

Government welcomes CFA judgment on appeal of unauthorised assembly case

The Court of Final Appeal (CFA) today (August 12) unanimously dismissed the appeals of seven appellants including Lai Chee-ying arising out of their knowingly taking part in an unauthorised assembly on August 18, 2019. The Hong Kong Special Administrative Region (HKSAR) Government welcomes the CFA's judgment.

The CFA reiterated that the defendants' applications for leave to appeal on the ground of challenging the trial Judge's factual findings had been refused. The court also stated in its judgment that the appellants' constitutional challenges against section 17A(3)(a) of the Public Order Ordinance (Cap. 245) had failed, and they had not raised any constitutional challenge against the Commissioner of Police's decision to ban the march, and that was not to suggest that such a challenge would have succeeded as there were compelling reasons to accept that the Commissioner of Police's decision had been constitutionally sound and proportionate.

The CFA has explained and modified the legal concept of "operational proportionality", placing it in the well-established framework for constitutional challenges in this jurisdiction. In view of the differences between the respective frameworks for human rights challenges in Hong Kong and the United Kingdom (UK), the court also held that the decisions of the two UK cases should not be followed in Hong Kong, and rejected the appellants' argument that each of a defendant's arrest, prosecution, conviction and sentence must be separately justified as proportionate.

The HKSAR Government reiterated that Hong Kong citizens have the rights to peaceful assembly and procession conducted in accordance with the law. That said, these rights must be exercised in conformity with the relevant legislation to ensure the safeguarding of national security, public order, public safety and the protection of the rights and freedom of others. The impact of such public events on members of the public should also be minimised.

The HKSAR Government spokesman said, "Hong Kong residents have the obligation to abide by the laws in force in the HKSAR. Equality before the law is one of the fundamental facets of the rule of law, and all persons, regardless of race, rank, politics or religion, are subject to the laws of the land."

Ends/Monday, August 12, 2024