

Implementing human rights principles in the field of social welfare: the role of the JCHR

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OUTLINE

- Scrutiny compared to litigation
- Various scrutiny roles of JCHR
- Examples of each type of scrutiny
- Assessment of effectiveness

LITIGATION AND SCRUTINY COMPARED

- “No lifting” policies – the problem
- DRC sought advice on possible HR challenges
- Standing restrictions limiting options
- A, B, X & Y v East Sussex
- Practical impact of judgment
- Could scrutiny do any better?

SCRUTINY ROLES OF THE JCHR

- Legislative scrutiny
- Treaty monitoring
- Inquiries into aspects of implementation of HRA
- Thematic inquiries
- Implementation of judgments
- Monitoring of remedial action following declarations of incompatibility

RELEVANCE OF JCHR TO ACCESS TO SERVICES

- Positive as well as negative obligations
- Other treaties as well as ECHR
- Soft law norms as well as treaty obligations
- Balance between work on, e.g., counter-terrorism measures and measures concerning access to services

LEGISLATIVE SCRUTINY

- Case study: Mental Capacity Bill
- Main compatibility issues
- References in Parliament
- Changes to Bill
- Code of Practice
- Other examples

IMPLEMENTATION OF HRA

- Case study (1): Report on “Meaning of public authority”
- The problem
- The possible solutions
- The Govt guidance in response

IMPLEMENTATION OF HRA

- Case study (2): Reports on CEHR
- The question of the power to JR
- Overcoming the “no lifting” case problem
- The Equality Bill

TREATY MONITORING

- CRC Report
- ICESCR Report
- Pre-ratification reporting on HR treaties
(see Protocol 14 Report)
- Will report before ratification of future
conventions on Disability

MONITORING IMPLEMENTATION OF JUDGMENTS

- Strasbourg judgments
- Process – letter to Minister
- Case-study: Glass v UK
- Limits: Bournewood (HL v UK)

HOW EFFECTIVE IS THE JCHR?

- How often does Govt change its position?
- How often are reports referred to in Parliament and to what effect?
- Have parliamentarians become more rights-literate?
- Have policy makers changed the way they make policy?
- Have decision-makers changed the way they make decisions?
- How often are reports referred to in the media or in general public debates?
- How aware are lawyers of the existence of JCHR reports?
- How often are reports referred to by courts in judgments?

COMPLEMENTARITY OF SCRUTINY AND LITIGATION

- Scrutiny as a different means of implementing/enforcing human rights principles
- Litigation informs scrutiny
- Scrutiny should inform litigation