



Summary of Judgment

Horsfield Leslie Grant & Others v Chief Executive of the HKSAR & Another HCAL 952/2020; [2020] HKCFI 903

Decision	: Writ of <i>habeas corpus</i> dismissed; Leave to apply for JR application to be dealt with later by the Court
Date of Hearing	: 18 May 2020
Date of Handing Down of Reasons for Decision	: 22 May 2020

Background

1. The Applicants applied for a writ of *habeas corpus* and sought leave to apply for judicial review (“**the Applications**”), seeking their release from compulsory quarantine at JCP Permanent Activity Centre and Integrated Youth Training Camp (“**the Centre**”). The 1st – 5th Applicants are a family of five, they are all Hong Kong residents. The 6th Applicant is the 1st Applicant’s foreign domestic helper. On 15 May 2020, they returned to Hong Kong from South Africa, and was served with a compulsory quarantine order (“**the Order**”) by the Director of Health (“**the Director**”) requiring them to be quarantined at the Centre for 14 days under the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation, Cap. 599E.
2. The Applicants raised two grounds of challenge. First, the Applicants argue that the Chief Executive in Council (“**the CEIC**”) does not have the power to enact Cap. 599E under s.8 of the Prevention and Control of Diseases Ordinance (Cap. 599) (“**the Regulation**”) and thereby has no power ordering the Applicants to compulsory quarantine. Secondly, the Applicants complain that the alleged blanket policy requiring all arrivals from South Africa to be placed in quarantine centres is arbitrary and unlawful, hence depriving the Applicants’ right to liberty under Article 28 of the Basic Law (“**BL 28**”) and Article 5 of the Hong Kong Bill of Rights (“**BOR 5**”).
3. The Applications were heard on 18 May 2020 before the Court of First Instance (“**CFI**”). At the hearing, the court dealt with the writ of *habeas corpus*, and indicated that leave to apply for judicial review would be dealt with later. On 20 May 2020, the CFI dismissed the writ of *habeas corpus* and handed down the reasons for the decision on 22 May 2020.



Issues in dispute

4. The main issues in dispute were:

- (a) Whether the CEIC has power to make Cap. 599E placing the Applicants in quarantine at the Centre (*the ultra vires ground*) ;
- (b) Whether the decision of the Director of Health (“**the Director**”) to quarantine the Applicants at the Centre is arbitrary, and violates BL 28, BOR 5 and the common law right to liberty (*the arbitrary detention ground*); and
- (c) Whether the Director failed to give individual consideration of the Applicants’ circumstances in making the Order to place them under quarantine at the Centre (*the individual circumstances ground*).

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=128094&QS=%2B&TP=JU)

5. The CFI dismissed the Applicants’ application for their release from quarantine at the Centre, and rejected the Applicants’ arguments on all three grounds.

The ultra vires ground

6. The CFI rejected the Applicant’s argument that the Regulation does not convey a power to restrict the right to liberty of Hong Kong residents, for reasons that:

(1) In construing the purposes of Cap. 599, and relevant statutes, the court must apply a purposive and context-based approach. It would be extraordinary that the CEIC, on an occasion of a public health emergency, has no power to prevent and control the spread or transmission of contagious diseases under section 8 of Cap. 599, while the Secretary for Food and Health (“**the Secretary**”) has power to make regulations to place persons coming to Hong Kong from overseas under quarantine and at designated quarantine centres under section 7 of Cap. 599 (§§24(2)-(4) of the Judgement);

(2) On an ordinary reading of the general powers available to the CEIC under section 8(1) of Cap. 599, it is clearly wide enough to confer on



the CEIC power to make regulations to provide for the making of Compulsory Quarantine Orders. The specific powers enumerated in section 8(3) does not limit the generality of section 8(1) (§24(5) of the Judgment);

- (3) When considering the application of the principle of legality in this case, it does not seem to make any difference whether the curtailment of the relevant rights is imposed by regulations made by the Secretary or by the CEIC (§24(6) of the Judgment); and
- (4) The fact that the Secretary has power to make similar regulations under section 7 is no reason to construe the powers of the CEIC under section 8 restrictively. As shown from the Bills Committee Report dated 22 May 2008, on an occasion of a public health emergency, it is more appropriate for the necessary public health and safety measures to be provided for by regulations made by the CEIC instead of by the Secretary (§§24(8)-(10) of the Judgment).

The arbitrary detention ground

7. The CFI rejected the Applicants' contention that the decision to place all returnees from South Africa at a designated quarantine centre is a "blanket decision" which admits of no exception, since:
 - (1) The Director's risk assessment in respect of returnees from different countries is a matter of professional judgment. The Government is in a much better position to assess than the court, and should be given a wide margin of discretion in its determination (§27 of the Judgment);
 - (2) Based on facts and evidence provided in the Affirmation of the Director, it was not unreasonable or wrong for Director to take the view that returnees from South Africa should generally be required to quarantine at the Centre, subject to a discretion to permit home-base quarantine on special circumstances (§§28-29 of the Judgment); and
 - (3) The Order requiring the Applicants to quarantine at the Centre satisfies the 4-step proportionality test (§36 of the Judgment).

The individual circumstances ground



8. The CFI was of the view that none of the matters raised by the Applicants could justify an exception permitting them to quarantine at home. The CFI also held that once a person is quarantined at a designated quarantine centre, the Director is not required to conduct a review, periodically or otherwise, of the quarantine within the 14-day period, subject to any material change in the circumstances. The position is different from administrative detention under the Immigration Ordinance, which is open-ended in nature (§§40 -42 of the Judgment)

9. In light of the above, the CFI found the Order requiring the Applicants to be quarantined at the Centre for a period of 14 days is a lawful decision. A costs order *nisi* that there be no order as to costs with respect to the *habeas corpus* application was ordered (§§43, 45 of the Judgment).

Civil Division

Department of Justice

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