

SJ's appeal allowed: Court of Appeal granted interim injunction relating to a song

A spokesman for the Hong Kong Special Administrative Region (HKSAR) Government said that the Court of Appeal of the High Court today (May 8) allowed the Secretary for Justice's appeal in relation to an interim injunction for a song. The Court of Appeal granted an interim injunction (CACV 274/2023) to prohibit the following four classes of criminal acts relating to the song "Glory to Hong Kong" (or "áŠéí~æ|@á...æ,é|™æ,~á€<", referred to below as "the Song"):

(1) Broadcasting, performing, printing, publishing, selling, offering for sale, distributing, disseminating, displaying or reproducing in any way including on the internet and/or any media accessible online and/or any internet-based platform or medium, the Song, whether its melody or lyrics or in combination:

(i) with the intent of and in circumstances capable of inciting others to commit secession, contrary to Article 21 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region; or

(ii) with a seditious intention as defined in section 23 of the Safeguarding National Security Ordinance; and in particular to advocate the separation of the HKSAR from the People's Republic of China; or

(2) Broadcasting, performing, printing, publishing, selling, offering for sale, distributing, disseminating, displaying or reproducing in any way (including on the internet and/or any media accessible online and/or any internet-based platform or medium), the Song, whether its melody or lyrics or in combination, in such a way:

(i) as to misrepresent it as the national anthem insofar as the HKSAR is concerned; or

(ii) as to suggest that the HKSAR is an independent state and has a national anthem of her own;

and with intent to insult the national anthem, contrary to section 7 of the National Anthem Ordinance; or

(3) Wilfully assisting, causing, procuring, inciting, aiding, abetting others to commit or participate in any of the acts as set out in paragraph (1) or (2); or

(4) Knowingly authorising, permitting or allowing others to commit or participate in any of the acts as set out in paragraph (1) or (2).

The interim injunction also covers the following items:

- (a) The acts of publishing the items via the Uniform Resource Locators (URLs) set out in the Schedule thereunder; and
- (b) Any adaptation of the Song, the melody and/or lyrics of which are substantially the same as the Song.

The spokesman for the HKSAR Government said that the purpose of applying for the injunction is to safeguard national security and preserve the dignity of the national anthem. The Song has been widely circulated since 2019, and has been used to incite others to participate in acts and activities which are very likely to constitute offences such as secession and sedition, thereby endangering national security. The Song has also been mistakenly presented as the "national anthem of Hong Kong" (instead of the correct one "March of the Volunteers"). This has not only insulted the national anthem but also caused serious harm to the State and the HKSAR. The HKSAR Government has acted in accordance with the law and applied to the Court for an injunction for discharging the constitutional duty of the HKSAR Government to safeguard national security by effectively preventing, suppressing and imposing punishment on acts or activities endangering national security.

The Basic Law, the Hong Kong National Security Law and the Hong Kong Bill of Rights Ordinance and other relevant laws fully guarantee that Hong Kong residents enjoy basic rights and freedom, including freedoms of speech and of the press, in accordance with the law. However, such freedoms are not absolute. Relevant international covenants recognise that the law may impose reasonable and necessary restrictions on the exercise of such rights in order to safeguard national security. This is a common practice in many countries. The application pursues the legitimate aim of safeguarding national security and is necessary, reasonable, legitimate, proportionate and consistent with the requirements of the Hong Kong Bill of Rights. The interim injunction will not in any way affect law-abiding Hong Kong citizens in exercising their rights and freedoms in accordance with the law.

It has never been the intent of the application to cover or affect lawful and legitimate activities conducted in or outside Hong Kong for the purposes such as academic activity and news activity. For the avoidance of doubt, the interim injunction clearly states that lawful academic activity and news activity will not be prohibited on condition that such activities do not involve any of the acts mentioned in paragraphs (1) to (4) above.

The full text of the interim injunction will in due course be uploaded to the websites of the Government of the HKSAR, the Department of Justice and the Hong Kong Police Force. Addresses of the websites and the QR codes will be announced after the uploading.

Any person who violates the interim injunction order may be held liable for contempt of court. Members of the public must not defy the law.