

# BASIC LAW BULLETIN

## Editor's Note

In the "Focus" section of this issue, we review the principle of proportionality and the concept of margin of appreciation in human rights law. The principle of proportionality has been adopted in various human rights treaties. It is used to achieve a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. We will discuss proportionality in international human rights treaties, followed by a review of the Hong Kong cases on the proportionality principle and the related concept of "margin of appreciation" in human rights law.

We have our usual columns "Judgment Update" and "LegCo President's Decision on Members' Bill". In the "Judgment Update" column, there are summaries of four recent judgments of the CFA concerning the following matters:

- The constitutionality of immigration legislation governing entry into, stay and departure from Hong Kong of persons not having the right to enter and remain in Hong Kong. In particular, the scope and effect of the reservation concerning immigration legislation in section 11 of the Hong Kong Bill of Rights Ordinance (Cap. 383) relating to those articles of the BoR which protect against double jeopardy and cruel, inhuman or degrading treatment or punishment.
- The standard of fairness with which the

Director of Immigration must assess claims for refugee or torture non-refoulement status although the Convention Relating to the Status of Refugees 1951 and its Protocol have not been extended to Hong Kong. In particular, whether the Director is obliged to conduct a determination independently rather than to rely on assessments of status claims by the United Nations High Commissioner for Refugees.

- The constitutionality of immigration legislation which prevents persons who are not of Chinese nationality and who enter Hong Kong for employment as foreign domestic helpers from acquiring Hong Kong permanent resident status.
- The freedom of marriage of Hong Kong residents under BL 37 and the right of men and women of marriageable age to marry under Article 19(2) of the BoR. In particular, the right of a post-operative transsexual to marry.

The column "LegCo President's Decision on Members' Bill" covers two recent decisions on members' bills, one concerning the Professional Accountants (Amendment) Bill 2013 and the other the Import and Export (Import and Export (General) Regulations) (Amendment) Bill 2013.

In "Sidelights", there is an updated list of members of the Committee for the Basic Law of the HKSAR under the NPCSC.

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