

CONSTITUTIONAL LAW

CASE NOTES



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SAMPLE

***Anisminic v Foreign Compensation Commission* [1968] UKHL 6**

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Court details: House of Lords

Procedural history: Appeal from the Court of Appeal

Facts:

- As a result of the Suez Crisis some mining properties of the appellant Anisminic located in the Sinai peninsula were seized by the Egyptian government before November 1956.
- The appellants then sold the mining properties to an Egyptian government-owned organisation called TEDO in 1957.
- In 1959, a piece of subordinate legislation was passed under the *Foreign Compensation Act 1950* to distribute compensation paid by the Egyptian government to the UK government with respect to British properties it had nationalised.
- The appellants claimed that they were eligible for compensation under this piece of subordinate legislation, which was determined by a tribunal (the respondents in this case) set up under the *Foreign Compensation Act 1950*.
- The tribunal, however, decided that the appellants were not eligible for compensation, because their "successors in title" (TEDO) did not have the British nationality as required under one of the provisions of the subordinate legislation.

Issue:

- There were two important issues on the appeal to the Court of Appeal and later, the House of Lords.
- The first was straightforward: whether the tribunal had made an error of law in construing the term "successor of title" under the subordinate legislation.
- The second issue was more complex and had important implications for the law on judicial review.
- Even if the tribunal had made an error of law, the House of Lords had to decide whether or not an appellate court had the jurisdiction to intervene in the tribunal's decision.
- Section 4(4) of the *Foreign Compensation Act 1950* stated that:
"The determination by the commission of any application made to them under this Act shall not be called into question in any court of law".
- This was a so-called "ouster clause".

Reasoning / Decision (Commentary):

- By a 3-2 majority, the House of Lords decided that section 4(4) of the *Foreign Compensation Act* did not preclude the court from inquiring whether or not the order of the tribunal was a nullity.
- Accordingly it decided that the tribunal had misconstrued the legislation (the term "successor in title"), and that the determination by the defendant tribunal that the appellant did not qualify to be paid compensation was null, and that they were entitled to have a share of the compensation fund paid by the Egyptian government.
- The ouster clause exempting the determination from legal review did not apply, as there was no valid determination in the first place.

Ratio:

- The decision illustrates the courts' reluctance to give effect to any legislative provision that attempts to exclude their jurisdiction in judicial review.
- Even when such an exclusion is relatively clearly worded, the courts will hold that it does not preclude them from scrutinising the decision on an error of law and quashing it when such an error occurs.
- It also establishes that any error of law by a public body will result in its decision being *ultra vires*.

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