

DoJ appeals against CFI's refusal to grant interim injunction

The Department of Justice (DoJ) today (August 7) said that the Secretary for Justice has decided to appeal against the decision of the Court of First Instance (CFI) of the High Court made on July 28 to refuse granting an interim injunction for prohibiting four classes of unlawful acts relating to a song. The DoJ has filed the application for leave to appeal to the court.

"The Secretary for Justice acting as a guardian of public interest applied for the interim injunction for the purpose of discharging the constitutional responsibility of the Government of the Hong Kong Special Administrative Region to safeguard national security by effectively preventing, suppressing and imposing punishment on acts or activities endangering national security, and to preserve the dignity of the National Anthem," a spokesman for the DoJ emphasised.

The DoJ's spokesman pointed out that the CFI in its judgment agreed there can be little doubt that the song, "Glory to Hong Kong" (the Song), was used to incite secession, and the four classes of acts that the application for interim injunction sought to prohibit are plainly or likely to constitute criminal activities. The court's views include:

- (1) The court considered there can be little doubt that the Song was used and used effectively by people with intention to incite secession and/or sedition, and was designed to arouse anti-establishment sentiment and belief in the separation of Hong Kong from the People's Republic of China;
- (2) The court also considered there is reasonable ground to believe that the existence of the videos on YouTube entitled "Hong Kong National Anthem" had contributed to the playing of the Song erroneously as the national anthem in international sports events on numerous occasions;
- (3) The four classes of acts that the application for interim injunction sought to prohibit are plainly or likely to constitute criminal activities. And as the unlawful acts of insulting the National Anthem is aimed at arousing emotion for the "independence of Hong Kong", it therefore also endangers national security; and
- (4) The court hopes that its decision may serve to remedy the misconception that

conducting the relevant acts does not constitute a crime.

"The CFI made the decision to refuse granting an interim injunction not because the acts in questions are legal, but because the court considered that such acts already constitute criminal offences even without the injunction, and therefore was not satisfied that the injunction would be of real utility. The court was also of the view that there is a real risk that the enforcement of the injunction would conflict with the prosecution procedure of cases concerning offence endangering national security under the Hong Kong National Security Law (NSL). The Secretary for Justice considered it necessary to appeal to put forward views and request the Court of Appeal to consider granting the interim injunction," the spokesman said.

The spokesman added, "As a matter of fact, the court's judgment has pointed out that, had the court been satisfied that the injunction is of real utility and there exists no conflict with the NSL, the court would accept the interim injunction as satisfying the proportionality test, in that the restriction imposed on freedom of expression is no more than necessary to safeguard national security and would not result in an unacceptably harsh burden on the individual, and would have held in favour of granting the interim injunction."

The Government reiterated that it is a criminal offence to disseminate or perform the Song with the intention of inciting others to commit secession or with seditious intention, or to disseminate or perform the Song as the "National Anthem of Hong Kong" with the intent to insult the National Anthem. Intentionally aiding or abetting others to commit such acts also constitutes an offence which has serious consequences. Members of the public are urged not to take their chances or attempt to break the law.

Ends/Monday, August 7, 2023