

Case Summary (English Translation)

HKSAR v Chung Hon Lam (鍾翰林)

DCCC 27/2021; [2021] HKDC 1484
(District Court)

(Full text of reasons for sentence in Chinese
at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=140366&QS=%28%5B2021%5D%7CHKDC%7C1484%29&TP=RS)

Before: HH Judge Stanley Chan

Date: 23 November 2021

Sentencing - secession under NSL 20 - money laundering under s.25 of Organized and Serious Crimes Ordinance (Cap.455) - guilty plea - member-cum-convener of “Studentlocalism”, a part of its US division and a member of “Initiative Independence Party” - established “Localism Concern Group” in secondary schools - “international route” – using multiple online social platforms – providing volunteer group link and PayPal link for fundraising - sentencing limit at the District Court - actively “organized, planned, committed” - “active participant” - starting point of 4 and a half years for secession - starting point of 2 years for money laundering

Background

1. The Defendant faced 4 charges. Upon plea bargain, he pleaded guilty to secession under Charge 2, contrary to NSL 20 and money laundering under Charge 3 (namely, dealing with property known or believed to represent proceeds of an indictable offence), contrary to s. 25 of the Organized and Serious Crimes Ordinance (Cap. 455). The remaining Charges 1 and 4 were left on the court file.

Major provision(s) under consideration

- NSL 20
- Organized and Serious Crimes Ordinance (Cap. 455), s. 25

Summary of the reasons for sentence

2. The sentence in this case was based on the summary of facts agreed by the parties. Secession under Charge 2 was committed during the period between 1 July 2020 and 27 October 2020, whilst on money laundering under Charge 3 took place from January 2018 to 27 October 2020. (paras. 2 to 3)

A. Facts prior to the NSL came into force

3. “Studentlocalism” was established on 5 April 2016. The establishment declaration, belief and political manifesto included: statements and actions about ending “the colonial rule of the Chinese Communist Party”, Hong Kong independence, devising constitution by all people and making new covenant, with the seditious intention to bring into hatred or contempt or to excite disaffection against the HKSARG; to alter any other matter in Hong Kong as by law established; to raise discontent or disaffection amongst inhabitants of Hong Kong, to incite persons to violence, or to counsel disobedience to law or to any lawful order, as well as the intention to commit secession. (para. 4.2)

4. The Defendant was the member-cum-convener of Studentlocalism and also the administrator of the organization’s Facebook page. Since the establishment of Studentlocalism, he and other participants had made representations and committed acts with the seditious intention and secessionist intention mentioned above, including setting up street booths; instigating or organizing activities such as procession through live webcast and programme interviews; producing or arranging the release of promotional items; releasing content and publications with a seditious intention and a secessionist intention through social platforms Facebook, Twitter, Instagram and Telegram; as well as advocating and instigating representations with such intentions. (paras. 4.3 and 4.4)

5. The Defendant opened a PayPal account on 14 May 2017. Since 20 January 2018, when content with the abovementioned seditious intention and secessionist intention was published on the Studentlocalism's Facebook page, a PayPal link for "Studentlocalism PayPal – Subsidise as You Please" was provided. (paras. 4.4 (4.7) to (4.11))

6. The content that the Defendant published on the Studentlocalism's Facebook page was further advocated and instigated by the following means: (para. 4.4 (4.16))

(a) Representations and acts in relation to Hong Kong independence, particularly at a later stage before the coming into force of the NSL, were accompanied by search hashtags in such words like "Hong Kong independence", "Liberate Hong Kong · Revolution of Our Times", "Glory to Hong Kong" or similar combination of words.

(b) Not only did the Defendant mention the PayPal link and volunteer group link in the published content on numerous occasions, he also republished the links to other Studentlocalism's social platforms and links for dissemination of information such as Twitter, Instagram and Telegram.

B. Facts of Charge 2 – Secession (which took place after the NSL came into force)

7. The Defendant, between 1 July 2020 and 27 October 2020, together with other person(s), actively organized, planned, committed or participated in acts with a view to committing secession or undermining national unification, namely separating the HKSAR from the PRC or altering by unlawful means the legal status of the HKSAR. His criminal acts included: (see para. 4.5 for details)

(a) On Studentlocalism's Facebook page, he continued to: display the organization's information, setting out the secessionist

representations and acts to implement “establishing Republic of Hong Kong with its independent sovereignty”, bearing the slogan “Defend localism · Hong Kong Independence · Students’ Mission · Separation from China and Decolonisation”; recruit volunteers; and provide the PayPal link and the volunteer group link. (para. 4.5 (5.2))

(b) On about 13 July 2020, the Defendant created a Facebook page for “Studentlocalism US Division”. He was one of the administrators of that page, and the organization’s slogan, “Hong Kong Independence, National Self Determination” was displayed thereon. On 17 July, Studentlocalism US Division, of which the Defendant was a part, was formally established. On 19 July, the Defendant advocated on the Facebook page of that division for the support from international communities, establishment of the “Hong Kong Nation”, democratic self-determination as well as the realisation of Hong Kong independence. (paras. 4.5 (5.6) to (5.10))

(c) “Initiative Independence Party” was established on 21 July 2020; the Defendant was a member and its Facebook page administrator. He made the establishment manifesto on the organization’s Facebook page, asserting Hong Kong independence as the ultimate goal, “to fight without bottom line by any means to expel the Chinese colonizers” and promoting the agenda of Hong Kong independence to people overseas at the same time. Such content could also be found on the organization’s Twitter and Instagram pages. (paras. 4.5 (5.12) to (5.15))

(d) On 26 July 2020, he published the post “Resist Chinese Nationalism · Build up Hong Kong Nationalism” on Studentlocalism’s Facebook page, stating “building up the sense of Hong Kong national identity, so as to fulfil Hongkongers’

eventual determination of their own fate”. (para. 4.5 (5.16))

(e) Studentlocalism, its US Division and “Initiative Independent Party” all held accounts on Instagram, Twitter and/or Telegram apart from Facebook. These platforms were still in operation after the NSL had come into force. What they had published on these platforms before and after the coming into force of the NSL remained thereon even after the law came into force. All platforms were open to public and accessible to users without the need for subscriptions. (para. 4.5 (5.19))

C. Facts of Charge 3 – Money Laundering

8. There were 8 sub-accounts under the PayPal account opened by the Defendant for handling different currencies. For example, between 19 January 2018 and 27 October 2020, its HKD account had 83 transactions, with deposits of HKD\$102,747.79 received in total. When making deposits, depositors could send the Defendant (the money recipient) messages including representations that supported Hong Kong independence such as “Liberate Hong Kong · Revolution of Our Times”. The Defendant had withdrawn a total of HKD\$130,091 from that PayPal account. 94.7% of the amount withdrawn was deposited into his personal bank account and was eventually dealt with by the Defendant by various means as proceeds of crime. (see paras. 4.6 to 4.17 for details)

D. Sentencing

9. The basis of the sentence imposed by the Court was confined to the period as particularised in Charge 2, namely between 1 July and 27 October 2020. The Court found that the Defendant’s political belief as well as the purpose and direction of his acts crystal clear. His criminal acts were recorded both on his online social platforms and in the Annex to the summary of facts:

(a) The Defendant recruited members or volunteer groups and

raised funds on Studentlocalism's platforms in order to achieve their political beliefs and to take actions, calling for "actions to break new ground";

- (b) They set up street booths and displayed the flag of colonial Hong Kong, "spreading the ideology of Hong Kong independence across all districts in Hong Kong";
- (c) They established "Localism Concern Groups" in secondary schools and "promoted Hong Kong independence on campus, using the resources and power of students' unions, so as to contribute to the furtherance of Hong Kong independence".
(paras. 9 to 11)

10. As regards Charge 2 of secession, according to the facts of the present case, the Defendant continued to separate the HKSAR from the PRC or held the intention to alter by unlawful means the legal status of the HKSAR despite the implementation of the NSL. Obviously, the Defendant was incited by others in 2016 to actively participate in political activities. He later became an organizer who moreover violated the law, committed secession, as well as actively organized, planned and committed secessionist acts after the NSL had been implemented.
(paras. 14 and 16)

11. Three categories of sentence were listed under NSL 20 (Secession):

- (a) a person who was a principal offender or a person who committed an offence of a grave nature should be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years;
- (b) a person who actively participated in the offence should be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years;
- (c) other participants should be sentenced to fixed-term imprisonment of not more than 3 years, short-term detention or restriction.

12. In light of the sentencing limit at the DC, the Court only considered the sentencing categories under sub-paragraphs (b) and (c) and held that

the Defendant was an active participant: (paras. 14 to 15)

- (a) Since the founding of Studentlocalism in 2016, the Defendant had been actively participating in activities and managing the relevant social platforms. Prior to the coming into force of the NSL, although he alleged that the Studentlocalism had ceased operation in Hong Kong, the provision of the links to recruitment of volunteer groups and to PayPal fundraising were not stopped.
- (b) In around July 2020, the Defendant opened a Facebook account for Studentlocalism US division, with “Hong Kong independence · National Self-determination” as the slogan. The Defendant, being one of the account administrators, continued to advocate the idea of Hong Kong independence. The account also contained a form for recruiting volunteers for the overseas division, a link to its Chinese version and a PayPal link for fundraising.
- (c) On 21 July 2020, “Initiative Independence Party” was established; its objective was “Initiative Independence · National Self-strengthening” with Hong Kong independence as the ultimate goal. The Defendant was a part of the organization and its Facebook account administrator. That organization also held accounts on Twitter and Instagram.
- (d) On 26 July 2020, the Defendant made political declarations on Studentlocalism’s Facebook page to build up the sense of “Hong Kong national identity”.
- (e) On 29 July 2020, the police found a large quantity of political placards as well as flags and leaflets printed with words “Hong Kong independence” at the Defendant’s residence.
- (f) On 29 July 2020, the Defendant was arrested by the police for incitement to secession. Upon his release on bail, he continued to give public interviews and make political statements in August. The Defendant had already committed the offences of

desecrating the national flags and taking part in an unlawful assembly back in May 2019. He committed the present offences whilst on police bail.

13. The Defence argued that the Defendant only published posts online, which did not involve any actual use of violence and that his organizations were all anonymous ones. The Defendant had limited ability to spread information around and had no specific plan. The Court noted that the Defendant was under the impression that shifting activities to the overseas branch and adopting the so-called “international route” outside Hong Kong would not be unlawful. He thus established Studentlocalism’s US division on 13 July 2020 and followed suit on the Facebook page of that division to recruit volunteers and to appeal for donations to the PayPal account opened by him. The Court held that although the Defendant did not have any concrete and specific plan to achieve secession, there were active organization, planning and even commission on his part with an explicit goal. The offence of secession needed not necessarily involve the actual use of violence. (paras. 17 to 18)

14. The Defendant committed the offence of secession over a period of approximately 3 and a half months. The Court noted that had the Defendant not been further arrested on 27 October 2020, he most likely would have continued his criminal acts. The Court held that a sentence, apart from serving as a punishment on the offender, should have a deterrent effect, so that the people in future would be aware of the consequences and criminal liability for committing the offence. As stipulated by NSL 20, a person who actively participated in the offence should be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years. Having considered all the factors, the Court decided to adopt 4 and a half years as the starting point and also granted the Defendant a further discount of 25% in sentence for his late plea. The sentence was then rounded off to 40 months instead of 40.5 months. (para. 19)

15. As regards Charge 3 of money laundering, having taken into account the facts that:

- (a) the offence period was from January 2018 to October 2020, over a span of approximately 2 and a half years;
- (b) the sum involved was merely around HKD\$135,000;
- (c) there was no evidence to prove that other serious and organized crimes were involved in this charge;
- (d) there was no concrete evidence to prove that the Defendant pocketed the entire sum;
- (e) the Defence reiterated that all the money was used for financing activities of Studentlocalism,

the Court decided to adopt 2 years as the starting point and likewise, to grant a discount of 25% in sentence. The Defendant was sentenced to 18 months' imprisonment. (para. 20)

16. Finally, upon consideration of the totality principle in sentencing, the Court decided to order 3 months of the sentence on Charge 3 to run consecutively to the sentence on Charge 2, which meant 40 months plus 3 months. The Defendant was sentenced to a total of 43 months' imprisonment. (para. 21)

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