COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF TSFAYO v. THE UNITED KINGDOM

(Application no. 60860/00)

JUDGMENT

STRASBOURG

14 November 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tsfayo v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Ms L. MIJOVIĆ, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2005 and 24 October 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 60860/00) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Ethiopian national, Ms Tiga Tsfayo ("the applicant"), on 25 July 2000.

2. The applicant was represented by Mr P. Draycott, a lawyer practising in Manchester. The British Government ("the Government") were represented by their Agent, Mr J. Grainger, Foreign and Commonwealth Office.

3. The applicant complained under Article 6 § 1 of the Convention about the lack of independence and impartiality of the Housing Benefit Review Board.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 24 August 2004, the Court declared the application admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. The applicant and the Government filed observations on the merits and on the applicant's claim for just satisfaction (Rule 59 § 1).

8. An oral hearing on admissibility and merits took place in public in the Human Rights Building, Strasbourg, on 22 November 2005.

There appeared before the Court:

(a) for the Government

Mr John GRAINGER,	*Agent*
Mr James EADIE,	*Counsel*
Ms J. KENNY,	*Adviser*
Ms A. POWICK,	*Adviser*

(b*) for the applicant*

Mr Richard DRABBLE, Q.C.,	*Counsel*
Mr Paul DRAYCOTT,	*Solicitor*

The Court heard addresses by Mr Eadie and Mr Drabble, as well as their answers to questions put by Judge Bratza.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. In 1993, the applicant arrived in the United Kingdom from Ethiopia and sought political asylum. She was initially provided with accommodation by the social services department of Hammersmith and Fulham Council ("the Council"). On 21 April 1997, the applicant moved into accommodation owned by a housing association. A member of the housing association's staff assisted the applicant to complete her application for housing and council tax benefit which was submitted to the Council in April 1997. This application was successful.

10. The applicant was required by law to renew her application for housing and council tax benefit on an annual basis. Because of her lack of familiarity with the benefits system and her poor English, the applicant failed to submit a benefit renewal form to the Council by the required time. In September 1998, the applicant received correspondence from the housing association about her rent arrears. As the applicant did not understand the correspondence, she sought assistance from the Council's advice office. After obtaining this advice the applicant realised that her housing and council tax benefit had ceased. She therefore submitted a prospective claim as well as a backdated claim for both types of benefit to 15 June 1998.

11. The prospective claim was successful and the applicant began to receive housing benefit again from 4 October 1998, but on 4 November 1998 the Council rejected the application for backdated benefit because the applicant had failed to show "good cause" why she had not claimed the benefits earlier.

12. During the period from 15 June to 4 October 1998 the applicant lost housing benefit of GBP 860.00, and since her rent in any event exceeded the benefit to which she had been entitled, her rent arrears amounted to GBP 1,068.86. The housing association commenced possession proceedings, seeking the applicant's eviction for non-payment of rent, and the Council also brought proceedings based on the applicant's failure to pay council tax of GBP 163.36 for the year 1998/99. On 19 October 1998 a court order was made allowing the Council to deduct GBP 2.60 per week from the applicant's income support of GBP 35.87.

13. On 9 November 1998, the applicant's legal advisers wrote to the Council requesting that they reconsider their refusal. However, by letter dated 4 February 1999, the Council informed the applicant that they were upholding their initial decision to refuse council tax and housing benefits.

14. The applicant appealed. The case was heard on 10 September 1999 by Hammersmith and Fulham Council Housing Benefit and Council Tax Benefit Review Board ("the HBRB"). The HBRB consisted of three Councillors from the Council. It was advised by a barrister from the Council's legal department. The applicant was represented by Fulham Legal Advice Centre and the Council was represented by a Council benefits officer. The HBRB rejected the applicant's appeal, finding that the applicant must have received some correspondence from the local authority during the period from 15 June to 4 October 1998 concerning the council tax she owed, although no such correspondence was produced to it.

15. On 13 September 1999 the housing association's possession proceedings against the applicant concluded with a court order requiring her to pay off the rent arrears at GBP 2.60 a week (in addition to the GBP 2.60 per week for council tax arrears).

16. On 6 December 1999, the applicant sought judicial review of the HBRB's decision. She complained that the HBRB had acted unlawfully because it had failed to make adequate findings of fact or provide sufficient reasons for its decision. The applicant also alleged that the HBRB was not an "independent and impartial" tribunal under Article 6 § 1 of the Convention.

17. On 31 January 2000, the High Court dismissed the applicant's application for leave to apply for judicial review on the grounds that the Convention had not yet been incorporated into English law, and further dismissed the application on the merits, on the grounds that the HBRB's decision was neither unreasonable nor irrational. The applicant was unable

to appeal because legal aid was refused. The applicant subsequently obtained Counsel's opinion that the appeal had no prospects of success.

II. RELEVANT DOMESTIC LAW

A. Housing benefit

18. Housing benefit ("HB") is a means-tested benefit payable towards housing costs in rented accommodation. It is not dependent on or linked to the payment of contributions by the claimant.

19. The HB scheme is administered by the local authority. Payments of HB are subsidised by central Government, normally to the extent of 95%, although where HB is paid as a result of a decision that the claimant had good cause for a late claim the subsidy is only 50%.

20. HB is awarded for "benefit periods" and entitlement for each period is dependent on a claim being made in time in accordance with the statutory rules. If a claimant makes a late claim, any entitlement to arrears of HB depends on the claimant establishing "good cause" for having missed the deadline. The case-law establishes that the concept of "good cause" involves an objective judgment as to whether this individual claimant, with his or her characteristics such as language and mental health, did what could reasonably have been expected of him or her.

B. The Housing Benefit Review Board

21. At the relevant time, a claim to housing benefit was first considered by officials employed by the local authority and working in the housing department. If the benefit was refused the claimant was entitled to a review of the decision, first by the local authority itself, then by a HBRB, which comprised up to five elected councillors from the local authority. Since 2 July 2001, HBRBs have been replaced by tribunals set up under the Child Support, Pensions and Social Security Act 2000.

22. The procedure before the HBRB was governed by the Housing Benefit (General) Regulations 1987. Regulation 82 provided, as relevant:

> "(2) Subject to the provisions of these Regulations
>
> (a) the procedure in connection with a further review shall be such as the Chairman of the Review Board shall determine;
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> (b) any person affected may make representations in writing in connection with the further review and such representations shall be considered by the Review Board;
>
> (c) at the hearing any affected person has the right to
>
> (i) be heard, and may be accompanied and may be represented by another person whether that person is professionally qualified or not, and for the

purposes of the proceedings at the hearing any representative shall have the rights and powers to which any person affected is entitled under these regulations;

(ii) call persons to give evidence;

(iii) put questions to any person who gives evidence;

(d) the Review Board may call for, receive or hear representations and evidence from any person present as it considers appropriate."

23. The Review Board's Good Practice Guide provided, *inter alia*, that "the general principle underlying the proceedings" was the observance of natural justice. The HBRB should "be fair and be seen to be fair to all parties at all times". The HBRB was "in law, a separate body from the authority" and "independent". Before the hearing of a case checks were carried out to ensure that Board Members "have had no previous dealings with the case, and that they have no relationship with the claimant or any other person affected".

C. The scope of judicial review of administrative decision-making

24. In the House of Lords' judgment in *R. v. Secretary of State for the Environment,* ex parte *Holding and Barnes, Alconbury Developments Ltd and Legal and General Assurance Society Ltd*, [2001] UKHL 23, ("*Alconbury*"), Lord Slynn of Hadley described the scope of judicial review as follows (§ 50):

"It has long been established that if the Secretary of State misinterprets the legislation under which he purports to act, or if he takes into account matters irrelevant to his decision or refuses or fails to take account of matters relevant to his decision, or reaches a perverse decision, the court may set his decision aside. Even if he fails to follow necessary procedural steps - failing to give notice of a hearing or to allow an opportunity for evidence to be called or cross-examined, or for representations to be made or to take any step which fairness or natural justice requires, the court may interfere. The legality of the decision and the procedural steps must be subject to sufficient judicial control." ...

Lord Slynn continued that he was further of the view that a court had power to quash an administrative decision for a misunderstanding or ignorance of an established and relevant fact (§§ 51-53 of the judgment, and see also Lord Nolan at § 61, Lord Hoffman at § 130 and Lord Clyde at § 169) and, where human rights were in issue, on grounds of lack of proportionality.

25. In *Runa Begum (FC) v. London Borough of Tower Hamlets* [2003] UKHL 5 (see paragraph 29 below), Lord Bingham of Cornhill made it clear that a court on judicial review (§§ 7-8):

"... may not only quash the authority's decision ... if it is held to be vitiated by legal misdirection or procedural impropriety or unfairness or bias or irrationality or bad faith but also if there is no evidence to support factual findings made or they are

plainly untenable or if the decision maker is shown to have misunderstood or been ignorant of an established and relevant fact ... It is plain that the ... judge may not make fresh findings of fact and must accept apparently tenable conclusions on credibility made on behalf of the authority... .”

D. Consideration of administrative decision-making under the Human Rights Act 2000

26. Since the coming into force of the Human Rights Act 2000, the English courts have considered on a number of occasions the extent to which judicial review can remedy defects of independence in a first instance administrative tribunal.

27. In *Alconbury* (cited above), the House of Lords considered the procedure whereby the Secretary of State had the power himself to determine certain matters of planning and compulsory purchase, subject to judicial review. Following the Court’s judgment in *Bryan v. the United Kingdom*, no. 19178/91, §§ 44-47, Series A no. 335-A, the House of Lords held unanimously that since the decisions in question involved substantial considerations of policy and public interest it was acceptable, and indeed desirable, that they be made by a public official, accountable to Parliament. Although the Secretary of State was not an independent and impartial tribunal, he (or rather, his Department’s decision-making process) offered a number of procedural safeguards, such as an inspector’s inquiry with the opportunity for interested parties to be heard, and these safeguards, together with the availability of judicial review (see paragraphs 24-25 above) was sufficient to comply with the requirement for “an independent and impartial tribunal” in Article 6 § 1.

28. Lord Hoffmann explained the democratic principles underlying this approach as follows (§§ 69 and 73):

“In a democratic country, decisions as to what the general interest requires are made by democratically elected bodies or persons accountable to them. Sometimes the subject-matter is such that Parliament can itself lay down general rules for enforcement by the courts. Taxation is a good example; Parliament decides on grounds of general interest what taxation is required and the rules according to which it should be levied. The application of those rules, to determine the liability of a particular person, is then a matter for independent and impartial tribunals such as the General or Special Commissioners or the courts. On the other hand, sometimes one cannot formulate general rules and the question of what the general interest requires has to be determined on a case by case basis. Town and country planning or road construction, in which every decision is in some respects different, are archetypal examples. In such cases Parliament may delegate the decision-making power to local democratically elected bodies or to ministers of the Crown responsible to Parliament. In that way the democratic principle is preserved.

... There is however another relevant principle which must exist in a democratic society. That is the rule of law. When ministers or officials make decisions affecting the rights of individuals, they must do so in accordance with the law. The legality of what they do must be subject to review by independent and impartial tribunals. This is

> reflected in the requirement in Article 1 of Protocol No. 1 that a taking of property must be 'subject to the conditions provided for by law'. The principles of judicial review give effect to the rule of law. They ensure that administrative decisions will be taken rationally, in accordance with a fair procedure and within the powers conferred by Parliament. ..."

29. The House of Lords returned to these issues in *Runa Begum* (cited above). The appellant had been offered a flat by the local authority, but considered it unsuitable for herself and her children because, she alleged, it was on a housing estate known for drugs and crime and in close proximity to a friend of her ex-husband. She requested a review of the local authority's decision. The reviewing officer was a re-housing manager employed by the same local authority but who had not been involved in the original decision and who was senior to the original decision-maker. She found that there were no serious problems on the estate and that the relationship between Runa Begum and her husband was not such as to make it intolerable for them to risk meeting each other.

30. It was accepted that the case involved the determination of civil rights and that the reviewing officer was not, in herself, an "independent and impartial tribunal". The House of Lords held unanimously that the existence of judicial review was sufficient in this context for the purposes of Article 6 § 1. In reaching this conclusion, Lord Bingham of Cornhill considered three matters as "particularly pertinent": first, that the legislation in question was part of a far-reaching statutory scheme regulating the important social field of housing, where scarce resources had to be divided among many individuals in need; secondly, that although the council had to decide a number of factual issues, these decisions were "only staging posts on the way to the much broader judgments" concerning local conditions and the availability of alternative accommodation, which the housing officer had the specialist knowledge and experience to make; thirdly, the review procedure incorporated a number of safeguards to ensure that the reviewer came to the case with an open mind and took into account the applicant's representations. Lord Bingham commented, generally, on the inter-relation between the Article 6 § 1 concept of "civil rights" and the requirement for an "independent and impartial tribunal", that (§ 5):

> "the narrower the interpretation given to 'civil rights', the greater the need to insist on review by a judicial tribunal exercising full powers. Conversely, the more elastic the interpretation given to 'civil rights', the more flexible must be the approach to the requirement of independent and impartial review if the emasculation (by over-judicialisation) of administrative welfare schemes is to be avoided. ..."

31. It was argued before the House of Lords that when, as in *Bryan* and *Alconbury*, the decision turned upon questions of policy or "expediency", it was not necessary for the appellate court to be able to substitute its own opinion for that of the decision-maker; that would be contrary to the principle of democratic accountability. However, where, as in *Runa Begum*,

the decision turned upon a question of contested fact, it was necessary either that the appellate court should have full jurisdiction to review the facts or that the primary decision-making process should be attended with sufficient safeguards as to make it virtually judicial. In response, Lord Hoffmann (§§ 37-44) underlined that the fact-finding in *Bryan* had been closely analogous to a criminal trial, since the inspector's decision that Mr Bryan had acted in breach of planning control would be binding on him in any subsequent criminal proceedings for failing to comply with the enforcement notice. Lord Hoffmann continued:

> "A finding of fact in this context seems to me very different from the findings of fact which have to be made by central or local government officials in the course of carrying out regulatory functions (such as licensing or granting planning permission) or administering schemes of social welfare such as [housing the homeless]. The rule of law rightly requires that certain decisions, of which the paradigm examples are findings of breaches of the criminal law and adjudications as to private rights, should be entrusted to the judicial branch of government. This basic principle does not yield to utilitarian arguments that it would be cheaper or more efficient to have these matters decided by administrators. Nor is the possibility of an appeal sufficient to compensate for lack of independence and impartiality on the part of the primary decision-maker (see *De Cubber v. Belgium* [judgment of 26 October 1984, Series A no. 124-B]).
>
> But utilitarian considerations have their place when it comes to setting up, for example, schemes of regulation or social welfare. I said earlier that in determining the appropriate scope of judicial review of administrative action, regard must be had to democratic accountability, efficient administration and the sovereignty of Parliament. This case raises no question of democratic accountability. ...
>
> On the other hand, efficient administration and the sovereignty of Parliament are very relevant. Parliament is entitled to take the view that it is not in the public interest that an excessive proportion of the funds available for a welfare scheme should be consumed in administration and legal disputes ... ."

32. Following the House of Lords' judgment in *Alconbury*, but before that in *Runa Begum*, the High Court examined whether the HRRB procedure at issue in the present application was compliant with Article 6, in a case where the determination of the central issues of fact depended on an assessment whether the claimant was telling the truth: *Bewry (R. on the application of) v. Norwich City Council* [2001] EWHC Admin 657. The Secretary of State conceded that the HBRB lacked the appearance of an independent and impartial tribunal. On the question whether judicial review proceedings were sufficient to remedy the problem, Moses J observed:

> "There is however, in my judgment, one insuperable difficulty. Unlike an inspector [in a planning case], whose position was described by Lord Hoffman [in *R. v. Secretary of State for the Environment, ex parte Holding and Barnes, Alconbury Developments Ltd and Legal and General Assurance Society Ltd,* [2001] UKHL 23; [2001] 2 All ER 929: see *Holding and Barnes plc v. the United Kingdom* (dec.), no. 2352/02*,* ECHR 2002] as independent, the same cannot be said of a councillor who is directly connected to one of the parties to the dispute, namely the Council. The

dispute was between the claimant and the Council. The case against payment of benefit was presented by employee of the Council and relied upon the statement of an official of the Council (the Fraud Verification Officer in the Council's Revenue office). ...

The reasoning carefully set out by the Board enables the court to ensure that there has been no material error of fact. Even in relation to a finding of fact, this court can exercise some control if it can be demonstrated that the facts found are not supported by the evidence. But, in that respect, the court can only exercise limited control. It cannot substitute its own views as to the weight of the evidence ... In my judgment, the connection of the councillors to the party resisting entitlement to housing benefit does constitute a real distinction between the position of a [planning] inspector and a Review Board. The lack of independence may infect the independence of judgment in relation to the finding of primary fact in a manner which cannot be adequately scrutinised or rectified by this court. One of the essential problems which flows from the connection between a tribunal determining facts and a party to the dispute is that the extent to which a judgment of fact may be infected cannot easily be, if at all, discerned. The influence of the connection may not be apparent from the terms of the decision which sets out the primary facts and the inferences drawn from those facts. ...

Thus it is no answer to a charge of bias to look at the terms of a decision and to say that no actual bias is demonstrated or that the reasoning is clear, cogent and supported by the evidence. This court cannot cure the often imperceptible effects of the influence of the connection between the fact finding body and a party to the dispute since it has no jurisdiction to reach its own conclusion on the primary facts; still less any power to weigh the evidence. Accordingly, I conclude that there has been no determination of the claimant's entitlement to housing benefit by an independent and impartial tribunal. The level of review which this court can exercise does not replenish the want of independence in the Review Board, caused by its connection to a party in the dispute."

The Secretary of State was granted leave to appeal against this judgment but, in the event, decided not to appeal.

The *Bewry* judgment was approved and followed, after the House of Lords' judgment in *Runa Begum*, by the High Court in *R. (Bono and another) v. Harlow District Council* [2002] EWHC 423.

E. The Council on Tribunals' recommendations

33. In each of its annual report between 1988/89 and 1997/98, the Council on Tribunals (a statutory advisory committee which reports to the Lord Chancellor) recommended the abolition of the HBRB system, because of concerns about lack of independence and the potential for injustice.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

34. The applicant complained that the HBRB was not an independent and impartial tribunal, as required by Article 6 § 1:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. The parties' submissions

35. The Government accepted that the applicant's civil rights were determined in the domestic proceedings, so that Article 6 was applicable. They further accepted that the HBRB did not itself satisfy the requirements of Article 6, since it included up to five elected councillors of the same council that would be paying the benefit. However, the Government stressed that the principle of review rather than substitution by the second tier body was of fundamental importance, since it recognised the legitimacy of States conferring decision-making power, particularly on questions of fact, to first-tier administrative bodies. The domestic and Strasbourg case-law showed that Article 6 would not be violated where the second-tier tribunal had "full jurisdiction", and that this concept was to be flexibly applied, depending on the nature of the case. The concept of "civil rights" under Article 6 was wide, and the State should be allowed more flexibility as regards the manner of determining disputes which many legal systems had for many years considered as falling within the administrative sphere. Housing benefit and council tax benefit were examples of such rights, and it fell within the margin of appreciation to decide that it was in the public interest to save resources by deciding such disputes administratively.

36. In the present case, there was no reason to suppose that the councillors who sat on the applicant's appeal were anything other than impartial; the problem concerned only the appearance of lack of independence. Moreover, it was necessary and appropriate in considering the overall fairness to have regard to the procedure before the HBRB, which included, *inter alia*, the requirement to take into account the applicant's written observations and to hold an oral hearing (see paragraphs 22-23 above). The HBRB was advised and assisted by a lawyer and its Good Practice Guide reminded members of the need to decide the case on the basis of the evidence alone, to afford a fair and equal opportunity to both sides to put their case and to record the reasons for their decision and any findings of fact. Judicial review was then available of the HBRB's decision. A court on an application for judicial review could scrutinise the fairness of

the procedure and also, *inter alia*, examine whether there was sufficient evidence to support a finding of fact, whether all relevant matters had been taken into account and all irrelevant maters disregarded, and whether there had been a misunderstanding or ignorance of an established and relevant fact (see paragraphs 24-25 above).

37. The applicant emphasised that housing benefit was administered by the local authority and subsidised by Government. Where the benefit was paid following a decision that the claimant had good cause for a late claim, the subsidy was only 50% as opposed to the usual 95%, presumably because of a deliberate desire by central Government to ensure that assertions of "good cause" were rigorously examined. The determination of "good cause" involved an objective judgment as to what could reasonably have been expected of the individual claimant (see paragraph 20 above), and for this purpose domestic law demanded an oral hearing. Under the system as it applied to the applicant, this hearing had taken place before a tribunal consisting of members of the same local authority which would be required to pay 50% of the benefit awarded in the event of a finding in her favour.

38. The applicant argued that the present case was distinguishable from *Bryan* and *Alconbury* (see paragraphs 27-28 above) because, unlike a planning inspector or even the Secretary of State in a planning matter, the HBRB could not be said to be independent of the parties to the dispute or thus impartial. Judicial review could not correct any error or bias in the assessment of primary facts, particularly where the witnesses had been heard in person by the HBRB but not by the Administrative Court. Moreover, the councillors who sat on HBRBs were not specialist administrators. The decisions that they used to make were now routinely made by independent tribunals. The problems with the HBRB system had been recognised domestically, by the Council on Tribunals and by the High Court in *Bewry* and had, eventually, led to the abolition of HBRBs (see paragraphs 21, 32 and 33 above). The present case was also distinguishable from *Runa Begum* (paragraphs 29-31 above), where the fact-finding had formed part of a broad judgment about the claimant's entitlement and the availability of suitable housing in the area. Fundamental to the House of Lords' judgment was the view that the issues were appropriate for a specialised form of adjudication by an experienced administrator. This reasoning did not apply to housing benefit disputes, and the councillors in the HBRBs were not experienced administrators.

B. The Court's assessment

39. The Court recalls that disputes over entitlement to social security and welfare benefits generally fall within the scope of Article 6 § 1 (see *Salesi v. Italy*, judgment of 26 February 1993, Series A no. 257-E, § 19; *Schuler-Zgraggen v. Switzerland,* judgment of 24 June 1993, Series A no. 263, § 46;

Mennitto v. Italy [GC], no. 33804/96, § 28, ECHR 2000-X). It agrees with the parties that the applicant's claim for housing benefit concerned the determination of her civil rights and that Article 6 § 1 applied. The applicant therefore had a right to a fair hearing before an independent and impartial tribunal.

40. The HBRB was composed of five elected councillors from the same local authority which would have been required to pay a percentage of the housing benefit if awarded, and the Government conceded on these grounds that the Board lacked structural independence. They contended, however, that the High Court on judicial review had sufficient jurisdiction to ensure that the proceedings as a whole complied with Article 6 § 1.

41. The Court recalls that even where an adjudicatory body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1" (*Albert and Le Compte v. Belgium*, judgment of 10 February 1983, Series A no. 58, § 29).

42. In *Bryan v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-A, §§ 44-47, the Court held that in order to determine whether the Article 6-compliant second-tier tribunal had "full jurisdiction", or provided "sufficiency of review" to remedy a lack of independence at first instance, it was necessary to have regard to such factors as the subject-matter of the decision appealed against, the manner in which that decision was arrived at and the content of the dispute, including the desired and actual grounds of appeal. In *Bryan*, the inspector's decision that there had been a breach of planning controls involved some fact-finding, namely that the buildings which Mr Bryan had erected had the appearance of residential houses rather than agricultural barns. However, the inspector was also called upon to exercise his discretion on a wide range of policy matters involving development in a green belt and conservation area, and it was these policy judgments, rather than the findings of primary fact, which Mr Bryan challenged in the High Court. The inspector lacked the requisite appearance of independence from the executive, since the Secretary of State had the power, albeit applied only in exceptional circumstances, to withdraw a case from him. The inspector followed a quasi-judicial procedure, and was under a duty to exercise independent judgment. Any alleged shortcoming in relation to these safeguards could have been subject to review by the High Court, which also had the power to satisfy itself that the inspector's findings of fact or the inferences based on them were neither perverse nor irrational. The Court concluded that there had been no violation of Article 6 § 1 and added that:

> "Such an approach by an appeal tribunal on questions of fact can reasonably be expected in specialised areas of the law such as the one at issue, particularly where the

facts have already been established in the course of a quasi-judicial procedure governed by many of the safeguards required by Article 6 § 1. It is also frequently a feature in the systems of judicial control of administrative decisions found throughout the Council of Europe member States. Indeed, in the instant case, the subject-matter of the contested decision by the inspector was a typical example of the exercise of discretionary judgment in the regulation of citizens' conduct in the sphere of town and country planning."

43. The Convention organs followed the approach set out in *Bryan* to find that there had been "sufficiency of review" in a number of cases against the United Kingdom (see, for example, *X. v. the United Kingdom*, no. 28530/95, Commission decision of 19 January 1998, concerning a determination by the Secretary of State that the applicant was not a fit and proper person to be chief executive of an insurance company; *Stefan v. the United Kingdom*, no. 29419/95, Commission decision of 9 December 1997, concerning proceedings before the General Medical Council ("GMC") to establish whether or not the applicant was mentally ill and thus unfit to practise as a doctor; *Wickramsinghe v. the United Kingdom* (dec.), no. 31503/96, 9 December 1997, concerning disciplinary proceedings before the GMC; and see also *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 32, ECHR 2002-IV).

44. The domestic courts have also applied the principles in *Bryan*, notably the House of Lords in *Alconbury* and *Runa Begum* (see paragraphs 27-31 above). In the latter case, the House of Lords found that judicial review of a housing officer's decision that the claimant had been unreasonable in rejecting the accommodation offered to her provided "sufficiency of review" for the purposes of Article 6 § 1. The House of Lords stressed that although the housing officer had been called upon to resolve some disputed factual issues, these findings of fact were, to use the words of Lord Bingham in that case, "only staging posts on the way to the much broader judgments" concerning local conditions and the availability of alternative accommodation, which the housing officer had the specialist knowledge and experience to make. Although the housing officer could not be regarded as independent, since she was employed by the local authority which had made the offer of accommodation which Runa Begum had rejected, statutory regulations provided substantial safeguards to ensure that the review would be independently and fairly conducted, free from improper external influences. Any significant departure from the procedural rules would have afforded a ground of appeal.

45. The Court considers that the decision-making process in the present case was significantly different. In *Bryan*, *Runa Begum* and the other cases cited in paragraph 43 above, the issues to be determined required a measure of professional knowledge or experience and the exercise of administrative discretion pursuant to wider policy aims. In contrast, in the instant case, the HBRB was deciding a simple question of fact, namely whether there was "good cause" for the applicant's delay in making a claim. On this question,

the applicant had given evidence to the HBRB that the first that she knew that anything was amiss with her claim for housing benefit was the receipt of a notice from her landlord – the housing association – seeking to repossess her flat because her rent was in arrears. The HBRB found her explanation to be unconvincing and rejected her claim for back-payment of benefit essentially on the basis of their assessment of her credibility. No specialist expertise was required to determine this issue, which is, under the new system, determined by a non-specialist tribunal (see paragraph 21 above). Nor, unlike the cases referred to, can the factual findings in the present case be said to be merely incidental to the reaching of broader judgments of policy or expediency which it was for the democratically accountable authority to take.

46. Secondly, in contrast to the previous domestic and Strasbourg cases referred to above, the HBRB was not merely lacking in independence from the executive, but was directly connected to one of the parties to the dispute, since it included five councillors from the local authority which would be required to pay the benefit if awarded. As Mr Justice Moses observed in *Bewry* (paragraph 32 above), this connection of the councillors to the party resisting entitlement to housing benefit might infect the independence of judgment in relation to the finding of primary fact in a manner which could not be adequately scrutinised or rectified by judicial review. The safeguards built into the HBRB procedure (paragraphs 22-23 above) were not adequate to overcome this fundamental lack of objective impartiality.

47. The applicant had her claim refused because the HBRB did not find her a credible witness. Whilst the High Court had the power to quash the decision if it considered, *inter alia*, that no there was no evidence to support the HBRB's factual findings, or that its findings were plainly untenable, or that the HBRB had misunderstood or been ignorant of an established and relevant fact (see paragraphs 24-25 above), it did not have jurisdiction to rehear the evidence or substitute its own views as to the applicant's credibility. Thus, in this case, there was never the possibility that the central issue would be determined by a tribunal that was independent of one of the parties to the dispute.

48. It follows that there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary Loss

50. The applicant claimed the sums of housing and council tax benefit owing to her for the period from 15 June to 4 October 1998, amounting to GBP 1,023.36, together with the GBP 271.10 costs of the various summonses issued by the local authority in respect of unpaid council tax and the housing association in respect of unpaid rent, which the HBRB ordered her to pay after rejecting her claim to "good cause".

51. The Government contended that, even if the Court were to find a violation of Article 6 § 1, it would not be in a position to speculate as to what the outcome of the applicant's claim might have been if a procedure consistent with the Convention had been followed. No award should therefore be made under this head.

52. Having regard to all the circumstances, and in accordance with its normal practice of avoiding speculation in such cases, the Court does not consider it appropriate to award financial compensation to the applicant in respect of loss allegedly flowing from the outcome of the domestic proceedings (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 43, ECHR 2002-IV).

B. Non-pecuniary Loss

53. The applicant claimed already to have been in a depressive state at the time the HBRB rejected her claim, because two of her friends had recently committed suicide. The HBRB's decision and the failure of her judicial review application exacerbated her medical condition, anguish and distress, and she should be awarded GBP 10,000 in compensation.

54. The Government submitted that the applicant had not proved that her depression was caused by the alleged breach of Article 6 § 1, rather than by her vulnerable position as an asylum seeker and the distressing events which she had recently experienced.

55. The Court does not find it established that her medical condition, or the consequent anguish and distress relied on by the applicant, were exacerbated by the fact that the proceedings for back-dated benefits were determined by a tribunal which lacked independence and impartiality. However, it considers that the applicant undoubtedly sustained non-

pecuniary damage as a result of the circumstances in which her claim for benefits was determined by the HBRB, which is not sufficiently satisfied by the mere finding of a violation (cf. *Pescador Valero v. Spain*, judgment of 17 June 2003, ECHR 2003–VII, p. 119, § 33). Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

C. Costs and expenses

56. The applicant claimed costs for the proceedings before this Court of GBP 3,882.47 (approximately EUR 5,800)

57. The Government had no comment as regards this part of the claim.

58. The Court considers that the above costs were actually incurred and are reasonable as to quantum. It therefore awards EUR 5,800, together with any tax that may be payable.

D. Default interest

59. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*:

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 5,800 (five thousand, eight hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 14 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Josep CASADEVALL
President