Written Evidence of The AIRE Centre to the review panel on Administrative Law

2020

19th October 2020

AIRE Centre and Judicial Review

Introduction

1. The AIRE Centre is a charity and specialist law centre founded in 1993 to promote awareness of, and compliance with, European and International law. Today, some twenty-five years after it was set up, it continues to use the power of European law to protect fundamental rights.

2. The European legal framework with which we work is far more complex now than that of twenty-five years ago. The cross-fertilisation of European Union (EU) and European Convention on Human Rights (ECHR) law in the areas in which we specialise, such as asylum, migration, family law and criminal justice, has meant the AIRE Centre has had to develop and maintain greater expertise in both European legal orders and to keep up to date with developments at both European Courts.

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3. Throughout its history we have worked to ensure that individuals and families benefit from the rights under European law to which they are entitled. The AIRE Centre has also worked to make the responsible authorities aware of the applicable European law standards. Implementing the right to good administration is often the key ensuring that those standards are observed.

Judicial Review

4. As a charity and not-for-profit organisations, the AIRE Centre has historically been involved in judicial review, usually in supporting claims in the public interest rather than bringing cases in their own right or supporting individuals to do so.

5. A third party to litigation is someone without a material interest in the litigation above and beyond lending its experience and expertise of the legal questions before the court, who is not acting as a friend of the court or *amicus curiae*.

6. Historically, such interveners were rare in the UK courts – though the Anti-Slavery Society had used equivalent procedures with some effect in its challenges to slavery in the 18th century. They were much more common in the US,[1] where the practice developed of allowing the participation in Supreme Court hearings of someone who 'was not a supplementary counsel for plaintiff or defendant, but a man sufficiently zealous for truth and justice to offer an unsolicited guidance to the court directly'.[2]

[1] The first record intervention was in 1904 by The Chinese Charitable and Benevolent Association of New York who submitted an amicus brief in Ah How v United States, 193 US 65. For further details, see Paul Collins, Friends of the Supreme Court: interest groups and judicial decision making, OUP, 2008 pp40-41.

[2] M. Radin *'Sources of Law, New and Old'*, 1 So. CALIF. L. REV. 411-421 (1928).

7. Third party interventions in the UK,[3] certainly over the last fifteen years, are now much more common and are acknowledged in, and governed by, both the Civil Procedure Rules and the Supreme Court Rules (SCR).[4]

8. There is also already a statutory framework governing third party interveners and costs in judicial review cases introduced by Section 87 of the Criminal Justice and Courts Act 2015, albeit we are not aware of any costs orders awarded against third party interveners. This suggests that third party interventions, granted permission by the courts, are being conducted in an appropriate manner and in line with what the court has granted them permission to make submissions on. In other words, adding value, and not simply duplicating submissions made by the other parties, as per Lord Hoffmann's criticism of the Northern Ireland Human Rights Commission in Re E.[5]

9. In many of the AIRE Centre's interventions, the additional element is often a detailed analysis of international comparisons, as well its broader charitable purpose and strategic interests.

[3] The earliest third party interveners were public bodies and intergovernmental organisations, rather than NGOs, The House of Lords allowed the first intervention by an NGO (Liberty) in *R v. Khan* (1996) 3 WLR 162 which considered the legality of a conviction based on evidence obtained by means of an electronic listening device attached to a private house without the knowledge of either the owners or occupiers.

[4] Civil Procedure Rules Part 54.1(2)(f), defining an 'interested party' as 'any person (other than the claimant and defendant) who is directly affected by [a] claim' (emphasis added). An interested party can be named as such by either the claimant (in the claim form) or the defendant (in the acknowledgment of service). In *R v Rent Officer and another ex parte Muldoon* [1996] 1 WLR 1103, the House of Lords held 'that a person is directly affected by something connotes that he is affected without the intervention of any immediate agency' (per Lord Keith).

[5] In *re E (a child) (AP) (Appellant) (Northern Ireland)* [2008] UKHL 66 Lord Hoffman said 'I am *bound to say that in this appeal the oral submissions on [its] behalf only repeated in rather more emphatic terms the points which had already been quite adequately argued by counsel for the appellant. In future, I hope that intervenors will avoid unnecessarily taking up the time of the court in this way.'*

10. It is important to note that, though the courts now welcome interventions by appropriate organisations and in suitable cases, they do not extend invitations to intervene. Instead, and as Lord Hope said in relation to *Brown v Stott*, 'it is not the function of the court to invite interested parties to intervene. It is up to interested parties to take the initiative.'[6]

Examples of where the AIRE has intervened

11. The AIRE Centre believes these may be instructive in how and why NGO organisations make decisions on when and when not to request permission to intervene in cases before the UK courts.

EU free movement law

12. The AIRE Centre has also often litigated around the impact of family reunification polices on integration. So the AIRE Centre intervened in the domestic proceedings,[7] and then before the CJEU in the case of *Rahman*,[8] which concerned which relatives, other than those in the ascendant or descendant line of the EEA nationals exercising treaty rights and their spouses, were entitled to benefit from the provisions of the EU Citizens Directive.[9]

13. The AIRE Centre also undertook a series of interventions where the denial of a right of appeal where an EEA family permit had been refused to an Extended Family Member (EFM) was being challenged. The AIRE Centre argued that, contrary to the UK government's position, EFM's did enjoy a statutory right of appeal against the refusal of a residence card. The Court of Appeal agreed,[10] as

[6] *Brown v Stott* [2001] 2 WLR 817, [2003] 1 AC 681

[7] *Secretary of State for the Home Department, ex p Rehman* [2001] UKHL 47

[8] Case C-83/11 *Secretary of State for the Home Department v Muhammad Sazzadur Rahman and Others*: ECLI:EU:C:2012:519

[9] Article 3(2) of Directive 2004/38/EC

[10] *Khan v Secretary of State for the Home Department (AIRE Centre intervening)* [2017] EWCA Civ 1755, [2017] All ER (D) 67 (Nov).

did The UK Supreme Court, which later confirmed the right of a statutory appeal in a separate case (which the AIRE Centre was also involved in) could be appealed in the ordinary way to the First-tier Tribunal.[11]

14. In *Saint Prix*[12] (where AIRE had been the representative in the lower tribunal) the case concerned EEA nationals who had given up work, or seeking work, in the late stages of pregnancy or the aftermath of childbirth and whether in such circumstances they remained a 'worker'. It relied on the long-standing and well-settled approach of the CJEU to giving a broad and purposive interpretation to the term 'worker' having regard to social as well as economic considerations.[13] The UKSC unanimously decided to refer the matter to the Court of Justice of the European Union (CJEU), where ultimately the CJEU agreed with the AIRE Centre's submissions that EU citizens *retain* the status of worker, and therefore access to benefits, where they have previously been employed in the host Member State (like Ms. Saint Prix).[14]

15. This year the AIRE Centre was granted permission by the UKSC to intervene in *Gubeladze,*[15] which raised fundamental questions of EU law as to the nature of the residence required under Article 17(1)(a) of the Citizens' Directive and the correctness of the judgment of the House of Lords in *Zalewska,*[16] concerning the legality of the Accession (Immigration and Worker Registration) (Amendment) Regulations 2009[17] which extended the UK's Worker Registration Scheme (WRS) for citizens of the eight most populous States which joined the European Union

[11] *SM (Algeria) v Entry Clearance Officer, UK Visa Section* [2018] UKSC 9 (14 February 2018)
[12] *Jessy Saint Prix (Appellant) v Secretary of State for Work and Pensions (Respondent)* [2012] UKSC 49
[13] *Levin v Secretary of State for Justice* (Case 53/81) [1982] ECR 1035, at para 13; *Kempf v Staatssecretaris van Justitie* (Case 139/85) [1986] ECR 1741, at para 13
[14] Article 7(3) of Directive 2004/38/EC
[15] *Secretary of State for Work and Pensions (Appellant) v Gubeladze* (Respondent) [2019] UKSC 31
[16] *Zalewska v Department for Social Development* [2008] 1 W.L.R. 2602
[17] Accession (Immigration and Worker Registration) (Amendment) Regulations 2009 (SI 2009/892) ("**the Extension Regulations**")

in 2004 (the "A8 States"). The focus of our submissions was on a discrete but related issue, namely whether the continuation of the WRS scheme conformed with the strictly limited purpose for which such exceptional derogation measures were permitted under EU law. The UKSC ultimately ruled that there was no intention under the Act of Accession to confer an unfettered right to derogate from general principles of freedom of movement, and that it must be subject to the principles of proportionality. In addition, the Court overturned the Court of Appeal's judgment and that, contrary to the UK government's position, on a textual interpretation of the relevant provisions, the concept of residence as referred to in the EU Citizens Directive, art 17(1)(a) is factual residence, not a 'legal residence'.

Family and Children's Rights

16. Since its inception the AIRE Centre has been committed to assisting families and children to ensure that any interference by the state (whether by act or omission) meets the requirements of Article 8 ECHR (Article 7 EU Charter of Fundamental Rights) relating to the right to respect for family life, the UN Convention on the Rights of the Child, and any applicable EU law and other international standards.

17. In 2000 we assisted the Official Solicitor in successfully taking a ground-breaking case *Z v UK*[18] (*X v Bedfordshire* in the domestic courts[19]), which concerned the appalling neglect and abuse of five children by their parents and the failure of social services to take steps to bring this situation to an end. Unlike Victoria Climbie and Baby P, these children survived physically but remained very severely damaged psychologically. The action in negligence that was subsequently brought on their behalf was rejected by the English courts on the basis that no duty of care was owed by child protection professionals to the

[18] *Z and Others v United Kingdom* (Application No 29392/95)
[19] *X (Minors) v Bedforshire County Council* [1995] 2 AC 633

children concerned. The issue of the duty of care owed by those entrusted with the care of children is still a live one in the UK, as demonstrated by the decision of the UKSC in *Woodland v Essex CC* (not an AIRE Centre case).[20]

18. In contrast, sometimes the state can be over-zealous in intervening. An example of our domestic work in this area is *CN v Poole*,[21] a landmark appeal to the UKSC which from the AIRE Centre's perspective, raised important questions regarding the UK's obligations under the ECHR and international human rights law (such as UN Conventions on the Rights of the Child (UNCRC) and on the Rights of Persons with Disabilities (UNCRPD), in the context of the relationship between the tort of negligence and the statutory powers and duties of local authorities in respect of the protection of children. Whilst the UKSC ultimately decided that on the particular facts of the case no duty of care arise, the Court did explicitly overrule previous case law[22] and found that, in some circumstances, a local authority can be liable to children if it fails to protect them from third parties. was owed. This will have broad implications for the individual rights of children who are in a vulnerable position.

19. We also acted in the case of *P, C and S v UK*,[23] which concerned the freeing and placing for adoption of a child under UK adoption laws and did not permit the judges to attach any conditions, for example in relation to contact, which they might have considered to be in the child's best interests

20. The interface between family law and human rights and where issues of jurisdiction have been central has also been an area of expertise in which the

[20] *Woodland v Essex County Council* [2013] UKSC 66
[21] *Poole Borough Council v GN and another* [2019] UKSC 25
[22] *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633
[23] *P,C and S v United Kingdom* [2002] 2 FLR 631

AIRE Centre has been keen to assist the courts with. The AIRE Centre has acted as a third-party intervener before the UKSC *In the Matter of J (A Child)*[24] and *In the Matter of B (a child).* The latter case concerned the first international child abduction case involving same-sex parents, and the decision was that the English court still has jurisdiction to make decisions about the welfare of a child (B) who was taken to live in Pakistan by her biological mother. The AIRE Centre made submissions about the need to consider and give appropriate weight to the best interests of the child[25] when considering the exercise of the inherent/ *parens patriae* jurisdiction, as well as giving appropriate weight to the child's right and procedural guarantees under the European Convention.[26] The UKSC emphasised in reaching its decision that it was not in a child's best interests to be routinely left without habitual residence; and that English court's interpretation of habitual residence needs to be in line with the international interpretation.

21. Similarly, Hague/ BiiBis/ child relocation cases have occupied a consistent source of third-party interventions for us. When considering child abduction most family practitioners' minds will turn to the Hague Convention on the Civil aspects of International Child Abduction ("the 1980 Convention"). Currently 93 States are contracted to the 1980 Convention, however there are nearly 200 recognised countries in the world. Should an abduction be made to or from a non-contracted State, the court still has jurisdiction to make orders under: (1) Brussels IIa; (2) the inherent jurisdiction of the court (and the case law flowing from it); or (3) the Hague Convention of 1996 on the international protection of

[24] *In the Matter of J (A Child)* [2015] UKSC 70
[25] Article 3 (1) of the UN Convention on the Rights of the Child
[26] Inherent in Article 6 and Article 8 of the European Convention on Human Rights

children ("the 1996 Convention").[27] The focus of the 1996 Convention is on the care and upbringing of the child. In jurisdictional terms, Art 5 is the starting point and founded on habitual residence. Article 11 confers an additional jurisdiction to the courts of the territory where the child is present in limited circumstances of 'cases of urgency'. This is what the case of *In the matter of J (a child)*[28] was primarily concerned.[29]

22. The subject of proceedings in *Re J* was a child (S), born in the UK in 2007. His parents held Moroccan and British citizenship and in 2011 the family returned to Morocco. The parents divorced and, pursuant to an order made by the Moroccan court, S then lived with his mother whilst retaining contact with his father. However, in September 2013, the mother wrongfully removed S to the UK. The father applied to the Moroccan court for custody and then, after being refused, applied in March 2014 to the English courts for a return order. The AIRE Centre was given permission to intervene and submitted that Article 11, when understood in accordance with its purpose and in the context of the fundamental rights in which it is rooted, should be interpreted broadly, enabling the court to adopt a course of action which implements the actual and assumed best interests of the child. The UKSC held in this regard that the jurisdiction conferred by Article 11 is a complimentary, additional jurisdiction to the Court of the territory where the child is found to be habitually resident and is not limited to cases of wrongful removal but extends to safeguarding children who are lawfully present in another country.

[27] 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the ***1996 Hague Convention***)

[28] *In the matter of J (a child)* [2015] UKSC 70

[29] The 1996 Convention came into force in the United Kingdom on 1 November 2012 and had not previously been considered by the Supreme Court

Immigration

23. The treaty of Maastricht (and later the EU Charter of Fundamental Rights) gave every EU citizen the right to live on the territory of the Union.

24. Long before the CJEU's landmark decision in *Zambrano*[30] or the decision of the UKSC in *ZH (Tanzania)*[31] the AIRE Centre had been arguing (in cases such as *Sorabjee v UK*,[32] *Jaramillo v UK*[33] both of which were cited in *ZH (Tanzania*)) that a child who was a citizen of a European state, such as the UK, derived from that status a right to live in that state and in the EU. For that right to be practical and effective, not theoretical and illusory, this required the child's custodial parent(s) to be permitted to remain to care for the child.

25. In *EM (Lebanon)*[34] before the House of Lords, we were able to work with the legal team acting on behalf of the child to ensure that, at very least, the child's representative could participate in the proceedings and his interests put before the court, so that his fate, were the custodial parent to be expelled, would be properly taken into account. The case was successful and also was an example of treading the line between being an intervener in the public interest, and not standing in the shoes of the respondent.

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[30] The AIRE Centre has intervened in a number of *Zambrano* domestic cases such as R (HC) v Secretary of State for Work and Pensions & Ors [2017] UKSC 73 which concerned the UK Government's amended legislation precluding *Zambrano* carers from claiming various income-related benefits. It is also currently involved in the UKSC case *Patel v Secretary of State for the Home Department; Secretary of State for the Home Department v Shah* which is considering the scope of the derivative claims of residence under current Home Office policy and if this is in line with the latest CJEU case law.

[31] *ZH (Tanzania) v SSHD* [2011] UKSC 4

[32] *Sorabjee v United Kingdom*, App No 23938/94, 23 October 1995

[33] *Jaramillo v United Kingdom*, No. 24865/94, 23 October 1995

[34] *EM (Lebanon) (FC) (Appellant) (FC) v Secretary of State for the Home Department (Respondent)* [2008] UKHL 64

26. The right to marry is enshrined in Article 12 ECHR. It is a separate right from the right to respect for family life protected under Art 8 ECHR, the article most frequently cited when families are faced with separation as a consequence of immigration controls. The UK Government, in an ill-fated attempts to control the ability of third-country nationals to marry in the UK, introduced a "Certificate of Approval" scheme which required all those subject to immigration control to obtain, on payment of a large fee, the permission of the Home Office to celebrate their marriage. Such permission was totally unconnected with the subsequent grant of the right to remain with the person, who then became the spouse. The Certificate was not required of those who married in the Church of England, but was required of those who married in, for example, Roman Catholic Churches, Synagogues and licensed mosques. In *O'Donoghue v UK*,[35] concerning a Roman Catholic couple in Northern Ireland, we acted as representatives before the ECtHR and in *Baiai*,[36] we were interveners before the House of Lords. We put forward arguments about the compatibility of the scheme with the ECHR and evidence about the schemes in place in other European countries. The scheme was abolished as consequence of this litigation.

27. We were also interveners before the UKSC in the case of *Quila*,[37] which concerned a couple, who had been granted a certificate of approval to marry but the husband was then refused the right to live in the UK as the qualifying age had been raised. The age threshold was brought back to the old level as a consequence of this litigation.

[35] *O'Donoghue and Others v The United Kingdom* [2010] The European Court of Human Rights (Fourth Section), Application no. 34848/07

[36] *R (Baiai) v Secretary of State for the Home Department (Joint Council for the Welfare of Immigrants intervening) (Nos 1 and 2)* [2008] UKHL 53, [2009] AC 287

[37] *R (on the application of Quila) (Appellant) v Secretary of State for the Home Department (Respondent)* [2011] UKSC 45

28. Most recently the AIRE Centre intervened in a case concerning how the "Dubs amendment scheme" was being implemened, relating to the transfer of unaccompanied refugee children from mainland Europe to the UK and capped at 480 by the Home Office after a consultation procedure with local authorities. The Court of Appeal[38] ruled that the process was unlawful in not giving reasons to children refused entry to Britain under the Dubs Amendment. The Court of Appeal agreed with the AIRE Centre's submissions around the importance of the "best interests of the child" principle, as enshrined in the EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child. Although noting that the standard of procedural fairness is invariable, the content of this common law duty remains highly related to the facts and context of each case. As such, the fact that the actions challenged affected vulnerable children was an important factor in the case.

Vulnerable persons

29. While much of our work has focused on families and children, we have also taken up cases concerning vulnerable adults, particularly, the victims of domestic violence, forced labour and/or trafficking, those facing destitution and removal and the problems of those with mental and physical disabilities.

30. The case of the *Chagos Islanders v UK* involved the people of the Chagos Archipelago who, mostly illiterate and uneducated at the time, the 1960s, and having been described as "a few Tarzans and Man Fridays", had been driven from their homes on the islands in an inhuman and degrading manner, in order to facilitate the building of the USA air base on Diego Garcia. For forty years they have been fighting for compensation for their ill-treatment and the right to return.

[38] *R (on the application of Help for Refugees Ltd) v Secretary of State for the Home Department (AIRE Centre intervening)* [2018] EWCA Civ 2098. ***Case*** No: C4/2017/3221

We devoted 8 years to helping them fight their case in Strasbourg but after many volumes of exchanges of observation with the Government, were eventually unsuccessful. Litigation on other related issues has however continued in the domestic courts. In *Bashir*,[39] the AIRE Centre intervened in a case concerning a group of refugees who had been rescued in the Mediterranean from a dangerous Lebanese fishing boat en route to Italy. Human traffickers, who charged $2000 per person for the journey, abandoned the "floating coffin" vessel when the engine broke down. The group were saved and airlifted to the UK Sovereign Base Areas (SBAs) of Akrotiri in Cyprus in 1998 where they were recognised as Convention refugees shortly thereafter. But they then lived in limbo in another SBA (Dhekelia), where they occupied disused, dilapidated and hazardous military accommodation. In 2013, they had sought admission to the UK but were refused entry by the UK government. In a complex interim judgment dealing with threshold issues, the UKSC held that both the Refugee Convention 1951 and the 1967 Protocol extended to the UK's SBAs of Akrotiri and Dhekelia. The UK government eventually settled the claim prior to final judgment being handed down.

31. In the case of *P and Q v Cheshire West and Surrey County Council* the AIRE Centre argued that, in identifying the criteria to be applied to determine whether people with impaired mental capacity had been deprived of their liberty when in involuntary placements, for example in care homes, or when they are given involuntary treatment, the human rights of disabled people should be protected to the same degree as the human rights of everybody else under domestic and Strasbourg jurisprudence. Lady Hale, who gave the lead judgment, set out a clear principle of the "universality of human rights" in holding that those who are subject to "continuous control and supervision"; and who are also "unable to

[39] *R (on the application of Tag Eldin Ramadan Bashir and others) (Respondents) v Secretary of State for the Home Department (Appellant)* UKSC 2017/0106

leave" where ever they are placed are potentially deprived of their liberty under Article 5 of the European Convention. The implications of the Court's decision for the legal definition of the deprivation of liberty and where the state is involved are obviously far reaching.

32. For many years the AIRE Centre has run a project to assist the victims of trafficking and domestic abuse. Within the scope of this project we have successfully intervened in challenging the lawfulness of the Lord Chancellor and the Legal Aid Agency's approach to granting legal aid to victims of trafficking,[40] as well as the culpability of victims of trafficking who commit crimes and the decision to prosecute in light of issues of age, trafficking and exploitation.[41]

33. In the case of *Janah and Benkarbouche*,[42] the UKSC had the chance to look at the doctrine of state immunity through human rights law. The AIRE Centre in its submissions drew attention to the supremacy of EU Law, the role and significance of Article 47 of the Charter of Fundamental Rights of the EU ("CFREU") and the way in which it confers a free-standing route to dis-applying primary legislation. In its Judgment the UKSC concluded that the State Immunity Act 1978 ("SIA") was indeed unlawful since it prevents all employees of foreign embassies bringing claims for compensation against employer states regardless of the nature of the employee's work. In applying immunity so widely the SIA goes beyond the requirements of international law. The breach of CFREU, art 47 meant that relevant provisions of the SIA had to be disapplied in order for the Claimants could litigate their employment claims in the domestic tribunals.

[40] *R (on the application of LL) v The Lord Chancellor (the AIRE Centre intervening)* CO/3581/2017
[41] *L & Ors v The Children's Commissioner for England & Anor* [2013] EWCA Crim 991
[42] *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs; Libya v Janah* [2017] UKSC 62

34. Finally, the case of *Gureckis*,[43] shows the power of litigation and third party-interventions to properly challenge potentially unlawful state policy. In that case the High Court quashed policy guidance which set out the circumstances in which "rough sleeping" would be treated as an abuse of EU Treaty rights, rendering an EEA national liable to removal if this would be proportionate. The AIRE Centre in being granted permission to intervene was able to made detailed written submissions around the questions of law in the case (rather than the outcome of the individual applications being considered) and to address the issue of whether sleeping rough could ever constitute an "abuse of rights" under Article 35 of EU Directive 2004/38/EC (which is implemented in to UK law by Regulation 26 of the Immigration (European Economic Area) Regulations 2016). We also argued successfully that the policy itself discriminated unlawfully against EEA nationals, and that it involved systematic verification, contrary to the requirements of EU law. The Secretary of State did not appeal the decision and indeed published amended guidance on the same day as the judgment was handed down.

Conclusions

35. As a regular intervener before the UK courts, and especially the UKSC, the AIRE Centre continues to believe in the merits of third-party interventions in the public interest.

36. The number of third-party interventions before the courts have certainly risen in the last fifteen years and we acknowledge that there are arguments that third-party interventions should be discouraged. Litigation, it is argued, exists to

[43] *R (On the Application of **Gureckis**) v Secretary of State for the Home Department* **[2017] EWHC 3298 (Admin)**

determine issues between the parties. [44] Democratic institutions, such as parliament, should be the ones to determine matters relating to the public.

37. The AIRE Centre (in line with other NGO interveners) would not demur from the idea that there are issues which it is for parliament to decide, not judges. However, we hope that the above examples show that there are cases and issues where third part interventions do add real value and come within any proper scope for judicial decision: whether it is the rights of the child and promoting their best interests; or the extent of the duties on competent authorities to protect victims of trafficking and domestic violence. Indeed, the AIRE Centre takes comfort in the Courts' recognition of the value of the submissions made in various cases.[45]

38. The UK courts remain in the words of Sir Stephen Sedley 'lions under the throne of parliament'.[46] None of the cases the AIRE Centre has intervened in has overturned UK legislation, even when we have been successful in persuading the court on the correctness of our legal argument. Thus, the ultimate power of an intervener remains to assist the scrutiny of the courts of the executive and to ultimately ensure democracy is enhanced. This is what the current rules and processes accommodate and it is something which, in our experience, all courts properly consider when determining whether to grant permission on a third party application in cases.

[44] Carol Harlow *'Public Law and Popular Justice'*, (2002) 65 Modern Law Review
[45] See Lord Thorpe's comments in *Re E (Children)* [2011 EWCA Civ 361 paras [7] and [16]
[46] S Sedley; *Lions Under the Throne, Essays on the History of English Public Law*; Cambridge University Press November 2015

The AIRE Centre
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