



## Summary of Judgment

### Secretary for Justice (“SJ”) v Persons conducting themselves in any of the acts prohibited under paragraph 1(a), (b), (c) or (d) of the Indorsement of Claim HCA 855/2023; [2023] HKCFI 1950

**Decision** : Application for interim injunction restraining four classes of acts as defined in the Indorsement of Claim in relation to a song commonly known as “願榮光歸香港” or “Glory to Hong Kong” (the “Song”) dismissed

**Date of Hearing** : 21 July 2023

**Date of Decision** : 28 July 2023

### Background

1. In August 2019, amidst violent protests in Hong Kong, the Song first emerged as a video publicly accessible online on YouTube. Since then, the Song was used by people with intention to incite secession and/or sedition, and sung by protesters in many public order events between 2019 and 2022 during some of which “Hong Kong independence” or other seditious slogans were chanted.
2. The Song remains freely available on the internet and prevalent. Only a small number of arrests and criminal prosecutions were brought in relation to the unlawful use of the Song because of the difficulty and time required for investigation.
3. On 5 June 2023, SJ, acting as guardian of public interest, applied to the Court of First Instance for an interlocutory injunction (the “**Injunction**”) in aid of criminal law to restrain the following acts (the “**4 Acts**”):-
  - (a) Broadcasting, performing, printing, publishing, selling, offering for sale, distributing, disseminating, displaying or reproducing in any way including on the internet and/or any media accessible online and/or any internet-based platform or medium, the Song, whether its melody or lyrics or in combination, (i) with the intent of and in circumstances capable of inciting others to commit secession, contrary to Article 21 of The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the “**NSL**”), or (ii) with a seditious intention as defined in section 9 of the Crimes Ordinance (Cap. 200); and in particular to advocate



the separation of the Hong Kong Special Administrative Region (“HKSAR”) from the People’s Republic of China;

- (b) Broadcasting, performing, printing, publishing, selling, offering for sale, distributing, disseminating, displaying or reproducing in any way including on the internet and/or any media accessible online and/or any internet-based platform or medium, the Song, whether its melody or lyrics or in combination, in such a way: (i) as to be likely to be mistaken as the national anthem insofar as the HKSAR is concerned; or (ii) as to suggest that the HKSAR is an independent state and has a national anthem of her own; with intent to insult the national anthem, contrary to section 7 of the National Anthem Ordinance (Instrument A405);
- (c) Assisting, causing, procuring, inciting, aiding, abetting others to commit or participate in any of the acts as set out in paragraph (a) or (b); or
- (d) Knowingly authorizing, permitting or allowing others to commit any of the acts or participate in any of the acts as set out in paragraph (a) or (b).

### **The Issues**

- 4. The central issue in the case is whether the jurisdiction of the Court in granting an interlocutory injunction in aid of criminal law should be exercised.
- 5. The main sub-issues include whether the Injunction:
  - (1) will be effective or of utility in aid of the criminal law;
  - (2) may conflict with the criminal law for which purpose it is sought to be granted;
  - (3) is sufficiently certain in its terms and is proportionate due to the potential intrusion to the right to free expression.

### **Department of Justice’s Summary of the Decision**

(Full text of the Decision at

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=154086&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=154086&currpage=T))

- 6. The Injunction is not intended to make an inroad into the freedom of expression enjoyed by the people of Hong Kong, for the simple reason that the 4 Acts are criminal or unlawful activities (§3). There is no absolute freedom of expression, and the right to free expression is always confined within legal limits.



Commission of a crime goes outside such limits (§4).

7. The Court had a duty pursuant to Articles 3 and 8 of the NSL to effectively prevent, suppress and impose punishment for any act or activity endangering national security. National security goes to the stability and prosperity of Hong Kong, the core interests of Hong Kong people. The Court would accord significant weight to matters of national security. At the same time, the Court was duty bound to protect human rights, which included freedom of expression, when acting to safeguard national security under Article 4 of the NSL (§§6-7).
8. There can be little doubt that the Song was used and used effectively by people with intention to incite secession and/or sedition (§15). Equally, there can be little doubt that the Song was designed to arouse anti-establishment sentiment and belief in the separation of Hong Kong from the PRC (§16). There is reasonable ground to believe that the existence of videos of various versions of the Song on YouTube entitled “Hong Kong National Anthem” had contributed to the playing of the Song erroneously as the national anthem in international sports events, which was highly embarrassing and hurtful to many people of Hong Kong (§17).
9. It is also plain that the Acts covered by §3(a) to (c) above are criminal activities, and they endanger national security. The Act covered by §3(d) above is also likely to capture the aiding and abetting of the commission of those offences, and is likely to be a crime (§§45 & 60).
10. It is hoped that this Decision may, to some extent, serve to remedy the misconception that the Song may be broadcast etc in whichever manner one wishes with impunity. The relevant criminal codes and the cases of convictions have been set out in this Decision (§§19, 24-32). Those who are sailing close to the wind may think again if they have the belief that these are crimes without consequences (§58).
11. The Injunction is intended to be *contra mundum* (against the world). An injunction *contra mundum* is exceptional. In light of the potential impact of the Injunction on everyone in Hong Kong, the Court must place great emphasis on safeguarding the fundamental rights of third parties who may be adversely affected (§§34-38).
12. An important background in the consideration of the application is that the criminal law regime under the NSL, the Crimes Ordinance and the National Anthem Ordinance can fairly be described as extensive and robust. Since the enactment



of the NSL, Hong Kong has returned to normality. The criminal law regime, especially the NSL, is effective (§§47-48).

13. The law required that for the grant of an injunction in aid of criminal law, it must be shown that absent the injunction the illegal conduct cannot be effectively restrained, and the court must consider (1) the effectiveness of the injunction i.e. whether the injunction would actually provide greater deterrence than what the criminal law already imposes; and (2) the ease of enforcement against law-breakers. After careful consideration, the Court was not satisfied of the utility of the Injunction for prevention and suppression of the relevant offences (§§51-54), based on reasons including the following:

(1) It is unlikely that the entrenched offenders will be deterred by an additional injunction (§57);

(2) The more effective tool to correct misconceptions may be one of education (§58);

(3) Whilst acknowledging the difficulties faced by the enforcement agencies on the matter, the Court failed to see how the Injunction would assist effective enforcement against the 4 Acts. In order to enforce the Injunction, the SJ will have to prove the criminal offences relevant to the 4 Acts by way of contempt proceedings (§§59-61);

(4) The Injunction would not have the effect of demonstrating to Internet Platform Operators (the “IPOs”) violation of Hong Kong law in relation to the relevant contents of the Song. Further, the IPOs must have access to legal advice and are aware of their duties to act within the law. The Injunction does not add to the deterrence of the criminal law (§§63-64).

14. The Court was not satisfied how any enforcement action in the civil domain against alleged breaches of the Injunction would operate compatibly and coherently with the requirements and mandated procedures in the NSL regime (§§66-68).

15. The Court recognised that the right to freedom of expression is engaged by the application, but not the freedom of conscience. Having balanced the possible “chilling effects” generated by the Injunction (which the Court accepted was not the intention behind the Injunction) against the fundamental importance of national security, the Court held that had it been satisfied that the Injunction is of real utility and does not conflict with the criminal laws, the restriction of the right



to freedom of expression by the Injunction would have been justified after applying the proportionality test set out in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372 (§§75-83).

### **Conclusion**

16. The Court was not satisfied that it is just and convenient to grant the Injunction. SJ's application for the Injunction was dismissed (§84).

**Department of Justice**  
**July 2023**

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