Reasons to be hopeful?

Should public bodies be obliged to give reasons for their decisions?

By David Pievsky

The traditional view is that in general there is no such obligation. The situations in which reasons are necessary are exceptions to the norm. An alternative argument is that what were once seen as exceptional requirements to give reasons are, in truth, examples of the norm. It is those situations in which reasons are not required that are, in fact, exceptional. In the pre-Human Rights Act case of *Stefan v General Medical Council* [1999] 1 WLR 1293 this alternative argument was described by the Privy Council (per Lord Clyde at p. 1301) as a "strong" one, and one which might need to be considered later, through the lens of article 6 of the ECHR (once in force), in a wide-reaching review.

Nearly 10 years down the line – in a post article 6 world – an attempt has recently been made, in *R (Hasan) v Secretary of State for Trade and Industry* [2008] EWCA Civ 1311, to persuade the Courts to recognise this alternative view as being legally correct. The context was somewhat unusual. The Claimant was a Palestinian living near Bethlehem. In April 2005, Israeli forces had destroyed his olive and almond trees, and appropriated his land. He contended that military equipment licences, granted by the UK to Israel, should have been accompanied by published reasons, in order to scrutinize whether the equipment might ultimately be used for internal repression. In order to make good this submission, the Claimant sought to import a public interest test: reasons should be provided if the public interest requires them. The Court of Appeal thought that there did not need to be a review of the type contemplated in Stefan, because Mr Hasan had at most only an "indirect interest" in the subject matter and the outcome of the appeal. That said, the Court did not hold back on expressing its views, albeit briefly. The duty contended for was said to be a "massive and unwarranted leap" for it to make. The suggested general duty, as advanced, was too hard to pin down. Just as in Stefan, there was no need in this case to explore the true parameters of the rule relating to reasons. (This last point is perhaps surprising, because in Stefan the proper classification of the general rule arguably didn't affect the outcome: the Privy Council decided there that on the facts brief reasons were required anyway.)

Whatever one's views on the merits of the argument, those (like the writer) who see in Lord Clyde's comment a tantalising invitation to a proper, HRA-informed debate about reasons in Administrative Law are likely to feel after reading Hasan that there is perhaps still more to come. Let's hope that it is not another 10 years before we get the next instalment.

Mike Fordham QC and Naina Patel appeared for the Appellant. James Eadie QC appeared for the Secretary of State.

Blackstone Chambers, Blackstone House, Temple, London EC4Y 9BW
Tel: +44 020 7583 1770 Fax: +44 020 7822 7350 Email: clerks@blackstonechambers.com

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