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Office of Ip Kwok Him 25379868

編號5529



公民黨
CIVIC PARTY | 郭榮鏗立法會議員辦事處
Legislative Council Office of the Hon. Dennis Kwok

26 February, 2013

Panel on Administration of Justice and Legal Services
Chairman, Hon. Priscilla Leung Mei-fun, JP
Panel on Security
Chairman, Hon Ip Kwok-him, GBS, JP

Dear Chairmen,

Re: Joint meeting between Panel on Administration of Justice and Legal Services
and Panel on Security regarding the CFA judgment in the case of Ubamaka

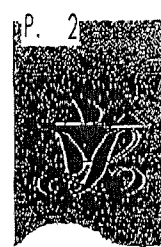
As you may be well aware, the Court of Final Appeal recently handed down its judgment in the case of *Ubamaka Edward Wilson v Secretary for Security and Director of Immigration*, whereby it was held that the right guaranteed under Article 3 of the Hong Kong Bill of Rights, i.e. the right to freedom from torture or cruel, inhuman or degrading treatment or punishment, is non-derogable and absolute even for those persons having no right to enter and remain in Hong Kong. As a result, torture claimants facing *refoulment* can now rely not only on the Convention Against Torture, but also on the Hong Kong Bill of Rights Ordinance as long as he can establish "two main requirements: (i) that the ill-treatment which he would face if expelled attains what has been called 'a minimum level of severity' and (ii) that he faces a genuine and substantial risk of being subjected to such mistreatment."

This judgment will have substantial implications for the Administration when dealing with torture claimants in the future. I would like to request for a joint meeting between the two Panels in order to have a thorough discussion on this issue. I hereby attach the letter I have written to the Secretary for Security on this issue.

Yours sincerely,

Dennis Kwok
Member of the Legislative Council

Attachment: Letter to Secretary for Security



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19 February, 2013

Secretary for Security
Mr. Lai Tung Kwok
9/F, East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong SAR

Dear Secretary,

Re: The Effect of *Ubamaka* on the Determination of Torture Claims

As you may be well aware, the Court of Final Appeal recently handed down its judgment in the case of *Ubamaka Edward Wilson v Secretary for Security and Director of Immigration*, whereby it was held that the right guaranteed under Article 3 of the Hong Kong Bill of Rights, i.e. the right to freedom from torture or cruel, inhuman or degrading treatment or punishment, is non-derogable and absolute even for those persons having no right to enter and remain in Hong Kong. As a result, torture claimants facing *refoulement* can now rely not only on the Convention Against Torture, but also on the Hong Kong Bill of Rights Ordinance as long as he can establish "two main requirements: (i) that the ill-treatment which he would face if expelled attains what has been called 'a minimum level of severity' and (ii) that he faces a genuine and substantial risk of being subjected to such mistreatment."

Both the Hong Kong Bar Association and the Law Society of Hong Kong have both issued press statements highlighting the significance of the CFA judgment and its impact on the screening process for torture claimants seeking protection in Hong Kong from *refoulement*, I am writing to inquire:

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- a) Whether the Administration will take immediate steps to cease, at least temporarily, repatriating persons who have previously made, or who have expressed an intention to make, a torture claim;
- b) Whether the Administration will consider further amending the Immigration Ordinance to ensure that the current statutory process for making and determining claims is in full compliance with the judgment in *Ubamaka*;
- c) If not by amending the Immigration Ordinance, whether the Administration will issue new guidelines for determining torture claims;
- d) How can the Administration ensure that the current statutory process for making and determining claims is in full compliance with the judgment in *Ubamaka*?

Yours sincerely,



Dennis Kwok

Member of the Legislative Council