Slaughterhouse right of appeal JR against FSA unfit meat decisions, fails.

By Hannah Curtain

In *R (on the application of the Association of Independent Meat Suppliers and another) v Food Standards Agency* [2015] EWHC 1896 (Admin), Simon J sitting in the Admin Court (judgment 2.7.15) has found that neither the governing EU Regulations, nor the EU Charter nor the European Convention (A1P1) required the Food Standards Authority to afford any right of appeal to the owners of an expensive bull carcase found, at the slaughterhouse, to be unfit for human consumption and thus disposed of as worthless animal by-product.

EU Regulation 854/2004

1. EU Regulation 854/2004 requires Official Veterinarians (OVs) stationed in most slaughterhouses by the Food Standards Agency, to inspect meat and only to apply a Health Mark (which permits the meat to be placed on the market) if they are satisfied that there are no grounds for declaring the meat unfit for human consumption. If that occurs then the meat becomes worthless animal by-product and must be disposed of.

Prize Bull

2. In this case, a slaughterhouse had purchased a bull for £1400. The OV on site refused to apply a health mark as the carcase was considered to be

suffering from generalised pyaemia (a form of septicaemia) and thus had to be disposed of at a cost of £200, with total loss of profit and value.

3. The slaughterhouse sought its own veterinarian advice and sought to challenge the OV's decision. The FSA refused any form of challenge or appeal. The slaughterhouse owner and their trade body then commenced judicial proceedings challenging the lack of any right of appeal against a decision not to permit meat to be placed on the market and therefore forcing its disposal as worthless by-product at significant loss to the owner.

The Basis of the Claim

4. The challenge was put in three ways:

    i. The applicable EU Regulations required the FSA to apply the procedure set out under section 9 Food Standards Act 1990, such that the carcase would have to be presented to a Justice of the Peace for condemnation.

    ii. That if there was any doubt about the application of section 9, it should be resolved in the Claimants' favour by virtue of the rights to enjoy property under Article 1, Protocol 1, (A1P1) of the ECHR and article 17 of the EU Charter of Fundamental Rights and Freedoms.

    iii. Or if section 9 was not the correct route, then the Claimants asked for a declaration that the FSA's practice of not providing a right of appeal was a breach of A1P1.

All grounds failed

5. Simon J found that there was no right of appeal provided for in the directly applicable EU Regulations. It clearly was for the EU legislative institutions to set out the applicable procedures and it is for them to prescribe whether there should be a right of appeal and they had not done so.

6. He found section 9 of the 1990 wholly inapplicable to the situation where an OV refuses to apply a health mark to a carcase. Under section 9 an officer of the FSA can seek the condemnation of meat which has been placed on the market in breach of regulations, but unlike an OV, the officer does not make the decision to condemn himself, that lies with the Justice of the Peace. Furthermore, if the meat is not condemned by the Justice, there is a right to compensation, which would need to be provided for in the applicable EU primary legislation if it were to apply to OV's decisions.

7. Further, he found that A1P1 does not prescribe that there should be a procedural right of appeal before possessions (i.e. the Bull) are interfered with by the State. The European Court has required that rights of appeal which do exist should be effective under A1P1, but has not held that there should be such rights, if none exist in domestic law.

8. Furthermore, Simon J found that even if there was such a right, he could not re-write section 9 so as to fulfil obligations in EU law or the ECHR so as to make it apply to appeals from OVs' decisions, holding that to do so would exceed even the generous interpretive obligation on the Court and would amount to crossing the constitutional boundary of a Court carrying out the amendment of primary UK legislation.

9. Simon J accepted that not having a right of appeal assigns the financial risk of not having health marks applied onto slaughterhouses but noted that the health mark and its application were a safety measure taken in the public interest and therefore the system achieved an appropriate balance between the general interests of the those who consume meat and those who produce it. He found no breach of A1P1. Accordingly the claim failed.

10. Permission to appeal to the Court of Appeal has been sought.

Comment

11. This was an interesting attempt to use the European Convention of Human Rights to argue for an interpretation of an UK Statute in the context of system of regulation provided for by EU primary legislation.

12. The finding that A1P1 does not necessarily require a system of appeal when the State interferes with property rights is important and may have ramifications in other areas of law. Ultimately, the Court was not prepared to find that EU Law or the ECHR required a right of appeal, and was more inclined to leave that issue to the EU legislative institutions.

13. Further, this is a good example of the Court refusing to use its liberal interpretive powers to re-write domestic statutes so as to secure ECHR and EU compliance, in circumstances in which the re-write would amount to the constitutionally impermissible judicial making (or re-making) of primary legislation. It is a timely reminder that even that wide discretion has limits.

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