



Current human rights issues in homelessness and the allocation of social housing

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Garden Court Chambers
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A right to a home?

- Unfortunately not - Wandsworth LBC v Michalak [2002] EWCA Civ 271, [2003] 1 WLR 617.
- Nevertheless human rights principles may be of considerable utility to those seeking, or seeking to retain, a roof over their head.



Purpose of this part of the session

- To explore some of the recent incidences of the application of human rights principles in the context of the law relating to homelessness and the allocation of social housing.



Structure

- Art.6 – Poshteh and homelessness reviews
- Art.8 and 14 – challenges to allocation schemes
- Art.4 – interplay between homelessness duties and duties owed to trafficking victims





Art.6 - Poshteh

- Iranian refugee who had been detained and tortured leaving her with PTSD.
- Refused offer of accommodation as window in the property reminded her of the cell in which she had been tortured and gave her flashbacks.
- LHA decided property suitable. Duty to P ended.




P appealed to the Supreme Court arguing that:

- The decision of the Supreme Court in *Ali v Birmingham City Council* [2010] 2 AC 39 should be departed from in the light of the decision of a chamber of the ECtHR in *Ali v United Kingdom* (2016) 63 EHRR 20, meaning that Article 6 ECHR was engaged.




- SC dismissed appeal.
- Court declined to follow ECtHR, on the footing that decision of chamber failed to 'address in any detail either the reasoning of the Supreme Court, or indeed its concerns over judicialisation of the welfare services, and the implications for local authority resources'.




Discussion points

- Thoughts on the decision.
- What if the ECtHR takes a different view?
- What would the practical ramifications of this be?





Art.8/14 - allocation of social housing

- R (Jakimaviciute) v Hammersmith & Fulham LBC - qualifying classes versus reasonable preference. Exclusion of majority of homeless applicants unlawful.
- R (Alemi) v Westminster CC - unlawful to exclude homeless applicants for initial 12-month period.




- R (HA) v Ealing LBC - five-year residence requirement contrary to Art.8/14.
- R (Woolfe) v Islington LBC - points threshold which prevented applicants with less than 120 points from bidding not unlawful.




- R (YA) v Hammersmith and Fulham LBC - unlawful to take into account spent convictions but no breach of Art.8/14 by provisions adversely affecting care leavers.
- R (Osman) v Harrow LBC - reduced priority to tenants in overcrowded private sector accommodation not contrary to Art.8/14




- R (XC) v London Borough of Southwark - lawful to determine relative priority by reference to financial resources and community contribution.
- R(C) v Islington London Borough Council - prioritising council tenants already living on estates for new homes built on those estates not contrary to Art.8/14.





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- R (H) v Ealing LBC - High Court wrong to find that reserving properties for model tenants and working households contrary to Art.8/14




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Discussion points

- Should allocation fall within ambit of Art.8?
- Does the manifestly without reasonable foundation test apply?
- How should it be applied?
- Should it be applied under the Equality Act 2010?
- What does the future hold?




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Art.4 - trafficking

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.

ECHR needs interpreted compatibly with international human rights standards See e.g. Nzolameso v Westminster CC.




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The Trafficking Convention

- Art.5(2) of the Council of Europe Convention on Action Against Trafficking in Human Beings (CETS No 197) - obligation to take steps to prevent trafficking
- Art.12 – obligation to assist victims





ECtHR case law

- *Siliadin v France* - failure to introduce criminal legislation to afford effective protection to trafficking victim a breach of Art.4 ECHR.
- *Rantsev v Cyprus and Russia* - Art.4 places states under a positive obligation to provide practical and effective protection against trafficking and exploitation.




As with arts 2 and 3 of the Convention, art.4 may, in certain circumstances, require a state to take operational measures to protect victims, or potential victims, of trafficking. In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the state authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of art.3(a) of the Palermo Protocol and art.4(a) of the Anti-Trafficking Convention . In the case of an answer in the affirmative, there will be a violation of art.4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk.




Domestic case law

- *R (SF (St Lucia)) v Secretary of State for the Home Department*.
- The rationality of a gateway decision that a person is not the victim of trafficking requires a heightened or a more rigorous level of scrutiny.




Discussion points

- Is the law adequate?
- How might HA 1996 be interpreted to take account of Art.4 etc?
- Priority need.
- Accommodation pending review.
- The duty to give reasons.





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