

JUDICIAL REVIEW CASE LAW UPDATE 2013

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Landmark Chambers

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JURISDICTION



The Human Rights Act

Susan Smith v MoD 2013 UKSC

Whether acts outside the UK fell within the territorial scope of the HRA

- Art 2 protection for armed forces outside the UK
- Key issue is authority and control

JURISDICTION



Scope of EU Charter of Fundamental Rights

R(Sandiford) v Secretary of State for FCO 2013 CA

Challenge to FCO refusal to pay legal fees for UK national detained in Indonesia

Scope of EU Charter

- No decision implementing EU law
- Again turned on authority and control
- S was under authority and control of Indonesian Govt and not UK

DISCLOSURE AND RELIANCE ON DOCUMENTS



Bancoult v Secretary of State for FCO 2012 EWHC 2115 and 1502

Chagos islanders sought to rely on documents revealed by Wikileaks

Court held

Settled principle of international law that diplomatic communications are inviolable and cannot be referred to without consent.

Evans v AG to Prince of Wales and Information
Commissioner



Whether disclosure of communications between Prince of Wales and Government ministers should be disclosed under FoI

s.53 FOIA Minister or AG can veto disclosure even when Tribunal has ordered it

Court of Appeal

- s.53 part of the scheme of the Act
- AG's judgement not irrational
- Same applied to Environmental Information Regulations

CLOSED HEARINGS



Bank Mellat v HM Treasury 2013 UKSC 38

Measures to control Iranian bank's access to UK markets on the grounds of involvement in nuclear programme

- Whether SC could hold closed hearing

Held

- SC could hold closed hearing if necessary to dispose of appeal
- National security, plus Counter Terrorism Act struck balance of public interest
- Appropriate in this case to hold closed hearing
- Very strong dissent

COMMUNITY CARE and HOUSING



Care and attention

SL (FC) v Westminster CC 2013 UKSC

What is covered by „care and attention“ in s.21 National Assistance Act

- Involved “looking after” someone
- More than mere monitoring

Sharif v Camden LBC 2013 UKSC 10

- Family accommodated in two separate units could be living “together with” family members under Housing Act 1996 p.176
- “accommodation” didn’t mean unit of accommodation

ARTICLE 8



Disclosure of previous convictions

R (T) v Chief Constable of Greater Manchester 2013 EWCA

Proportionality of requirement to disclosure spent convictions, cautions and warnings to employers

Court

- Schemes were incompatible because blanket requirements to disclose
- Didn't include considerations of relevance of the information to employers

ARTICLE 2 AND INVESTIGATIVE DUTIES



R (Mousa) v SoS for Defence 2013 EWHC 1412

Scope of investigation into allegations of ill treatment of Iraqis by UK Armed forces. Investigation by Iraq Historic Allegations Team

- Inquiry had to be effective and independent
- IHAT couldn't be seen as being independent
- Either overarching public inquiry or inquest

BENEFITS CASES



Bedroom tax

R (MA) v SoS for Work and Pensions 2013 EWHC

Argued that bedroom tax was indirectly discriminatory because failed to meet needs of disabled

Court

- Couldn't define one class who were discriminated against because depended on particular facts and disability
- SoS under obligation to ensure means chosen were proportionate
- SoS decision was proportionate

R (MM and DM) v SoS for Work and Pensions 2013 UT



(CA next week)

Challenge to failure under Equalities Act 2010 of SoS to make reasonable adjustments in the claim process for Employment Support Allowance – in respect of claimants with mental health problems

UT found

- Claimants with MHPs were at substantial disadvantage
- Needed further evidence as to whether adjustment being sought was reasonable
- Sought to weigh up benefits to those claimants against overall impact

R (Reilly and Wilson) v SoS for Work and Pensions
(judgment in SC awaited)

Issue was whether the Jobseekers Allowance Regulations on doing unpaid work to get benefits were ultra vires

- Regulations unlawful because failed to prescribe a scheme
- Issue about the requirement to publish policies/information

PRISONERS AND RIGHT TO A FAIR HEARING



R (Osborn and Booth) v Parole Board 2013 UKSC 61

When prisoners had right to an oral hearing before a Parole Board

- Close relationship between common law fairness and Art 5(4)
- Oral hearing necessary where
 - Important facts in dispute
 - Necessary to put case effectively
 - Unfair for decision to be made on the papers
 - Board couldn't otherwise fairly make assessment of risk
 - Whenever Board member thought prisoner was potentially suitable for release

RIGHT TO DIE – ARTICLES 2 AND 8



R (Nicklinson) v MoJ

- Not for court to fashion defence of necessity
- No reason why a right to life in art 2 should be trumped by autonomy
- Blanket prohibition on assistance to die not contrary to art 8
- Policy was insufficiently clear

DISCRETION IN JRS CONCERNING EU LAW



Walton v Scottish Ministers 2012 UKSC 44

- When the court considers the discretion to quash, there is no different approach in EU cases to domestic cases.
- Significant “explanation” of HoL decision in Berkeley

FORTHCOMING CASES



- Challenge to Fast Track detention scheme on the grounds of common law unfairness and breach of Article 5
- Series of cases trying to reopen/redefine tests in *N v UK* and *D v UK* on when people with very serious health problems can not be returned to home country on grounds of breach of articles 3 and 8