

## Case Digest (English Translation)

**HKSAR v 陳永霖 (Chen Raymond)**

WKCC 2179/2022; [2022] HKMagC 6

(West Kowloon Magistrates' Courts)

(Full text of the Court's Reasons for Sentence in Chinese at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=147311&QS=%28wkcc%7C2179%2F2022%29&TP=RS](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=147311&QS=%28wkcc%7C2179%2F2022%29&TP=RS))

Before: Mr Law Tak-chuen Peter, Principal Magistrate

Date of Sentence: 15 September 2022

*Sentencing – doing acts with seditious intention – guilty plea – publishing posts with seditious intention on an instant messaging platform – court making reference to NSL case law – continuing for a period that was not short – contents and materials of the posts being serious – only forwarding others' messages*

*Sentencing – possession of apparatus for radiocommunications without a licence – guilty plea – apparatus not having been used during period of social unrest*

1. The Defendant pleaded guilty to two counts of charges. The first count involved doing one or more acts with a seditious intention, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200) (“Charge 1”). The charge stated that he published a total of 23 seditious posts on Telegram between 20 July 2020 and 10 June 2022, including defamatory messages against the Central Authorities and the Hong Kong Police, slogans commonly used during the period of social unrest (including “Liberate Hong Kong, Revolution of Our Times” and “Hong Kong Independence”), and messages inciting others to participate in violence, armed revolution, military training or unlawful assembly, with an intention: (a) to bring into hatred or contempt or to excite disaffection against the Central Authorities and/or the HKSARG; (b) to excite inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established; (c) to incite persons to violence; and/or (d) to counsel disobedience to law or to any lawful order. The Defendant also pleaded

guilty to possession of apparatus for radiocommunications without a licence (“Charge 3”)<sup>1</sup>.

2. Held, sentencing the Defendant to 4 months’ imprisonment for Charge 1 and a fine of \$2,000 for Charge 3, that:

- (a) The Court of Appeal in *HKSAR v Ma Chun Man* [2022] HKCA 1151 identified various sentencing factors for assessing the seriousness of an offence of incitement to secession under NSL 21. Although the charge in that case was different from the charge in this case, the Court of Final Appeal in *HKSAR v Ng Hau Yi Sidney* [2021] HKCFA 42 held that an offence of sedition was an offence endangering national security. Therefore, even though the charges were different, they were of the same category. Besides, they shared the common feature of involving seditious acts. Hence, the court considered that the sentencing factors identified in *Ma Chun Man* were applicable to this case.
- (b) The number of posts published by the Defendant was only 23, but they continued for a period that was not short, indicating that the Defendant hoped that his messages could continue.
- (c) The social atmosphere at that time was relatively calm, but many people had not yet calmed down their emotions. Publishing this kind of posts carried probable risks of giving rise to a resurgence.
- (d) The contents and materials of the posts were serious, involving elements of force and violence, as well as defamatory and derogatory.
- (e) The number of respondents was small and the posts were not influential. There was no evidence showing that the posts had caused significant harm or serious crimes.
- (f) The Defendant’s acts only pertained to forwarding others’ messages the contents of which were not created by him.
- (g) The court adopted 7.5 months as the starting point for sentencing Charge 1, which was reduced to 5 months after one-third discount on account of the guilty plea. Considering the factors mentioned in (e) and (f) above, an additional discount of 1 month was given.
- (h) As regards Charge 3, the Defendant purchased the communications apparatuses as early as in 2017, and there was no evidence that they had been used during the period of social

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<sup>1</sup> With regard to Charge 2, the prosecution’s application to withdraw was granted.

unrest. Therefore, it was dealt with by a fine.

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