



17 February 2010

PRESS SUMMARY

Tomlinson and others (FC) (Appellants) v Birmingham City Council (Respondents) [2010] UKSC 8

On appeal from the Court of Appeal Civil Division [2008] EWCA Civ 1228

JUSTICES: Lord Hope (Deputy President), Lady Hale, Lord Brown, Lord Collins, Lord Kerr

BACKGROUND TO THE APPEAL

The Housing Act 1996 places a duty on local housing authorities to ensure that suitable accommodation is available for homeless persons who fulfil certain criteria. An authority may cease to be subject to that duty where an applicant refuses an offer of accommodation, but only if the authority notifies him, in writing, that it regards itself as having discharged its duty.

If dissatisfied with an authority's decision that its duty has been discharged, an applicant may appeal to the county court. But he may only do so on a "point of law" arising from the decision; the county court judge is not entitled to decide factual disputes as to whether or not events have happened.

In this case, Birmingham City Council maintained that it had successfully discharged its duty to a number of applicants who were homeless and fulfilled the relevant criteria. The applicants disputed this, claiming that, although written notification of the kind the law requires may have been sent to them by the authority, they never actually received it. The dispute between the parties as to whether the duty had been discharged therefore turned entirely on a pure question of fact. It was therefore of a nature which a county court judge on appeal has no power to determine.

Before this Court, the applicants argued that the lack of a fact-finding jurisdiction for a county court on appeal put that aspect of the system in breach of Article 6(1) of the European Convention on Human Rights, which guarantees the right to a fair trial in the determination of civil rights and obligations.

Two main issues arose for the court's determination:

- (1) whether an appeal to the county court involved the determination of a "civil right" for the purposes of Article 6(1);
- (2) if so, whether Article 6(1) required that a court hearing such an appeal must itself be able to determine issues of fact such as those raised in the present case.

JUDGMENT

The Supreme Court unanimously dismissed the appeal. It held that a decision that a local housing authority takes under the Housing Act 1996 that it has discharged its duty to an applicant is not a determination of the applicant's "civil rights" for the purposes of Article 6(1). It therefore lies outside

the protection of that Article. The Court also holds that, although it is unnecessary to decide the point, the appeal procedure as a whole complies with Article 6(1) in any event.

REASONS FOR THE JUDGMENT

As to the first issue:

- Lord Hope (with whom Lady Hale and Lord Brown agreed) reasoned that in cases such as this, where the award of services or benefits in kind is not an individual right of which the applicant can consider himself the holder, but is dependent upon a series of evaluative judgments by the provider as to whether the statutory criteria are satisfied and how the need for it ought to be met, Article 6(1) is not engaged (**see para [49]**).
- Lord Collins, whilst agreeing with Lord Hope's reasoning, placed less emphasis on the evaluative nature of the decision making process (**para [58]**). The mere fact that evaluative judgments are required did not take the case out of Article 6(1) (**para [61]**). The main reason why the decision fell outside the scope of the Article was that the statutory duty lacked precision. There was no right to any *particular* accommodation; the duty was simply to ensure that accommodation was available. Together with the essentially public nature of the duty, those factors meant that the duty did not give rise to an individual economic right (**para [73]**).

As to the second issue:

- Although the question whether or not the letters were received was factual, it was just one among a number of interlinked questions that had to be addressed to determine whether the housing authority's duty had been discharged. No case of the European Court of Human Rights was to the effect that an appeal from such a determination on a point of law only would constitute a breach of Article 6(1) (**paras [53]-[55], [79]**).

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html