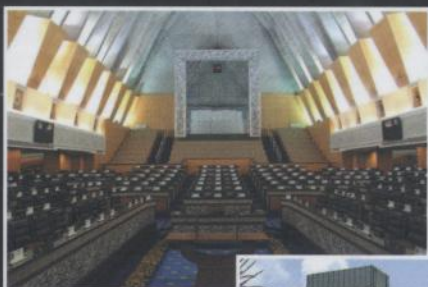


Constitutional Law and Human Rights in Malaysia

Topical Issues and Perspectives

Editor

Khairil Azmin Mokhtar



SWEET & MAXWELL ASIA

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Editor

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THOMSON REUTERS

Published in 2013 by
Thomson Reuters Malaysia Sdn Bhd (464942-H)
(trading as Sweet & Maxwell Asia)
No 17, Jalan PJS 7/19, Bandar Sunway
46150 Petaling Jaya, Selangor, Malaysia

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Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Constitutional law and human rights in Malaysia: topical issues and perspectives /
Khairil Azmin Mokhtar editor
Includes index

ISBN 978-967-0498-13-3

1. Public law—Malaysia.
 2. Human rights—Malaysia.
- I. Khairil Azmin Mokhtar, 1969-
342.595

Cover design by Edward Goh

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Chapter Twenty Seven

Beatrice Fernandez v Sistem Penerbangan Malaysia: A Constitutional Critique

Siti Aliza binti Alias

27.1 INTRODUCTION

In July 2011, Zaleha Yusof J delivered a landmark decision on gender equality in Malaysia, when the court ruled¹ that the Government's revocation of its offer of employment, on the basis that the plaintiff was pregnant, was unconstitutional, null and void. The court upheld the prohibition against gender discrimination that is enshrined in Article 8(2) of the Federal Constitution (FC), and more importantly, the court referred to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Malaysia acceded to on July 5, 1995, and found that CEDAW has the force of law and is binding on the Malaysian government, and Article 8(2) of the FC must be read to comply with it. Zaleha J was able to come to such conclusion by referring to the *Hansard* for the second and third readings of the Bill to amend Article 8(2) and satisfying herself that the amendment to Article 8(2) by adding the term "gender" was done to comply with Malaysia's obligation under CEDAW, and thus concluded at paragraph 28 of the decision that "To me, in interpreting Art 8(2), it is the court's duty to take into account the government's commitment and obligation ... under an international convention, like CEDAW, to which Malaysia is a party. The court has no choice but to refer to CEDAW in clarifying the term "equality" and gender discrimination under Art 8(2)"

What constitutes "discrimination against women" and "gender discrimination" has not been decided in Malaysia prior to *Noorfadilla's* case. Zaleha J referred to Article 1 of CEDAW to assist her in defining "discrimination against women" and also to Article 11 of CEDAW which sets out the prohibition of discrimination against women in the field of employment, particularly on the prohibition of using pregnancy as an excuse to stop women from working. This interpretation gives

1 *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun & 5 Ors* [2012] 1 AMR 839.