



Court examines private versus public landlord-tenant relationships, dismisses case brought by a private tenant complaining about a possession order

In its decision in the case of [F.J.M. v. the United Kingdom](#) (application no. 76202/16) the European Court of Human Rights has unanimously declared the application **inadmissible**. The decision is final.

The case concerned a possession order against a tenant after the landlords, who were also her parents, defaulted on their mortgage payments. The applicant complained under Article 8 (right to respect for private and family life and the home) that the UK courts had refused to carry out a balancing exercise between her rights as a tenant to not lose her home and the mortgagee's right to be repaid.

The Court reiterated that losing one's home was an extreme interference with one's rights which in principle should lead to a weighing up of the competing rights involved by an independent tribunal.

However, in a [judgment concerning Croatia](#) the Court had recently clarified that there is a distinction between public authority landlords and private landlords. In particular, where possession is sought by a private individual or body, the balancing of the parties' competing interests can be embodied in domestic legislation, and it is not, therefore, necessary for an independent tribunal to weigh up those interests again when considering a claim for possession.

The Court confirmed this distinction in the present case, finding that the domestic legislation had taken account of the competing interests at stake and that the finance company (as mortgagee) and the applicant (as the mortgagor's tenant) had entered voluntarily into a contractual relationship in respect of which the legislature had prescribed how each of their Convention rights were to be respected.

Indeed, if a private tenant such as the applicant could require an independent tribunal to conduct a balancing exercise before making a possession order, the resulting impact on the private rental sector would be wholly unpredictable and potentially very damaging.

The authorities had therefore been entitled to regulate tenancies such as the applicant's through legislation intended to balance the Convention rights of the individuals concerned.

Principal facts

The applicant, F.J.M., is a British national who was born in 1970 and lives in Abingdon. She suffers from mental health problems.

In May 2005 the applicants' parents bought a house with a mortgage, pledging the house as security. The applicant lived there, paying rent to her parents under an assured shorthold tenancy.

However, the parents fell into arrears on the mortgage payments and in 2012 the mortgagee sought a possession order to bring the applicant's tenancy to an end.

The applicant challenged the possession order before the domestic courts, without success. The courts, ultimately the Supreme Court in 2016, found that she was not entitled to require the courts to carry out a balancing exercise with regard to the competing interests involved in her case.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 December 2016.

Relying on Article 8 (right to respect for the home), the applicant complained that the possession order against her had been disproportionate and that the domestic courts had refused to carry out a balancing exercise between the competing interests involved, namely her right to not lose her home and the mortgagee's right to be repaid.

The decision was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Ksenija **Turković** (Croatia),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Gilberto **Felici** (San Marino),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

The Court reiterated that losing one's home was 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 request that an independent tribunal weigh up the competing rights involved.

The Court acknowledged that it has primarily applied that principle in cases where applicants were living in State-owned or socially-owned accommodation.

However, in a recent judgment, [Vrzić v. Croatia](#) (no. 43777/13 of July 2016), the Court had made a distinction between public authority landlords and private landlords since, in private landlord cases, other private interests were at stake which had to be weighed against those of the tenant. In that case, the Court had expressly acknowledged for the first time that where possession was sought by a private individual or body, the balancing of the parties' competing interests could be embodied in domestic legislation, and it was not, therefore, necessary for an independent tribunal to weigh up those interests again when considering a claim for possession.

The Court developed the *Vrzić* judgment in the applicant's case, agreeing with the UK Supreme Court that what set claims for possession by private sector owners against residential occupiers apart is that the two private individuals or entities (in the present case the finance company as mortgagee and the applicant as the mortgagor's tenant) had entered voluntarily into a contractual relationship in respect of which the legislature had prescribed how each of their Convention rights were to be respected. If the domestic courts could override the balance struck by the legislation in such a case, the Convention would be directly enforceable between private citizens so as to alter the contractual rights and obligations that they had freely entered into.

Indeed, the Court observed that in drafting the relevant domestic legislation the UK authorities had had regard, among other things, to the general public interest in reinvigorating the private residential rented sector, something which the domestic courts had accepted was best achieved through contractual certainty and consistency in the application of the relevant law. In the present case the applicant had agreed to the terms of the tenancy, and the applicable legislation clearly defined the nature of those terms and the circumstances in which the tenancy could be brought to an end. The Court added, in line with the UK Supreme Court's view, that if a private tenant could nevertheless require a court to conduct a proportionality assessment before making a possession order, the resulting impact on the private rental sector would be wholly unpredictable and potentially very damaging.

Finally, it noted that the domestic legislation had made provision for cases of exceptional hardship by allowing the courts to delay enforcement of possession orders for a certain period of time.

In sum, even though this particular applicant's circumstances were undoubtedly deserving of sympathy, the Court held that, in view of the specific features of the private rental market, the authorities were entitled to regulate tenancies such as the applicant's assured shorthold tenancy through legislation intended to balance the Convention rights of the individuals concerned.

The applicant's Article 8 complaint had therefore to be rejected as manifestly ill-founded.

The decision is available only in English.

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