

Dear Sir,

Your article on the interview with Chairman of the Hong Kong Bar Association, Mr Philip Dykes, SC, published on December 10 seemed to have conflated certain issues which require clarifications. It is therefore incumbent upon me, as the Secretary for Justice of the Hong Kong Special Administrative Region (HKSAR), to provide the following information.

In Hong Kong, fundamental rights and freedoms are fully protected by the Basic Law. In particular, Article 27 of the Basic Law expressly guarantees the freedom of assembly and procession. However, these rights and freedoms are not absolute. With the onset of the pandemic, it is the duty of every responsible government, including that of the HKSAR, to put in place measures to reduce the risks of transmission of the disease in the community.

The HKSAR Government introduced the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) (the 599G Regulation) with a view to combating the pandemic with resolute and stringent measures. The Police duly exercised their power to issue notices of objection to public meetings and processions strictly on grounds of public health concern as set out in the 599G Regulation. It is unfair and incorrect for Mr Dykes, SC to allege that the Police had used COVID-19 as an “excuse”.

Any person who is aggrieved by the decisions of the Police is entitled to appeal to the Appeal Board on Public Meetings and Processions, which is an independent statutory body, chaired by a retired judge. The Appeal Board is empowered to confirm, reverse or vary the decision being appealed against. Having carefully considered evidence and the circumstances of each case, the Appeal Board subsequently dismissed a number of appeals.

Mr Dykes, SC has mentioned that the case involving Joshua Wong and two others in his interview. I trust you are aware that their prosecutions were instituted in respect of the offence of unauthorised assembly that took place in 2019 under the Public Order Ordinance (Cap. 245) and not the 599G Regulation. All the three defendants pleaded guilty to their charges and were sentenced by the court.

Your article also quoted Mr Dykes, SC as saying “[t]here is scepticism about the claimed need to postpone the election on public health grounds”. I wish to point out that Hong Kong has experienced a severe resurgence since early July. From July 22 to 31, over 100 confirmed cases were recorded daily, most of them local cases and many with unknown sources of infections. Against such background, the Chief Executive in Council on July 31 invoked the Emergency Regulations Ordinance (Cap. 241)¹, which allows the Chief Executive in Council to make regulations on an occasion of emergency or public danger, to postpone

¹ A related judicial review over the Ordinance has been heard by the Court of Final Appeal of the HKSAR with judgment reserved.

the seventh-term of the Legislative Council (LegCo) election for a year in order to protect public safety and public health as well as to ensure that a fair and open election can be conducted.

Since it was clear that it would be unlikely for the pandemic to subside within a reasonably short period, it was unrealistic, as some lawyers had suggested, to invoke section 44 of Legislative Council Ordinance (Cap. 542) to postpone the election for 14 days. Many countries have also postponed their elections due to the pandemic. Amongst them, the United Kingdom has postponed the local council and the metro-mayoral elections for a year from May 7, 2020 to May 6, 2021 pursuant to the Coronavirus Act 2020 passed in March. Hong Kong has similarly postponed the election for a year to ensure, inter alia, the proper functioning of the LegCo.

I hope that the above would enable your readers to have a better perspective and hence understanding of the basis of the decisions made by the HKSAR Government.

Yours faithfully,

(Ms Teresa Cheng, SC)
Secretary for Justice
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