The Role And Effect Of Judicial Review In The UK's Constitutional Structure

Role of judicial review

Judicial review (JR) ensures that a public decision-maker acts within law and their power (balancing the powers between parliament, judiciary and the executive), yes avoiding arbitrary decision-making yes and protecting our fundamental human rights. Yes, It is way to ensure the government is accountable for their actions, although it is not merit based i.e. on the decision of the case but instead the process. yes In essence, the main principles which judicial review focusses on is are illegality, irrationally, and proportionality. These principles have arisen from many landmark cases which will be further explored. There are two types of judicial review: Substantive grounds of review are concerned with the content or the outcome of the decision made. Yes Procedural grounds of review, in contrast, address the question of the way in which a decision is made. Yes This essay with predominantly focus on the role and effect of substantive JR [Loveland, 2012].

Firstly, illegality can be broken into excess of power used by the public authority, the relevant/irrelevant considerations doctrine, unlawful delegation of power; unlawful constraint of power; and the estoppel doctrine [Loveland, 2012] and procedural propriety. A common phrase used to describe the unlawful decision undertaken by the governmental body is that they are exercising a power ‘beyond the four corners of the act’. Yes Lord Diplock said ‘the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it’, yes Illegality is a common theme in cases violating the European convention of human rights after the HRA. In addition, due process must occur which is fair treatment through the normal judicial system, especially a citizen's entitlement to notice of a charge and a hearing before an impartial judge. Yes

JR can be used to bring govt action within the illegality doctrine which is evident in Court of Appeal’s judgment in Congreve v Home office. The Wireless Telegraphy Act 1949 made it a criminal offence for any person to use a radio or television without having a license issued by the govt. In Feb 1975, the license fee was increased to £18 to raise revenue, in effect from 1 April 1975. To save £6 many citizens purchased another license before 1 April. Soon after, the Home office revoked all such licenses, and sent purchasers letters ordering them to return their license and buy new £18 licenses on the date their original license expired. The minister had no power to revoke the licenses which had been granted lawfully, unless the licensee had done something wrong e.g. paid by a cheque which later ‘bounced’. A revocation in the present circumstances would amount to a misuse of power conferred on him by parliament [Parpworht, 2014). Congreve (a solicitor) refused to comply and declared Home office was acting illegally, which Court of Appeal rules. Too much factual background here – you could use these words to better effect Lord Denning said this ‘invades a man in the privacy of his home and it does so solely for financial reasons so as to enable the minister to collect money for the revenue’. Yes Provided that a decision maker acts in accordance with the statutory purpose/s, he will have acted lawfully. If, an improper purpose, the courts will be prepared to intervene [Parpworthht, 2014]. Generally accepted, a decision will be illegal if its contents were arrived at because the decision-maker either took account of irrelevant considerations or failed to take account of

relevant considerations. OK

Irrationality defined by Lord Diplock in the GCGQ case is a decision which is ‘so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it’. Yes In Brind v Secretary of State (HL), radio/television media were not permitted to broadcast live statements made by members of terrorist organisations. Brind, a journalist, saw this ban was ‘ultra vires’ under s29 and unlawfully infringed free expression, which was viewed as irrational, yet the court disagreed since it was not a blanket ban such as in the case of Ministry of Defence v ex Parte Smith. But even the blanket ban in Smith was not regarded as unreasonable/ irrational In this case, the ban only extended to the speaker’s actual voice so dubbed interviews could be released. Therefore, the courts believe there was limited infringement of free speech and expression. It is important to note, not all prerogative power is subject to judicial review since as Lord Roskill states, their nature and subject matter is not to be amenable to the judicial process [Turpin and Tomkins, 2012]. Such as in ex Parte Smith, Sir Thomas Bingham MR said :“The greater the policy content of a decision, and the more remote the subject matter of the decision from ordinary judicial experience, the more hesitant the court must necessarily be in holding a decision to be irrational”, yes typically in cases of war or national security since the judiciary lack expertise in these fields (highly political issues). Yes NB also the doctrine of deference and the notion of institutional competence.

Proportionality is a fairly recent addition the grounds of judicial review, evolving from the concept of unreasonableness, albeit very important. Evolving really through the HRA If there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, the courts can quash (reject as invalid) the exercise of discretionary powers. It is famously exemplified in the Associated Provincial Picture Houses Ltd. V Wednesbury corporation, the corporation took into account irrelevant considerations, did not relevant considerations and acted unreasonably. No – the body was not found to be acting unreasonably in Wednesbury – are you thinking of Roberts v Hopwood? In the Belmarsh detainee case, non-nationals were indefinitely detained without trial and mistreated compared to nationals – the state went further than necessary to achieve their objective. Eight judges who thought there was a public emergency had to go on to decide whether the nature and seriousness of the emergency was sufficient to justify the particular step that had been taken. Seven of the eight judges said it was no9 judges in this case – always an odd number in the SCt. As Lord Bingham put it, the Human Rights Act “gives the courts a very specific, wholly democratic, mandate” to uphold human rights. In other words, courts will no longer accede to the argument that national security is none of their business – at least not when human rights are at stake [Elliot, 2013]. Yes

Effect of judicial review

As a result of JR taking the place, there may be tangible outcomes for applicants such as obtaining a service or benefit which an authority previously denied, financial compensation or an apology [Public Law Project, 2015] or intangible such as reconsidering policy. Yes – or none of the above Accordingly, JR decisions are viewed to affect applicants in both tangible and intangible ways [Public Law project]. Although, 80% of successful claimants obtained some direct, tangible benefit from their claim [The Conservation, 2015]

Judicial review cannot change the outcome of a decision although there are remedies provided remedies such as: a quashing order, a prohibiting order, a mandatory order, declaration, injunction, interim declaration and damages [Parpworht, 2014]

To summarise the role of JR, Sir Thomas Bingham MR said it holds ‘one function only, which is to rule upon the lawfulness of decisions’ in R v Cambridge Health Authority ex p B [1995] 1 WLR 898,905 [Parpworthht, 2014] which covers the various principles aforementioned. It is fundamental to the rule of law in our country that executive decisions are open to review by judges to see that they conform to what the rule of law requires. [Rozenberg, 2013]

Fahmida – this is a very good essay on principles of judicial review – albeit it is somewhat over the word limit. It is well written and well researched. My main critique is that you could have focussed your material more directly on the essay title and placed the material more in the context of the separation/ balance of power, the supremacy of Parliament and the rule of law and the essay could have been more clearly structured to meet this objective. 62%

References:

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