

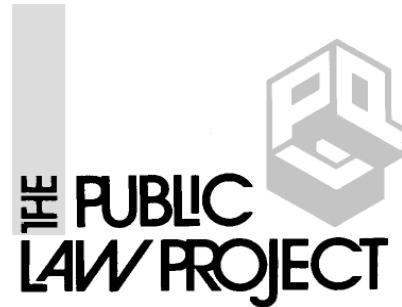
Administrative decision-making and Article 6:

Recent developments

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It is now well established that in the context of administrative decision-making, disputes between private individuals and public bodies can come within the scope of Article 6(1). The most contentious issue in the civil courts recently has been this question: to what extent can judicial review alone provide Article 6 safeguards which remedy the want of independence and/or impartiality in the earlier stages of the administrative decision-making and appeals process?

The issue was thrown into sharp contrast by two cases (1) Runa Begum v Tower Hamlets London Borough Council, CA, 06/03/02, [2002] EWCA Civ 239; and (2) The Personal Representative of Christopher Beeson v Dorset County Council & the Secretary of State for Health [2002] HRLR 15; CA, unreported 18/12/02, [2002]EWCA Civ 1812. The former was heard in the House of Lords in mid January; the latter may yet be heard in the Lords or in Strasbourg, so this debate will continue to rage for some time yet.

Beeson concerned the operation of the statutory social services complaints procedure - a fixed procedure, set out in delegated legislation, which all local authorities must follow. It is three-stage process, culminating in a review panel which can consider the complaint in full and make recommendations to the Director of Social Services who makes the ultimate decision. The review panel is usually made up of local authority employees and/or Councillors. The only 'appeal' from the Director's final decision is by way of judicial review.

Runa Begum concerned a housing authority's power to determine applications for housing under the Homelessness provisions in Part VII Housing Act 1996. Decisions are challenges by way of an internal review procedure conducted by employees of the Council. An appeal lies to the County Court (on a point of law only) which in this instance has a similar jurisdiction to that of the High Court in judicial review.

Given that neither the local authority's officers nor a review panel can constitute an independent or impartial tribunal, the question arose whether the limited jurisdiction of a judicial review court is sufficient to guarantee Article 6 compliance. In particular, does it matter that the judicial court has no jurisdiction to investigate factual disputes or conduct a full merits review of the case? Should it do so in order to achieve compliance? It seems that it may be able to conduct a merits review on the evidence if it wishes to do so: see Wilkinson v RMO Broadmoor Hospital & Another [2001] EWCA Civ 1545, CA, 22/10/01.

In Beeson at first instance it was held that judicial review could not compensate for the lack of an independent element in the decision making process and that therefore overall compliance with Article 6 was not achieved.

However, the Court of Appeal does not agree. In Runa Begum, the Court of Appeal held that what is important is the nature of the dispute: where an internal review scheme is concerned with *findings of primary fact* then judicial review will *not* be sufficient to remedy a lack of independence at that stage and the procedure as a whole is likely not to be Art 6 compliant.

Whereas where the scheme is concerned with the *application of judgment or the exercise of discretion*, especially if it involves the weighing of policy issues, then judicial review *is* a sufficient remedy.

A few months later, giving judgment in Beeson, Laws LJ had the opportunity to reiterate the views he expressed in Runa Begum – except this time he went further and suggested that it “will usually be right to respect the particular public law regime as it has been established by Parliament” and that “successful challenges... on the ground of insufficiency of judicial review will be relatively infrequent”.

The Secretary of State has argued in Runa Begum before the House of Lords firstly that Article 6 is not engaged at all in these kinds of administrative processes (i.e. that the individual’s civil rights are not in play), and alternatively that it is wrong (and impractical) to differentiate between decisions that are based on fact finding and those that are based on policy or expediency. Therefore in all types of administrative decision making an appeal or review on a point of law should be sufficient to ensure compliance with Art 6.

Keep an eye out for the House of Lords decision in the next few weeks!