



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

FOURTH SECTION

DECISION

Application no. 31673/11
Cleveland PINNOCK and Christine WALKER
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 24 September 2013 as a Chamber composed of:

Ineta Ziemele, *President*,
David Thór Björgvinsson,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having regard to the above application lodged on 28 April 2011,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Cleveland Pinnock (“the first applicant”) and Ms Christine Walker (“the second applicant”), are British nationals, who were born in 1943 and 1963 respectively and live in Manchester. They were represented before the Court by Mr J. Stringer of Platt Halpern, a firm of solicitors based in Manchester.

A. The circumstances of the case

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

1. The applicant's tenancy

3. In November 1978 Manchester City Council granted the first applicant a tenancy of a local authority property. Since that time, he has resided there with the second applicant and, from time to time, with all or some of their five children. Following the enactment of the Housing Act 1980 he became a secure tenant. A secure tenant cannot be evicted unless the landlord establishes to the satisfaction of the court that one of the conditions for eviction stipulated in primary legislation (e.g. non-payment of rent or nuisance to neighbours) is satisfied; and that it is reasonable to make an order for possession.

4. In March 2005 Manchester City Council issued proceedings for a demotion order on the basis of the alleged antisocial behaviour of the first applicant's children and of the second applicant. In March 2006 permission was granted to consolidate the claim with a claim for possession.

5. On 8 June 2007 the Recorder dismissed the claim for possession on the basis that an immediate order would be draconian bearing in mind the length of the tenancy and the first applicant's lack of any direct involvement in criminal activity. However, he found that a large number of serious allegations had been made out and that a demotion order was therefore appropriate. The secure tenancy was accordingly terminated and replaced with a demoted tenancy for the period of one year. The demoted tenancy conditions provided that the first applicant was responsible for the behaviour of every person living in or visiting his home and that neither he nor those living with or visiting him were permitted to harass or to cause a nuisance, annoyance or disturbance to any other person. If the demoted tenancy conditions were not respected, the local authority would be entitled to seek possession.

6. On 6 June 2008 Manchester City Council served notice of proceedings to terminate the demoted tenancy on the ground that the first applicant was in breach of the demoted tenancy conditions. The reasons given were that one of the first applicant's sons, who did not live at the property, had caused nuisance, annoyance and disturbance by resisting arrest and obstructing the police while visiting the property; and another of the first applicant's sons had caused nuisance, annoyance and disturbance by committing offences of dangerous driving causing death and driving a vehicle while disqualified and uninsured 1.55 miles from the property.

7. The first applicant requested a review of the decision, which took place on 2 July 2008. On 3 July 2008 the decision to terminate the demoted tenancy was upheld.

2. The possession proceedings

8. On 15 August 2008 possession proceedings were issued in the County Court by Manchester City Council. On 22 December 2008 the County Court

made an order for possession. It expressed the view, consistent with previous case-law of the Supreme Court, that the relevant legislation did not permit a court to assess, under Article 8 of the Convention, the proportionality of an eviction in the context of a demoted tenancy. It granted the first applicant permission to appeal to the Court of Appeal.

9. On 31 July 2009 the Court of Appeal dismissed the first applicant's appeal. On 9 December 2009 the Supreme Court granted the first applicant leave to appeal.

10. On 3 November 2010 the Supreme Court dismissed the appeal. Overturning its previous case-law, the court found that it was open to the first applicant to raise a defence to the possession claim relying on Article 8 of the Convention, explaining:

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

11. The Supreme Court explained the approach to be taken where there was an Article 8 argument in an eviction case:

“52 ... The question is always whether the eviction is a proportionate means of achieving a legitimate aim. Where a person has no right in domestic law to remain in occupation of his home, the proportionality of making an order for possession at the suit of the local authority will be supported not merely by the fact that it would serve to vindicate the authority's ownership rights. It will also, at least normally, be supported by the fact that it would enable the authority to comply with its duties in relation to the distribution and management of its housing stock, including, for example, the fair allocation of its housing, the redevelopment of the site, the refurbishing of sub-standard accommodation, the need to move people who are in accommodation that now exceeds their needs, and the need to move vulnerable people into sheltered or warden-assisted housing. Furthermore, in many cases (such as this appeal) other cogent reasons, such as the need to remove a source of nuisance to neighbours, may support the proportionality of dispossessing the occupiers.”

12. It concluded that in virtually every case where a residential occupier had no contractual or statutory protection and the local authority was entitled to possession as a matter of domestic law, there would be a “very strong case” for saying that making an order for possession would be proportionate. However, it added that in some cases there might be factors which would lead to a different conclusion.

13. As to the outcome in the applicant's case, the Supreme Court recognised that it could remit the matter to the County Court to decide the case or it could decide the case itself. It considered that if the latter course of action were possible, it should be followed since it was more than three years since the demotion order had been made and more than two years since the commencement of the possession proceedings. It therefore turned to consider the particular circumstances of the first applicant's case in more detail.

14. Setting out the events which had led to the making of the demotion order, the court noted that they were “many and serious”. It observed that anti-social behaviour injunctions had been granted against the second applicant and one of the first applicant’s sons in 2003. The second applicant had subsequently breached the injunction. Anti-social behaviour orders had been granted against three of the first applicant’s other sons. Each of them had been breached. Further, each of the five children had appeared before the criminal courts where they had been convicted of a variety of offences, including a racial offence, driving while disqualified and blackmail. The Supreme Court noted that in a schedule to his judgment, the Recorder had listed no fewer than thirty-two crimes or serious nuisances which were committed by the second applicant and the first applicant’s five children between 1992 and 2006.

15. The court summarised the arguments for and against the making of a possession order. It discussed the incidents to which Manchester City Council had referred in its notice seeking to terminate the demoted tenancy. It also examined the first applicant’s claim that it would be disproportionate to evict him and the second applicant from their home of thirty years given that none of the children now lived with them; none of the matters relied on constituted a breach of the tenancy agreement; the second applicant had committed no nuisance or offence since 2003; there had been no further incidents at all since February 2008; and there were other remedies such as anti-social behaviour orders and injunction which would be more effective deterrents to prevent the children from returning to the area. The court continued:

“125. We see the force of these points. But, unless there is some dispute of fact which needs to be resolved, we are not persuaded that this is a case where the occupiers of the property have any real prospect of successfully relying on Article 8 proportionality, or indeed on the contention that the decision of the Council to issue and maintain possession proceedings against them was unreasonable.”

16. Setting out its broad findings on the facts of the case, the court said:

“126. The history of crime, nuisance and harassment on the part of those living at the property in the period leading up to the demotion order made in June 2007 was extraordinary in its extent and persistence. Were it not for Mr Pinnock being innocent of any such conduct on his own account, we doubt whether the Recorder would have thought it right to refuse the Council’s original claim for possession. As it was, he made it clear that the demotion order represented what was very much a last chance for Mr Pinnock (and for Ms Walker).

127. Despite this being their last chance, as we have explained, there were incidents at or near the property ... In short, there were three serious incidents in a year, one in the property, two in its immediate vicinity. Mr Pinnock’s children were responsible for all of them. Moreover, there is every sign that Ms Walker, at least, has learnt nothing. All this happened under the shadow of a demotion order.

128. The argument that none of the children lives in the property any longer is of scant assistance to Mr Pinnock since his case is that none of them has lived there since

the demotion order was made. Even if that is true, it is clear that the children visit the property, and, unfortunately, when they do, they appear to commit crimes and make a nuisance of themselves in the vicinity. Furthermore, there is no guarantee that at least some of the children will not stay at the property on a temporary, intermittent or permanent basis. For the Council to evict Mr Pinnock on such grounds may well seem to him harsh. However, in the light of the history, the demotion order, the interests of their neighbours, and the Council's right and duty to manage and allocate its housing stock, the decision cannot be characterised as unreasonable or disproportionate.

129. If some of the children did in fact live in the property, then Mr Pinnock has been dishonest, and the Council's case is even stronger ...

130. The fact that some (or even all) of the grounds justifying the rationality and proportionality of the Council's decision to seek possession may not have involved any breach of the tenancy agreement does not give rise to a problem. There is no requirement ... that they should, and, as already mentioned, there is no warrant for implying any such requirement into the statute. The fact that Mr Pinnock may not be responsible for the incidents is not of great significance: the order for possession was not sought or made to punish him. The fact that there may be other remedies to deal with the children is also of little force: rather than seeking ASBOs or ASBIs to keep them out of the vicinity, it is scarcely irrational or disproportionate to decide to remove their parents, whom they undoubtedly visit, even if (which is an unresolved issue) they do not live with them."

17. It therefore concluded that it was unnecessary to remit the case to the County Court for the question of proportionality to be determined, observing that the only issues of fact which were in dispute in relation to the post-demotion order incidents were whether the first applicant's son lived at the property at the time he caused death by dangerous driving; and whether the behaviour of his other son in resisting arrest actually caused any nuisance locally. It considered that it was not necessary to resolve either of these issues of fact in order to decide the case. The court was accordingly satisfied that it was proportionate to make the order, irrespective of the truth relating to the two possible issues of fact.

18. On 9 February 2011 the Supreme Court set aside the order of the County Court of 22 December 2008 and made a new order for possession based on its conclusions in its November 2010 judgment.

B. Relevant domestic law

19. The Housing Act 1980 introduced the secure tenancy regime. Its provisions were consolidated in the Housing Act 1985 ("the 1985 Act"), which itself was subsequently amended.

20. Pursuant to 82A of the 1985 Act as amended, the court has the power to make a demotion order in respect of a secure tenancy. A demotion order results in a tenancy ceasing to be a secure tenancy and becoming a "demoted tenancy". Section 82A(4) states that two conditions must be satisfied before a court may make a demotion order. First, the tenant or someone living with him must have engaged, or threatened to engage, in

(i) housing-related anti-social conduct or (ii) conduct which consists of or involves using the premises for unlawful purposes. Second, it must be reasonable to make the order.

21. The Housing Act 1996 (“the 1996 Act”) sets out the operation of the demoted tenancy regime. Section 143B(1) provides that if a tenancy is demoted the demotion will last for a year, unless the landlord brings possession proceedings within that year. If no proceedings are brought, the demoted tenancy will become a secure tenancy at the expiry of the one-year period. If proceedings are brought within the year and an order for possession is made, the tenancy ends.

22. Section 143D(1) of the 1996 Act provides that the court must make an order for possession in proceedings brought by the local authority in respect of a demoted tenancy unless it thinks that the appropriate procedure has not been followed.

COMPLAINT

23. The applicants complained under Article 8 of the Convention of the Convention that the making of the possession order on 9 February 2011 violated their right to respect for their home.

THE LAW

24. The applicants contended that the decision of the Supreme Court to make a possession order was not compatible with Article 8 of the Convention, which provides:

“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.”

25. The applicants argued in particular that the Supreme Court had failed to apply the established principle of proportionality; indeed, according to the applicants, the principles actually applied were impossible to ascertain from its judgment. They claimed that the court had failed to apply the principle that there must be a rational connection between the proposed interference with the right to respect for the home and the legitimate aim relied upon. As the legitimate aim in their case was to prevent recurrences of criminal and anti-social behaviour connected with the applicants’ home,

it was clear that when the possession order was finally made in February 2011 there was no rational connection between eviction and the achievement of that aim. The aim had been achieved when the first applicant's sons ceased to reside at the property, and there had been no allegations of nuisance, criminal activity or other anti-social behaviour for three years. In any event, the first applicant's sons had many connections in the area and the fact that the applicants no longer resided in the property would have no effect on the sons' continued frequentation of the area. In any event, other less intrusive measures were available to control anti-social behaviour, including anti-social behaviour orders and anti-social behaviour injunctions. Accordingly, the eviction of the first applicant was wholly unnecessary to achieve the aim pursued, and profoundly disproportionate having regard to the first applicant's blamelessness, age, health, length of residence, support from his neighbours and other personal circumstances. Finally, the applicants contended that the failure of the Supreme Court to have the disputed issues of fact resolved by a court deprived the first applicant of the opportunity for an independent and impartial tribunal to assess the justification for and proportionality of the eviction.

26. The Court accepts that the applicants' eviction interfered with their right to respect for their home. It has previously emphasised that 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, for example, *McCann v. the United Kingdom*, no. 19009/04, § 50, ECHR 2008; and *Kay and Others v. the United Kingdom*, no. 37341/06, § 68, 21 September 2010).

27. 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 the primary responsibility for making the assessment of the necessity is placed by the Convention on the national authorities, the final evaluation as to whether the reasons relied on by them for the interference are relevant and sufficient remains subject to review by the Court in terms of the requirements of the Convention.

28. In making their assessment of the necessity of the measure, the national authorities enjoy a margin of appreciation in recognition of the fact that they are better placed than international courts to evaluate local needs and conditions. The margin afforded to national authorities will vary depending on the Convention right in issue and its importance for the individual in question (see *Kay and Others*, cited above, § 66). The Court has made it clear that, in the great majority of cases, an order for possession

can be made in summary proceedings and that it will be only in very exceptional cases that an applicant will succeed in raising an arguable case on Article 8 grounds which would require a court to examine the issue in detail (see *McCann*, cited above, § 54; *Kay and Others*, cited above, § 73). Where there is no reason to doubt the procedure followed, the margin of appreciation allowed to the domestic courts in such cases will therefore be a wide one.

29. In the present case, the applicants do not argue that they were unable to contest the making of a possession order by relying on its alleged lack of proportionality having regard to their personal circumstances. The Court is satisfied that it was open to the applicants to challenge the order by invoking their rights under Article 8 of the Convention (see paragraph 10 above and compare *McCann*, cited above, § 55; and *Kay and Others*, cited above, § 74). The applicants further do not contest the legality of the making of the order. The sole question for the Court is whether the decision of the Supreme Court to make a possession order can be regarded as proportionate to the legitimate aim pursued.

30. The applicants consider that the legitimate aim pursued by the possession order was the prevention of recurrences of criminal and anti-social behaviour connected with the applicants' home. However, while the removal of a source of nuisance to neighbours was undoubtedly one of the aims pursued by the possession order, the evidence before the Court discloses that another important aim was to protect the rights and freedoms of others, namely the local authority's right to manage its housing stock and to apply properly the statutory scheme for housing provision for the protection of other intended beneficiaries of the complex arrangements put in place under domestic legislation. This further aim was thus cited by the Supreme Court in its analysis of the applicants' case (see paragraph 11 above). The proportionality of the applicants' eviction is to be measured against these twin aims.

31. When assessing the proportionality of making the order, the Supreme Court identified the relevant facts which supported the seeking of a possession order, pointing to the "many and serious" events which had occurred. It noted the extensive involvement of the first applicant's sons in criminal activity in the vicinity of the property. It also pointed out that various anti-social behaviour orders and injunctions had been made and subsequently breached by the first applicant's sons and the second applicant. It emphasised that even once the demotion order had been made, and the applicants were aware of the very real risk that they ran of losing their tenancy altogether, there were three serious incidents involving the first applicant's sons in one year, one in the property and two in its immediate vicinity (see paragraphs 14 and 16 above).

32. The Supreme Court also examined the first applicant's arguments against the making of a possession order. As to his reliance on the fact that

none of his sons resided in the property any longer, the court considered this to be of scant assistance to him given that it was his case that none of the children had lived in the property since the making of the demotion order. It was clear from the events of the subsequent year that they continued to visit and to engage in criminal activity when they did. There was further no guarantee that they would not return to reside at the property in the future, even if only on a temporary basis. The court accepted that the first applicant was not personally involved in any of the incidents, but explained that the possession order was not intended to punish him. Although there were alternative remedies available to deal with the first applicant's sons, the court did not consider it disproportionate to decide instead to remove the parents whom they undoubtedly visited. It found that it was not disproportionate to make the order in light of the history of the case, the demotion order, the interests of the neighbours and the local authority's right and duty to manage and allocate its housing (see paragraphs 15-16 above).

33. It is clear from the foregoing that the Supreme Court had regard to all relevant factors when making the possession order and weighed the first applicant's interests in remaining in the property against the interests of the local authority in seeking his eviction. It provided detailed reasons which, far from capable of being taxed as arbitrary or unreasonable, were relevant and sufficient for its conclusion that the applicants' eviction would not be disproportionate. In so far as the applicants complain about the failure of the Supreme Court to resolve disputed matters of fact, it is evident from the court's judgment that, even if the matters had been resolved in the first applicant's favour, this would not have affected the outcome of the case.

34. The Court therefore concludes that the Supreme Court did not exceed its margin of appreciation in finding the applicants' eviction to be proportionate. It follows that the facts of the case disclose no appearance of a violation of Article 8. The application is accordingly inadmissible as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority,

Declares the application inadmissible.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President