



TOP 20 CASES OF 2004

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1. *A: A v Secretary of State for the Home Department* [2004] UKHL 56 [2005] 2 AC 68 HL. Allowing appeals (8-1) from the Special Immigration Appeals Commission: (1) although the Government had been entitled to conclude that terrorist threats constituted a public emergency threatening the life of the nation (ECHR Art 15); nevertheless (2) the detention without trial of non-UK nationals on a national security basis under the Anti-Terrorism, Crime and Security Act 2001 s.23 and the Human Rights Act 1998 (Designated Derogation) Order 2001 was disproportionate, not being rationally linked to the security threat since UK nationals were not so detained; so that (3) the Derogation Order would be quashed, as not being strictly necessary as a derogation from Art 5; and (4) a declaration of incompatibility would be granted as to s.23, being discriminatory under HRA:ECHR Art 14 (with Art 5). This case resoundingly subjects shameful detention without trial to the rule of law.

2. *Limbuela (CA): R (Limbuela) v Secretary of State for the Home Department* [2004] EWCA Civ 540 [2004] QB 1440 CA. Granting judicial review (2-1), refusal of asylum support had placed asylum-seekers here in sufficiently serious circumstances of destitution to be an HRA:ECHR Art 3-violation. This case vindicates those bold immigration practitioners who, refusing to take "no" for an answer, had besieged the Courts with urgent injunction applications. They had forced the judicial conscience to confront the inhumanity of leaving asylum-seekers on the streets.

3. *Al-Skeini: R (Al-Skeini) v Secretary of State for Defence* [2004] EWHC 2911 (Admin) DC. Granting judicial review (on preliminary issues), an Iraqi civilian death in British custody in post-war occupied Iraq: (1) occurred in UK "jurisdiction" (ECHR Art 1); (2) to which the HRA applied extra-territorially; and (3) had led to a violation of the procedural duty of investigation (HRA:ECHR Arts 2/3). Together with *B (Foreign Secretary)* [2004] EWCA Civ 1344 [2005] QB 643 (concerning actions of Consular officials in Australia), this case established the extra-territorial reach of the HRA. It allowed human rights accountability of the British military and justice for Iraqi civilians.

4. *G (IAT): R (G) v Immigration Appeal Tribunal* [2004] EWCA Civ 1731 [2005] 1 WLR 1445 CA. Refusing judicial review, the new statutory review mechanism for immigration and asylum cases (Nationality Immigration and Asylum Act 2002 s.101) was a proportionate and Art 14-compatible alternative remedy, making judicial review (despite its added procedural safeguards) an abuse of process. This weak, policy-led response endorses what was in effect back-door ouster of judicial review. Astonishingly, leave to appeal to the HL was refused.

5. *E: E v Secretary of State for the Home Department* [2004] EWCA Civ 49 [2004] QB 1044 CA. Allowing asylum appeals the CA held that, in approaching the question whether to exercise its

power to order a rehearing, the IAT should have considered fresh country evidence. The case is important for the recognition that unfairness through material misunderstanding or ignorance of an established and relevant fact can constitute an error of law and a ground for judicial review.

6. *Ullah: R (Ullah) v Secretary of State for the Home Department* [2004] UKHL 26 [2004] 2 AC 323 HL. Refusing judicial review, ill-effects in the receiving state constituting a flagrant denial of an ECHR right could make an immigration removal decision an HRA-violation, but there was no flagrant Art 9 denial here. See too *Razgar* [2004] UKHL 27 [2004] 2 AC 368 (when immigration removal violating Art 8 by reference to serious health consequences). These cases are important guidance on ECHR state responsibility, keeping pace with the Strasbourg jurisprudence.

7. *Ghaidan: Ghaidan v Godin-Mendoza* [2004] UKHL 30 [2004] 2 AC 557 HL. In a housing case, the HL held that the surviving member of a same-sex couple was entitled to succeed to his deceased partner's statutory tenancy. Although: (1) the ordinary meaning of the Rent Act 1977 Sch 1 treated surviving homosexual partners less favourably than surviving heterosexual partners without any rational or fair ground incompatibly with HRA:ECHR Art 14 (with Art 8); nevertheless (2) it was possible (4-1) to read it compatibly to eliminate its discriminatory effect without contradicting any cardinal principle of the Act. This was a strong example of both ECHR Article 14 and HRA s.3 in action, in re-interpreting a statute to eliminate its inherent inequality.

8. *Middleton: R (Middleton) v West Somerset Coroner* [2004] UKHL 10 [2004] 2 AC 182 HL. Granting judicial review in a custody-suicide case, reading Coroners Act 1988 s.11 compatibly (HRA s.3) with HRA:ECHR Art 2, allowing the inquest jury to deal with "how" the deceased died meant "by what means and in what circumstances", including whether appropriate precautions should have been taken. This is an important analysis of the state's procedural investigative duty under Art 2 and coroners' expanded role in achieving compatibility.

9. *Rashid: (Home Secretary): R (Rashid) v Secretary of State for the Home Department* [2004] EWHC 2465 (Admin) Davis J. Granting judicial review, the facts that the SSHD had (i) failed to apply to the claimant the then policy which would have resulted in his being granted refugee status and (ii) subsequently granted such status to two other Iraqi asylum seekers identically placed, was so unfair as to be a misuse of power. This is a powerful example of substantive legitimate expectation, moreover arising despite (a) no detrimental reliance and (b) no knowledge of the policy.

10. *Laporte: R (Laporte) v Chief Constable of Gloucestershire* [2004] EWCA Civ 1639 [2005] QB 678 CA. Granting judicial review, although (1) it was not an HRA:ECHR Art 10 or Art 11 violation to prevent a coachload of protesters from proceeding to the Fairford antiwar demonstration; nevertheless (2) their forced return to London non-stop by coach was unnecessary and constituted false imprisonment. This case is a noteworthy HRA-examination of common law police powers. See too *Gillan* [2004] EWCA Civ 1067 (statutory stop and search Art 5-compatible).

11. *Scribes West: Scribes West Ltd v Relsa Anstalt (No.1)* [2004] EWCA Civ 835 CA. On a private law appeal, the CA highlighted the requirements of the new CPR 52PD, including as to contents of skeletons and timing of bundles. Most importantly, all skeletons and bundles had to be with the Court by 7 days before the appeal hearing. A clear and important warning.

12. *Stancliffe Stone: Stancliffe Stone Co Ltd v Peak District National Park Authority* [2004] EWHC 1475 (QB) Moore-Bick J. Refusing an ordinary claim form action for a declaration, the decision characterising quarries as dormant (Environment Act 1995 Sch 13) was lawful and it was far too late to challenge a listing decision made 8 years ago. This case illustrates that procedural exclusivity (*O'Reilly v Mackman*) lives on, as a power to strike out late private law claims which

should have been promptly-pursued public law challenges.

13. *Burkett: R (Burkett) v Hammersmith and Fulham London Borough Council* [2004] EWCA Civ 1342 CA. Dealing with costs at the end of judicial review proceedings, the CA held that where a CLS-funded claimant obtained a costs order in judicial review, it was appropriate to direct a set-off in respect of any earlier costs order made against that claimant. This decision has real practical importance, and practitioners need to be alive to possible future set-off implications of asking for otherwise-worthless costs orders against legally-aided claimants.

14. *West (Lloyds): R (West) v Lloyds of London* [2004] EWCA Civ 506 [2004] 3 All ER 251 CA. Refusing judicial review of decisions to approve syndicate membership buy-outs, the CA held that regulating Lloyds' members was a private (contractual, commercial) and non-governmental matter and that Lloyds was not, in so acting, a public authority: (1) amenable to judicial review; or (2) subject to the HRA. This is an interesting analysis of amenability to judicial review.

15. *Edwards: R (Edwards) v Environment Agency* [2004] EWHC 736 (Admin) [2004] 3 All ER 21 Keith J. On judicial review (preliminary issue) the Court ruled that: (1) the claimant had standing to bring an environmental impact assessment challenge to the grant of a pollution control permit, even though he had not participated in the consultation exercise which was alleged to have been flawed; and (2) nor was it an abuse of process to bring judicial review even as an individual who had been put up as being legally-aidable. This case illustrates the liberal and principled nature of standing, as part of judicial review's public interest function, and the importance of respecting the judgment and function of the Legal Services Commission in deciding issues of funding appropriateness.

16. *Scholarstica: R (Scholarstica Umo) v Commissioner for Local Administration in England* [2003] EWHC 3202 (Admin) [2004] ELR 265 Beatson J. Refusing judicial review, the local ombudsman had rightly declined jurisdiction to entertain a complaint previously raised on judicial review (Local Government Act 1974 s.26(6)). This case emphasises the importance of pursuing any desired local ombudsman route first, and judicial review as a last resort.

17. *Middlebrook: R (Middlebrook Mushrooms Ltd) v Agricultural Wages Board of England and Wales* [2004] EWHC 1447 (Admin) Stanley Burnton J. Granting judicial review, the exclusion of mushroom pickers from the Agricultural Wages Order 2003 (minimum wage and manual harvest workers) was unjustified and so (a) unreasonable (having regard to the common law principle of equality) and (b) incompatible with Art 14 (read with Art 1P). This is a good illustration of equality as an operable principle in domestic public law, at common law and not just under the HRA.

18. *Davies: R (Davies) v Birmingham Deputy Coroner* [2004] EWCA Civ 207 [2004] 1 WLR 2739 CA. After a successful judicial review, the CA awarded costs against the participating coroner. This is an authoritative survey of the general principles as to: (1) the inappropriateness of ordering costs against a non-participating inferior court or tribunal absent flagrantly improper behaviour; but (2) the availability of costs against a court or tribunal who appears and actively resists the claim.

19. *Wall: R (Wall) v Brighton and Hove City Council* [2004] EWHC 2582 (Admin) [2004] 4 PLR 115 Sullivan J. Granting judicial review to quash a planning permission, the failure to provide a summary of reasons with the grant of planning permission (Town and Country Planning (General Development Procedure) Order 1995 Art 22) was not curable by a solicitor's letter asking individual members to explain their reasons. What was needed was the collective reconvening the planning committee in public session. This case exemplifies the judicial aversion to retro-reasons, particularly in the case of a collegiate decision-making authority.

20. *Banks: R (Banks) v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWHC 416 (Admin) Sullivan J. Granting judicial review, in maintaining a movement restriction order over a cattle herd, the Secretary of State had unfairly failed to (1) explain the reasons for the order and (2) disclose highly material information (test results). This is a classic illustration of procedural fairness in action.