



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

FOURTH SECTION

CASE OF McCANN v. THE UNITED KINGDOM

(Application no. 19009/04)

*This version was rectified on 21 July 2009
under Rule 81 of the Rules of Court*

JUDGMENT

STRASBOURG

13 May 2008

FINAL

13/08/2008

This judgment may be subject to editorial revision.

In the case of McCann v. the United Kingdom,

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

Lech Garlicki, *President*,

Nicolas Bratza,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 April 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19009/04) 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 a British national, Mr Gerrard McCann (“the applicant”), on 20 May 2004.

2. The applicant, who had been granted legal aid, was represented by Mr Gurbinder Gill, a lawyer practising in Solihull.

3. The applicant complained that eviction proceedings brought against him by the local authority violated Articles 6, 8 and 14 of the Convention.

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. On 10 May 2005 the Chamber decided that the admissibility and merits of the case should be considered jointly (Article 29 § 3 of the Convention and Rule 54A). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1968 and lives in Birmingham. The facts of the case as submitted by the parties are as follows.

7. In July 1998 the applicant and his wife became joint tenants of a three-bedroom family house owned by Birmingham City Council (“the local authority”). They were also secure tenants under the provisions of the Housing Act 1985 (see paragraph 20 below).

8. The marriage broke down early in 2001 and the applicant's wife moved out of the house with the two children. On 5 April 2001, following a contested hearing at which the applicant was not represented, the court made a three-month non-molestation order and an ouster order requiring the applicant to leave the house, which he did. Mrs McCann and the children moved back into the house, but moved out again when on 14 April the applicant turned up at the house, used a crowbar to force entry and allegedly assaulted Mrs McCann and her friend. Criminal proceedings were begun against the applicant following this incident, but resulted in an acquittal when no evidence was put forward.

9. On 18 April 2001, Mrs McCann submitted to the local authority an application to be re-housed on grounds of domestic violence. On 8 August 2001 she returned the keys to the local authority with a note saying that she was giving up the tenancy. She and the children moved into another council house which had been allocated to them in accordance with the local authority's domestic violence policy. The local authority visited the house and found that most of the fixtures had been removed so that in excess of GBP 15,000 would be required to make it habitable. Thereafter, as far as the local authority was concerned, the property was uninhabited.

10. In November 2001 the applicant returned to the house and did a considerable amount of work to renovate it. His relationship with Mrs McCann improved, and she supported his application for an exchange of accommodation with another local authority tenant, since the three-bedroom house was too big for him on his own, but he still required a suitable home in the area to permit contact visits with his children.

11. That application, dated 4 January 2002, was completed at the local authority housing office. On the same day, a housing officer, having realised that the property was not in fact empty, and having taken legal advice, visited Mrs McCann and asked her to close the tenancy by signing a notice to quit. The County Court judge who heard the local authority's claim for possession found as a fact that Mrs McCann was not advised and had no understanding that the notice to quit would have the effect of extinguishing the applicant's right to live in the house or exchange it for another local authority property (see paragraph 19 below). Approximately a week later

Mrs McCann wrote to the local authority seeking to withdraw the notice to quit, but it nonetheless remained effective.

12. The applicant was informed that the tenancy had come to an end, and he was given notice to vacate. On 11 June 2002 the local authority's Allocations Officer Review Panel decided, *inter alia*, that in accordance with the domestic violence policy, the applicant would not be granted the right to accede to the former tenancy of the house and that, in any event, the applicant, who had no dependants living with him, would not qualify for a dwelling originally allocated to a qualifying family which had been rehoused.

13. On 11 October 2002 the local authority brought possession proceedings against the applicant in the County Court, which he defended on the basis that it was contrary to his right to respect for his home under Article 8 of the Convention to be evicted on the basis of the notice to quit.

14. In his judgment of 15 April 2003, the County Court judge held that under the common law and Housing Acts (see paragraphs 19-20 below), the applicant had no defence to the authority's claim for possession. Under Article 8, however, he cited previous case-law which held that in such cases, generally, the interest of the local authority as landlord and of other persons in need of social housing had been taken into account by the applicable common law and legislation, and that, provided that the local authority had acted lawfully, it was not open to a court to put aside a claim for possession, except in exceptional circumstances where it appeared that the former tenant's Article 8 rights had not been properly considered. He noted the circumstances in which Mrs McCann had signed the notice to quit and observed that, if she had not been induced to sign it, the local authority would have had to apply for a possession order under section 84 of the Housing Act 1985 (see paragraph 20 below). It would then have been open to the applicant to seek to persuade the court that it would not be reasonable to grant the order; he and Mrs McCann could have given evidence regarding the alleged domestic violence; and he could in addition have raised such issues as his own housing needs and the need to provide accommodation for the children when they visited. In the circumstances, the judge held that the local authority had not acted as required by Article 8 § 2 of the Convention and he dismissed the claim for possession.

15. The authority's appeal to the Court of Appeal was adjourned pending the outcome of proceedings before the House of Lords in *Qazi v. London Borough of Harrow* ([2003] UKHL 43: "*Qazi*", see paragraphs 22-25 below). On 9 December 2003 Lord Justice Mummery gave the judgment of the Court of Appeal in the present case, holding as follows:

“ ... Article 8 is not available as a defence to the possession proceedings, even though the premises in question were the 'home' of the occupant for the purposes of the article. The council acted lawfully and within its powers in obtaining the notice to quit, which had the effect of terminating the secure tenancy. There was no dispute but

that the tenancy had been brought to an end by [the applicant's wife's] notice to quit. Under ordinary domestic law the council had an unqualified right to immediate possession on proof that the tenancy of the premises had been brought to an end. The statutory procedure in Section 82 of the 1985 Act, which is available to a local authority landlord for terminating a secure tenancy, does not apply to a case where the secure tenancy has been terminated by the tenant's notice to quit. That notice to quit was effective, even though the notice was signed without appreciating the consequences for the occupier of the premises.

This is not a 'wholly exceptional' case where, for example, something has happened since the service of the notice to quit, which has fundamentally altered the rights and wrongs of the proposed eviction and the council might be required to justify its claim to override the Article 8 right (see *Qazi* at paragraph 79 [paragraph 24 below]).

16. The applicant applied for judicial review of the local authority's decision of 4 January 2002 to procure a notice to quit from his wife, and of its decision of 11 June 2002 to issue possession proceedings. The application was refused on 23 September 2004. The judge found, *inter alia*, that the local authority had acted within its powers in seeking, through the wife's notice to quit, to formalise the situation as regards the tenancy and that its decision to apply its domestic violence policy where domestic violence had been established by the existence of a non-molestation injunction and ouster clause was neither unlawful nor outside the range of decisions properly open to the authority in all the circumstances. He concluded:

“I agree ... that the Court of Appeal effectively decided the relevant issues between Mr McCann and the Council and that this application is an attempt to resurrect them a second time. The Council is entitled to possession and this application for judicial review fails. ...

As for the generality, whether or not a decision can be challenged as a matter of law does not mean that it is not appropriate for a public authority to be as open as it can be. There is no reason why the Council's policy should not be absolutely explicit, spelling out that the consequence of an application for re-housing will be a requirement to give notice to quit of the existing tenancy which will affect the rights of the remaining tenant or occupier and thereafter providing notice to that person. In that way, clarity will prevail and some of the concerns that have been expressed in this case avoided.”

17. Permission to appeal to the Court of Appeal was refused on 9 December 2004.

18. The applicant was evicted from the house on 22 March 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Notice to quit under common law

19. In common law, where a valid notice to quit is given by one joint tenant, it has the effect of bringing the joint tenancy to an end, whether or

not the other joint tenant knew of or consented to the service of the notice to quit (*Hammersmith and Fulham London Borough Council v. Monk* [1992] 1 All ER 1). Once a tenancy has been validly brought to an end, a former tenant remaining in the property is in law a trespasser and the landlord has a right to immediate possession.

B. Security of tenure under the Housing Act 1985

20. By section 82 of the Housing Act 1985, a secure tenant of a local authority or other public authority, such as the applicant, has security of tenure. Under section 84(1) of the Act, a court shall not make an order for possession of a dwelling house let under a secure tenancy except on one or more of the grounds set out in Schedule 2 to the Act. Ground 2(a) of Schedule 2 gives a ground of possession where a couple live in a dwelling-house, one or both is a tenant, one partner has left because of violence or threats of violence by the other, and the court is satisfied that that partner who has left is unlikely to return. Section 84(2) provides that the court shall not make an order for possession on one of these grounds “unless it considers it reasonable to make an order”.

C. The local authority's domestic violence housing policy

21. According to Birmingham City Council's Allocations Policy Manual (§ 30.8):

“1. Where a relationship has broken down the tenant who is leaving the property must be asked to sign a relinquishing form. This has the effect of closing the 'whole' tenancy.

2. If the property remains suitable for the family left, [a new] tenancy can be granted.

3. If the property is not suitable (eg. too large), the tenant should be offered alternative accommodation ...

However, where there has been domestic violence the Allocations Policy provides (§ 3.7.1):

“Domestic violence is included in the Department's revised Conditions of Tenancy as a breach of the Tenancy agreement. Action will be taken [against those] who have been found to have subjected another person to domestic violence. This could include perpetrators losing their home or being classed as intentionally homeless.”

It would be open to a person who has been made homeless following an allegation of domestic violence to challenge the truth of the allegation and claim that he has been made unintentionally homeless and that the local authority have a statutory duty to re-house him.

D. The House of Lords' judgment in *Qazi*

22. *Qazi v. London Borough of Harrow* ([2003] UKHL 43) similarly concerned the making of a possession order in respect of a council house held under a joint tenancy of a husband and wife. The marriage broke down and the joint tenancy came to an end when Mrs Qazi served a notice to quit. Mr Qazi was refused a sole tenancy by the local authority, but he nonetheless remained in occupation with his new family, and sought to resist possession proceedings on the ground that they constituted an interference with the right to respect for his home under Article 8 of the Convention.

23. The House of Lords were unanimous in holding that, despite the fact that the tenancy had come to an end, the property continued to be Mr Qazi's home and Article 8 was therefore engaged. However, the majority (Lords Hope of Craighead, Millett and Scott of Foscote) held that Article 8 could not be relied upon to defeat the local authority's proprietary or contractual rights to possession. Since the local authority had an unqualified right to immediate possession, there was no infringement of Mr Qazi's right to respect for his home under Article 8 § 1 and so no issue arose under Article 8 § 2 as to justification. Alternatively, the effect of the authority's proprietary or contractual rights was that any assessment under Article 8 § 2 would inevitably be determined in the local authority's favour. The majority variously referred to a number of decisions of the Commission in which similar complaints, regarding the eviction of a former joint tenant from local authority property after the joint tenancy had come to an end, had been declared manifestly ill-founded (*S. v. the United Kingdom*, no. 11716/85, Commission decision of 14 May 1986, Decisions and Reports (DR) 47, p. 274; *D.P. v. the United Kingdom*, no. 11949/86, Commission decision of 1 December 1986, DR 51, p. 195; *Ure v. the United Kingdom*, no. 28027/95, Commission decision of 27 November 1996; *Wood v. the United Kingdom*, no. 32540/96, Commission decision of 2 July 1997).

Lord Hope, having held that Article 8 was applicable, continued:

“... in my opinion it does not follow that, on the facts of this case, there is an issue which must be decided within the domestic legal order by remitting the question whether any interference is permitted by Article 8 § 2 for decision by the county court. ...

I do not say that the right to respect for the home is irrelevant. But I consider that such interference with it as flows from the application of the law which enables the public authority landlord to exercise its unqualified right to recover possession, following service of a notice to quit which has terminated the tenancy, with a view to making the premises available for letting to others on its housing list, does not violate the essence of the right to respect for the home under Article 8 § 1. That is a conclusion which can be applied now to all cases of this type generally. ... It follows that the question whether any interference is permitted by Article 8 § 2 does not require, in this case, to be considered by the county court.”

Lord Millett similarly held that:

“... In my opinion Article 8 is not ordinarily infringed by enforcing the terms on which the applicant occupies premises as his home. Article 8 § 1 does not give a right to a home, but only to 'respect' for the home.”

As regards the balancing exercise envisaged by Article 8 § 2 he stated:

“... no such balancing exercise need be conducted when its outcome is a foregone conclusion. In the present case ... the local authority had an immediate right to possession. The premises were Mr Qazi's home, and evicting him would obviously amount to an interference with his enjoyment of the premises as his home. But his right to occupy them as such was circumscribed by the terms of his tenancy and had come to an end. Eviction was plainly necessary to protect the rights of the local authority as landowner. Its obligation to 'respect' for Mr Qazi's home was not infringed by its requirement that he vacate the premises at the expiry of the period during which it had agreed that he might occupy them. There was simply no balance to be struck. ...”

Lord Scott concurred with Lords Hope and Millett, although on somewhat different grounds:

“In my opinion, the Court of Appeal, having correctly held that Mr Qazi had an Article 8 'home', should have held that his rights under Article 8 could not prevail against the council's admitted and undoubted right to possession under the ordinary housing law. I would, for my part, have said that Article 8 was not, in these circumstances, applicable. But it could also be said that a possession order was 'in accordance with the law' and was necessary in order to protect and give effect to the council's right to possession. ... But it comes to the same thing. Article 8 cannot be raised to defeat contractual and proprietary rights to possession.”

24. As to the question of remedies in exceptional cases, Lord Hope referred (in paragraph 79 of the judgment) to *Sheffield City Council v. Smart* [2002] EWCA Civ 4, where the Court of Appeal had held, in a case where a non-secure council tenant was evicted following nuisance proceedings, that a challenge under Article 8 of the Convention to the local authority's decision to serve notice to quit could be made by judicial review within the appropriate time limits. Lord Hope continued by observing that the Court of Appeal in *Smart* had further held:

“that in the rare situation where something wholly exceptional happened after service of the notice to quit which fundamentally altered the rights and wrongs of the proposed eviction the judge in the county court who was hearing the claim for possession might be obliged to address it in deciding whether the making of a possession order could be justified ... I wish to reserve my opinion as to whether it would be open to the tenant, in a wholly exceptional case, to raise these issues in the county court where proceedings for possession were being taken following the service of the notice to quit by the housing authority, bearing in mind as Lord Millett points out that its decision to serve the notice to quit would be judicially reviewable in the High Court so long as the application was made within the relevant time limit. The situation in the present case is different, as it was a notice to quit served by one of the joint tenants that terminated the tenancy”.

Lord Millett also stated:

“In the exceptional case where the applicant believes that the local authority is acting unfairly or from improper or ulterior motives, he can apply to the High Court for judicial review. The availability of this remedy, coupled with the fact that an occupier cannot be evicted without a court order, so that the court can consider whether the claimant is entitled as of right to possession, is sufficient to supply the necessary and appropriate degree of respect for the applicant's home.”

25. The dissenting minority (Lords Bingham of Cornhill and Steyn) held that where there was a proposed interference with a person's right to respect for his home, the question of justification, if raised, did fall to be considered and should, in the instant case, be remitted to the County Court. Both cited with approval the following extract from the judgment of the Court of Appeal in *Sheffield City Council v. Smart* (cited in paragraph 24 above):

“26. ... 'Home' is an autonomous concept for the purpose of ECHR, and does not depend on any legal status as owner. Thus in these cases, the premises in Sheffield and Sunderland were without question the women's homes. Since the effect of the possession orders would be to throw them out, I think it inescapable that those orders amounted to an interference with the appellants' right of respect of their homes. I have said that the case is all about Article 8; more precisely, it is all about Article 8(2).

27. Before proceeding to the issues arising under Article 8(2), I should make it clear that I entertain what is perhaps a deeper reason for my view that the case cannot be concluded by a judgment that there is no violation of Article 8(1). It concerns the relationship between the two paragraphs of Article 8. I have held that eviction of these appellants would constitute a prima facie violation of their right to respect for their homes. But this conclusion is not simply an instance of that everyday judicial process, the application of a statute's correct construction (here, Article 8(1)) to a particular set of facts. Rather it has a purposive quality. The court has to arrive at a judicial choice between two possibilities, a choice which transcends the business of finding out what the legislation's words mean. The first choice ... would entail a judgment that the Convention requirement was met at the Article 8(1) stage ... The second choice (accepting a prima facie violation of Article 8(1)), which I prefer, entails a judgment that the more rigorous and specific standards set out in Article 8(2) have to be met if the court is to hold that the evictions are compatible with the appellants' Convention rights. The Convention is, as it were, much more remotely engaged in the fabric of our domestic law if the first, rather than the second, choice is taken. Part of the court's task is to decide how close that engagement should be in the context in hand. Thus I do not eschew the first choice merely because I take the view that the second more naturally reflects the ordinary sense of the words used in Article 8(1). I consider as a matter of substance that the vindication and fulfilment of the Convention rights, for which purpose [the Human Rights Act 1998] was enacted, require that the domestic law procedures involved in these appeals should be subjected to scrutiny for conformity with the Article 8(2) standards. Such a process is demanded by the fullness of our municipal law of human rights.”

Lord Bingham nonetheless emphasised that the administration of public housing under various statutory schemes was properly entrusted to local housing authorities and that the occasions on which a court would be justified in declining a possession order would be highly exceptional. He concluded:

“If (contrary to the ruling of the majority of the House) effect were to be given to my opinion, I am confident that the housing authorities acting in good faith in implementation of schemes prescribed by statute and administered by them need apprehend no significant increase in their litigious burden”.

E. The House of Lords' judgment in *Kay*

26. In *Kay v. Lambeth Borough Council; Price v. Leeds County Council*, 8 March 2006, [2006] UKHL 10, the House of Lords constituted itself as a seven judge Committee (rather than five judges as usual) in order to revisit its decision in *Qazi* in the light of the Court's judgments in *Connors v. the United Kingdom*, no. 66746/01, §§ 81–84, 27 May 2004 and *Blečić v. Croatia*, no. 59532/00, 29 July 2004 (the latter judgment was subsequently referred to the Grand Chamber which found, on 8 March 2006, that because domestic remedies had not been exhausted, it was unable to take cognisance of the merits of the case). The Lords were unanimous in limiting their consideration to cases where the landlord was a public authority.

27. The majority (Lords Hope, Scott, Brown and Baroness Hale) held that the judgment in *Connors* was not incompatible with the view of the majority in *Qazi* that there was no need for a review of the issues raised by Article 8 § 2 to be conducted by the County Court if the case was of a type where the law itself provided the answer, as in that situation a merits review would be a pointless exercise. In such a case an Article 8 defence, if raised, should simply be struck out. However, in the light of the judgments in *Connors* and *Blečić* it was necessary to emphasise that a person evicted might have a defence to possession proceedings in exceptional cases, namely (1) where he challenged the domestic law as itself being incompatible with Article 8 (as in *Connors*) or (2) he challenged the action of the public authority landlord on public law grounds, on the basis that the authority's actions constituted an abuse of power.

28. The minority (Lords Bingham, Nicholls and Walker) held that a defendant to possession proceedings brought by public authorities should be permitted in principle to raise an Article 8 defence during the County Court possession proceedings. Lord Bingham expressed it as follows:

“I do not accept, as the appellants argued, that the public authority must from the outset plead and prove that the possession order sought is justified. That would, in the overwhelming majority of cases, be burdensome and futile. It is enough for the public authority to assert its claim in accordance with domestic property law. If the occupier wishes to raise an Article 8 defence to prevent or defer the making of a possession order it is for him to do so and the public authority must rebut the claim if, and to the extent that, it is called upon to do so. In the overwhelming majority of cases this will be in no way burdensome. In rare and exceptional cases it will not be futile.”

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

A. Article 6 § 1 of the Convention

29. The applicant alleged a violation of Article 6 § 1 of the Convention, claiming that the local authority was not an independent and impartial tribunal when it brought about the termination of the tenancy to the property.

Article 6 § 1 provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

30. This provision ensures procedural guarantees in the determination of civil rights and obligations. In the present case, the “rights and obligations” were those arising out of the tenancy which the applicant and his wife had with the local authority. The tenancy was terminated by the applicant's wife's notice to quit of 4 January 2002. The determination of the civil rights and obligations, however, took place before the domestic courts – the Birmingham County Court, which gave judgment on 15 April 2003, and the Court of Appeal, which gave judgment on 9 December 2003. Any complaints concerning the fairness of the proceedings must therefore relate to the proceedings before those courts. The applicant makes no submissions as to the fairness of the proceedings before the courts, and does not submit that anything outside the proceedings as such could have had an impact on them.

31. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

B. Article 8 of the Convention

32. The applicant also alleged a violation of Article 8 of the Convention, contending that because of the way in which the council procured the notice to quit in the case, and because the resultant proceedings were limited to bare property law issues, his right to respect for his home was not observed.

Article 8 of the Convention provides, so far as relevant, as follows:

“1. Everyone has the right to respect for his private ... life, his home

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 ... the economic well-being of the country, for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others.”

33. The Court considers that this part of the application raises questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No other ground for declaring it inadmissible has been established. The application must therefore be declared admissible. Pursuant to Article 29 § 3 of the Convention, the Court will consider the merits of this complaint below.

C. Article 14 of the Convention taken in conjunction with Article 8

34. Finally, the applicant, comparing his position with that of spouses of tenants who leave premises because of a relationship breakdown where there is no allegation of domestic violence, alleged a violation of Article 14 of the Convention in connection with Article 8 because the local authority has different policies for the two categories. Article 14 provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

35. The Court notes that the applicant did not raise the issue of Article 14 in any of the domestic proceedings, and has failed otherwise to challenge the different policies before the domestic courts. There is thus a real question as to whether the applicant has exhausted domestic remedies, as required by Article 35 of the Convention.

36. In any event, cases involving domestic violence are not the same as cases which do not involve domestic violence, such that different treatment of them cannot, as such, be discriminatory for the purposes of Article 14 of the Convention.

37. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

II. THE MERITS OF THE COMPLAINT UNDER ARTICLE 8

A. The parties' submissions

38. The parties were agreed that the right to respect for the home contained in Article 8 of the Convention was engaged on the facts of the present case. They disagreed, however, as to whether the impugned measure was “necessary in a democratic society”.

1. The Government

39. The Government contended that any interference with the applicant's rights under Article 8 § 1 was justified within the meaning of Article 8 § 2.

The local authority's decisions to procure a notice to quit from his wife and subsequently to commence possession proceedings were taken in accordance with the law and pursued a number of legitimate aims, namely, (a) the protection of the rights of the authority as owner of the property with responsibility for the management of its social housing stock; (b) the protection of the rights and freedoms of others on the authority's waiting list to be provided with housing out of the authority's stock of homes to meet their needs; and (c) the promotion of the economic well-being of the country. Furthermore, given that it was necessary in a democracy to have in place clear and certain rules governing property rights, and in view of the fact that under ordinary property law the authority had an absolute right to recover the property in question, the Government submitted that the interference which arose by virtue of the recognition and implementation of those rights by the courts was "necessary in a democratic society" and proportionate to the legitimate aim pursued.

40. According to the Government, the present case was distinguishable from *Connors v. the United Kingdom*, (no. 66746/01, §§ 81–84, 27 May 2004: see further paragraph 49 below), where three key features had led the Court to find a violation of Article 8: first, the vulnerable position of gypsies as a minority, which imposed a positive obligation on the State to facilitate their way of life; secondly, the absence of procedural protection, which permitted a local authority to remove gypsies from an authorised site without any scrutiny by the courts; and, thirdly, the fact that the domestic law discriminated unjustifiably between gypsies who resided on private sites and those who resided on local authority sites. In contrast to the position in *Connors*, there was no suggestion in the present case that the domestic law of landlord and tenant was itself incompatible with Article 8.

41. Since, in asking Mrs McCann to sign a notice to quit, the local authority had merely been seeking to regularise the situation which she had created by leaving the house and applying for alternative accommodation, it had been appropriate to ask her to sign the notice and there had been no obligation fully to explain to her the implications. In circumstances where the relationship between joint tenants had broken down, it was the local authority's policy to obtain a relinquishing form from the departing tenant (see paragraph 21 above). This policy was eminently sensible, since it permitted the local authority landlord to regain control of its property and thus to manage scarce housing resources effectively. The procedural protection against the termination of a secure tenancy contained in sections 82-84 of the 1985 Act (see paragraph 20 above) were applicable only in circumstances where the landlord was seeking to terminate the tenancy. In the present case, the joint tenancy was brought to an end by the applicant's wife serving notice to quit.

42. Given that the applicant's central allegation was that the local authority had acted improperly in obtaining the notice to quit from Mrs

McCann, judicial review provided an appropriate and adequate remedy, to which the applicant had had access. Moreover, it was now clear from the House of Lords' decision in *Kay* (see paragraphs 26-28 above) that an individual in the applicant's position would not need to commence proceedings by way of judicial review in order to raise this kind of public law challenge; such objections could now be raised by way of collateral challenge to possession proceedings in the County Court. The clarification in *Kay* served to underline the extent of the procedural protection provided to individuals in the applicant's position. In this respect the present case was clearly distinguishable from *Connors*, where the applicant's contentions (that he was not responsible for the alleged anti-social behaviour) did not relate to abuse of power by the local authority and where he was refused leave to apply for judicial review.

2. *The applicant*

43. The applicant maintained that the manner in which the notice to quit was obtained rendered his eviction an unjustified violation of his right to respect for his home. Article 8 was engaged because Mrs McCann would not have served the notice to quit except at the request of the local authority housing officer, and the local authority knew that the notice would have the effect of bringing the joint tenancy to an end without any opportunity for the applicant effectively to challenge the loss of his home. Moreover, the termination of the tenancy affected the applicant's relationship with his children who stayed with him three nights a week. In deciding to ask Mrs McCann for the notice to quit, the local authority gave no consideration whatsoever to the applicant's rights under Article 8.

44. The only time any court had scrutinised the applicable Convention considerations, it had found that the applicant's right to respect for his home had not been sufficiently respected. However, this decision by the County Court was overturned on appeal, in the light of the House of Lords' judgment in *Qazi*, and the applicant's subsequent request for judicial review was rejected because the Court of Appeal had previously determined the issue.

45. In proceedings under sections 82-84 of the Housing Act 1985 (see paragraphs 20 above), the County Court must examine and determine all issues of fact and can grant possession to the landlord only where it "considers it reasonable to do so". The local authority's actions in obtaining the wife's notice to quit had, in effect, by-passed this statutory scheme, which Parliament had created to protect tenants such as the applicant. While accepting that it would be rare for possession to be refused to the landlord on Article 8 grounds, the applicant contended that to exclude the possibility of individual circumstances rendering an eviction disproportionate was to deprive the Convention of any effect.

B. The Court's assessment

46. The Court has noted on a number of occasions that whether a property is to be classified as a “home” is a question of fact and does not depend on the lawfulness of the occupation under domestic law (see, for example, *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 54, in which the applicant had lived on her own land without planning permission for a period of some eight years). In the present case, it was found by the national courts and accepted by the parties that the local authority house which the applicant formerly occupied as a joint tenant with his wife and where he lived on his own from November 2001 continued to be his “home”, within the meaning of Article 8 § 1, despite the fact that following service by the wife of notice to quit he had no right under domestic law to continue in occupation. The Court agrees with this analysis.

47. It was further agreed that the effect of the notice to quit which was served by the applicant's wife on the local authority, together with the possession proceedings which the local authority brought, was to interfere with the applicant's right to respect for his home.

48. The Court considers that this interference was in accordance with the law and pursued the legitimate aim of protecting the rights and freedoms of others in two respects. First, it protected the local authority's right to regain possession of the property as against an individual who had no contractual or other right to be there. The domestic courts laid considerable emphasis on this aspect, which applies equally to all landlords who are trying to repossess property. However, the interference also pursued the aim of ensuring that the statutory scheme for housing provision was properly applied. The “others” in such a case are the intended beneficiaries of the complex arrangements set up by, amongst others, the Housing Acts. The Court accepts that it is only by limiting the protection of the Acts to the categories to which it applies that the policy underlying the Acts can sensibly be implemented.

49. The central question in this case is, therefore, whether the interference was proportionate to the aim pursued and thus “necessary in a democratic society”. It must be recalled that this requirement under paragraph 2 of Article 8 raises a question of procedure as well as one of substance. The Court set out the relevant principles in assessing the necessity of an interference with the right to “home” by the application of summary possession proceedings in the case of *Connors v. the United Kingdom*, (no. 66746/01, §§ 81–84, 27 May 2004), which was decided subsequent to the House of Lords' judgment in *Qazi* (see paragraphs 22-25 above), but before its decision in *Kay* (see paragraphs 26-28 above), as follows:

“81. 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 ...

82. In this regard, a margin of appreciation must, inevitably, be left to the national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions. 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 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' 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 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 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

83. 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 ...”

50. The Court is unable to accept the Government's argument that the reasoning in *Connors* was to be confined only to cases involving the eviction of gypsies or cases where the applicant sought to challenge the law itself rather than its application in his particular case. The loss of one's home is a 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 the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end.

51. The Court notes that the legislature in the United Kingdom has set up, through the Housing Acts *inter alia*, a complex system for the allocation of public housing, about which the applicant does not complain. That

system includes, in section 84 of the Housing Act 1985 (see paragraph 20 above), provisions to protect secure tenants of public authority landlords, such as the applicant during the course of the joint tenancy. In accordance with these provisions, a court cannot grant a public authority landlord possession of a property occupied by a secure tenant except on one of the specified statutory grounds and where it is in addition satisfied that it is reasonable to make such an order. Had the local authority sought to evict the applicant in accordance with this statutory scheme, it would have been open to the applicant to ask the court to examine, for example, whether his wife had really left the family home because of domestic violence and whether in his personal circumstances, including his need to provide accommodation for his children during overnight visits several times a week, it was reasonable to grant the possession order.

52. In the present case, however, the local authority chose to bypass the statutory scheme by requesting Mrs McCann to sign a common law notice to quit, the effect of which was immediately to terminate the applicant's right to remain in the house. It does not appear that the authority, in the course of this procedure, gave any consideration to the applicant's right to respect for his home. Moreover, under domestic law (see the majority opinions in *Qazi* and *Kay*, 22-28 above), in summary proceedings such as those brought against the applicant, it was not open to the county court to consider any issue concerning the proportionality of the possession order, save in exceptional cases where, as the Court of Appeal put it in the present case, "something has happened since the service of the notice to quit, which has fundamentally altered the rights and wrongs of the proposed eviction". No such exceptional circumstances applied in the present case. Furthermore, although since the applicant's landlord was a public authority it was open to him to challenge the decisions to obtain the notice to quit and to bring possession proceedings in an application for judicial review, his application failed because the local authority had not acted unlawfully.

53. As in *Connors*, the "procedural safeguards" required by Article 8 for the assessment of the proportionality of the interference were not met by the possibility for the applicant to apply for judicial review and to obtain a scrutiny by the courts of the lawfulness and reasonableness of the local authority's decisions. Judicial review procedure is not well-adapted for the resolution of sensitive factual questions which are better left to the County Court responsible for ordering possession. In the present case, the judicial review proceedings, like the possession proceedings, did not provide any opportunity for an independent tribunal to examine whether the applicant's loss of his home was proportionate under Article 8 § 2 to the legitimate aims pursued.

54. The court does not accept that the grant of the right to the occupier to raise an issue under Article 8 would have serious consequences for the functioning of the system or for the domestic law of landlord and tenant. As

the minority of the House of Lords in *Kay* observed (see paragraph 28 above), it would be only in very exceptional cases that an applicant would succeed in raising an arguable case which would require a court to examine the issue; in the great majority of cases, an order for possession could continue to be made in summary proceedings.

55. It is, for present purposes, immaterial whether or not Mrs McCann understood or intended the effects of the notice to quit. Under the summary procedure available to a landlord where one joint tenant serves notice to quit, the applicant was dispossessed of his home without any possibility to have the proportionality of the measure determined by an independent tribunal. It follows that, because of the lack of adequate procedural safeguards, there has been a violation of Article 8 of the Convention in the instant case.

III. ARTICLE 41 OF THE CONVENTION

56. The applicant claimed just satisfaction under Article 41 of the Convention, which 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. Non-pecuniary damage

57. The applicant claimed a total of EUR 50,000 in compensation for non-pecuniary damage, including EUR 20,000 for the loss of his home, EUR 20,000 for the interference with his relationship with his children and EUR 10,000 for suffering and distress occasioned by the humiliation of being evicted in the knowledge that the County Court judge had found it to be unjustified.

58. The Government commented that, unlike the applicant in *Connors* who was evicted at short notice from his home of 15 years, and to whom the Court awarded EUR 14,000 in respect of non-pecuniary damage, the present applicant had lived in the house in question for only three years before his marriage broke down and he was ordered to leave under the molestation order of April 2001. Furthermore, the applicant had applied for an exchange of property on 4 January 2002, as the house was too big for his needs. In these circumstances, and given that it was impossible to ascertain what the applicant's position would have been had there been no breach of Article 8 (which was, in any event, denied), the Government submitted that the finding of a violation would in itself constitute sufficient just satisfaction or, in the alternative, an amount significantly lower than that in *Connors* should be awarded.

59. The Court notes that it has found Article 8 violated in its procedural aspect only. Given the allegations of domestic violence against the applicant, his status as a single man (albeit one who wished to maintain regular overnight contact with his children) and the shortage of local authority housing stock, it is far from clear that, had a domestic tribunal been in a position to assess the proportionality of the eviction, the possession order would not still have been granted. Nonetheless, the applicant was deprived of his home without the opportunity to obtain a ruling on the issues under Article 8, and the Court thus concludes that he suffered some non-pecuniary damage, in particular feelings of frustration and injustice, not sufficiently compensated by the finding of a violation of the Convention (see *Connors*, § 114). Deciding on an equitable basis, it awards the applicant EUR 2,000 under this head.

B. Costs and expenses

60. In addition, the applicant claimed costs incurred during the domestic and Strasbourg proceedings, claimed at the national *inter partes* rate, amounting to a total of GBP 75,570.18, of which GBP 7,691.32 represented his costs before the Court.

61. The Government submitted that GBP 45,000 in respect of the domestic costs and GBP 6,000 for the Strasbourg costs would be more than adequate.

62. The Court awards EUR 75,000 for costs and expenses, together with any value added tax that may be payable, less the EUR 850 already received in legal aid from the Council of Europe.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* the complaint under Article 8 of the Convention admissible;
2. *Declares* the remainder of the complaint inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* (a) that the respondent State is to pay the applicant, within three months from the date of the adoption of the present judgment,

EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 75,000 (seventy-five thousand euros) in costs and expenses, less EUR 850 (eight hundred and fifty euros) in legal aid paid by the Council of Europe, together with any tax that may be chargeable, which payments are to be converted into pounds sterling at the rate applicable on the date of settlement;

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

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and notified in writing on 13 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President