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

FIRST SECTION

DECISION

Application no. 76202/16
F.J.M.
against the United Kingdom

The European Court of Human Rights (First Section), sitting on 6 November 2018 as a Chamber composed of:

Linos-Alexandre Sicilianos, *President,*
Ksenija Turković,
Aleš Pejchal,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke,
Gilberto Felici, *judges,*

and Abel Campos, *Section Registrar,*

Having regard to the above application lodged on 6 December 2016,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, F.J.M., is a British national who was born in 1970 and lives in Abingdon. She was represented before the Court by Mr J. McNulty, a lawyer practising in Oxford. On 6 November 2018 the Court decided of its own motion not to disclose the applicant's identity (Rule 47 § 4 of the Rules of Court).

A. The circumstances of the case

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

3. The applicant is a vulnerable adult with psychiatric and behavioural problems. According to her treating psychiatrist, she has "an emotionally

instable personality disorder and at times when her mental state has deteriorated she has presented with frank psychotic symptoms". She had lost two public sector tenancies on account of her behaviour.

4. In May 2005 the applicant's parents purchased a property with the assistance of an eight-year mortgage. They then granted the applicant an assured shorthold tenancy of the property and she claimed housing benefit to pay the rent.

5. The parents fell into arrears on the mortgage repayments and in August 2008 the finance company exercised its powers under the mortgage to appoint receivers. As the rent was being paid regularly and the arrears were not substantial (approximately GBP 527) the receivers initially took no steps to end the tenancy. However, the mortgage arrears persisted and on 13 January 2012 the receivers served notice on the applicant under section 21 of the Housing Act 1988, which permitted a court to make an order for possession of a property let on an assured shorthold tenancy if it was satisfied that the landlord had given the tenant at least two months' notice in writing that possession was required.

1. The County Court

6. The applicant sought to resist the possession order. As she did not have capacity to conduct legal proceedings, her brother acted as her litigation friend. In addition, she was represented throughout by counsel. On her behalf, two arguments were advanced before the County Court. First, that the receivers were not authorised to issue the section 21 notice ("the authorisation ground"); and secondly, that a possession order would violate her rights under Article 8 of the Convention ("the Article 8 ground").

7. Having found that the receivers were authorised to issue the section 21 notice, the court proceeded to consider "the more difficult and attractive submissions" in relation to the Article 8 ground. In this regard, a report was advanced in which the applicant's treating psychiatrist expressed the view that if evicted she would have real difficulty finding alternative accommodation on account of her mental health history and there was therefore a significant possibility that she would become homeless. Even if alternative accommodation was found, the psychiatrist believed that the stress and upheaval would have a significantly detrimental effect on her mental health, with the possibility of harm to herself or suicide, or violence towards others.

8. Nevertheless, having regard to the case-law of both this Court and the domestic courts, the County Court found no authority for the proposition that a proportionality assessment was required where the claimant was not a public authority. Therefore, "with regret", the court saw no reason not to order possession. However, it indicated that, had it decided otherwise, on balance it considered the applicant's circumstances sufficiently "exceptional" to justify dismissing the claim for possession. In particular, it

noted the applicant's "palpable disability and fragility", the fact that the arrears were never very substantial, the fact that the rent was always up to date, and the fact that the applicant had failed to keep two previous tenancies provided by public authorities and would therefore find it very difficult to find alternative accommodation.

2. The Court of Appeal

9. The applicant appealed against the possession order on both the Article 8 ground and the authorisation ground. The Court of Appeal dismissed the appeal on the authorisation ground, agreeing with the County Court that the mortgage conditions gave the receivers appropriate authority to serve the section 21 notice and take proceedings. In respect of the Article 8 ground, it indicated that the crux of the appeal was whether the applicant, as a tenant of a private landlord, could claim under Article 8 § 2 of the Convention that a possession order would be disproportionate. The Court of Appeal concluded that the county court had been correct in finding that she could not, since there was no "clear and constant" jurisprudence of this Court to the effect that the proportionality test should apply where the landlord is a private person or organisation rather than a public authority. In any case, the court considered that even if the proportionality test had applied, the possession order would still have been made. In this regard, it was unable to agree with the County Court's selection of factors for the purpose of the balancing exercise under Article 8 of the Convention. For example, the Court of Appeal considered that the amount of arrears could not by themselves be considered a relevant factor because the lender was also entitled to recover its capital. Moreover, there was no indication that the County Court had directed itself that very few cases would meet the high standard required for interference with the rights of the landlord in a public sector case. It therefore found that it would have to set the County Court's assessment aside and make its own assessment.

10. In making that assessment, it observed that where the right of a former tenant to respect for his home had to be balanced against the rights of a landlord, the balance would almost always be struck in the landlord's favour because the landlord was enforcing his property rights and may have suffered financial loss (such as arrears of rent) which he might not be able to recover. Moroever, there could be third parties liable to be prejudiced by the refusal to make a possession order, such as mortgagees of the property and other creditors of the landlord – or, indeed, homeless persons interested in the enforcement by social landlords of their rights to recovery of their housing stock from tenants to whom they no longer owe any housing duty. On the facts of the present case, the court considered that even if the proportionality test had applied, a possession order could have been made Although there was clear medical evidence that the applicant would suffer distress on having to move home, those caring for her would be able to help

her and take precautions to prevent her from causing herself serious harm. On the other hand CHL was owed some GBP 200,000 which it would be unable to recoup unless a possession order was made.

11. Further, and in any event, the court considered itself bound by *Poplar Housing and Regeneration Community Association Ltd v Donoghue* [2001] EWCA Civ 595, in which the Court of Appeal held that section 21(4) of the Housing Act 1988 was not incompatible with Article 8 of the Convention.

12. Therefore, the court also dismissed the appeal on the Article 8 ground.

3. The Supreme Court

13. The applicant was granted permission to appeal to the Supreme Court, which, on 15 June 2016, handed down a unanimous judgment (Lady Hale and Lord Neuberger gave the leading judgment, with which the other Justices agreed).

14. The Supreme Court identified three issues raised by the appeal. The first was whether a court, when entertaining a claim for possession by a private sector owner against a residential occupier, should be required to consider the proportionality of evicting the occupier in light of section 6 of the Human Rights Act 1998 and Article 8 of the Convention. The second issue was whether, if the first question was answered in the affirmative, section 21(4) of the Housing Act 1988 could be read so as to comply with that conclusion. Finally, if the answer to the first and second questions was yes, whether the trial judge would have been entitled to dismiss the claim for possession in this case, as he said he would have done.

15. Before turning to these issues, the Supreme Court first considered the history of successive Governments' policies towards renting in the private sector. In essence, the court observed that the creation of assured shorthold tenancies and the subsequent decrease in statutory protection for such tenants had served to reinvigorate the private residential rented sector in England and Wales over the past twenty-five years.

16. With regard to the first issue, the applicant had contended that as a court was a "public authority" within the meaning of section 6(3)(a) of the Human Rights Act 1998, no judge could make an order for possession of a person's home without first considering whether it would be proportionate to do so, and a private sector residential tenant was therefore in a similar position to a public sector residential tenant. The court responded to that argument in the following terms:

> "In the absence of any clear and authoritative guidance from the Strasbourg court to the contrary, we would take the view that, although it may well be that article 8 is engaged when a judge makes an order for possession of a tenant's home at the suit of a private sector landlord, it is not open to the tenant to contend that article 8 could justify a different order from that which is mandated by the contractual relationship

between the parties, at least where, as here, there are legislative provisions which the democratically elected legislature has decided properly balance the competing interests of private sector landlords and residential tenants. In effect the provisions of the Protection from Eviction Act 1977, section 89 of the Housing Act 1980 and Chapters I and IV of the 1988 Act, as amended from time to time, reflect the state's assessment of where to strike the balance between the article 8 rights of residential tenants and the A1P1 rights of private sector landlords when their tenancy contract has ended. ...

To hold otherwise would involve the Convention effectively being directly enforceable as between private citizens so as to alter their contractual rights and obligations, whereas the purpose of the Convention is, as we have mentioned, to protect citizens from having their rights infringed by the state. To hold otherwise would also mean that the Convention could be invoked to interfere with the A1P1 rights of the landlord, and in a way which was unpredictable. Indeed, if article 8 permitted the court to postpone the execution of an order for possession for a significant period, it could well result in financial loss without compensation - for instance if the landlord wished, or even needed, to sell the property with vacant possession (which notoriously commands a higher price than if the property is occupied).

... ...

It is, of course, true that a court, which is a public authority for the purposes of the 1998 Act (and is regarded as part of the state by the Strasbourg court), actually makes the order for possession which deprives the tenant of his home - and indeed puts an end to the [assured shorthold tenancy]. However, as Lord Millett explained in *Harrow London Borough Council v Qazi* [2004] 1 AC 983, paras 108-109, the court is "merely the forum for the determination of the civil right in dispute between the parties" and "once it concludes that the landlord is entitled to an order for possession, there is nothing further to investigate".

This conclusion does not mean that a tenant could not contend that the provisions of the 1988 Act did not, for some reason, properly protect the article 8 rights of assured shorthold tenants: that would involve arguing that the legislature had not carried out its obligations under the Convention. However, quite rightly, no such argument was advanced on behalf of the appellant in this case. As the summary in paras 11-19 above shows, the Government's approach to the private rented sector in England has been designed to confer a measure of protection on residential occupiers, without conferring so much protection as to deter private individuals and companies from making residential properties available for letting. The extent of the protection afforded to tenants under [assured shorthold tenancies] is significant, if limited, and it enables both landlords and tenants to know exactly where they stand. While there will of course occasionally be hard cases, it does not seem to us that they justify the conclusion that in every case where a private sector landlord seeks possession, a residential tenant should be entitled to require the court to consider the proportionality of the order for possession which she has agreed should be made, subject to what the legislature considers appropriate.

Of course, there are many cases where the court can be required to balance conflicting Convention rights of two parties, eg where a person is seeking to rely on her article 8 rights to restrain a newspaper from publishing an article which breaches her privacy, and where the newspaper relies on article 10. But such disputes arise not from contractual arrangements made between two private parties, but from tortious or quasi-tortious relationships, where the legislature has expressly, impliedly or through

> inaction, left it to the courts to carry out the balancing exercise. It is in sharp contrast to the present type of case where the parties are in a contractual relationship in respect of which the legislature has prescribed how their respective Convention rights are to be respected.
>
> Given that that is our view as a matter of principle, it is necessary to consider the jurisprudence of the Strasbourg court to see whether it points to a different conclusion."

17. The Supreme Court then turned to consider the Strasbourg jurisprudence, but agreed with the lower courts that there was no support for the proposition that a judge could be required to consider the proportionality of a possession order in a case such as the present.

18. The court therefore indicated that it would dismiss the appeal on the first issue. It then proceeded to consider the second and third issues. While it acknowledged that it was not necessary to do so, it observed that both were of potential importance.

19. With respect to the second issue, it found that it would not have been possible to read section 21(4) of the Housing Act 1988 so as to require a proportionality assessment.

20. Finally, with regard to the third issue, the court noted:

> "In those rare cases where the court is required to assess the proportionality of making a possession order, the court has at least four possible options. ...
>
> It may (a) make an immediate order for possession; (b) make an order for possession on a date within 14 days; (c) in cases of exceptional hardship make an order for possession on a date within six weeks; or (d) decline to make an order for possession at all. The cases in which it would be justifiable to refuse, as opposed to postpone, a possession order must be very few and far between, even when taken as a proportion of those rare cases where proportionality can be successfully invoked. They could only be cases in which the landlord's interest in regaining possession was heavily outweighed by the gravity of the interference in the occupier's right to respect for her home. ... Were a proportionality defence to be available in section 21 claims, it is not easy to imagine circumstances in which the occupier's article 8 rights would be so strong as to preclude the making, as opposed to the short postponement, of a possession order.
>
> In this case, the judge referred to the fact that the arrears of interest on the mortgage were insubstantial and the rent was always up to date. That is, however, only part of the story. The loan which enabled the appellant's parents to buy this house was for a period of only eight years, expiring on 12 May 2013, three weeks after the judge gave his judgment. The lenders were entitled to their money back then. The amount due (apart from legal costs) was nearly £164,000. The best chance of recovering all that was due to them was to sell the property with vacant possession. ... In any event, it would be for the appellant to show that a possession order would be disproportionate, and that to refuse a possession order would not prevent the lenders from recovering the sums to which they were entitled. It is difficult to see how the appellant's circumstances, most unfortunate though they undoubtedly are, could justify postponing indefinitely the lenders' right to be repaid.

In the circumstances, therefore, and on the evidence available to the judge, it seems likely that the most the appellant could hope for on a proportionality assessment would be an order for possession in six weeks' time."

B. Relevant domestic law and practice

1. The Housing Act 1988

21. Section 5 of the 1988 Act (as amended by the Housing and Regeneration Act 2008) provides, in so far as relevant:

"(1) An assured tenancy cannot be brought to an end by the landlord except by -

(a) obtaining -

(i) an order of the court for possession of the dwelling-house under section 7 or 21,

and

(ii) the execution of the order,

...

and, accordingly, the service by the landlord of a notice to quit is of no effect in relation to a periodic assured tenancy.

(1A) Where an order of the court for possession of the dwelling-house is obtained, the tenancy ends when the order is executed.

..."

22. Accordingly, a landlord under an assured shorthold tenancy can obtain an order for possession from a court against the tenant either under section 7 or under section 21 of the 1988 Act. Section 7, which was not in issue in the present case, applies where the assured shorthold tenancy is a periodic tenancy or has come to an end or could be brought to an end, and one of the specified grounds is made out by the landlord.

23. Section 21(1) of the 1988 Act (as amended by the Local Government and Housing Act 1989 and the Housing Act 1996) applies where the landlord has given the tenant two months' notice after the tenancy has come to an end. At the time of the service of notice and the hearing in the County Court in this case, it provided as follows:

"[O]n or after the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, a court shall make an order for possession of the dwelling-house if it is satisfied -

(a) that the assured shorthold tenancy has come to an end and no further assured tenancy (whether shorthold or not) is for the time being in existence, other than an assured shorthold periodic tenancy (whether statutory or not); and

(b) the landlord ... has given to the tenant not less than two months' notice in writing stating that he requires possession of the dwelling-house."

Section 21(4) (as amended by the Housing Act 1996) states that:

> "Without prejudice to any such right as is referred to in subsection (1) above, a court shall make an order for possession of a dwelling-house let on an assured shorthold tenancy which is a periodic tenancy if the court is satisfied -
>
> (a) that the landlord ... has given to the tenant a notice in writing stating that, after a date specified in the notice, being the last day of a period of the tenancy and not earlier than two months after the date the notice was given, possession of the dwelling-house is required by virtue of this section; and
>
> (b) that the date specified in the notice under paragraph (a) above is not earlier than the earliest day on which, apart from section 5(1) above, the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the notice under paragraph (a) above."

2. The Housing Act 1980

24. Section 89 of the 1980 Act provides that, subject to certain exceptions (which do not include orders for possession in respect of an AST):

> "Where a court makes an order for the possession of any land ..., the giving up of possession shall not be postponed (whether by the order or any variation, suspension or stay of execution) to a date later than 14 days after the making of the order, unless it appears to the court that exceptional hardship would be caused by requiring possession to be given up by that date; and shall not in any event be postponed to a date later than six weeks after the making of the order."

3. The Human Rights Act 1998

25. Pursuant to section 6 of the 1998 Act, it is unlawful for a public authority (including any court or tribunal) to act in a way which is incompatible with a Convention right.

4. Manchester City Council v Pinnock *[2011] 2 AC 104 and* Hounslow London Borough Council v Powell *[2011] 2 AC 186.*

26. Over the past ten years there has been an ongoing dialogue between this Court and the House of Lords/Supreme Court concerning the applicability of the Article 8 proportionality assessment in possession cases. The House of Lords originally took the view that although a claim for possession of residential property by a local authority engaged the Article 8 right of the residential occupier, the proportionality of making an order for possession had already been taken into account by Parliament through the legislation, which limited the landlord's right to obtain possession. However, this Court held that the existence of the legislation did not prevent an occupier in such a case from raising his or her Article 8 rights when possession of his or her home was being sought (see, for example, *McCann v. the United Kingdom*, no. 19009/04, § 50, ECHR 2008)

27. In *Pinnock*, the Supreme Court concluded that, in light of Strasbourg's clear and constant jurisprudence,

> "if our law is to be compatible with Article 8, where a court is asked to make an order for possession of a person's home at the suit of a local authority, the court must have the power to assess the proportionality of making the order, and, in making that assessment, to resolve any relevant dispute of fact".

28. However, the Supreme Court also made it clear that it would "only be in 'very highly exceptional cases' that it will be appropriate for the court to consider a proportionality argument" and that "where ... the local authority is entitled to possession as a matter of domestic law, there will be a very strong case for saying that making an order for possession would be proportionate".

29. In *Pinnock*, the Supreme Court made it clear that "nothing" said in the judgment in that case was "intended to bear on cases where the person seeking the order for possession is a private landowner", and added that it was "preferable for this court to express no view on the issue until it arises and has to be determined".

30. Following the Supreme Court judgment, the applicants complained to this Court under Article 8 of the Convention. In a decision dated 24 September 2013 the Court held the complaint to be inadmissible as manifestly ill-founded, as the Supreme Court had not exceeded its margin of appreciation in finding the applicants' eviction to be proportionate (see *Pinnock and Walker v, the United Kingdom*, no. 31673/11, 24 September 2013).

COMPLAINTS

31. The applicant complained under Articles 6 and 8 of the Convention that she was not permitted to raise a defence to the claim for possession of her home on proportionality grounds; and that the possession order was disproportionate on the facts of her case.

THE LAW

A. Article 8 of the Convention

32. The applicant complained under Article 8 of the Convention that the possession order was not proportionate and that she was unable to a have the proportionality of the order determined by a court. Article 8 provides as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. General principles

33. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, among other authorities, *Kay and Others v. the United Kingdom*, no. 37341/06, § 65, 21 September 2010, *Connors v. the United Kingdom*, no. 66746/01, § 81, 27 May 2004).

34. In making their initial assessment of the necessity of the measure, the national authorities enjoy a margin of appreciation in recognition of the fact that they are better placed than international courts to evaluate local needs and conditions. The margin afforded to national authorities will vary depending on the Convention right in issue and its importance for the individual in question. The Court set out its approach in *Connors*, cited above, § 82, in which it stated:

"... The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (see, for example, *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, p. 21, § 52; *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A, no. 104, § 55). On the other hand, in spheres involving the application of social or economic policies, there is authority that the margin of appreciation is wide, as in the planning context where the Court has found that "[i]n so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation (*Buckley v. the United Kingdom*, judgment of 26 September 1996, Reports of Judgments and Decisions 1996-IV, p. 1292, § 75 in fine). The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 45, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 49). It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, *mutatis mutandis*, *Gillow v. the United Kingdom*, cited above, § 55*; Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III; *Christine Goodwin v. the United Kingdom*, no. 28957/95, § 90, ECHR 2002-VI). Where general social and

> economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (*Hatton and others v. the United Kingdom*, [GC] no. 36022/97, ECHR 2003-..., §§ 103 and 123)."

35. Further, it is clear from the case-law of the Court that the requirement under Article 8 § 2 that the interference be "necessary in a democratic society" raises a question of procedure as well as one of substance (*Connors,* cited above, § 83; *McCann v. the United Kingdom*, no. 19009/04, § 49, ECHR 2008). The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Buckley v. the United Kingdom*, 25 September 1996, § 76, Reports of Judgments and Decisions 1996‑IV; *Chapman v. the United Kingdom* [GC], no. 27138/95, § 92, ECHR 2001-I; and *Connors*, cited above, §§ 83 and 92)

36. As the Court emphasised in *McCann* (cited above, § 50), the loss of one's home is the most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right to occupation has come to an end.

2. Application of the general principles to cases concerning private landlords

37. The principle that any person at risk of losing his or her home should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the Convention (see paragraph 36 above) has primarily been applied in cases where applicants had been living in State-owned or socially-owned accommodation (see, for example, *Connors*, cited above; *Stanková v. Slovakia*, no. 7205/02, 9 October 2007; *McCann* cited above; *Ćosić v. Croatia*, no. 28261/06, 15 January 2009, *Paulić v. Croatia*, no. 3572/06, 22 October 2009; *Kay*, cited above; *Orlić v. Croatia*, no. 48833/07, 21 June 2011; *Buckland v. the United Kingdom*, no. 40060/08, 18 September 2012; *Pinnock and Walker v. the United Kingdom* (dec.), no. 31673/11, 24 September 2013; *Yevgeniy Zakharov v. Russia*, no. 66610/10, 14 March 2017; *Shvidkiye v. Russia*, no. 69820/10, 25 July 2017; and *Panyushkiny v. Russia*, no. 47056/11, 21 November 2017). It has also been applied by the Court in cases concerning the judicial sale of property to pay creditors

(see, for example, *Zehentner v. Austria*, no. 20082/02, 16 July 2009 and *Rousk v. Sweden*, no. 27183/04, 25 July 2013), and, more recently, in a case concerning an application by the National Building Control Directorate for the demolition of a property built without the appropriate permit (see *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 54 21 April 2016).

38. In *Brežec v. Croatia*, no. 7177/10, 18 July 2013, the Court applied the same principle in a case where the applicant had been evicted from accommodation under private ownership. However, in that case it was relevant that the premises had been allocated to the applicant "in the specific circumstances which existed in the former Yugoslavia" (*Brežec*, cited above, § 48). She had been employed by a publicly owned hotel group, paid obligatory monthly contributions into a housing fund, and in 1970 she had been allocated rooms in the hotel group's personnel building which was intended to provide accommodation for its employees. The hotel group was later privatised (although it was suggested that a State-owned entity continued to hold a forty-nine percent stake in the company) and in 1997 it purchased the building in which the applicant lived from the Republic of Croatia. It was only in 2005 that the hotel group brought civil proceedings to evict the applicant.

39. At the time of the Supreme Court's judgment in the present case it was not clear whether *Brežec* was intended to extend the requirement of a proportionality assessment by an independent tribunal to cases concerning private sector landlords, or whether that judgment was restricted to the particular facts of the case. However, shortly after the Supreme Court judgment was handed down, the Court clarified the position in *Vrzić v. Croatia*, no. 43777/13, 12 July 2016.

40. In *Vrzić*, the applicants had used their home as collateral to secure a loan to a private company. The company subsequently issued enforcement proceedings, the property was sold at public auction and the applicants' eviction was ordered by a court. The applicants complained under Article 8 of the Convention that the rules governing the enforcement proceedings did not allow the courts to carry out a proportionality assessment. In its assessment of the merits, the Court distinguished *McCann* and "several cases against Croatia", including *Brežec*, on the basis that "in all those cases ... the applicants were living in State-owned or socially-owned flats and an important aspect of finding a violation was the fact that there was no other private interest at stake. Furthermore, the applicants in those cases had not signed any form of agreement whereby they risked losing their home" (*Vrzić*, cited above, § 66). The Court considered the situation in the case before it to be distinguishable as the other parties in the enforcement proceedings were either a private person, or private enterprises, and the case-law of the Convention organs indicated that in such cases a measure prescribed by law with the purpose of protecting the rights of others might be seen as necessary in a democratic society (*Vrzić,* cited above, § 67); and,

unlike the situations addressed in the earlier cases, the applicants had voluntarily used their home as collateral for their loan (*Vrzić,* cited above, § 67). It therefore concluded that, despite the absence of a proportionality assessment by an independent tribunal, there had been no violation of Article 8 of the Convention.

3. Application of the general principles to the present case

41. In *Vrzić*, the Court expressly acknowledged, for the first time, that the principle that any person at risk of losing his or her home should be able to have the proportionality of the measure determined by an independent tribunal did not automatically apply in cases where possession was sought by a private individual or enterprise. On the contrary, the balance between the interests of the private individual or enterprise and the residential occupier could be struck by legislation which had the purpose of protecting the Convention rights of the individuals concerned (*Vrzić*, cited above, § 67).

42. As the Court noted in *Vrzić,* in such cases there are other, private, interests at stake which must be weighed against those of the applicant. However, the distinction in fact runs deeper than that. As the Supreme Court acknowledged in the present case, there are many instances in which the domestic courts are called upon to strike a fair balance between the Convention rights of two individuals. What sets claims for possession by private sector owners against residential occupiers apart is that the two private individuals or entities have entered voluntarily into a contractual relationship in respect of which the legislature has prescribed how their respective Convention rights are to be respected (see paragraph 16 above). If the domestic courts could override the balance struck by the legislation in such a case, the Convention would be directly enforceable between private citizens so as to alter the contractual rights and obligations that they had freely entered into.

43. In *Vrzić*, the relationship under consideration was a contractual relationship between lender and borrower, while in the present case it was between the finance company, as mortgagee, and the applicant, as the mortgagor's residential tenant. It was therefore the applicant's parents – and not her – who pledged the property as security for the mortgage. Nevertheless, the case still concerns a contractual (landlord-tenant) relationship between two private individuals or entities, which is governed by legislation prescribing how the Convention rights of the parties are to be respected. In this regard, the Housing Act 1988 reflects the State's assessment of where the balance should be struck between the Article 8 rights of residential tenants and the Article 1 of Protocol No. 1 rights of private sector landlords. Indeed, it is clear from the Supreme Court judgment that in striking that balance the authorities had regard, *inter alia*, to the general public interest in reinvigorating the private residential rented

sector (see paragraph 15 above); something which the court accepted was best achieved through contractual certainty and consistency in the application of the law (see paragraph 16 above). As the Supreme Court made clear, a tenant entering into an assured shorthold tenancy agrees to the terms – clearly set out in the 1988 Act – under which it could be brought to an end and if, once it comes to an end, he or she could require a court to conduct a proportionality assessment before making a possession order, the resulting impact on the private rental sector would be wholly unpredictable and potentially very damaging.

44. Furthermore, the Court notes that the domestic legislation has, in fact, made provision for cases where exceptional hardship would be caused by requiring possession to be given up within fourteen days of the making of an order; in such cases, the courts may postpone the giving up of possession for up to six weeks after the making of the order (see paragraph 24 above; see also the findings of the Supreme Court, set out at paragraph 20 above).

45. Therefore, while the applicant's particular circumstances are undoubtedly deserving of sympathy, having regard to the considerations set out above they cannot justify the conclusion that in cases where a private sector landlord seeks possession, a residential tenant should be entitled to require the court to consider the proportionality of the possession order.

46. In light of the foregoing, the Court considers that the authorities of the respondent State were entitled to regulate tenancies such as the applicant's assured shorthold tenancy through legislation intended to balance the Convention rights of the individuals concerned. Moreover, the applicant does not challenge the Convention compliance of that legislation as such. Her Article 8 complaint must therefore be rejected as manifestly ill-founded pursuant to Article 35 § 3 (a) of the Convention.

B. Article 6 of the Convention

47. The applicant's complaints under Article 6 of the Convention do not appear to raise any separate issue from those complaints already considered under Article 8. In any case, as she did not complain of a breach of Article 6 of the Convention at any stage of the domestic proceedings, these complaints must be rejected pursuant to Article 35 § 1 of the Convention for failure to exhaust domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 November 2018.

Abel Campos Registrar	Linos-Alexandre Sicilianos President