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PRESS SUMMARY

HKSAR

v

ZEN Joseph

1st defendant (D1)

NG Ngoi-ye, Margaret

2nd defendant (D2)

HUI Po-keung

3rd defendant (D3)

HO Sau-lan, Cyd

4th defendant (D4)

HO Denise Wan-see

5th defendant (D5)

SZE Ching-wee

6th defendant (D6)

WKS No. 4829-4834 of 2022

Coram: Ms Ada Yim, Principal Magistrate
 Dates of Trial: 26-27 September, 26 October, 31 October, 1-2 November and 5 November 2022
 Date of Verdict: 25 November 2022
 Representation: Mr Anthony Chau, Deputy Director of Public Prosecutions, Ms Crystal Chan, Senior Public Prosecutor (Ag.) and Ms Jennifer Tsui, Senior Public Prosecutor (Ag.), of the Department of Justice, for the HKSAR
 Mr Robert Pang SC and Mr Jay Koon, instructed by Messrs Ho Tse Wai & Partners, for D1 and D4
 Mr Ambrose Ho SC, Mr Jason Ko and Mr Johnathan Tsang, instructed by Messrs Ho Tse Wai & Partners, for D2
 Ms Gladys Li SC, Mr Chris Ng and Mr Elson Tong, instructed by Messrs Ho Tse Wai & Partners, for D3
 Mr Osmond Lam, Mr Ernest Ng and Ms Vivian Ho, instructed by Messrs Ho Tse Wai & Partners, for D5
 Ms Lydia Leung and Ms Velda Yau, instructed by Messrs Ho Tse Wai & Partners, for D6

Summary

- The six defendants in the present case each faced one count of “failing to apply for registration or exemption from registration within the specified time”, contrary to section 5C(1) of the Societies Ordinance, Cap 151, Laws of Hong Kong (“the Ordinance”).
- The Second Reading by the Legislative Council of the Fugitive Offenders Ordinance amendment bill was originally scheduled to take place on 12 June 2019, but the roads around the Legislative Council Complex were blocked by crowds on that day. The police conducted dispersal operation and many were arrested. D2-D5 first set up a provisional fund on 15 June 2019 to provide support to those who were arrested and later invited D1 to join. Subsequently, the Fund was formally named “612 Humanitarian Relief Fund” (“612 Fund”) and its secretariat was set up. The work of the secretariat was coordinated by D6, the general administrator.
- The prosecution alleged that the 612 Fund established and operated by the six defendants was an association within the meaning of society under the Ordinance, and that the six defendants, who were office-bearers of the society, violated the law by having failed, as required, to apply for registration or exemption from registration within one month after the society had been established.
- The defence argued that the Ordinance was inapplicable because the 612 Fund was a sum of money and did not fall within the meaning of association or society under the Ordinance. D1-D5, being the trustees of the Fund, handled the money in accordance with the trust deed and were not office-bearers of a society. The defence also contended that the relevant provisions were unconstitutional due to the ambiguous definition in the Ordinance concerning “association” and the society registration system being a disproportional inroad into the freedom of association.
- D5 believed that she, being only a trustee of the Fund, did not establish any organisation with others and could rely on the common law defence. D6 contended that he merely provided service to D1-D5 and that he was an independent contractor rather than an office-bearer or member of a society. Further, according to the Schedule of the Ordinance, the Ordinance did not apply to registered companies and associations with business registrations. Given that the 612 Fund used the bank account of a limited company to deal with its fund and D6 registered a business under a different name to handle the day-to-day affairs of the 612 Fund, the defence argued that the Fund could be deemed to have been brought into the registration system, thereby rendering the Ordinance inapplicable.
- The Court found that the Ordinance was applicable in the present case for the following reasons:
 - Taking into account the objects and context of the Ordinance, as well as the ordinary and natural meaning of the word “association”, “association to which the Ordinance applied” referred to a group or body which was formed with specific objects and aims, continued to operate in accordance with its objects and would be concerned with the public, and/or a group or body which had a connection with a political group.
 - Different associations had different structures and modes of operation. They formulated their rules/codes based on their own circumstances, and named things differently and presented them in various ways. In considering whether an association was a society, the prerequisite was that there had to be mutual rights and obligations among its members, and regard should be had to various kinds of indicators as a whole.
 - The evidence showed that D2-D5, who shared the same beliefs, had come together and discussed ways to raise funds for providing support to those who, in their view, were injured or arrested as a result of the protests. They mutually agreed to put them into action by way of a fund. On 15 June 2019, D2-D5 announced the setting up of a provisional fund and identified their association in public by the name of the Fund.
 - D2-D5 subsequently invited D1 to join the association. D1 agreed with their beliefs and aims, and acceded to the inclusion of the terms that they had to mutually abide by in the trust deed of the Fund, which were to be signed by the five of them. D6 later joined and coordinated the work of the secretariat. Like the other defendants, there were mutual rights and obligations for him.
 - The Fund explained its objects to the public through its website and Facebook page, and had raised hundreds of millions of dollars in two plus years. Its operation obviously concerned the public.
 - Under the Schedule of the Ordinance, unincorporated trusts of a public character established solely for charitable purposes were not subject to the Ordinance. In other words, unincorporated trusts of a public character were clearly societies to which the Ordinance applied unless they were established solely for charitable purposes. According to the trust deed of the 612 Fund, the Fund’s objects had political objectives and thus it was not established solely for charitable purposes.
 - In view of the above, the 612 Fund, established by D2-D5 and jointly operated by them as well as D1 and D6, who joined shortly afterwards, was a society within the meaning of the Ordinance.
- The Court went on to find that D1-D5 were members and office-bearers of the society for the following reasons:
 - According to the Interpretation in the Ordinance, officer-bearer of a society means any person who is the president, or vice president, or secretary or treasurer of such society or any branch thereof, or who is a member of the committee or governing body thereof, or who holds any similar office or position.
 - Under the trust deed of the 612 Fund, D1-D5, as the trustees, were jointly responsible for the governance of the Fund. It was clear that the five trustees were important decision-makers in moving the operation of the 612 Fund forward and their duties were akin to those of a president and vice president.
- The Court also found, for the following reasons, that D6 was a member of the association rather than an independent contractor, and that he was an office-bearer undertaking duties of a secretary/treasurer:
 - The evidence showed that D6 had a coordinating role in the secretariat of the Fund, and had the right to take part in the trustees’ meetings and express his views on the uses of the funds. Like other trustees, he was under a mutual obligation to use the funds in accordance with the objects and aims.
 - D6 registered a business under a different name to handle the Fund’s day-to-day affairs as the 612 Fund had no business registration. He applied for business registration merely at the request of D1-D5 and was not running his own business.
- The Court considered that the registration of other companies under other ordinances was unconnected to the 612 Fund. Likewise, the business registration made by D6 under a different name was unrelated to the 612 Fund. The Court did not accept that the 612 Fund had, therefore, been brought into the registration system.
- In addition, as the provision concerned specified that it was a defence if due diligence had been exercised to comply with the requirements, the Court was of the view that the standard required for the specified statutory defence was higher than that for the common law defence of “honest and reasonable belief”, which indicated that the common law defence was not permissible under the Ordinance. The defendant could only rely on the statutory defence specified in the provision. However, it was also the Court’s view that there was nothing in the evidence to suggest that any of the defendants had done anything to comply with the requirements and hence the defence could not rely on the statutory defence either.
- Concerning the defence’s argument that the relevant provisions were unconstitutional, the Court took the view that where the operation of a society concerned the public, the latter was entitled to know the basic information of the society and it was the government’s duty to ensure accurate information was made available to the public. The Court, therefore, came to the view that the purposes of the registration system were legitimate, that the relevant requirements were reasonable, in particular the one where registration was required for associations of persons, and that the duty imposed was not excessively onerous. The Court did not accept that the Ordinance was unconstitutional.
- As the six defendants organised and operated the 612 Fund, giving rise to a society within the meaning of the Ordinance, and the six defendants, being office-bearers of the society, failed to apply for registration of or exemption from registration of the society before the end of the specified period, they were found guilty.