

《Summary》

Shifts in the Principle of Judicial Review in England

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Ever since the judgment of Lord Green M.R. in the case of “Associated Provincial Picture Houses, Limited v. Wednesbury Corporation ([1948] 1 K.B.223.)”, made clear the meaning of the word of “unreasonable”, this standard has been used as a general principle of judicial review of administrative actions when they are challenged as unreasonable and ultra vires.

The court’s interpretation of the word “unreasonable” in this case was a limited one, and the court argued: “It is right to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever come to it, then the courts can interfere.” However, the court also says: “To prove a case of that kind would require something overwhelming.” Furthermore, it says: “The task of the court is not to decide what it thinks is reasonable, but to decide whether what is prima facie within the power of the local authority is a condition which no reasonable authority, acting within the four corners of their jurisdiction, could have decided to impose.”

In UK law, there are cases and academic views that this Wednesbury principle should be observed as a basic test for judicial review. On the other hand, a case has been presented in the European Human Rights Court in which it is argued that the threshold of this principle

is placed so high that it effectively excludes any consideration by the domestic courts of the question of whether the interference with the applicants' rights answered a pressing social need or was proportionate to the national security and public order aims pursued ([1999] ECHR 72.).

The House of Lords ([1999] 2A.C.418.) also has recognized a simpler version of the *Wednesbury* principle by admitting a test of "whether the decision was one which a reasonable authority could reach." In the human rights-related cases, in particular, more intensive judicial review is warranted, and some cases which adopt a more active approach than ever have appeared.

Under such circumstances, the decision of the Court of Appeal in *R.v. North and East Devon Health Authority, ex parte Coughlan* ([2000] 2W.L.R.622.), which is a marked ruling developing the doctrine of substantive legitimate expectations, has appeared.

Lord Woolf MR has clearly said: "We would prefer to regard the *Wednesbury* categories themselves as the major instances (not necessarily the sole ones) of how public power may be misused." Lord Woolf went on to say that once it is recognized that conduct which is an abuse of power is contrary to law, its continued existence must be for the courts to determine (Ibid.654).

In this article, I intend to analyze the *Coughlan* case and to make clear the relations between substantive legitimate expectations and judicial review, particularly focusing on legitimate expectations in relation to the abuse of power. I will also discuss the possibility of UK courts going beyond a review of bare rationality or unreasonableness in the *Wednesbury* sense. Finally, by referring to the relationship between the *Wednesbury* test and the proportionality principle, I will give an overview of recent trends in the testing of judicial review in England.