Redefining the Rules on Judicial Review Application in Uk Can Ensure It is Available to Protect the Rights of the Individuals Against an Overbearing State

Xiaofan Meng

Yunnan Zhanteng Law Firm, Dali, Yunnan Province, China

Keywords: Judicial review, Protection of human rights, Judicial reform

Abstract: Judicial Review is centred on the manner in which a specific decision has been concluded, or action has been taken by the court. The preceding summarised notes are applied as substantive inputs based on which decision-making are done. Further, the process is compared to the legal framework in which decisions should be made, i.e. based on authorising statute and the grounds of administrative law. It has been accessed by Institute of public affair that various acts are excluded and restricted from review under the Administrative Decision Judicial Review Act 1977. The present report provides an in-depth analysis of restriction relating to judicial review in different laws through redefining the rules relating to who can make application of judicial review. Further, different legislation and case laws have been considered to ensure that judicial review is available for protecting the rights of individual and not abused to conduct politics by other means.

1. Introduction

The process of applying for judicial review is guided by the Communities Act 1972 under the EU law, for public bodies that are UK based. Therefore, if any public body wants to file a legal action against another, there is a statutory process as prescribed by the law except in cases where the claim is an action for private law like negligence in a contract or so. Some residents may have straight dealings with institutions that have EU based if any of the citizens are not satisfied with decisions of EU institutions, then the decision is bought in EU courts.

This rationing process has some sort of positive aspect as decision provided in case of law *Sedley J in R v Camden London Borough Council, ex p. Martin* [1997]. The application must be made without notice to provide an easy and less expensive way of finding out that the case is worthy enough for a judicial review.

Thus, the obligation for obtaining permission discards the cases which are weak at an early stage and paving the way for a system that is more efficient in working. The need to protect the public's interest and difficulty of the judicial systems to process more cases due to lack of funding is also the rationales for judicial review.

2. How Can One Apply for Judicial Review?

To obtain judicial review of a public authority, there are two main stages prescribed: A preliminary application in written form must be made to the Administrative Court for getting the permission to proceed. The application will be considered by an individual judge without an oral hearing. The court is obliged to provide reasons for their judgement. In the case where the application is rejected, the claimant can apply for an oral hearing. This application is essential for the success of the review process as the majority of the applications are rejected at this initial stage. Before giving permission, some requirements of the courts are to be satisfied by the claimant. If the claimant receives the permission, the court sets a date for an oral hearing for hearing the dispute.

The issues that are to be satisfied for obtaining access to judicial review are inclusive of providing suitable avenues for redressal, a time considered for the case, any arguable case of the claimant and the case to be brought against a public body.

  DOI: 10.25236/iceesr.2021.054

3. Restrictions to Judicial Review

The principle of legality protects judicial review. The court does presume while interpreting statue that Parliament did not intend to restrict access to court unless the purpose behind the same is evident. The same could be accessed through a case study of *Magrah v Goldsborough Mort & Co Ltd*, in which judge Dixon stated that 'general rule is that statue should not be interpreted by Court for depriving power to prevent the unauthorised assumption of jurisdiction unless the purpose is clear and unmistakably'.

There are different restrictions provided in various laws relating to judicial restriction. For instance, in Migration Act 1958; the restriction is on access to court were specified in 1992 relating to limits imposed on the grounds of review[1]. A mandatory condition has been specified before accessing judicial review, i.e. to seek merits of review. Further section 474 of Migration Act; inserted by Migration Legislation Amendment Judicial Review Act can be considered. This section specifies that the private clause is final and conclusive and should not be challenged and reviewed in any court.

Moreover, it is not subject to prohibition, injunction or criteria specified by the court. It is referred to as the ouster clause. A similar decision was provided in case of *Plaintiff S157 v Commonwealth* which specified that provision of section 474 does not apply to cases relating to jurisdictional error.

4. Redefining Rules of Restriction to Judicial Review for Ensuring That It is Available to Protect the Rights of Individual and Not Abused To Conduct Politics By Another Means

The desire of the Court desire to build jurisprudence based on new rights has overwhelmed the concerns of executive branches over separation of powers. The government has made efficient effort to restrict judicial review ostensibly for ensuring the right balance is struck between protection access to justice and decreasing saddle on public services. Thus, to redefine the rules for restricting access is enquired to ensure that the reforms must not threaten the law as they would restrict the access to the courts for judicial review just in the name of efficiency.

There is an example provided by The Public Law Project how such a reform can induce government action which the courts consider appropriate for reviewing despite lack of direct interest of the claimant. There are situations when an individual is incapable of bringing a challenge to the court's decision. This is because if there is an unlawful policy which has not yet affected any individual and so he is not in a position to challenge the policy. For instance, there is a judicial review brought by the immigration detention charity Medical Justice, and the court declared that the policy of deporting people within 72 hours of serving the notice, could not give them enough time to get legal advice. This is unlawful as it violates the universal right of access to courts. Hence no challenge could be brought by an individual affected in this case for the reason that they were deported without having sufficient time in hand and there was no time left for legal consideration for how lawful is their deportation or to question the policy as a whole.

In this case, only an NGO could challenge the review, and if the medical justice had not brought the challenge to the review, this unlawful policy would have been into existence till date. This is a clear case where the review was made to protect the interest of the people. However, according to the judiciary, this was contradicted to the general law because it had some unlawful action, which the courts reviewed which was beyond the reach of the courts. It can be indicated that this review had threatened the rule of law. Lord Reed's statement emphasised that the interest of a particular party could sometimes prevent the matter from being brought up in court which in turn disable the judiciary to perform its primary function of protecting the interest of the people. However, for the present purpose of redefining the rule of standing access, it is essential to recognise the potential which the legal aid reforms have to restrict the access by those who use it for political content.

5. Restriction of Judicial Review in Workplace Relations

For standing review for blocking the political misuse of content can be areas where the decisions of the court related to workplace relations are exempted from review under the ADJR ACT. The decisions made by Fair Work Australia are not subjected to be reviewed for the reason that the decisions may affect the national economy, future rights of employees and conduct at the workplace.

The review restriction under the ADJR Act to administrative decisions reflects that the focus of the Act is on improving the rights of individuals for reviewing decisions that might affect them. The exclusions of review by Fair Works from the ADJR reflect that the decision might not be reviewed for any political cause. Thus, it can be concluded that the decisions which are capable of affecting some individuals may be open for review for the protection of their rights and similar purpose does exist where judicial review is restricted.

6. Standing of Review and the Human Rights Act:

The rules on restricting review are more rigid for people who challenge the judiciary's decision under the Human Rights Act have been specified in section 7. Further section 7 of the Human Right Act asserts that any person to can claim against a public authority for acting in a certain way which is unlawful in section 6 (1), i.e. A person may bring proceedings adjacent to the authority in the appropriate tribunal if he is a victim of the unlawful activity.

Further subsection (3) of section 7 of the Human Rights Act asserts that in case the person applying for the review must have a personal interest by being a victim of the Act. A person is considered to be a victim, and the reviewed is undertaken only when the proceedings were initially brought to the human rights court. There are two prerequisites for determining whether the defendant is subjected to review or not in this first is that the decision must have been made by a public body and second such a body is guided by public law.

This test is undertaken to determine that the judicial review is amenable on a legal basis. The creators of the statute are suspected for a review because there may be some power involved for them in the review. Thus, the Bodies Deriving Authority from Statute may be restricted for a judicial review. For the authorities exercising powers are allowed for a judicial review following the decision made in case of *Council for Civil Service Unions v Minister for the Civil Service* (the 'GCHQ case') [1985] AC 374 because such bodies obtain authority from public law which is generally controlled by the government. The decision reveals the fact that judicial review is restricted for protection of rights of individual and not for abused to conduct politics by another means.

7. Conclusion

It can be concluded from the above analysis that there is a need for a shift in legal thinking relating to remedies against the law. As by emphasising on intentionally restricted nature of the development of judicial review represents a continued failure of the law in providing effective remedies for executive over-reach. The restriction of proportionality review relating to matters of EU law and human rights seems to be perceived regarding the way to accounting for the expansionary force placed on specific bodies of law–which in turn might explain the reason behind their legitimacy. Lastly, following above case studies and provision of various legislations such as Human Rights Act, Migration Act etc.; it would be appropriate to state that judicial review is available to protect rights of the individual against overbearing estate while ensuring that it is not. Thus, for the same restriction to judicial review has been specified so that public interest could be ensured and no additional burden is imposed on public bodies.

8. Bibliography

The quote of articles of law in this paper root in the legislation and case laws below: Administrative Decision Judicial Review Act 1977; Human Rights Act.; Migration Act 1958;

Administrative Decision Judicial Review Act 1977; Bromley LBC v Greater London Council [1983] AC 768 (HL); Council for Civil Service Unions v Minister for the Civil Service (the 'GCHQ case') [1985] AC 374; Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476; Sedley J. in *R v Higher Education Funding Council ex p. Institute of Dental Surgery*[1994] 1 All ER 651.

References

[1] Allan, T. R. S. "Constitutional rights and judicial review." (2018): 138-145.

[2] Arvind, T. T., and Lindsay S. "The curious origins of judicial review." Law Quarterly Review 133 (2017): 91-117.

[3] Griffiths, J. "Judicial review of administrative action in Australia." In AIAL Forum, no. 88, p. 9. Australian Institute of Administrative Law, 2017.

[4] H Timothy Jones. "Judicial review and codification." Legal Studies 20, no. 4 (2000): 517-537.

[5] Hirschl, R. "Judicial review and the politics of comparative citations: theory, evidence and methodological challenges." In Comparative Judicial Review. Edward Elgar Publishing, 2018.

[6] Hooper, G. "Judicial Review and Proportionality: Making a Far-Reaching Difference to Administrative Law in Australia or a Misplaced and Injudicious Search for Administrative Justice?." In Australian Institute of Administrative Law (AIAL) Forum, vol. 88, pp. 29-47. 2017.

[7] Landau, D. "New Directions in the Comparative Law and Politics of Judicial Review." (2019): 225.

[8] Landau, D., and Rosalind D. "Abusive Judicial Review: Courts Against Democracy." (2019).

[9] McIntyre, J., and Lorne N. "Judicial review reform: avoiding effective review through procedural means?." Oxford University Commonwealth Law Journal 16, no. 1 (2016): 65-99.

[10] Ríos-Figueroa, J. "Judicial review and democratic resilience: Afterword to the Foreword by Doreen Lustig and JHH Weiler." International Journal of Constitutional Law 17, no. 1 (2019): 17-23.

[11] Wheeler, C. "Judicial review of administrative action: An administrative decision-maker's perspective." In aial Forum, no. 87, p. 79. Australian Institute of Administrative Law, 2017.