

SJ's response to WSJ: Hong Kong's Jimmy Lai Rules (English only)
May 20, 2023

The Editor
The Wall Street Journal

Dear Editor,

I take strong exception to your editorial dated May 19 which contained absurd and misleading comments on our legal system and the Hong Kong National Security Law (NSL), reflecting your serious misunderstanding, if not ignorance, about the Hong Kong's highly regarded judicial system.

First and foremost, our judicial independence is premised on the solid infrastructure that has been laid down in the Basic Law, including the security of tenure, the immunity of judges, and importantly the express provision in Article 85 of the Basic Law that guarantees judicial independence, free from any interference. All judges are required to administer justice without fear or favour. The only criterion upon which judges are appointed is their judicial and professional quality, and their appointment by the Chief Executive under Article 88 of the Basic Law is upon the recommendation of an independent statutory commission comprising representatives of the Judiciary, the legal profession and distinguished figures of the community.

Under the NSL, the Chief Executive establishes a list or panel of judges for dealing with national security cases. The listing and handling of cases, as well as the assignment of which judge or judges are to handle cases, have always been judicial functions to be exercised by the Judiciary independently. It is a well-established practice for specialist judges to be designated for dealing with a particular area of law. When adjudicating cases, regardless of whether the cases concern national security or otherwise, judges remain independent and impartial in performing their judicial duties, free from any interference. The arrangement on the designation of judges under the NSL does not undermine the impartiality of judges or the exercise of the independent judicial power by the HKSAR courts in adjudicating cases.

The facts of the case and the court's considerations in determining the verdict are clearly set out in written judgments, which are accessible by everyone under Hong Kong's open and transparent judicial system. If one reads the judgments fairly, properly and objectively, there is no basis to suggest that they have not exercised their judicial powers independently and decided the cases strictly in accordance with the law and evidence.

Article 35 of the Basic Law provides that Hong Kong residents have the right to choose their lawyers, but such right simply means a person has a right to choose counsel who are available and qualified to practise in Hong Kong. They have no right to demand overseas counsel be admitted ad hoc to represent them. Even under the existing law, they must obtain the permission of the courts, who will only grant it if stringent conditions are satisfied.

It cannot be stressed enough that the provisions of the NSL clearly specify the elements of each offence, including the criminal acts and intents, the scope of application and the penalties. The same standard of proof applies to NSL offences just like any other criminal offences. Similar provisions are commonly found under the national security laws in foreign jurisdictions. So long as people, regardless of whether they are Hong Kong residents or overseas investors, strictly observe the laws in Hong Kong, they will not unwittingly violate the law.

As guaranteed by the Basic Law and the Hong Kong Bill of Rights, defendants charged with criminal offences shall have the right to a fair trial by the Judiciary; and Article 85 of the Basic Law clearly stipulates that the courts of the HKSAR shall exercise judicial power independently, free from any interference.

The HKSAR Government steadfastly safeguards national sovereignty, security and development interests. In accordance with the law, it will continue to resolutely carry out its duties and obligations to safeguard national security and, at the same time, protect the rights and freedoms that Hong Kong residents enjoy, ensuring the steadfast and successful implementation of the “one country, two systems” principle.

Paul Lam, SC
Secretary for Justice
The Government of the Hong Kong Special Administrative Region