

Prosecution of Melody Chan is not a political decision

The Department of Justice (DoJ) normally does not comment on individual cases. However, as certain comments made by the defendant, Melody Chan Yuk Fung (Chan), to the media after the court hearing this morning are not factually correct, it is in the public interest to set the record straight.

The Director of Public Prosecutions (DPP), Mr Kevin P Zervos, SC, said at the Eastern Magistracy today (July 3), "This is not a political prosecution" and "the lapse of time in this prosecution was caused by Chan."

As he explained in court this morning, the DPP agreed to deal with Chan's case by way of the bind over procedure as it was believed to be appropriate in the circumstances of this case. Chan gave an undertaking to the court to be of good behaviour and keep the peace for a period of 12 months. Mr Zervos pointed out that a bind over is not a "let-off" as the defendant has to give an undertaking to be of good behaviour for a period of 12 months with a further sanction of any breach of the undertaking being liable to imprisonment for up to six months.

When addressing the court, Mr Zervos stated that he accepted Chan's remorse as expressed in the written submissions previously put forward by her lawyers, who stated that the incident had "brought home to her (Chan) the serious consequences of breaking the law" and she (Chan) realised that she had to "face up to the consequences of her action".

Mr Zervos made the point that this incident occurred on July 1, 2011 and the Prosecutions Division submitted a legal advice to the Police on December 20, 2011 recommending prosecution actions against nine of the arrested persons. Of the other eight offenders dealt with by the court in 2012, two were by way of the bind over procedure and the other six received fines upon pleas of guilty, it was considered appropriate that Chan be dealt with by the bind over procedure.

Chan admitted the Brief Facts (a copy of which is attached) read

out in open court by the DPP during the hearing this morning, which included the following:

"Since January 2012, the Police endeavoured to locate and arrest the defendant with a view to prosecuting her. The Police had repeatedly attempted to contact her by phone on over 20 occasions. On two of those occasions, the Police successfully contacted the defendant over the phone and she was informed of the intended prosecution against her and invited her to go to the police station to go through the charging formalities. The Police had also paid ten odd visits to addresses connected to the defendant in an effort to locate her. The Police had told the defendant's family members that the police were looking for her and provided police contact details. However, the defendant did not contact the Police." (para. 20)

After the court hearing this morning, Chan sought to stress to the media that she had never ever avoided the Police. What Chan said is contrary to the Brief Facts to which she admitted in open court (see para. 20 quoted above). Besides, Mr Zervos made the point in court that the Police endeavoured to contact the defendant throughout 2012 and 2013 and that the time taken in bringing this prosecution was the result of the defendant avoiding the Police. Such submission by Mr Zervos was not disputed by Chan or her counsel in court. As made clear previously and confirmed by the DPP this morning, this was not a political prosecution, and the Police was acting in accordance with the legal advice given in December 2011.

Mr Zervos also emphasised that the defendant and all citizens of Hong Kong enjoy the right to a peaceful and lawful demonstration. However, members of the public should also respect one another's rights and abide by the law.

Ends/Wednesday, July 3, 2013