

THE COURT OF FINAL APPEAL

ZN v.

**Secretary for Justice, Director of Immigration, Commissioner of Police, Commissioner for Labour
FACV No. 4 of 2019**

Appellant:	ZN
1st Respondent:	Secretary for Justice
2nd Respondent:	Director of Immigration
3rd Respondent:	Commissioner of Police
4th Respondent:	Commissioner for Labour
Hearing Date:	3 December 2019
Judges:	Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Chan NPJ and Madam Justice McLachlin NPJ
Counsel for the Appellant:	Mr Raza Husain QC and Mr Azan Marwah
Counsel for the Respondent:	Lord Pannick QC, Mr Stewart Wong SC, Mr Jin Pao SC and Mr John Leung
Subject Matter:	Constitutional and Administrative Law – human trafficking – forced labour – Article 4 Hong Kong Bill of Rights Ordinance (Cap 383)

Facts: The Appellant is a Pakistani national. In January 2007, his employer, who was from the same village in Pakistan (the “**Employer**”), arranged for him to come to work in Hong Kong. The Employer promised him good working conditions and a salary. However, while in Hong Kong, the Appellant’s movements were restricted to the office and he slept on the office floor. He worked long hours, seven days a week. He was regularly beaten and was not paid any wages. The Employer threatened him with serious harm if he left his employment. The Appellant was not aware of his rights and did not make a report to any authorities. In December 2010, the Employer tricked him into returning to Pakistan.

In April 2012, the Appellant returned to Hong Kong illegally. Between April 2012 and July 2015, he made multiple reports about the mistreatment that he had suffered to the Immigration Department, the Police and the Labour Department. A claim for unpaid wages was registered, but there was no investigation of his complaints as a possible case of human trafficking (“**HT**”) for forced labour (“**FL**”).

The Appellant applied for judicial review in respect of the government’s failure to protect him from HT for FL, alleging a breach of Article 4 of the Hong Kong Bill of Rights Ordinance (Cap 383) (“**Article 4 BOR**”), which prohibits slavery, servitude and FL. The Appellant argued that such failure occurred because there is no legislation specifically against HT for FL. The Court of First Instance granted the application.

The Court of Appeal allowed the government’s appeal in part, ruling that this is a case of FL and that the government breached its duty to investigate a potential case of FL under Article 4 BOR. However, it held that Article 4 BOR does not cover HT and does not require the government to enact a specific criminal offence against FL.

Issues: The Court of Appeal granted leave to appeal to this Court on the following questions of law of great general or public importance:

- (1) Does Article 4 BOR prohibit HT for the purposes of (a) exploitation; (b) slavery, servitude and FL; or (c) FL?
- (2) Does Article 4 BOR impose an absolute duty on the government to maintain a specific offence criminalizing (a) FL; (b) HT for FL; (c) HT for slavery, servitude and FL; or (d) HT for exploitation?
If not: (i) Does Article 4 BOR impose a contingent duty to maintain such an offence? (ii) Does the contingency arise and is the duty triggered, when existing criminal law measures are ineffective? (iii) Is there a further requirement, for example, that maintaining such an offence is the only way of redressing the ineffectiveness?

Decisions of the Lower Courts

Court	Case Reference	Date of Judgment	Order
Court of First Instance (Zervos J)	HCAL 15/2015	23 December 2016	Application for judicial review granted.
Court of Appeal (Cheung CJHC, Lam VP and Poon JA)	CACV 14/2017	2 August 2018	The Respondents' appeal allowed in part.
Court of Appeal (Lam VP, Barma and Poon JJA)		21 May 2019	Leave to appeal to the Court of Final Appeal granted on questions of law of great general or public importance.

