



Summary of Judgment

**QBD v Secretary for Security, Director of Public Prosecutions,
Secretary for Justice and Commissioner of Police**

HCAL 1530/2024

Decision : Application for judicial review dismissed
Date of Hearing : 10 September 2025
Date of Judgment : 16 July 2026

Background

1. The factual context is as follows:

- (a) The Applicant was convicted of “trafficking in a dangerous drug” and is serving his imprisonment sentence. While he hinted that he committed the crime under threats on him and his family from his creditor and possibly for a monetary reward, he provided no detail and did not request any victim identification screening (“**VIS**”) for trafficking in persons (“**TIP**”) and forced or compulsory labour (“**FL**”). No VIS was conducted by the police as there was no credible suspicion of TIP/FL.
- (b) In the criminal proceedings, he sought a preliminary ruling from the criminal court on his purported defence of duress. After obtaining the preliminary ruling that was not in his favour, he decided to abandon the defence of duress and pleaded guilty to the charge. Detail of the asserted threats was first disclosed by him verbally to the criminal court after conviction for mitigation, which was taken into account by the criminal court and he was sentenced to imprisonment of 13 years and 1 month.
- (c) He applied for leave to appeal against conviction. After being asked about the assessment on the nature and quality of his evidence in support of the defence of duress, he withdrew the leave application.
- (d) He subsequently applied for leave to appeal against sentence (out of time). For such purpose, counsel acting for him wrote to the Director of Public Prosecution requesting a post-conviction VIS for TIP. The request was refused



as it was already 5 years after his arrest and a VIS would serve no practical purpose. The leave application was dismissed by the criminal court.

2. By way of this judicial review, the Applicant challenged the following decisions/failures of the Respondents, for the purpose of lodging a fresh appeal against conviction:

- (1) The Director of Public Prosecutions' decision not to conduct a VIS for TIP ("**VIS Refusal Decision**" or "**Refusal**");
- (2) The Secretary for Security or Commissioner of Police's failure to conduct with the Applicant a VIS for TIP ("**TIP Investigative Failure**");
- (3) Failure to investigate if the Applicant is a victim of forced labour under Article 4 of the Hong Kong Bill of Rights ("**BOR4**") ("**BOR4 Investigative Failure**"); and
- (4) Failure to legislate a statutory and complete defence to any criminal charge for any defendant who has committed the relevant offence as a victim of FL ("**BOR4 Legislative Failure**").

Grounds of Review

3. The Applicant's grounds of review are:

Ground 1 - The Applicant argued that he had met the threshold to trigger a VIS for TIP/FL under the policy for conducting a VIS and therefore the Respondents breached their duties by failing and refusing to conduct with him a VIS for TIP/FL (i.e. the aforesaid TIP investigative Failure and Refusal, and BOR4 Investigative Failure); [paras. 61(1) & 76-85]

Ground 2 - There was an absence of practical and effective protection against forced labour and absence of fair trial of his criminal case. [paras. 61(2) & 102-106]



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

(Full text of the CFI's judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=182797&QS=%2B%7C%28hcal%2C1530%2F2024%29&TP=JU)

4. Both grounds of review are rejected by the Court.
5. On **Ground 1** - Ground 1 must fail if it is for a collateral attack on the criminal proceedings. There is a question whether the Applicant's information could have reached the threshold and reasonably created any credible suspicion of TIP/FL ("**Threshold Question**") during the investigative or prosecuting process. On the facts of the case, there is room for reasonably thinking that there was no credible suspicion. [paras. 76-101]
6. On **Ground 2** -In light of the pronouncements by the Court of Final Appeal in *ZN* (2020) 23 HKCFAR 15 and *CB v Commissioner of Police* [2025] HKCFA 10, there is no absolute and freestanding duty, under BOR4, on the part of the Government to legislate against forced labour. Any duty to enact specific legislation can only be based on the Court's finding that the existing regime, short of bespoke legislation, cannot provide practical and effective protection of BOR4 rights. In the present case, it obviously cannot be shown that nothing less than a "statutory and complete defence" for all criminal offences advocated by the Applicant is the only effective solution to the alleged problem. In relation to the Applicant's criminal proceedings, the underlying facts of the TIP/FL claim were deployed in the mitigation. In other cases, the option of staying criminal proceedings or raising a defence of duress might be available. There was, and remains, no sizeable pool of cases to justify the conclusion that there was any systemic failure by reason of a lack of bespoke legislation, or that the failures as asserted are widespread phenomenon rather than an aberration. [paras. 102-113]

Issues Estoppel, Abuse of Process, and Futility

7. The Judge also rejected the Applicant's arguments against issues estoppel, abuse of process and futility for lodging this judicial review application by upholding the relevant legal principles.



8. The disputes about the Threshold Question can and should have been raised in the criminal proceedings from the outset. All the reasons mounted directly or indirectly to attack the safety of the Applicant's criminal conviction in these proceedings could have been heard by the criminal court on appeal. Issue estoppel creates an absolute bar against the Applicant from setting up the Threshold Question again. [para. 123(2)]
9. The present challenge had no utility apart from mounting a collateral challenge against the Applicant's criminal conviction because:
 - (i) There is no other investigate efforts or evidence the Government could possibly pursue or obtain.
 - (ii) The Applicant was never prevented from securing evidence which might have constituted an aspect of his defence of duress.
 - (iii) A VIS for TIP/FL by the Government is certainly not necessary to the Court of Appeal's own assessment of TIP in a fresh appeal against conviction.
 - (iv) A ruling (i.e. opinion) of this Court would not aid the Applicant in any prospective challenge of his conviction in the Court of Appeal or Court of Final Appeal. Any such opinion might undermine the safety of criminal conviction, which underscores the abuse. [paras. 123(3)]

Civil Division

Department of Justice

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