FIRST SECTION

DECISION

Application no. 78375/17  
Vida POSHTEH  
against the United Kingdom

The European Court of Human Rights (First Section), sitting on 27 November 2018 as a Chamber composed of:

Linos-Alexandre Sicilianos, *President,* Ksenija Turković, Aleš Pejchal, Pauliine Koskelo, Tim Eicke, Jovan Ilievski, Gilberto Felici, *judges,*and Abel Campos, *Section Registrar,*

Having regard to the above application lodged on 6 November 2017,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Ms Vida Poshteh, is a British national, who was born in 1978 in Rasht, Iran. She currently lives in London. She was represented before the Court by Mr Christian Hansen of Hansen Palomares Solicitors, a lawyer practising in London.

A.  The circumstances of the case

1.  The background facts

2.  The facts of the case, as submitted by the applicant, may be summarised as follows.

3.  The applicant, who was born in Iran, arrived in the United Kingdom in 2003. She was initially granted asylum, having been subject to imprisonment and torture in Iran, and was subsequently granted indefinite leave to remain. She is now a naturalised British citizen.

4.  The applicant lives with her son, who was born in 2007. In 2009 she applied to the Royal Borough of Kensington and Chelsea (“the local authority”) for accommodation as a homeless person. She was housed in temporary accommodation and on 13 November 2009 the local authority acknowledged its duty under section 193 of the Housing Act 1996 (see paragraph 27 below) to secure accommodation for her. She was advised that she was eligible to bid for two bedroom properties.

5.  Having failed to bid successfully for permanent accommodation, on 14 November 2013 the local authority informed her by letter that she was being offered permanent accommodation at 52a Norland Road, London. The property was on the first floor of a two-story building, accessible by twelve stairs. The offer was stated to be a final offer and failure to accept it would result in the local authority’s housing duty coming to an end. It was, however, explained to her that she would have the right to ask for review of any decision to discharge the statutory duty.

6.  The applicant visited the property on 16 November 2012 with an officer from the local authority and on 21 November her support worker telephoned the local authority to inform it that she would be refusing the offer because she considered it to be “too small for her furniture”. However, on 29 November she wrote personally to the local authority stating that the property was unsuitable in view of her history of post-traumatic stress disorder (“PTSD”), depression, and panic and anxiety attacks. She described the windows in the sitting room as “circle shaped and other windows were too small”. She indicated that they appeared to her as cell windows and they frightened her as they reminded her of being in prison in Iran. She enclosed letters from her General Practitioner (“GP”) and therapist. Her therapist stated that due to her past trauma she would not be able to accept any offer of accommodation in a high rise building where it would be necessary to use a lift. Her GP confirmed that she suffered from PTSD and urged the local authority not to house her in a place where she would have to use a lift or live high up, as this would exacerbate her anxiety and panic attacks.

7.  The letter of 29 November was treated as a request for a review. The reviewing officer requested copies of the applicant’s medical notes and related materials, and referred them to the local authority’s medical expert, Dr W. In his report of 31 January 2013, Dr W stated that the offer of accommodation was suitable on medical grounds. While he accepted that exposure to memories of an inciting stressor could cause re-emergence of symptoms of PTSD, this had to be balanced against the availability of local accommodation and the relative harm the accommodation could cause. While the property might not have been ideal or entirely to the applicant’s satisfaction, he considered that there was nothing to suggest that it would be harmful or have a significant impact upon her mental health.

8.  In a decision of 10 February 2013, the reviewing officer upheld the decision to discharge the statutory housing duty. When the applicant appealed, the local authority agreed to carry out a further review. The applicant made representations via her solicitors. In a letter dated 30 August 2013, the solicitors informed the local authority that as soon as the applicant walked into the property, she had flashbacks to her imprisonment and torture. In particular, the property had “small oddly shaped and placed windows which reminded her of her cell and interrogation rooms. According to the solicitor, just viewing the flat frightened her and “sent her into a panic attack”. The solicitor enclosed further medial evidence, including another letter from the applicant’s GP, who stated that the property was rejected because the windows were “very small and round” and the applicant felt like she was back in prison. In his opinion, it was unsuitable for her as it would continually trigger bad memories of her imprisonment and torture and this would not be good for her mental state. The clinical therapist added that “being housed in accommodation with very small dark rooms without windows at a normal height” would remind her of her prison cell.

9.  On 7 October 2013 the applicant was interviewed by the reviewing officer. According to his note, the applicant said that the main reason for refusing the property was the round window in the living room which was “exactly similar” to the round windows of her cell. Upon questioning, she conceded that the window was not exactly the same, as the one in her cell was much smaller and didn’t let in much light. She further indicated that the property would have been suitable as temporary accommodation but not as accommodation that she would have to live in on a permanent basis.

10.  In his decision of 17 October 2013 the reviewing officer decided to uphold the decision to end the housing duty to the applicant. He concluded, first, that the property was objectively suitable with regard to size and condition. However, having recognised that objectively suitable accommodation might be unsuitable for a particular applicant if it caused them to suffer from symptoms of mental illness, he proceeded to consider whether the offer of accommodation was reasonable for the applicant to have accepted, given her history of ill-treatment and PTSD. In making this assessment, he gave precedence to the applicant’s medical evidence, but noted that her GP and therapist had only raised concerns about properties with very small windows, or in which the windows were not at normal height. In contrast, the windows at the 52a Norland Road property were a good size and provided sufficient natural light. Moreover, as acknowledged at interview, the circular window was much larger than the one in the applicant’s prison cell, the only similarity being that both were round. Consequently, the officer did not accept as objectively reasonable her assertion that the size or design of the window was reminiscent of a prison cell, or that the windows or layout of the living room recreated the conditions of confinement that was likely to have a significant impact on her mental health.

2.  The appeal to the County Court

11.  The applicant appealed to the County Court on the following two grounds: that the local authority failed to make adequate inquires as it did not ask her treating medical practitioners whether the round window was capable of constituting an inciting stressor which would cause a re‑emergence or exacerbation of her PTSD; and that the local authority had placed too much weight on an irrelevant consideration, namely the reviewing officer’s opinion that the applicant’s assertion that the round window would remind her of her experiences in Iran was not “objectively reasonable”.

12.  In considering the appeal, the judge indicated that the court should not intervene with a local authority’s fact-finding, except in a clear case where it had acted perversely in the *Wednesbury* sense.In this regard, she quoted from the speech of Lord Neuberger in *Holmes-Moorhouse v. Richmond-upon-Thames LBC* [2009] UKHL 7 (see paragraph 28 below). In that speech, Lord Neuberger indicated that a “benevolent approach should be adopted to the interpretation of review decisions”. In particular, on appeal the court should not take “too technical a view of the language used ... or adopt a nit-picking approach”, and errors which did not undermine the basis of a decision should not be accepted as a reason for overturning it.

13.  In respect of the first ground, she found that the reviewing officer had reasonably concluded that he had all the relevant information. He had considered the further medical evidence obtained by the applicant – including that obtained following her visit to the property, and it was reasonable for him to conclude that he had sufficient information upon which to base his decision. In relation to the second ground, the judge found that the reviewing officer had not placed too much weight on an irrelevant consideration. He had approached the issue correctly, and was entitled to take into account all the evidence before him.

3.  The appeal to the Court of Appeal

14.  The applicant appealed to the Court of Appeal. Two grounds were advanced, namely: whether it was an irrelevant consideration for the reviewing officer to find that it was not objectively reasonable for the applicant to consider the design of the windows in the living room to be reminiscent of her prison cell; and whether the reviewing officer erred in his interpretation of her GP’s comments regarding the effect on the applicant of window size and design.

15.  In considering the appeal, all three Lord Justices of Appeal had regard to the speech of Lord Neuberger of Abbotsbury in *Holmes‑Moorhouse v. Richmond-upon-Thames LBC* (see paragraph 28 below).

16.  The Court of Appeal, by a majority, dismissed the appeal, finding that the reviewing officer had reached a decision that was reasonably open to him in light of the evidence as a whole. McCombe LJ, with whom Moore-Bick LJ agreed, found that the officer was entitled to take into account all the evidence relating to the applicant’s medical history and not just her account of her experience on one visit, and he was entitled to conclude, on all the evidence, that the subjective reminder of the Iranian prison cell caused by the window during her visit was not likely to have a sufficiently adverse effect on her mental health such as to render reasonable her rejection of the offer of accommodation. McCombe LJ also reminded himself that, pursuant to section 149 of the Equality Act 2010, the local authority had been under a duty to consider how its decision affected “protected persons”, which included persons with disabilities. However, he considered that the reviewing officer had clearly recognised the applicant’s disability and the public sector equality duty in that respect and took pains to acquire all the information that appeared to him to be necessary for that purpose.

17.  In his dissenting opinion, Elias J considered that “the only proper and rational conclusion open to the reviewing officer was that even though the premises were suitable in other respects, it was not reasonable to expect [the applicant] to live there”. For him, the issue was whether the reviewing officer, properly directing himself, could say on the evidence that there was no real risk to her mental health. In this regard, the officer appeared to consider that unless the relevant inciting stressor was one which, objectively considered, was reminiscent of a prison cell, the panic attacks could be ignored or treated as sufficiently trivial as not to be likely to affect her mental health. This reasoning was erroneous and as it lay at the core of the reviewing officer’s analysis, there had been a material misdirection and the decision could not stand. Finally, Elias LJ considered whether this was one of those cases referred to by Lord Neuberger in *Holmes-Moorhouse v. Richmond-upon-Thames LBC* where it was obvious that the decision would have been the same notwithstanding the error in approach (see paragraph 28. below). However, he did not think he could fairly make that assumption.

18.  Moore-Bick LJ added that it was “common ground” between the three Lord Justices that the question for decision was whether, in light of the evidence as a whole, it was open to the reviewing officer, properly directing himself, to conclude that it was reasonable for the applicant to accept the accommodation offered to her. In his opinion, the point on which they were divided was whether the officer wrongly dismissed as objectively unreasonable the applicant’s assertion that the round window reminded her of her prison cell and, as a result, ignored her evidence of experiencing a panic attack. In his view, that was not the case: the reviewing officer did not ignore the panic attack but instead did not accept as objectively reasonable her assertion that the layout of the living room was reminiscent of a prison cell likely to have a significant impact on her mental health. This was a matter of judgment which had to be determined by reference not only to the nature of the inciting stressor or her perception of the property but to the evidence as a whole.

4.  The application for permission to appeal to the Supreme Court

19.  The applicant sought permission to appeal to the Supreme Court on the following two grounds: whether the standard of review applied by the court when examining decisions made by local authorities under Part VII of the Housing Act 1996 involved a greater or more intense form of scrutiny than *Wednesbury* irrationality; and what, if any, steps were required of a public authority when making decisions under Part VII of the 1996 Act where section 149 of the Equality Act 2010 applied.

20.  Following the delivery by this Court of its judgment in *Fazia Ali v. the United Kingdom*, no. 40378/10, 20 October 2015, the applicant subsequently amended her grounds to include the following: whether, and to what extent, Article 6 required a more intensive standard of review than *Wednesbury* unreasonableness.

21.  Permission to appeal was granted on two grounds: first, whether the Supreme Court’s judgment in *Ali v Birmingham City Council* [2010] 2 AC 39 should be departed from in the light of *Fazia Ali*, and if so to what extent; and secondly, whether the reviewing officer should have asked himself whether there was a real risk that the applicant’s mental health would be damaged by moving into the accommodation offered, whether or not her reaction to it was irrational, and if so, whether he did in fact apply the right test.

22.  The Secretary of State was granted permission to intervene. He invited the court to confirm its decision in *Ali v Birmingham City Council* that the duties imposed on housing authorities under Part VII of the Housing Act 1996 did not give rise to “civil” rights or obligations, and that accordingly Article 6 had no application. His principal concern was the effect on decision-making procedures of extending Article 6 into both this and other areas of Government activity relating to community care and education. In *Ali v Birmingham City Council* Lord Hope, in giving the leading speech, had observed that it was not in the public interest for funds allocated to social welfare schemes to be unduly consumed in administration and legal disputes.

5.  The Supreme Court judgment

23.  In a unanimous judgment delivered on 10 May 2017, the Supreme Court dismissed the applicant’s appeal and confirmed the decision of the reviewing officer.

24.  With regard to the Article 6 complaint, the court declined to follow *Fazia Ali*, and instead confirmed its decision in *Ali v Birmingham City Council* that the duties imposed on housing authorities under Part VII of the Housing Act 1996 did not give rise to “civil” rights or obligations, and that accordingly Article 6 had no application. Lord Carnwath, with whom the other Justices agreed, stated:

“32.  The review of the domestic authorities noted above, from *Runa Begum* onwards, shows a continuing debate on this issue, against the background of the uncertain Strasbourg jurisprudence. The unanimous judgment of this court in *Ali v Birmingham City Council* was intended to settle the issue at domestic level, after a full review of all the relevant Strasbourg authorities. Against this background it is necessary to consider whether the reasoning in the recent Chamber decision makes it necessary or appropriate for us to depart from that decision.

33.  The Chamber acknowledged (in line with the Grand Chamber decision in *Boulois*) the weight to be given to the interpretation of the relevant provisions by the domestic courts. It is disappointing therefore that it failed to address in any detail either the reasoning of the Supreme Court, or indeed its concerns over ‘judicialisation’ of the welfare services, and the implications for local authority resources (see para 23 above). Instead the Chamber concentrated its attention on two admittedly *obiter* statements, respectively by Hale LJ (as she then was) in the Court of Appeal in *Adan,* and Lord Millett in *Runa Begum*. However, its treatment of these two statements is open to the criticism that they were taken out of context, and without regard to their limited significance in the domestic case law.

... ... ...

35.  Questionable also, with respect, is the Chamber’s reliance on the decision in *Schuler-Zgraggen v Switzerland* as an example of entitlement subject to ‘discretion’. As Lord Collins pointed out in *Ali* (at para 61), it was treated by the 1993 court as a claim to an ‘individual economic right’ flowing from ‘specific rules’ laid down in the statute. The case report shows that the statute in question gave a right to a full invalidity pension where incapacity of at least 66.66% was established (para 35). Once that level of incapacity was established, the financial entitlement followed as a matter of right, not discretion. It is hard to see any fair comparison with the range of factors, including allocation of scare resources, to which authorities are entitled to have regard in fulfilling their obligations under the housing legislation. In fairness to the Chamber, it may be that this was not spelt out in the government’s submissions, as fully as it has been in recent domestic cases (see eg para 27 above).

36.  Our duty under the Human Rights Act 1998 section 2 is ‘take account of’ the decision of the court. There appears to be no relevant Grand Chamber decision on the issue, but we would normally follow a ‘clear and constant line’ of chamber decisions (see *Manchester City Council v Pinnock* [2011] 2 AC 104, para 48). This might perhaps be said of some of the previous decisions referred to in the judgment, including most recently *Tsfayo v United Kingdom* (2006) in which the application of article 6 was conceded by the government. However, it is apparent from the Chamber’s reasoning (see para 58 cited above) that it was consciously going beyond the scope of previous cases. In answer to Lord Hope’s concern that there was ‘no clearly defined stopping point’ to the process of expansion, its answer seems to have been that none was needed. That is a possible view, but one which should not readily be adopted without full consideration of its practical implications for the working of the domestic regime.

37.  The scope and limits of the concept of a ‘civil right’, as applied to entitlements in the field of public welfare, raise important issues as to the interpretation of article 6, on which the views of the Chamber are unlikely to be the last word. In my view, this is a case in which, without disrespect to the Chamber, we should not regard its decision as a sufficient reason to depart from the fully considered and unanimous conclusion of the court in *Ali*. It is appropriate that we should await a full consideration by a Grand Chamber before considering whether (and if so how) to modify our own position.”

25.  With regard to the second ground, he continued:

“39.  In my view, the appeal on this issue well illustrates the relevance of Lord Neuberger’s warning in *Holmes-Moorhouse* (para 7 above) against over-zealous linguistic analysis*.* This is not to diminish the importance of the responsibility given to housing authorities and their officers by the 1996 Act, reinforced in the case of disability by the Equality Act 2010. The length and detail of the decision-letter show that the writer was fully aware of this responsibility. Viewed as a whole, it reads as a conscientious attempt by a hard-pressed housing officer to cover every conceivable issue raised in the case. He was doing so, as he said, against the background of serious shortage of housing and overwhelming demand from other applicants, many no doubt equally deserving. He clearly understood the potential importance of considering her mental state against the background of her imprisonment in Iran. His description of the central issue (para 39) has not been criticised.”

26.  Finally, Lord Carnwath referred to the applicant’s complaint concerning the scope of review. He observed that:

“This issue was not one on which permission to appeal was given, nor has [counsel for the applicant] offered any convincing reason for extending its scope. I bear in mind also Lord Neuberger’s comments on the potentially profound constitutional implications of a decision to replace the traditional *Wednesbury* tests for administrative decisions in general (*R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2016] AC 1355, para 132). I would agree with [counsel for the applicant] that, since the creation of a statutory right of appeal to the county court, recourse to the highly restrictive approach adopted 30 years ago in the *Puhlhofer* case (*R v Hillingdon London Borough Council, Ex p Puhlhofer* [1986] AC 484) is no longer necessary or appropriate. However, the principles governing the right of appeal to the county court under the 1996 Act have been authoritatively established by the House of Lords in *Runa Begum*’s case and others following it (including *Holmes‑Moorhouse*), and should be taken as settled.”

B.  Relevant domestic law and practice

1.  The Housing Act 1996

27.  The relevant provisions of the Housing Act are set out in full in *Fazia Ali* (cited above, §§ 26-30).

2.  The scope of review under Part VII of the Housing Act 1996

28.  The proper approach of the court when reviewing decisions under Part VII of the 1996 Act was explained by Lord Neuberger in *Holmes‑Moorhouse v. Richmond-upon-Thames LBC* [2009] UKHL 7:

“46.  The rights granted by Part VII of the 1996 Act to those claiming to be homeless or threatened with homelessness are based on humanitarian considerations, and this underlines the fact that any challenge to a review decision should be carefully considered by the County Court to whom such challenges are directed. Given that the challenge in the County Court is treated as a first appeal, the responsibility on the Judge considering the challenge is heavy, and, if he or she is satisfied that there is an error in the reasoning which undermines the basis upon which the decision was arrived at, then the decision should obviously be set aside.

47.  However, a Judge should not adopt an unfair or unrealistic approach when considering or interpreting such review decisions. Although they may often be checked by people with legal experience or qualifications before they are sent out, review decisions are prepared by housing officers, who occupy a post of considerable responsibility and who have substantial experience in the housing field, but they are not lawyers. It is not therefore appropriate to subject their decisions to the same sort of analysis as may be applied to a contract drafted by solicitors, to an Act of Parliament, or to a court’s judgment.

48.  Further, at least in my experience, and as this case exemplifies, review decisions generally set out the facts, the contentions, the analyses and the conclusions in some detail. To my mind, given the importance, particularly to the applicant, of the issues considered in review decisions, such fullness is to be strongly encouraged. However, as any lawyer knows, the more fully an opinion is expressed, the greater the opportunity for alleging mistakes of fact, errors of law, or inconsistencies. If the courts are too critical in their analyses of such decisions, it will tend to discourage reviewing officers from expressing themselves so fully.

49.  In my view, it is therefore very important that, while Circuit Judges should be vigilant in ensuring that no applicant is wrongly deprived of benefits under Part VII of the 1996 Act because of any error on the part of the reviewing officer, it is equally important that an error which does not, on a fair analysis, undermine the basis of the decision, is not accepted as a reason for overturning the decision.

50.  Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions.

51.  Further, as the present case shows, a decision can often survive despite the existence of an error in the reasoning advanced to support it. For example, sometimes the error is irrelevant to the outcome; sometimes it is too trivial (objectively, or in the eyes of the decision-maker) to affect the outcome; sometimes it is obvious from the rest of the reasoning, read as a whole, that the decision would have been the same notwithstanding the error; sometimes, there is more than one reason for the conclusion, and the error only undermines one of the reasons; sometimes, the decision is the only one which could rationally have been reached. In all such cases, the error should not (save, perhaps, in wholly exceptional circumstances) justify the decision being quashed.”

3.  The applicability of Article 6 to reviews of decisions under Part VII of the Housing Act 1996

29.  After some debate at the domestic level, *Ali v Birmingham City Council* [2010] 2 AC 39 was intended to settle the question of the applicability of Article 6 to such cases. In that case, a unanimous Supreme Court held that the determination by the local authority, that its duty to secure accommodation for the applicant had ceased, was not a determination of her civil rights within the meaning of Article 6 of the Convention (see *Fazia Ali*, cited above, §§ 20-25).

COMPLAINT

30.  The applicant complained under Article 6 § 1 of the Convention about the scope of review under Part VII of the Housing Act 1996.

THE LAW

31.  The applicant complained under Article 6 § 1 of the Convention that her challenge to the decision that the local authority had discharged its statutory duty to provide her with accommodation had not been subject to sufficient scrutiny by an independent and impartial tribunal to ensure that it was made on the basis of adequate and sufficient information and that it was supported by proper reasons.

32.  Article 6 § 1 of the Convention provides, insofar as is relevant to the present complaint:

“1.  In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.”

33.  In *Fazia Ali v. the United Kingdom*, no. 40378/10, 20 October 2015 the Court considered a complaint very similar to that of the applicant in the present case. Ms Ali, having refused an offer of accommodation by the local authority, was notified that it had discharged its statutory duty to provide accommodation to her as a homeless person eligible for assistance. She requested a review of this decision and, unhappy with a factual finding of the reviewing officer, appealed to the County Court. However, the County Court refused to hear evidence on the issue as findings of fact were properly for the reviewing officer to make. On appeal, the Court of Appeal proceeded on the assumption that the case involved the determination of the applicant’s civil rights for the purposes of Article 6 § 1 of the Convention but dismissed the appeal as it considered that the review had been sufficient to satisfy the requirements of that Article. As already noted at paragraph 29 above, the Supreme Court unanimously found that Article 6 was not applicable.

34.  The Court reached a different decision on the applicability of Article 6, finding that the domestic proceedings did involve the “determination” of a “civil right” (see also, in the different context of civil servant employment disputes, the judgment of the Grand Chamber in *Regner v. the Czech Republic* [GC], no. 35289/11, 19 September 2017). Nevertheless, the Court was not insensitive to the concerns expressed by the Supreme Court in *Ali* about the “judicialisation” of the welfare services, and the implications for local authority resources” (see the opinion of Lord Carnwath at paragraph 24 above). On the contrary, having full regard to the purpose of the legislative scheme (being the provision of housing to homeless persons), it held that the procedure provided for resolution of disputes under Part VII of the 1996 Act was compliant with Article 6 § 1, and that the adjudicatory process by which the applicant’s “civil rights” were “determined”, taken as a whole, provided a due enquiry into the facts (*Fazia Ali*, cited above, §§ 84-85).

35.  In particular, it held that:

“83.  Although the County Court did not have jurisdiction to conduct a full rehearing of the facts, the appeal available to the applicant did permit it to carry out a certain review of both the facts and the procedure by which the factual findings of the Officer were arrived at. In particular, the applicant could – and initially did – argue that in reaching the decision the Officer had taken into account irrelevant considerations and/or acted under a fundamental mistake of fact; that the Council had failed to make adequate inquiries to enable it to reach a lawful decision; that the decision was one which no rational Council could have made; that it fettered its discretion; and that it acted in breach of natural justice (see paragraph 13 above).

84.  In considering whether the legislative scheme, taken as a whole, provided a due enquiry into the facts, the Court must also have regard to the nature and purpose of that scheme. Indeed, in relation to administrative-law appeals, the question whether the scope of judicial review afforded was “sufficient” may depend not only on the discretionary or technical nature of the subject‑matter of the decision appealed against and the particular issue that the applicant wishes to ventilate before the courts as being the central issue for him or her, but also, more generally, on the nature of the “civil rights and obligations” at stake and the nature of the policy objective pursued by the underlying domestic law.

85.  The scheme at issue in the present case was designed to provide housing to homeless persons. It was therefore a legislative welfare scheme covering a multitude of small cases and intended to bring as great a benefit as possible to needy persons in an economical and fair manner. The Court considers that with regard to the “determination” of rights and obligations deriving from such a social welfare scheme, when due enquiry into the facts has already been conducted at the administrative adjudicatory stage, Article 6 § 1 of the Convention cannot be read as requiring that the judicial review before a court should encompass a reopening with a rehearing of witnesses. As was said by Thomas LJ in the Court of Appeal (see paragraph 18 above), such a reading of Article 6 § 1 would have significant implications for both the statutory scheme and the court and tribunal system.

... ... ...

87.  In light of the above, taking as a whole the legislative welfare scheme by virtue of which the applicant, as a homeless person, derived her “civil right” to be provided with accommodation, the Court considers that the appeal to the courts open to her afforded her adequate protection as regards the judicial “determination” of that “civil right”. In other terms, it finds that the decision by the Council that it had discharged its duty to her under Part VII of the 1996 Act was subject to judicial scrutiny of sufficient scope to satisfy the requirements of Article 6 § 1 of the Convention.”

36.  Turning, then, to the case before it, the Court has carefully considered the concerns expressed by the Supreme Court in relation to the question whether the applicant had a “civil right” to be provided with accommodation and, as a consequence, whether Article 6 § 1 of the Convention was engaged (see paragraph 24 above). However, applying the approach identified in the Court’s judgment in *Fazia Ali*, the present application is in any event manifestly ill-founded. Consequently, the Court does not consider it either necessary or appropriate to relinquish jurisdiction in relation to the present application to the Grand Chamber under Article 30 of the Convention.

37.  It is true that as Ms Ali’s challenge to the decision of the reviewing officer was primarily a factual one, her complaint focussed on the fact that domestic courts had no jurisdiction to re-open the proceedings and rehear witnesses. Nevertheless, the scope of review that was in fact carried out by those courts was exactly the same as in the present case; indeed, the Supreme Court in *Ali* expressly referred to the speech of Lord Neuberger of Abbotsbury in *Holmes-Moorhouse v. Richmond-upon-Thames LBC*, which formed the basis of the domestic courts’ analysis in the case at hand (see paragraphs 12, 15, 17, and 26 above).

38.  The Court clearly considered this level of review to be “judicial scrutiny of sufficient scope to satisfy the requirements of Article 6 § 1 of the Convention” (*Fazia Ali*, cited above, §§ 83-87). The same must be true in the present case, where the applicant was able to argue, at each level of jurisdiction, that the reviewing officer had regard to irrelevant considerations, that he made a material error in assessing the evidence, that he failed to make adequate inquiries to enable it to reach a lawful decision, and that the decision was one which no rational reviewing officer could have made (see paragraphs 11, 14 and 19 above) – in other words, precisely the same arguments that were material to the Court’s finding in *Fazia Ali* concerning the sufficiency of the judicial review (*Fazia Ali*, cited above, § 83).

39.  In light of the foregoing, it is clear that the local authority’s decision that it had discharged its duty to the applicant under Part VII of the 1996 Act was subject to judicial scrutiny of sufficient scope to satisfy the requirements of Article 6 § 1 of the Convention. Accordingly, the Court considers that the applicant’s complaint must be rejected as manifestly ill‑founded pursuant to Article 35 § 3(a) of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 20 December 2018.

Abel Campos Linos-Alexandre Sicilianos  
 Registrar President