

## Case Summary

### **HKSAR v Ng Hau Yi Sidney (伍巧怡)**

FAMC 32/2021; [2021] HKCFA 42; (2021) 24 HKCFAR 417;  
[2021] 6 HKC 822

(Appeal Committee of the Court of Final Appeal)

(Full text of the Appeal Committee's reasons for determination  
in English at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=140898&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=140898&QS=%2B&TP=JU))

Before: Cheung CJ, Ribeiro and Fok PJJ

Date of Hearing and Determination: 9 December 2021

Date of Reasons for Determination: 14 December 2021

*Bail – purposive and contextual construction – legislative intent of NSL – meaning of “acts endangering national security” and “offence(s) endangering national security” in NSL – application of threshold for bail under NSL 42(2) to offences not created by NSL – prohibited act of sedition qualified as offence endangering national security - proactive case management*

### **Background**

1. The applicant sought leave to appeal on the following point of law: “Whether the more stringent threshold requirement for the grant of bail under Article 42(2) of the [NSL] is applicable in relation to offences not created by the NSL, such as an offence under section 10 of the Crimes Ordinance ...”.

### **Major provision(s) and issue(s) under consideration**

- NSL 42(1) and (2)
- Crimes Ordinance (Cap. 200), s. 10(1)(c)

2. The analysis involved two questions: (i) whether the phrase “acts endangering national security” (or “offence(s) endangering national security”) should be held to apply only to offences created by the NSL; and (ii) if not so limited, whether the offence charged under s. 10(1)(c) of the Crimes Ordinance was one of the non-NSL offences covered so as to attract the more stringent bail threshold under NSL 42(2)<sup>1</sup>.

### **Summary of the Court’s rulings**

3. The Court applied *HKSAR v Lai Chee Ying* [2021] HKCFA 3 which noted that it was difficult to envisage the accused committing acts endangering national security which would not amount to offences either under the NSL or under HKSAR law “[s]uch as the offences of treason, incitement to disaffection or sedition under Parts I and II of the Crimes Ordinance”. (paras. 12-13)

4. Viewed purposively having regard to NSL 3, 8 and 41, the intent of the NSL was plainly for national security to be safeguarded by the complementary application of the laws which it created together with the existing laws of the HKSAR, such as those contained in Pt. II of the Crimes Ordinance. (paras. 22-24)

5. Where the NSL referred to “offence[s] endangering national security” without distinguishing between those offences which it created and other offences of that nature, subject to any contextual or purposive arguments to the contrary in any particular case, it was referring to all such offences without distinction. (para. 27)

6. All the more so, where the NSL provision referred to “acts endangering national security” (NSL 42(2)) or to “acts and activities endangering national security” (NSL 8), that phrase, as held in the *Lai*

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<sup>1</sup> S. 10(1)(c) of the Crimes Ordinance provides that any person who prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication shall be guilty of an offence.

*Chee Ying* case, should be construed as referring to acts endangering national security which were “capable of constituting an offence under the NSL or the laws of the HKSAR safeguarding national security.” (para. 28)

7. That the NSL should be construed to include the s. 10(1)(c) offence as an offence endangering national security appeared inescapable. NSL 7 bore on this question. It required the HKSAR to “complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law ... and [to] refine relevant laws”. That stipulation was in BL 23 which required the HKSAR to enact (among other laws) laws to prohibit any act of sedition. The combined effect of BL 23 and NSL 7 was therefore that a prohibited act of sedition – including an offence contrary to s. 10(1)(c) of the Crimes Ordinance – qualified as an offence endangering national security. (para. 31)

8. The applicant’s proposition that the more stringent threshold for the grant of bail under NSL 42(2) was confined to offences created by the NSL was not reasonably arguable. The more stringent threshold for the grant of bail applied to the offence charged under s. 10(1)(c) of the Crimes Ordinance. (paras. 29 and 32)

9. With the full cooperation of the parties, magistrates and judges should proactively seek ways to bring NSL-related matters to trial expeditiously, consistently of course with the interests of justice. There should be proactive case management and a monitoring of the progress of the court. The court should set and enforce strict timetables and should critically consider whether any prescribed procedural steps could be eliminated, re-sequenced, modified, split up or made to run concurrently to avoid delay and wasted effort, consistent always with a fair trial. (para. 34)