



Summary of Judgment

**Chow Hang Tung (“Applicant”) v Commissioner of the Correctional Services
 (“Commissioner”)**

HCAL 1528/2024; [2026] HKCFI 241

Decision : Judicial review dismissed with costs *nisi* to the Respondent
Date of Hearing : 14 April 2025
Date of Judgment/Decision : 13 January 2026

Background

1. In this judicial review application, the Applicant challenged **(a)** the Scales of Prisoner Personal Provisions (“Scales”) and/or policy of the Correctional Services Department (“CSD”) designed under the Prison Rules (Cap. 234A) (“Prison Rules”) that female persons in custody (“PICs”) shall wear trousers during summer daytime unless special approval for deviation is obtained (“Policy”), and **(b)** CSD’s alleged decision refusing her request for wearing shorts (“Alleged Decision”). Leave for judicial review was granted on 10 September 2024.
2. The Applicant alleged that she made “verbal” requests to officers of the CSD in July and August 2024 for permission to wear shorts (as opposed to trousers) in summer daytime but was rejected. The Commissioner’s stance is that Chow had never made any request through the prescribed channel before commencement of this judicial review application (despite making a substantial number of other requests) and that her bare assertions are not credible. On 4 and 5 February 2025, the Applicant sought permission to wear shorts during daytime in the then upcoming summer on the basis that the trousers provided were “*truly too stuffy and hot*” (“Recent Request”). CSD replied on 12 February 2025 that the Recent Request was premature since summer season had not arrived.

Issues in dispute

3. The main issues in dispute are:-
 - (i) whether the Alleged Decision was in fact made;
 - (ii) whether the Scales and/or the Policy and/or the Alleged Decision (if made) are:-
 - (a) contrary to the Sex Discrimination Ordinance (Cap. 480) (“SDO”) and



- unlawful, in that they unlawfully discriminate against the Applicant on the ground of her sex¹ (Ground 1);
- (b) unconstitutional, in that they unlawfully discriminate against the Applicant on the ground of her sex² (Ground 2);
 - (c) unreasonable in the public law sense (Ground 3); and
 - (d) illegal because they breached the then Rule 26 of the Prison Rules (“PR26”) which requires the provision of clothing “adequate for warmth and health”³ (Ground 4).

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

(Full text of the judgment at

https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=176249&currpage=T)

4. The Court begins its analysis by examining the dispute between the parties as to the existence of the Alleged Decision (§§36-45).

Existence of Alleged Decision

5. The Court found that there was no Alleged Decision on the grounds that (i) the Applicant’s assertions that requests were made by her in July and August 2024 have been flatly refuted by the CSD officers (§40); (ii) the Applicant was keenly aware of the prescribed channel in making requests at the self-service kiosks but had not made any for permission to wear shorts in summer daytime amongst her 297 other requests (§41); (iii) the Applicant had never complained about medical conditions arising from her wearing of trousers in summer daytime to the medical officers despite attendance on as many as 136 occasions nor made any relevant request to wear shorts due to any medical reason (§42); and (iv) the Recent Request was considered premature but not refused (§43). Nevertheless, the Court agreed to parties’ submissions that the focus of this case would be on the rule challenge (i.e. challenge against the Policy) (§45).

Ground 1 (Illegality – Contravention of the SDO)

6. The analysis of direct discrimination on the basis of sex followed a four-step test: (1) difference in treatment; (2) comparable circumstances between female PICs and male PICs; (3) less favourable treatment; and (4) the difference in treatment based on sex. The Commissioner does not take issue with Steps 1 and 4. The Court found the Applicant failed at Steps 2 and 3 (§§54-60).

¹ under s.38 of the SDO.

² under Article 25 of the Basic Law and/or Article 22 of the Hong Kong Bill of Rights.

³ amended on 18 July 2025.



7. As regards Step 2, the Court held the circumstances of male and female prisoners were not comparable due to inherent biological, physiological, and social differences. Expert evidence indicated female prisoners have greater privacy concerns, different psychological needs regarding clothing, and specific health considerations, justifying a gender-specific policy (§§62-76).
8. As regards Step 3, the Court found no "less favourable treatment." Providing trousers as the default summer clothing for women was not objectively less favourable than providing shorts for men, given that (i) the existence of exceptions for individual requests negated the claim of being denied an opportunity (§81); (ii) expert opines that provision of summer trousers to female PICs can be more favourable (§82); (iii) subjective preference of the Applicant is irrelevant (§82); (iv) default clothing items have been customised for each gender in each season with same chance for seeking approval for exceptions (§85); (v) the Policy was devised by a variety of considerations including privacy and decency concerns with support of expert evidence and is not regarded as stereotyping (§86); and (vi) evidence of CSD Medical Officers shows no record of health impact on female PICs caused by trousers in summer (§87).
9. Therefore, Ground 1 fails (§90).

Ground 2 (Constitutionality – Contravention of BL 25 and/or BOR 22)

10. The constitutional challenge under the Basic Law and the Hong Kong Bill of Rights also failed. The differential treatment also pursued legitimate aims of providing a humane, decent, and healthy custodial environment, and was not only confined to custodial disciplinary (§§102-104).
11. The differential treatment was held to be proportionate. The Court adopted the standard or intensity of review of "manifestly without reasonable foundation", and accorded a wide margin of discretion to the Commissioner in managing prisons (§109). The Policy was not inflexible, as exceptions existed for individual needs, and it was the product of careful review and expert consideration over many years (§110). Ground 2 also fails (§112).

Ground 3 (Unreasonableness)

12. The claim that the Policy was *Wednesbury* unreasonable or irrational in the public law sense was rejected. The Court found this ground essentially repackaged the



other arguments and noted that challenging the weight given to thermal comfort, rather than its complete absence from consideration, could not sustain an irrationality challenge (§§128-132).

Ground 4 (Illegality - Breach of PR26)

13. The challenge that the Policy breached PR26 also failed. The Court found thermal comfort had always been a relevant consideration in formulating the Policy, as demonstrated by repeated task force reviews assessing materials and suitability for seasons. The legislative amendment to PR26 did not change this analysis (§§113-127).

14. The Court concluded the core issue was the default summer uniform for female prisoners. While some individuals preferred shorts, many others had expressed a preference for trousers, and the Policy was the product of the statutory decision-maker's expert consideration, allowed for exceptions, and was applied equally within each gender group (§§133-135).

15. In the circumstances, the Court rejected the application for judicial review on all grounds put forward by the Applicant and awarded costs (on *nisi* basis) to the Commissioner (§§136-137).

Civil Division

Department of Justice

13 January 2026