

Case Digest (English Translation)

HKSAR v 陸挺峯 (Luk Ting Fung)

WKCC 2700/2022; [2022] HKMagC 10
(West Kowloon Magistrates' Courts)

(Full text of the Court's Reasons for Sentence in Chinese at
https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=148264&currpage=T)

Before: Mr So Wai-tak, Chief Magistrate

Date of Sentence: 25 October 2022

Sentencing – doing acts with seditious intention – guilty plea – using social media platform to publish and continuously display posts with seditious intention – risk of exacerbating disruption of social order

1. The Defendant pleaded guilty to one count of doing an act or acts with a seditious intention, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200). From 13 January 2020 to 1 August 2022, the Defendant published and continuously displayed 21 posts with a seditious intention through the online forum “LIHKG”. The contents of those posts included, among others, advocating the use of armed resistance and revolution to realize the independence of Hong Kong and to overthrow the CPG, as well as promoting hostility towards the CPG and the HKSARG, taking a hostile attitude towards individuals with different political opinions, and calling for their execution.

2. Held, sentencing the Defendant to 6 months' imprisonment, that:

- (a) In respect of the modus operandi, the Defendant made use of an online platform to disseminate and spread his messages quickly and widely, with the messages having continuity and permanence. Any internet user would be free to browse and read those posts.

- (b) When the Defendant started committing the offence, the society was still facing the severe impact of violence and riots. The Defendant nonetheless advocated for the use of violent means to realize his idea. He emphasized that he was not joking and called for real actions, which carried a risk of exacerbating the continued serious disruption of social order. He subsequently further published and continuously displayed comments that incited hatred among others against the CPG and the HKSARG.
- (c) The Defendant published and continuously displayed posts more frequently when the social atmosphere was calmer. He was determined to continue advocating his ideas, even inciting recourse to illegal means.
- (d) On the other hand, the Court did not overlook that the Defendant acted alone, that the scale of his crime was small, that his ability to rally for support and influence others was relatively low, and that there was no evidence of his posts having brought about actual harm or having caused any serious crimes.
- (e) A starting point of 9 months was adopted, and save for a one-third discount on account of the Defendant's guilty plea, there was no other ground for any further reduction in sentence.

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