came to the conclusion that it did. The public interest in the integrity of racing was such that the public were entitled to know about reservations and concerns over the ability of the Jockey Club to preserve the integrity of the racing industry.

A final word about the proviso permitting publication on the say-so of the Attorney General. In the Court of Appeal in *Punch*, Lord Phillips had been critical of the arrangement for giving permission to publish, taking the view that it subjected the press to the censorship of the Attorney General (as he had said on a previous occasion, in *Attorney General* v. *Times Newspapers Ltd.* [2001] 1 W.L.R. 885) and an interference with the European Convention right of freedom to publish. Lord Hope deals with the point most fully. Whatever arrangements are put in place for permitting the Attorney to vet the material prior to publication, he considered, must make it plain on their face that the last word does not rest with the Attorney but with the courts.

A.T.H. SMITH

PROCEDURAL JUSTICE IN ADMINISTRATIVE PROCEEDINGS AND ARTICLE 6(1) OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE applicability to administrative decision-making of Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms (which requires that the determination of a person's "civil rights" should be by an "independent and impartial tribunal") is somewhat vexed. First, it is often uncertain when an administrative decision determines "civil rights". And, secondly, since non-compliance at first instance may be cured where the person aggrieved has access to a court of "full jurisdiction", it is important but often uncertain to know what "full jurisdiction" is in the circumstances. The full tale is told in (2001) 60 C.L.J. 449 (Forsyth) and in Wade and Forsyth, *Administrative Law*, 8th edn. (2000) at pp. 441–444. Those unfamiliar with these technical issues should read a standard account before turning to *Runa Begum* v. *Tower Hamlets London Borough Council (First Secretary of State Intervening)* [2003] UKHL 5, [2003] 2 W.L.R. 388 (H.L.).

What had happened was that Runa Begum became homeless and the Tower Hamlets London Borough Council accepted that it had a duty under Part VII of the Housing Act 1996 to secure accommodation for her. But Runa Begum rejected the accommodation offered as unsuitable and requested a review of the

decision under section 202 of the 1996 Act. The review was conducted by the council's rehousing manger, Mrs. Hayes, who found that Runa Begum's rejection of the accommodation was unreasonable. So Runa Begum exercised her right of appeal under section 204 to the county court "on any point of law arising from the decision" of the housing officer. (In *Nipa Begum* v. *Tower Hamlets LBC* [2000] 1 W.L.R. 306 (C.A.) "point of law" was held to include the full range of issues that could be raised in judicial review.) In the House of Lords, the only issues of consequence remaining were, first, whether Article 6(1) applied to the decision of Mrs. Hayes. Even though there were significant procedural safeguards to ensure the fairness of her decision, Mrs. Hayes was plainly not an "independent and impartial tribunal" (she was a council employee with no security of tenure). Thus if Article 6(1) applied, it was breached. So the second question, which we turn to first, was whether the appeal in terms of section 204 was access to a court of "full jurisdiction" sufficient to ensure that the procedure overall did comply with Article 6(1).

R. (Alconbury Developments Ltd.) v. *Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2001] 2 W.L.R. 1389 had made it plain that, even though that court could not review the merits of the decision, a right of appeal on "a point of law" could cure the lack of impartiality and independence of the initial decision-maker. But what was the position where the issues were factual? Runa Begum was concerned about drug problems and racism in the area, she had allegedly been assaulted nearby, and her estranged husband frequently visited the building. These were factual issues. The court hearing a section 204 appeal has power to quash findings of fact that were perverse or irrational or when there was no evidence to support them, but the court could not substitute its own findings of fact for those of the first instance decision-maker (see Lord Millett, para. [99]). But the crucial point, stressed by their Lordships, was that access to a court of "full jurisdiction" meant "full jurisdiction to deal with the case *as the nature of the decision requires*" (*per* Lord Bingham (para. [5]) (emphasis added) in reliance upon Lord Hoffmann in *Alconbury* (para. [85])). In the particular statutory context, where the factual issues were preliminary to the broader discretionary powers (particularly whether Runa Begum's refusal was reasonable), a full fact-finding jurisdiction in the appellate court was not required. Hence any non-compliance with Article 6(1) was cured by the appeal.

We may turn finally to the first mentioned issue: if Runa Begum's "civil rights" were not determined by Mrs. Hayes's

decision, then Article 6(1) was not engaged at all and the fairness of this decision-making process would be determined by the judge-developed principles of the common law. Since their Lordships decided, as explained above, that any non-compliance was cured by the availability of the right of appeal, it was not necessary for them to decide this issue. But it was discussed at length—particularly by Lord Hoffmann. Although Lord Millett concluded that it was "desirable" to extend the scope of Article 6(1) to cases such as *Runa Begum*, this is to go further than the European Court of Human Rights. Social welfare schemes analogous to private insurance (in which contributions were made in return for benefits, when required) were held to engage Article 6(1) in *Feldbrugge* v. *Netherlands* (1986) 8 E.H.R.R. 425 (contributory sickness benefit claim). A further step was taken in *Salesi* v. *Italy* (1993) 26 E.H.R.R. 187 when Article 6(1) was applied to a claim for a state-funded non-contributory disability pension. (See, similarly, *Mennitto* v. *Italy* (2000) 34 E.H.R.R. 1122.) In these cases, although there was no analogy with private law, the right in question was an individual, economic right that flowed from specific statutory rules; this was enough to stamp it as a "civil right". But *Runa Begum* concerned a benefit in kind, not cash, and the Council necessarily exercised a discretion in the allocation of the accommodation. However, Lord Hoffmann favoured the view of Hale L.J. in *Adan* v. *Newham LBC* [2001] EWCA Civ 1916, [2002] 1 W.L.R. 2120 (para. [55]) that once the statutory criteria were fulfilled the right to accommodation arose (even if discretion came into the allocation as well as deciding whether refusal was reasonable), and this meant the claim was "akin to a claim for social security benefits"; and so Article 6(1) was engaged.

So once more the curative principle saved the day, by providing the means whereby the applicability of Article 6(1) was reconciled with standard administrative practice. As Lord Hoffmann said (at para. [35]):

> An English lawyer can view with equanimity the extension of the scope of article 6 because the English conception of the rule of law requires the legality of virtually all government decisions affecting the individual to be subject to the scrutiny of the ordinary courts .... [T]his breadth of scope is accompanied by an approach to the ground of review which requires that regard be had to democratic accountability, efficient administration and the sovereignty of Parliament.

That equanimity should not prevent one wondering whether anything has been gained by imposing upon the existing law of

procedural fairness these technical and uncertain arguments over the reach of Article 6(1). And, moreover, one may wonder whether the European Court of Human Rights will be as generous in according curative powers to judicial review.

CHRISTOPHER FORSYTH

INDETERMINATE SENTENCES ... AGAIN

A NOTE on the legality of the mandatory life sentence in (2002) 61 C.L.J. 5 concluded that once the gap between the Government's rhetoric and the reality was recognised, the mandatory life sentence could no longer be justified. After a bit of kicking from the European Court of Human Rights (see *Stafford* v. *UK* (2002) 35 E.H.R.R. 32, (2002) 61 C.L.J. 508), the House of Lords has at last recognised that the Home Secretary's involvement in fixing the "tariff" can no longer be justified. Nearly six months after their Lordships issued a declaration that the existing legislative provisions were incompatible with the European Convention on Human Rights, it appears that the Home Office has still not decided what to do. We should expect late amendments to the already dense Criminal Justice Bill 2002, but at the time of writing (April 2003) the proposed amendments have not been published despite the fact that the Bill has reached its Report stage in the House of Commons.

On 25 November 2002 the House of Lords in *R. (Anderson)* v. *Secretary of State for the Home Department* [2002] UKHL 46, [2002] 3 W.L.R. 1800 declared section 29 of the Crime (Sentences) Act 1997 to be incompatible with Article 6 of the European Convention of Human Rights "in that the Secretary of State for the Home Department is acting so as to give effect to section 29 when he himself decides on the minimum period which must be served by a mandatory life sentence prisoner before he is considered for release on life licence". This curious wording was agreed between the parties. Section 29 provides:

(1) If recommended to do so by the Parole Board, the Secretary of State may, after consultation with the Lord Chief Justice together with the trial judge if available, release on licence a life prisoner who is not [a discretionary life prisoner].

(2) The Parole Board shall not make a recommendation under subsection (1) above unless the Secretary of State has referred the particular case, or the class of case to which that case belongs, to the Board for its advice.