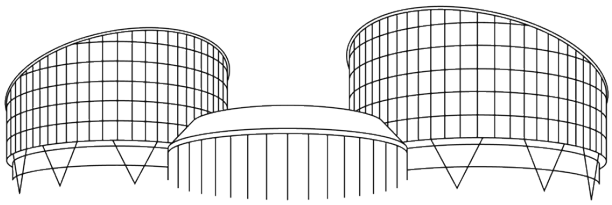

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BUCKLAND v. THE UNITED KINGDOM

(Application no. 40060/08)

JUDGMENT

STRASBOURG

18 September 2012

FINAL

18/12/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Buckland v. the United Kingdom**,**

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

Lech Garlicki, *President,*
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 28 August 2012,

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

PROCEDURE

1. The case originated in an application (no. 40060/08) 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, Ms Maria Buckland ("the applicant"), on 12 August 2008.

2. The applicant, who had been granted legal aid, was represented by the Community Law Partnership, a firm of solicitors based in Birmingham. The United Kingdom Government ("the Government") were represented by their Agent, Ms A. Sornarajah, of the Foreign and Commonwealth Office.

3. The applicant alleged that the Court of Appeal's decision to dismiss her appeal and uphold the judgment making a possession order constituted an unjustified breach of her right to respect for her home and her family life and discriminated against her, in violation of Article 8 taken alone and in conjunction with Article 14.

4. On 3 May 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Cardiff.

6. The applicant is a gypsy. In 1999 she moved to the Cae Garw caravan site in Port Talbot, Wales, with her two children. The site was owned by Neath Port Talbot County Borough Council.

7. On 12 June 2000 Neath Port Talbot County Borough Council entered into a licence agreement with the Gypsy Council which provided that the latter would manage the site.

8. On 29 March 2004 the applicant entered into a licence agreement with the Gypsy Council to occupy pitch 16 on the site. It was a condition of the licence that:

> "The Licensee or his/her resident family ... must not create a nuisance on the sites or to neighbouring properties. The Licensee shall be held responsible if any ... person living with ... her contravenes any of these Site Rules or Conditions."

9. On 30 December 2004 the Gypsy Council issued a notice of termination of licence to the applicant which expired on 6 February 2005. The notice referred to a clause of her licence agreement which provided:

> "The Gypsy Council or the Licensee may terminate this licence by giving the other not less than 28 days written notice to expire on a Sunday in any week."

10. No further reasons justifying the termination were given.

11. Notices to quit were also given to her parents, who occupied a different pitch on the site.

12. On 18 January 2005 amendments to section 4 of the Caravan Sites Act 1968 ("the 1968 Act") entered into force which introduced the possibility for possession orders to be suspended by a court on the application of the occupier for up to twelve months at a time (see paragraph 36 below).

13. On 2 August 2005 the Gypsy Council issued a claim for possession against the applicant and five members of her extended family, including her parents, in Neath Port Talbot County Court. In its particulars of claim, the Gypsy Council alleged that all six defendants were guilty of causing very substantial nuisance to the site to the detriment of other occupiers.

14. The applicant's parents did not apply for suspension or postponement of the orders. On 1 June 2006, possession orders were made against them by consent.

15. An oral hearing took place between 24 and 26 July 2006 in Swansea County Court and 28 July 2006 in Neath County Court in respect of the claim for possession against the applicant. In a witness statement lodged prior to the hearing, the applicant indicated that she intended to leave the site when her parents left.

16. On 25 July 2006 Judge Bidder QC gave a judgment on the preliminary issue of whether the applicant could challenge the making of a possession order in her case. He considered himself bound by the decision of the House of Lords in *Kay* and *Price* (see paragraph 42 below), which had examined the effect of this Court's judgment in *Connors v. the United*

Kingdom, no. 66746/01, 27 May 2004. Thus, he concluded, the only options open to the applicant were to challenge the domestic law itself or to commence judicial review proceedings based on conventional grounds. He concluded:

> "58. ... I do not consider it to be arguable that the decision of the claimants to seek possession against her was unreasonable or that their decision to invoke their domestic law rights could be castigated as unreasonable ...
>
> 59. Moreover, the fact that parliament has amended the applicable domestic legislation to afford the gypsy occupier the opportunity to contend that any possession order should be suspended for 12 months at a time distinguishes that case from *Connors*, and given that that amendment was considered in *Kay* and *Price* I find it impossible to say ... that there is a seriously arguable point raised that the law which enables the court to make the possession order is incompatible with article 8 ..."

17. He invited submissions from the applicant as to the possible temporary suspension of any possession order. He added:

> "71. I should say that on the issue of suspension of the ... order against the [applicant] of possession I would invite the parties to consider the date of 4th November 2006 being the date on which the [applicant's] parents are required to leave and on which she indicates that she would leave anyway ..."

18. On 28 July 2006, following the applicant's submissions that any possession order against her should be suspended, the judge handed down his judgment on the remaining issues. Having reviewed the allegations made against the applicant by the claimant, the judge concluded:

> "27. ... I am not satisfied that Maria Buckland has herself been guilty of any offensive behaviour on site, or of any breach of licence, apart from the relatively minor failure to pay the water charges."

19. He was, however, satisfied that her son, who resided part of the time with her, had been involved in an incident on site in which he threatened someone with a gun, although it was not clear whether the gun had been real or merely an imitation; and had dumped garden refuse on the site.

20. Turning to consider whether the applicant's personal circumstances, and those of her son, justified a suspension of the possession order which he would be making in her case the judge noted:

> "32. In relation to Maria Buckland, while I am obliged to make a possession order, I find her only breach of site conditions has been recent and is a very modest failure to pay water charges. She has indicated in a recent statement that she intends to move from the site when [her parents] leave, that is on or before 4pm on 24th November. I do consider it appropriate to suspend enforcement of the possession order against her until the same time and date. However, I am clear that the behaviour of [her son] on this site and his attitude towards the Farrows [the family of the site manager] is such that I have to impose conditions on her continued possession, as sought in the draft order – [her son] lives half his time with his father, and I have no doubt that if he cannot live with his mother, he will be able to live with his father ..."

21. He made an order for possession against the applicant, which he suspended until 24 November 2006 upon the condition that her son leave the site and that she discharge the GBP 95 arrears of water charges at the rate of GBP 5 per week.

22. On 18 April 2007 the applicant, who was still resident at the site, was granted permission to appeal the possession order to the Court of Appeal. A stay of execution of the order of 28 July 2006 was also ordered.

23. In November 2007 a bill which would amend the Mobile Homes Act 1983 ("the 1983 Act") was introduced to Parliament. The effect of the proposed amendment was to allow a defendant in possession proceedings such as the applicant to challenge before the County Court the reasonableness of making a possession order.

24. On 12 December 2007 the applicant's appeal was dismissed. Considering the impact of the amendment to the 1968 Act to allow suspension of a possession order on whether the applicant could succeed in a conventional public law challenge to the decision to seek a possession order, Lord Justice Dyson noted:

> "42. The significance of the amendment is that a claimant's decision to seek possession does not involve summary eviction without judicial scrutiny of the justification of the claim to possession. By issuing proceedings, the claimant submits to the jurisdiction of the court, which has power to investigate all the circumstances of the case, including the claimant's complaints about the defendant's behaviour."

25. He continued:

> "43. ... It may be that, for the reasons given by Lord Brown [in *Kay*], a public law defence could have been raised successfully in *Connors*. I would suggest that this is not so much because the family had been in occupation for a great length of time, but rather because it was unreasonable and grossly unfair for the local authority to seek a possession order and obtain the eviction of the occupier merely on the basis of a termination of the licence 'without the need to make good any underlying reason for taking such precipitate action'. The real difference between the present case and *Connors* is not that the appellant had been in occupation for a shorter period than was the family in *Connors* ... On any view, the site was her home and had been for a substantial period of time. The fact that she had not been in occupation for as long as the family in *Connors* is not, in my judgment, of much significance. The real difference between the two cases is that in *Connors,* once the licence had been terminated, the authority was entitled to an order for possession whose enforcement could not be suspended by the court."

26. He concluded that since the amendment to the 1968 Act, it was difficult to conceive of a case in which a public law defence would succeed. Referring also to the fact that Judge Bidder had made a finding of misconduct on the site by the applicant's son, for whose behaviour she was responsible under the terms of the licence, Dyson LJ considered that the judge was right to hold that the public law defence was not seriously arguable.

27. Dyson LJ further noted that the factual situation of *Connors* was not materially different from the present case in that in both cases the defendant had occupied a site as a home for a number of years. Further, in both cases the claimant had validly and properly terminated the defendant's licence to occupy so that the defendant had become a trespasser; the claimant was entitled to an order for possession as the owner of the land; and no further justification was required to seek an order for possession. However, it was agreed by the parties that it was not necessary to decide whether the present case could be distinguished from *Connors* as the distinction was only relevant for any appeal before the House of Lords.

28. Finally, in respect of the applicant's argument that the amendment to section 4 of the 1968 Act did not remedy the incompatibility with Article 8, Dyson LJ emphasised that, in principle, a wide margin of appreciation was left to the national authorities in such matters. However, he accepted that the vulnerable position of gypsies as a minority meant that "some special consideration should be given to their needs and different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases" (citing *Connors*, § 83). He found that the main reason for the narrowing of the margin of appreciation in *Connors* itself was that the complete absence of any procedural safeguards was a serious interference with the applicant's Article 8 rights in that case, which called for particularly weighty reasons of public interest in justification. However, the precise scope of these safeguards was in his view, a matter for the national authorities to determine. He considered that provided that a reasonable degree of protection was afforded by the domestic law, the Strasbourg Court would not interfere, even if a greater degree of protection could have been afforded. He accordingly rejected the applicant's submissions, noting:

> "60. The objectionable feature of the legal regime in place before the amendment was that the court was bound not merely to make an order for possession, but to order the eviction of an occupant such as the appellant provided that the 4 weeks' notice was given. Absent a public law challenge, the occupant had no opportunity to challenge the reasons given by the local authority for seeking possession and the court had no jurisdiction to take the reasons into account in deciding whether to order the occupant's eviction. The local authority's reasons were irrelevant as were the occupant's personal circumstances. Nor did the court have power to suspend an order for possession even in circumstances of extreme hardship which indicated that eviction would not be justified under article 8(2). In short, there was no opportunity for the court to make any assessment of the justification for eviction in order to determine whether the interference with an occupier's rights under article 8(1) was justified on an application of article 8(2). Provided that the relevant formal requirements had been satisfied, the role of the court was purely mechanistic.
>
> 61. The amendment has introduced procedural protections which ensure that the role of the court is no longer a mechanistic one even when a local authority seeks to evict a licensee from a caravan site. Summary eviction has been replaced by judicial examination. Section 4(1) now provides that the enforcement of a possession order may be suspended for such period up to 12 months 'as the court thinks reasonable'.

> The court has a wide discretion under subsection (2) to impose conditions when making an order for suspension. By subsection (3), the court may extend the suspension of the possession order for up to 12 months at a time. Subsection (4) requires the court to have regard to 'all the circumstances' in deciding whether to exercise its power to suspend. The court is, therefore, required to conduct an examination of all the circumstances of the case ..."

29. He concluded:

> "63. In my judgment, the decision to provide the procedural safeguards introduced by the amendment of section 4 of the 1968 Act was within the margin of appreciation available to the United Kingdom. More generous safeguards could have been introduced (and they will be when the 1983 Act is amended). But the amendment goes far enough to meet the real thrust of the criticisms made in *Connors*."

30. As to the applicant's argument that the legislation discriminated against gypsies, Dyson LJ found that although the discrimination point was one of the features of the Court's reasoning in *Connors,* it was not the main reason for the decision. Even if that was wrong, Dyson LJ considered that by addressing the lack of procedural safeguards for gypsies of local authority sites, the amendment had also gone a long way to meeting the discrimination point. While discrimination would not be cured completely until the 1983 Act was amended, it had been much mitigated. Thus to the extent that the discrimination persisted, the decision not to eliminate it altogether fell within the margin of appreciation accorded to the contracting States.

31. On 18 February 2008 the House of Lords refused the applicant's request for permission to appeal.

32. In May 2008 the applicant left Cae Garw caravan site for alternative accommodation on land owned by her brother. She claims that her departure was the result of the refusal of leave to appeal and in the face of further threats of eviction The land owned by her brother has no planning permission for residential use and its occupants, which include the applicant's brother, his six children and the applicants' parents, share minimal facilities, namely one toilet and one sink with cold running water in a shed with no lighting.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Caravan Sites Act 1968

33. Part I of the Caravan Sites Act 1968 ("the 1968 Act") provides limited security of tenure to certain occupiers of caravans and caravan sites. Section 2 provides that at least four weeks' notice of termination of a licence to occupy a caravan site must be given.

34. Section 4(1) provides that when a court makes an order for the removal or exclusion of an occupier from a caravan site, it may suspend the enforcement of that order for up to twelve months at a time.

35. Section 4(4) provides that in considering whether or how to exercise its powers under this section, the court shall have regard to all the circumstances, and in particular to the questions:

> "(a) whether the occupier of the caravan has failed, whether before or after the expiration or determination of the relevant residential contract, to observe any terms or conditions of that contract, any conditions of the site licence, or any reasonable rules made by the owner for the management and conduct of the site or the maintenance of caravans thereon;
>
> (b) whether the occupier has unreasonably refused an offer by the owner to renew the residential contract or make another such contract for a reasonable period and on reasonable terms;
>
> (c) whether the occupier has failed to make reasonable efforts to obtain elsewhere other suitable accommodation for his caravan (or, as the case may be, another suitable caravan and accommodation for it)."

36. Section 4(6) of the 1968 Act formerly excluded the court's power to suspend the enforcement of a possession order under section 4(1) in the case of possession proceedings brought by local authorities. However, the exclusion of local authority caravan sites from the ambit of the power to suspend under section 4(1) was removed by the Housing Act 2004, which entered into force on 18 January 2005, in respect of proceedings begun on or after that date.

B. The Mobile Homes Act 1983

37. The Mobile Homes Act 1983 ("the 1983 Act") was enacted, *inter alia*, to restrict the eviction from caravan sites of occupiers of caravans. It applies to any agreement under which a person is entitled to station a mobile home on land forming part of a "protected site" and to occupy it as his only or main residence and implies into licence agreements falling within the ambit of its provisions various protective terms.

38. Section 2(1) and paragraph 4 of Schedule 1 to the 1983 Act provide that the owner of a relevant site is entitled to terminate the licence only if (i) he satisfies the court that the occupier has breached a term of the licence agreement and has failed to comply with a notice to remedy the breach; and (ii) the court considers it reasonable for the agreement to be terminated.

39. Section 5(1) defines "protected site" by reference to its definition in the 1968 Act (essentially applying to land authorised for long-term residence). However, the section expressly excludes from the definition any land occupied by a local authority as a caravan site providing accommodation for gypsies.

40. Pursuant to section 321 and Schedule 16 of the Housing and Regeneration Act 2008, which was enacted on 22 July 2008, the exclusion of land used for accommodating gypsies from the definition of "protected site" in section 5(1) of the 1983 Act is removed. The amendment has entered into force in England but has not yet entered into force in Wales.

C. Judicial consideration of Article 8 in possession proceedings

41. For a general summary of domestic proceedings prior to November 2010 regarding the right of defendants to rely on Article 8 in the context of a defence to possession proceedings, see the Court's judgment in *Kay and Others v. the United Kingdom*, no. 37341/06, §§ 18-43, 21 September 2010.

42. Notably, in *Kay and others v. London Borough of Lambeth and others; and Leeds City Council v. Price and others* [2006] UKHL 10, Lord Hope of Craighead clarified that a challenge to possession proceedings could only be based either on an argument that the law itself was incompatible with Article 8; or on conventional judicial review grounds.

43. The subsequent case of *Doherty and others v. Birmingham City Council* [2008] UKHL 57, decided after the applicant's appeal was dismissed, concerned the eviction of gypsies from a local authority caravan site. Lord Hope concluded that it was open to the defendant to argue that the law itself was incompatible with the Convention because the relevant legal framework was indistinguishable from that which applied in *Connors*. He considered that in light of the clear terms of the legislation allowing the local authority possession, there was no scope for interpreting it in a manner which was Convention-compatible and continued:

> "50. ... This raises the question whether your Lordships should make a declaration of incompatibility ... The incompatibility with the appellant's article 8 rights that was to be found in section 4(6)(a) of the 1968 Act has been removed by section 211(1) of the Housing Act 2004. As already noted, a clause was included in the Housing and Regeneration Bill to remove the exclusion of local authority sites which provide accommodation for gipsies from the protection of the 1983 Act. Nevertheless, prior to its receiving the Royal Assent ..., Lord Walker favoured the making of a declaration of incompatibility in relation to section 5(1) of the 1983 Act.
>
> 51. I was at first inclined to doubt whether a declaration was necessary. The power to make a declaration ... is, after all, a discretionary one. But on reflection I agreed that it would be appropriate to make such a declaration in this case. Indeed I considered that the decision of the Strasbourg court in *Connors* left the House with no alternative but to do this. That was a judgment which was pronounced in a case against the United Kingdom. Its decision is as plain an indication as there could be that there was an incompatibility in our legislation that ought to be addressed by the United Kingdom Parliament ... In such circumstances the decision as to whether the incompatibility should remain was not for the court to take. It had to be left to the government and to Parliament, and it could not be taken for granted that the amending legislation would be passed. In the events that have happened, however, the making of a declaration has become unnecessary ..."

44. On 3 November 2010 the Supreme Court handed down its judgment in *Manchester City Council v. Pinnock* [2010] UKSC 45 ("*Pinnock*"), sitting as a panel of nine judges. The case concerned possession proceedings brought against a demoted tenant. Following a review of the case-law, the Supreme Court considered the following propositions to be well-established in the jurisprudence of this Court:

> "(a) Any person at risk of being dispossessed of his home at the suit of a local authority should in principle have the right to raise the question of the proportionality of the measure, and to have it determined by an independent tribunal in the light of article 8, even if his right of occupation under domestic law has come to an end ...
>
> (b) A judicial procedure which is limited to addressing the proportionality of the measure through the medium of traditional judicial review (i e, one which does not permit the court to make its own assessment of the facts in an appropriate case) is inadequate as it is not appropriate for resolving sensitive factual issues ...
>
> (c) Where the measure includes proceedings involving more than one stage, it is the proceedings as a whole which must be considered in order to see if article 8 has been complied with ...
>
> (d) If the court concludes that it would be disproportionate to evict a person from his home notwithstanding the fact that he has no domestic right to remain there, it would be unlawful to evict him so long as the conclusion obtains – for example, for a specified period, or until a specified event occurs, or a particular condition is satisfied."

45. The Supreme Court considered that in order for domestic law to be compatible with Article 8 of the Convention, where a court was asked by a local authority to make an order for possession of a person's home, the court had to have the power to assess the proportionality of making the order, and, in making that assessment, to resolve any relevant dispute of fact. In terms of the practical implications of this principle, the Supreme Court noted that if domestic law justified an outright order for possession, the effect of Article 8 could, albeit in exceptional cases, justify granting an extended period for possession, suspending the order for possession on the happening of an event, or even refusing an order altogether. Finally, the court observed that the need for a court to have the ability to assess the Article 8 proportionality of making a possession order in respect of a person's home might require certain statutory and procedural provisions to be revisited.

46. On 23 February 2001 the Supreme Court handed down its judgment in the joined cases of *Mayor and Burgesses of the London Borough of Hounslow v. Powell; Leeds City Council v. Hall; Birmingham City Council v. Frisby* [2011] UKSC 8 ("*Powell and others*"). In its judgment, the court extended its approach in *Pinnock* to introductory tenancies and tenancies under the homelessness regime.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

47. The applicant complained under Article 8 of the Convention that the Court of Appeal's decision to uphold the possession order constituted an unjustified breach of her right to respect for her home and her family life. Article 8 reads 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."

48. The Government contested that argument.

A. Admissibility

1. The parties' submissions

49. The Government emphasised that in the domestic proceedings before the County Court, the applicant's explicit position was that she intended in any event to leave the site when her parents left. In their view, it therefore followed that she was neither directly affected nor at risk of being directly affected by the order of 28 July 2006, which suspended possession for the period sought, or the statutory scheme under which it was made. According to the Government the applicant was now seeking to challenge the statutory scheme *in abstracto*. They therefore invited the Court to find that the applicant was not a victim within the meaning of Article 34 of the Convention.

50. The applicant denied that she could not claim victim status. She explained that she had originally received legal advice to the effect that there was no way of challenging the making of the possession order. She further indicated that she had not decided to leave the site of her own free will but because her parents were required to leave the site as a result of a possession order made in proceedings which violated their rights under Articles 8 and 14 of the Convention. She emphasised that she had stayed on the site until May 2008, when she left because of the threat of eviction as a consequence of the possession order which had been made.

2. The Court's assessment

51. The Court acknowledges that the applicant expressed the intention to leave the site when her parents did so. However, she later qualified this statement, explaining that while she still intended to leave, she wished to have the option to remain. It is further clear that she did not leave the site until 30 May 2008, some eighteen months after the suspension period stipulated by the County Court had expired. The Court further observes that, while still resident on the site, she pursued an appeal to the Court of Appeal arguing that the making of the possession order breached her rights under Article 8 of the Convention.

52. In these circumstances, the Court is satisfied that the applicant was not seeking to challenge the law in the abstract but was directly affected by the making of the possession order. She therefore can claim to be a victim of an alleged violation of her rights under Article 8 of the Convention.

53. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Was there an interference with the applicant's rights?

(a) The parties' submissions

54. The applicant maintained that there had been an interference with her right to respect for her home.

55. The Government accepted that the pitch at the site amounted to the applicant's home and that in principle a possession order would amount to an interference with her rights. However, in light of the applicant's explicit position before the County Court that she would leave the site when her parents left, and the resulting decision of the judge to suspend the possession order until that time, no interference arose in the circumstances of the case.

(b) The Court's assessment

56. As noted above, the Court is satisfied that the applicant was directly affected by the making of the possession order. It is therefore also satisfied that the making of the possession order constituted an interference with her right to respect for her home.

2. Was the interference justified under Article 8 *§ 2 of the Convention?*

(a) The parties' submissions

(i) The applicant

57. The applicant argued that the interference with her Article 8 rights was disproportionate and that a violation of both the procedural requirements and the substance of Article 8 had, as a result, occurred.

58. In respect of the procedure, the applicant claimed that she had been unable to challenge the claim for possession in the domestic proceedings. The fact that she was able to apply for suspension provided insufficient procedural protection for the purposes of Article 8. She pointed out that the amendment to the Mobile Homes Act 1983 (see paragraph 40 above) was not yet in force in Wales.

59. She further argued that the decision to grant a possession order was wholly disproportionate on the facts of her case, in light of the grounds for seeking possession, her own conduct, her personal circumstances and the positive obligation on the State to facilitate her traditional way of life. She contended that the low value of her arrears was not sufficient to justify the order and that the court could have imposed an injunction to prevent her son from residing on or visiting the site. She did not accept that an Article 8 defence would be seriously arguable only in wholly exceptional circumstances. However, even if this were the case, she considered that her circumstances were wholly exceptional.

(ii) The Government

60. The Government considered that in the present case the possession order pursued the aims of protecting the local authority's interests as owner of the site; ensuring that the statutory scheme for housing was properly applied; and, in light of the findings of misconduct in respect of the applicant's son, protecting the rights and freedoms of others who resided or might visit the site.

61. As to the necessity of the interference, the Government addressed both the applicant's procedural and substantive complaints. Regarding her procedural complaint, they explained that under the statutory scheme in place at the time, the applicant had the right to contest when any possession order could take effect. The domestic courts were under a duty to exercise their power to suspend in accordance with the requirements of the Convention. Moreover, having obtained a suspension of the possession order for a period of up to twelve months, she was entitled before the expiry of that period to argue that a further period of suspension should be granted. It was clear from the terms of the County Court judgment that in ordering suspension, the judge considered the applicant's personal circumstances and

he granted the full suspension period sought. The Court of Appeal subsequently found that the applicant's case was not a wholly exceptional one requiring examination, within the meaning of *McCann v. the United Kingdom*, no. 19009/04, § 54, ECHR 2008; and *Kay and Others v. the United Kingdom*, no. 37341/06, § 73, 21 September 2010. The Government considered that the scheme itself and the manner in which it was applied in the applicant's case were sufficient to satisfy the requirements of Article 8 of the Convention. They distinguished the Court's judgment in *Connors*, cited above, on the basis that since that case was decided, section 4 of the 1968 Act had been amended (see paragraph 36 above) which, they argued, resulted in the necessary degree of procedural protection being afforded to the present applicant.

62. The Government also argued that the making of the possession order was proportionate as a matter of substance. First, the applicant could not realistically have requested a suspension beyond 24 November 2006 as she planned to leave the site on that date. Second, the order was proportionate given the findings of misconduct as regards the applicant's son and the absence of compelling reasons which would make her case an "exceptional" one. As to the applicant's suggestion that the County Court could simply have made an injunction to prevent the applicant's son from living on the site, the Government contended that the applicant could not succeed in her Article 8 complaint simply by arguing that some lesser step might properly have been taken.

(b) The Court's assessment

63. The parties did not dispute that the interference was "in accordance with the law" and pursued a legitimate aim. The question remaining for examination by the Court is whether the interference was "necessary in a democratic society" in pursuit of that aim. 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 *Connors*, cited above, § 81). 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 (see *Kay*, cited above, §§ 65-66).

64. 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 (see *Connors*, cited above, § 83; *McCann*, cited above, § 49; and

Kay, cited above, § 67). 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 *Chapman v. the United Kingdom* [GC], no. 27138/95, § 92, ECHR 2001-I; *Connors*, cited above, §§ 83 and 92; and *Kay*, cited above, § 67).

65. As the Court has previously emphasised, 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 (see *McCann*, cited above, § 50; *Kay*, cited above, § 68; and *Paulić v. Croatia*, no. 3572/06, § 43, 22 October 2009).

66. It is clear that before the County Court, the applicant sought to challenge the making of the possession order in her case, and not merely to suspend its effect. The judge considered himself bound by the judgment in the prior cases of *Kay* and *Price* and concluded that the only possible challenges to the making of the possession order were to the law itself or on conventional judicial review grounds (see paragraph 16 above). The applicant was therefore unable to challenge the making of a possession order based on her personal circumstances.

67. The Court observes that, unlike in *Connors*, the applicant in the present case was able to argue for a suspension of the possession order for up to twelve months. Moreover, before the expiry of any suspension period granted she could seek a further extension. In deciding whether to grant a suspension, the judge was required to take into account the applicant's personal circumstances. There is no doubt that this amendment provides welcome additional protection to individuals faced with eviction from their homes.

68. However, the fact remains that the applicant was not able to argue that no possession order ought to have been made at all. The possibility of suspension for up to twelve months of the possession order is inadequate, by itself, to provide the necessary procedural guarantees under Article 8. Although further suspensions may be granted, suspension merely delays, and does not remove, the threat of eviction. The Court cannot accept that the fact that an individual may effectively be able to remain in her home in the long-term by making repeated applications to extend suspension of a possession order removes any incompatibility of the procedure with Article 8. It is further significant that in the present case the County Court judge considered the applicant's personal circumstances to be such that suspension was justified and he granted a suspension for the full period

sought. In the circumstances it is not possible for the Court to predict what decision he might have reached on the granting of the possession order had he considered it open to him to refuse the grant on the basis of personal circumstances.

69. Finally, the Court observes that an amendment to the Mobile Homes Act 1983 permits a court considering whether to make a possession order to examine the reasonableness of the termination of the licence (see paragraph 40 above). That amendment has entered into force in England but not in Wales. It would appear that, once it does so, domestic courts in Wales will be able to assess the proportionality of a proposed eviction in compliance with the procedural requirements of Article 8.

70. In conclusion, the applicant's attempt to contest the making of a possession order failed because it was not possible at that time to challenge the decision to seek a possession order on the basis of the alleged disproportionality of that decision in light of personal circumstances. Accordingly, the Court finds that the procedural safeguards required by Article 8 for the assessment of the proportionality of the interference were not observed. As a result, the applicant was dispossessed of her home without any possibility to have the proportionality of her eviction determined by an independent tribunal. It follows that there has been a violation of Article 8 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

71. The applicant complained that the making of the possession order constituted a violation of her rights under Article 14 taken together with Article 8 of the Convention. Article 14 of the Convention 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."

72. The Court considers that, like her complaint under Article 8, the present complaint is neither manifestly ill-founded is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

73. However, the Court has found above a violation of Article 8 of the Convention. It is of the view that no separate issue arises under Article 14 of the Convention and therefore finds it unnecessary to examine this complaint separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Article 41 of the Convention provides:

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

A. Damage

75. The applicant claimed 11,000 euros (EUR) in respect of non-pecuniary damage for the anxiety and distress suffered as a consequence of the violation of her rights under Article 8 taken alone and taken together with Article 14 of the Convention.

76. The Government considered the sum of EUR 11,000 excessive and argued that EUR 2,000 was adequate to compensate any finding of a procedural violation of Article 8 in the applicant's case.

77. Although the Court has found a procedural violation of Article 8 of the Convention, it reiterates that it is not possible to speculate as to what would have been the outcome if the applicant had been able to contest the making of the possession order on the basis of her personal circumstances. However, it is satisfied that as a result of the making of a possession order which the applicant was unable to challenge, the applicant suffered some feelings of frustration and injustice. These are likely to have been mitigated by the power of the County Court to suspend the order for up to twelve months, a power which the court used in her case. The Court therefore awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant also claimed 12,133.69 pounds sterling (GBP), inclusive of VAT, for the costs and expenses incurred before the Court. This sum was composed of solicitors' fees of GBP 5,781.22 for twenty-two hours' work already carried out and GBP 5,208 in anticipated fees; and counsel's fees of GBP 1,150. She further referred to a costs order made by the Court of Appeal in the domestic proceedings which has not yet been enforced and seeks reimbursement of those costs in the event of enforcement.

79. The Government considered the sums claimed to be excessive, particularly as they included anticipated costs which were inappropriate in light of the fact that there was no oral hearing in the case. They argued that the claim in respect of the costs order was unsustainable as the applicant had not alleged that she had been ordered to pay these costs.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the vast majority of the claim for anticipated costs as, following the submission of her written submissions, any significant costs were not "necessarily" incurred. It further considers the solicitors' fees claimed in respect of work done to be excessive having regard to the fact that the applicant's written observations were submitted by counsel. Taking into consideration the sum of EUR 850 awarded by the Council of Europe by way of legal aid, it therefore finds it reasonable to award the sum of EUR 4,000 for the proceedings before the Court. It further considers that in the event that the costs order awarded by the Court of Appeal is enforced against the applicant, these costs should be reimbursed by the Government.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 14 taken together with Article 8 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into pounds sterling at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousand Euros) in respect of non-pecuniary damage;

(iii) EUR 4,000 (four thousand Euros), inclusive of any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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; and
(c) that in the event that the costs order awarded by the Court of Appeal against the applicant on 12 December 2007 is enforced against her, these costs should be reimbursed by the Government;

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

Done in English, and notified in writing on 18 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Lech Garlicki
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge De Gaetano is annexed to this judgment.

L.G.
F.A.

SEPARATE OPINION OF JUDGE DE GAETANO

My only reservation in this case is with the principle as set out in the second sentence of paragraph 65. This sentence is a verbatim reproduction of what is found in § 50 of *McCann* and in § 68 of *Kay* (the sentence was slightly modified, but not in substance, in § 43 of *Paulić*). However, all the cases quoted in support of the principle as thus formulated (including, indirectly, *Connors*) are cases where the landlord was either the Government or a local authority. None were cases where the landlord was a private individual. In my view while it is perfectly reasonable to require that an eviction or repossession notice issued by the Government or by a local authority – both of which are normally under a public law obligation to provide accommodation for people within their jurisdiction – or possibly even by a private entity in receipt of public funds, should be capable of being challenged on the grounds of proportionality, when the landlord is a private individual the tenant's right should in principle be limited to challenging whether the occupation – tenancy, lease, encroachment concession, et cetera – has in fact come to an end according to law. In this latter case the proportionality of the eviction or repossession in light of the relevant principles under Article 8 should not come into the equation. This is not to say, of course, that the Government may not, by legislation, impose restrictions on the use of the property by the landlord upon or after the termination of the occupancy, from which restrictions the last tenant or occupant might even benefit (see, by way of analogy, *James and Others v the United Kingdom*, no. 8793/79, 21 February 1986; *Hutten-Czapska v. Poland*, [GC] no. 35014/97, 19 June 2006); but this is a totally different issue from what is being proposed in the second sentence of paragraph 65.

As the late Professor A. L. Goodhart said, 'The principle of a case is not to be found in the reasons given in the opinion'; it should, instead, be found by taking account of the facts treated by the judge as material, and his decision based on those facts[1]. It is precisely to prevent what we have said in the second sentence of paragraph 65 from being extrapolated to a different context that I would have preferred that the principle should have been qualified or otherwise restated.

[1] Goodhart, A.L., *Essays in Jurisprudence and the Common Law*, (Cambridge University Press), 1931, p. 25.