

**Ng Ka Ling & Others
and
Director of Immigration
[1999] 1 HKLRD 315**

Facts

The Appellants claimed to have right of abode in Hong Kong. They were in Hong Kong before 10 July 1997 when the Immigration (Amendment) (No. 3) Ordinance 1997 ("the No. 3 Ordinance") was enacted which required the Appellants to apply for a certificate of entitlement in Mainland in order to establish their right of abode. The No. 3 Ordinance was deemed to come into operation on 1 July 1997 and the Appellant's right of abode was hence subject to the discretionary control of the Mainland authorities.

Issues

One of the issues arose was the proper approach to interpret the Basic Law.

Court of Final Appeal Decision

In the interpretation of a constitution, such as the Basic Law, a purposive approach was to be applied. The Court should consider :

1. the principles of the particular provision declared in or ascertained from that provision and other provisions in the Basic Law and other relevant extrinsic materials; and
2. the language of its text in the light of the context found in the Basic Law and relevant extrinsic materials. The Court had to avoid a literal, technical, narrow and rigid approach.

Comments

The extract of the Court decision quoted by the Department of Justice on the approach to interpretation of the Basic Law is pertinent. However, the Court of Final Appeal has made the following qualification in its decision:

"What we have set out above cannot be and is not intended to be an exhaustive statement of the principles the courts should adopt in approaching the interpretation of the Basic Law. Constitutional interpretation, like other forms of interpretation, is essentially question specific. As and when questions of interpretation arise, the courts will address the challenges posed by the questions raised and develop principles as necessary to meet them." ([1999] 1 HKLRD 315 at 340J).