reflect the law's determination to safeguard national security and send a clear message to the society that the law did not condone any violation. There was a need to impose a sentence that was punitive and sufficiently deterrent. In general, an immediate custodial sentence was inevitable. (para. 10)

(b) The measure under Sch. 5 was intended for the prevention and investigation of an offence endangering national security. Information being the core of the measure, any obstruction to the provision of information would defeat the whole purpose. (para. 11)

(c) There was premeditation to show their dogged determination of non-compliance with the notice. The three Defendants and others were acting in concert. They had discussions, held a high-profile press conference announcing their non-compliance, and on the last day of the prescribed period presented an open letter to the Commissioner of Police. (paras. 4 and 12)

6. D1 presented her political rationale and criticized the law and the

case in her submissions, but those were irrelevant to mitigation. There being no justification for any reduction in sentence, the Court sentenced each Defendant to 4.5 months' imprisonment. (paras. 6 and 15-16)

#583703 (v3C)