



Summary of Judgment

**Kwok Cheuk Kin v Chief Executive of HKSAR
HCAL 1405/2020; [2020] HKCFI 1521**

Decision : **Application for leave to apply for judicial review dismissed**
Date of Application : **7 July 2020**
Date of Handing Down
Reasons for Decision : **13 July 2020**

Background

1. This application for leave to apply for judicial review concerns the Law of the People’s Republic of China on Safeguarding Nationality Security in HKSAR (“**HKNSL**”). The Applicant sought a declaration that the Chief Executive failed to adhere to her oath to uphold the Basic Law in that the HKSAR Government (“**HKSARG**”) did not enact laws under Basic Law Article 23 (“**BL 23**”) which led to the Standing Committee of the National People’s Congress (“**NPCSC**”) enacting the HKNSL, parts of which contravene the Basic Law. In terms of relief, the Applicant asked the Court to “make a request to amend” parts of the HKNSL so that it would be compatible with the Basic Law.
2. The application for leave to apply for judicial review was made on 7 July 2020 and the Court of First Instance (“**CFI**”) dismissed and handed down its reasons for decision on 13 July 2020.

Department of Justice’s Summary of the Court’s rulings

(Full text of the CFI’s decision at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=129354&QS=%2B&TP=JU)

5. The CFI dismissed the application for leave to apply for judicial review on the following grounds:
 - (1) The application is based on an unsupported assumption that if the HKSAR had enacted law under BL 23, the NPCSC would not enact the HKNSL. (para. 4)
 - (2) According to case law, the Court would not handle any hypothetical



question. It is up to the HKSARG or the legislature to decide when to enact law under BL 23. This decision does not come within the purview of judicial review. (para. 5)

- (3) The HKNSL contains 66 articles. The Applicant did not state which ones are incompatible with the Basic Law and how the HKNSL contravenes the Basic Law. Generally speaking, the Court when handling a judicial review application would not discuss or adjudicate in a vacuum. This is especially important when considering major constitutional issues. Without an actual case or specific factual background, the Court must also exercise its jurisdiction with care and caution, especially where the Court's ruling concerns major constitutional issues or is one that would have far-reaching consequences. The mutual relationship between the Basic Law and the HKNSL is a major constitutional issue. (para. 6)
6. The CFI also added that, in any event, if the Judiciary in a given case has to consider whether the HKNSL is consistent with the Basic Law, on the basis of:
- (1) Common law principles;
 - (2) The Hong Kong Judiciary's constitutional duty to protect the fundamental rights of the Hong Kong residents under the Basic Law's Chapter 3; and
 - (3) Article 4 of the HKNSL which provides that "Human rights shall be respected and protected in safeguarding national security in the Hong Kong Special Administrative Region. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region enjoy under the Basic Law of the Hong Kong Special Administrative Region and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law",

the Judiciary should also as far as possible, when under the circumstances of complying with the legal principles and being reasonable, interpret the HKNSL and the fundamental rights of the Hong Kong residents under Basic Law's Chapter 3 consistently. (para. 7)



7. The CFI found the Applicant's arguments not reasonably arguable, and accordingly dismissed the application for leave to apply for judicial review. (para. 8)

Civil Division

Department of Justice

July 2020