



BASIC LAW BULLETIN



Editor's Note

In the "Focus" section of this issue, we review the concept of "judicial independence", which is widely regarded as a fundamental aspect of the rule of law in Hong Kong. The principle that our judges are to exercise judicial power free from any interference is guaranteed in the Basic Law. Factors contributing to the upholding of judicial independence, including the method of appointment and removal of judges, the protection of judicial immunity and the requirements of judicial conduct, are discussed in this review. In particular, with reference to the "Guide to Judicial Conduct" published by the judiciary, we illustrate the situations where the principle of impartiality may operate to disqualify a judge from sitting in a case. It is of fundamental importance that judges should observe the highest standard of conduct in order to maintain public confidence in the judiciary and the administration of justice.

In our usual column "Judgment Update", there are summaries of five recent judgments of the CFA concerning the following matters:

- The scope of election petitions in the Chief Executive Election Ordinance (Cap. 569) ("CEEO") and their relationship to judicial review and other proceedings; and whether the seven-day time limit for lodging election petitions laid down by s. 34 of CEEO involves any infringement of the right of access to a Court guaranteed
- by BL 35, and if so, whether such time limit is unconstitutional.
- Whether the seven-year residence requirement for the application of Comprehensive Social Security Assistance engages the right to "social welfare" in the context of BL 36 and BL 145; and whether such limitation is rationally connected to a legitimate aim and is proportionate and justified.
- Whether mandated refugees and screened-in torture claimants have a constitutional right to work while staying in Hong Kong based on Article 14 of the BoR, Article 6 of the ICESCR, BL 33 as well as common law.
- Whether the posting of a message inciting others to bomb a premises on an internet discussion forum is capable of amounting to the criminal offence of outraging public decency and whether the offence was consistent with the constitutional right to freedom of expression.
- Having regard to the Basic Law and the LegCo Rules of Procedure, whether a decision of the President of the LegCo made during the legislative process may be judicially reviewed; and whether the President of the LegCo has the power to close a debate when presiding over meetings under BL 72(1).

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Contents



Editor's Note
P1



The Focus
P3



Judgment Update
P12