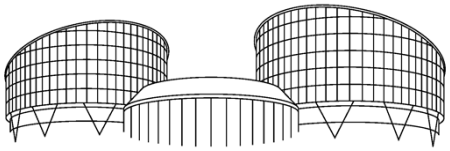

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 66387/10
J.L.
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 30 September 2014 as a Chamber composed of:

Ineta Ziemele, *President*,
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges*,

and Françoise Elens-Passos, Section Registrar,

Having regard to the above application lodged on 4 November 2010,

Having regard to the preliminary observations on admissibility submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, J.L., is a British national who was born in 1946 and lives in Leeds. The President granted the applicant's request for her identity not to be disclosed to the public (Rule 47 § 3). She was represented before the Court by Mr K. Lomax of Lester Morrill Solicitors, a lawyer practising in Leeds.

2. The United Kingdom Government ("the Government") were represented by their Agent, Ms R. Tomlinson of the Foreign and Commonwealth Office.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant was married to an army officer. He was an alcoholic who had been violent towards her and had abused one of her twin daughters. In 1989 he resigned from the army following a court martial which found him guilty of ungentlemanly conduct. The army therefore no longer had any duty to house the applicant but on compassionate grounds, because of her husband's misconduct towards her and her family, it was arranged that she should move to Ministry of Defence accommodation in Leeds where her daughters, then aged thirteen, were attending boarding school.

5. The applicant and her daughters moved into the accommodation in Leeds in September 1989 as "irregular occupiers". However, the accommodation in Leeds was supposed to be temporary until the applicant was able to obtain housing through the local council and her licence to occupy was terminated on 26 September 1990.

6. The Ministry of Defence was granted a possession order in July 1993 and attempts were made to find alternative accommodation for the applicant and her children. However, the applicant has a history of spinal surgery, osteoarthritis, poor mobility and chronic pain. She is currently registered disabled and has to use a wheelchair. When an offer of alternative accommodation was made, it was refused because it was not suitable for wheelchair use.

7. On 19 July 1994 a letter was sent from the headquarters of the Eastern District of the army stating that the applicant was ill-advised to reject the offer because she had removed herself from the Leeds Council priority housing list and the only alternative was to rent or purchase in the private sector. It was asserted that the applicant had been rejecting all attempts to provide help and advice and, in the absence of a specific plan to obtain alternative accommodation, there was no alternative but to apply for a warrant of possession.

8. In December 1994 a further letter was sent indicating that the army would do everything they could to help in a difficult situation. The letter also asked for a medical report and an indication of what steps would be taken. Nothing appears to have happened following receipt of the letter and the applicant and her family remained in occupation.

9. In September 1996 the Ministry of Defence sold its property to a company called Annington Homes and leased it back. In October 1999 it was said that the applicant's dwelling was surplus to requirements for the Ministry of Defence and should be handed back to Annington Homes. On 4 November 1999 a fresh notice to quit was served on the applicant.

10. There was a further delay and on 13 July 2001 a warrant for possession was sought based on the order made in 1993. The court refused

to grant the order as it concluded that a fresh tenancy had been granted since 1993.

11. Due to a shortage of Ministry of Defence housing in the Leeds area, a further notice to quit was served in November 2005. In April 2007 the Ministry of Defence Assistant Director of Housing met with Leeds Social Services. At the meeting social services offered to write to the applicant to provide help and advice on re-housing.

12. On 26 June 2007 the Ministry of Defence commenced possession proceedings in Leeds County Court. On 3 September 2007 the applicant served a defence and counterclaim in which she asserted that the claim for possession was unlawful and would constitute a breach of her rights under Article 8 of the Convention. At the time the applicant was living in the property with her two daughters. One daughter suffered from mental health problems while the other daughter had a young son who suffered from Crohn's disease.

13. On 22 November 2007 the case was transferred to the Administrative Court.

14. On 5 May 2009 the Administrative Court made a possession order in favour of the Ministry of Defence. It observed that following *Doherty and others v. Birmingham City Council* [2008] UKHL 57 the applicant could only challenge the decision to bring possession proceedings and not the proceedings themselves. In the present case there had been no obligation on the authority to enquire into the personal circumstances of the applicant and even if it were aware of her circumstances, personal disability would not generally provide a proper basis for declining to take proceedings. Moreover, while the Ministry of Defence had not always acted in a way which lived up to the proper standards of good administration, there was no reason to doubt that there was a real need for the property. As the Ministry's need for available accommodation overrode the applicant's rights under Article 8, it followed that she could not stay in the property forever and therefore could not have security. Possession had to be attained in due course, although it fell to Leeds City Council to consider the question of re-housing.

15. On 21 September 2009 the Court of Appeal refused to grant the applicant leave to appeal. Following renewal of the application, permission was again refused on 28 January 2010.

16. The applicant introduced her complaints to the Court on 4 November 2010. At that time the possession order had not been executed as suitable alternative accommodation had not been identified.

17. A few days later the Supreme Court handed down its judgment in *Manchester City Council v. Pinnock* [2010] UKSC 45 (see paragraphs 25-28 below). In that judgment 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.

18. In February 2011 the Secretary of State for Defence decided to take action to enforce the possession order. He applied for and obtained a writ of possession issued on 9 March 2011.

19. The applicant subsequently issued domestic proceedings, requesting that the decision to enforce the possession order made against her be judicially reviewed in light of the judgment in *Pinnock*. In particular, she submitted that Article 8 entitled her to a single proportionality review of the eviction process and following *Pinnock* this review had to be conducted when the domestic court was deciding whether or not to make a possession order. As a consequence, such a right could not arise at the enforcement stage.

20. On 7 November 2011 the Court adjourned the application pending the outcome of the domestic proceedings.

21. The High Court handed down its judgment on 30 July 2012. It held, *inter alia*, that there was no reason to doubt that Article 8 remained engaged at the enforcement stage, as enforcement itself involved a significant and direct infringement of the tenant's occupation of her home. That being said, the court held that it would not be in every case that a proportionality review would be appropriate at the enforcement stage. Indeed, where the question of proportionality had been raised and addressed at the possession stage, or where it could have been raised and addressed, it would be difficult for the tenant successfully to invoke it at the enforcement stage absent a marked change in circumstances or some other exceptional reason justifying its consideration. In the vast majority of cases where enforcement took place within days or weeks of the possession order, it would be unlikely that such justification could be established. In the present case, the court noted that the domestic courts had been unable to consider Article 8 in making the possession order, and concluded that in such circumstances she was entitled to a proportionality review at enforcement stage.

22. The High Court therefore conducted a proportionality review in the applicant's case. It considered her longstanding mobility and ill-health difficulties; her daughter's longstanding psychiatric disorder and the impact a forced eviction would have on her; the family's need for particular and accessible accommodation; and the hardship they would face if required to move. However, given the Secretary of State for Defence's legitimate aim in seeking possession (his right to do so under domestic law and his public law duty effectively to manage the Ministry of Defence's resources), and in light of the high threshold identified by the Supreme Court in both *London Borough of Hounslow v Powell and Others* [2011] UKSC 8 and *Pinnock* (see paragraphs 26-38 below), the court held that the applicant's

circumstances did not render it disproportionate to seek enforcement of the possession order.

23. In reaching this conclusion, the court found the following considerations to be of particular relevance: the high threshold that applied to an Article 8 defence in possession proceedings applied with even more force at the later stage; the Ministry of Defence did not have the public function of providing social housing generally; Leeds City Council had such a public function, and it had awarded the applicant the highest level of priority possible; even if the family had to be placed in temporary accommodation pending the identification of a suitable permanent home, they would be placed together in accommodation that suited their needs; the applicant had been warned that she could not remain in the property indefinitely; the Secretary of State had refrained from seeking to enforce the possession order for more than a year and a half after it became enforceable to give the applicant an opportunity to find alternative accommodation; no one could say with any certainty that the applicant's situation would be different within any fixed time-frame; and finally, there was no evidence to suggest that the eviction would be more detrimental now than in the future.

24. The applicant appealed to the Court of Appeal, which dismissed the appeal on 30 April 2013. In doing so, it agreed with the High Court that while in the overwhelming majority of cases the occupant's Article 8 rights could be appropriately and sufficiently respected by the provision of a proportionality review during the possession proceedings themselves, in exceptional cases such as the present the raising of Article 8 at enforcement stage would not be an abuse of process. It also accepted that in the present case such a review could only have taken place at enforcement stage and the judge had been correct to carry it out when she did. It found that the judge had carried out a careful and sympathetic analysis of the consequences for the applicant and her family of the threatened eviction and her conclusions on proportionality could not be faulted.

B. Relevant domestic law and practice

1. Protection from Eviction Act 1977

25. Pursuant to the 1977 Act, in order to evict a tenant a landlord must first serve a notice to quit, giving the tenant at least four weeks' notice. If the tenant does not leave the property voluntarily, the landlord must apply to court for an order for possession. If the court grants the order, it will specify the date on which the tenant must give up possession of the property. If the tenant does not give up possession on that date, the landlord must apply to court for a warrant of possession (see Rule 17 of CCR Order 26, as set out in Schedule II to the Civil Procedure Rules).

2. Judicial consideration of Article 8 in possession proceedings

26. 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.

27. 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 the two "gateways" via which a defendant in possession proceedings could challenge his eviction:

> "... Where domestic law provides for personal circumstances to be taken into account, as in a case where the statutory test is whether it would be reasonable to make a possession order, then a fair opportunity must be given for the arguments in favour of the occupier to be presented. But if the requirements of the law have been established and the right to recover possession is unqualified, the only situations in which it would be open to the court to refrain from proceeding to summary judgment and making the possession order are these: (a) if a seriously arguable point is raised that the law which enables the court to make the possession order is incompatible with article 8 ["gateway (a)"], the county court in the exercise of its jurisdiction under the Human Rights Act 1998 should deal with the argument in one or other of two ways: (i) by giving effect to the law, so far as it is possible for it do so under section 3, in a way that is compatible with article 8, or (ii) by adjourning the proceedings to enable the compatibility issue to be dealt with in the High Court; (b) if the defendant wishes to challenge the decision of a public authority to recover possession as an improper exercise of its powers at common law on the ground that it was a decision that no reasonable person would consider justifiable ["gateway (b)"], he should be permitted to do this provided again that the point is seriously arguable ..."

28. Lord Brown of Eaton-under-Heywood referred to the amendment to the 1968 Act allowing the County Court to suspend, for up to twelve months at a time, any possession order in respect of a local authority caravan site and noted:

> "... Now, therefore, the county court would be entitled to suspend the order made against someone in Mr Connors' position; previously, it was not.
>
> By the same token moreover that the county court judge would have been unable, under the pre-existing law, to decline or postpone a possession order in the case of someone in Mr Connors' position, so too in my judgment he is unable in other cases to give greater effect or weight to the occupier's right to respect for his home than is allowed for under domestic law ..."

29. He added:

> "The difficulty with such [a public law] defence, however, is that it would be well nigh impossible to make good, the challenge necessarily postulating that under domestic property law the claimant authority was entitled to possession. Accordingly the argument could only be that no reasonable public authority could properly invoke that domestic law right. This would be a more stringent test than would apply were the court ... under a primary duty to reach its own judgment on the justifiability of making a possession order.

> For my part I think that such an argument could perhaps have been mounted successfully in *Connors*: having regard to the great length of time (most of the preceding sixteen years) that that gypsy family had resided on the site, it was unreasonable, indeed grossly unfair, for the local authority to claim possession merely on the basis of a determined licence without the need to make good any underlying reason for taking such precipitate action ...
>
> It is difficult to suppose, however, that a defence based on a public law challenge of this character to a public authority's decision to pursue its domestic law rights could properly succeed except in such an infinitely rare case as *Connors* itself ..."

30. The subsequent case of *Doherty and others v. Birmingham City Council* [2008] UKHL 57 considered the *Kay* gateways. As regards the scope of gateway (b), Lord Hope clarified:

> "52. ... [T]he speeches in Kay show that the route indicated by this gateway is limited to what is conveniently described as conventional judicial review ...
>
> 53. ... [I]t will be open to the defendant by way of a defence to argue under gateway (b) that the order should not be made unless the court is satisfied, upon reviewing the respondent's decision to seek a possession order on the grounds that it gave and bearing in mind that it was doing what the legislation authorised, that the decision to do this was in the *Wednesbury* sense not unreasonable ...
>
> ...
>
> 55. I think that in this situation it would be unduly formalistic to confine the review strictly to traditional *Wednesbury* grounds. The considerations that can be brought into account in this case are wider. An examination of the question whether the respondent's decision was reasonable, having regard to the aim it was pursuing and to the length of time that the appellant and his family have resided on the site, would be appropriate. But the requisite scrutiny would not involve the judge substituting his own judgment for that of the local authority. In my opinion the test of reasonableness should be, as I said in para 110 of *Kay*, whether the decision to recover possession was one which no reasonable person would consider justifiable."

31. On 3 November 2010 the Supreme Court sitting as a panel of nine judges in *Manchester City Council v. Pinnock* [2010] UKSC 45 ("*Pinnock*") considered the application of Article 8 to a claim for possession brought against a demoted tenant under Chapter 1A of Part V of the Housing Act 1996 (as inserted by paragraph 1 of Schedule 1 to the Anti-social Behaviour Act 2003). 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."

32. The Supreme Court thus 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.

33. 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.

34. 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.

35. In *London Borough of Hounslow v Powell and Others* [2011] UKSC 8 ("*Powell*"), handed down on 23 February 2011, the Supreme Court held that the principle in *Pinnock* applied not only to demoted tenancies but to all cases where a local authority was seeking possession in respect of a property that constituted a person's home for the purposes of Article 8.

36. Lord Hope observed that following *Pinnock* the court had to have the ability to assess the Article 8 proportionality of making a possession order in respect of a person's home, even if his or her right to occupation had come to an end. The question of whether the property in question constitutes the defendant's "home" was likely to be of concern only in cases where an order for possession was sought against a defendant who had only recently moved into accommodation on a temporary or precarious basis. Therefore, in most cases it could be taken for granted that a claim by a person who was in lawful occupation to remain in possession would attract the protection of article 8.

37. With regard to the proportionality assessment, Lord Hope stated that:

> "33. The basic rules are not now in doubt. The court will only have to consider whether the making of a possession order is proportionate if the issue has been raised by the occupier and it has crossed the high threshold of being seriously arguable. The question will then be whether making an order for the occupier's eviction is a proportionate means of achieving a legitimate aim."

38. The threshold for raising an arguable case on proportionality was a high one which would only succeed in a small proportion of cases. However, if the threshold was crossed, the court would have to consider whether making an order for possession was a proportionate means of achieving a legitimate aim. Lord Hope continued:

> "The proportionality of making the order for possession at the suit of the local authority will be supported by the fact that making the order would (a) serve to vindicate the authority's ownership rights; and (b) enable the authority to comply with its public duties in relation to the allocation and management of its housing stock. Various examples were given of the scope of the duties that the second legitimate aim encompasses – 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. In *Kryvitska and Kryvitskyy v Ukraine* (Application No 30856/03) (unreported) given 2 December 2010, para 46 the Strasbourg court indicated that the first aim on its own will not suffice where the owner is the State itself. But, taken together, the twin aims will satisfy the legitimate aim requirement.
>
> So, as was made clear in *Pinnock*, para 53, there will be no need, in the overwhelming majority of cases, for the local authority to explain and justify its reasons for seeking a possession order. It will be enough that the authority is entitled to possession because the statutory pre-requisites have been satisfied and that it is to be assumed to be acting in accordance with its duties in the distribution and management of its housing stock. The court need be concerned only with the occupier's personal circumstances and any factual objections she may raise and, in the light only of what view it takes of them, with the question whether making the order for possession would be lawful and proportionate. If it decides to entertain the point because it is seriously arguable, it must give a reasoned decision as to whether or not a fair balance would be struck by making the order that is being sought by the local authority: *Kryvitska and Kryvitskyy v Ukraine,* para 44.
>
> ...
>
> In the ordinary case the relevant facts will be encapsulated entirely in the two legitimate aims that were identified in *Pinnock*, para 52. It is against those aims, which should always be taken for granted, that the court must weigh up any factual objections that may be raised by the defendant and what she has to say about her personal circumstances. It is only if a defence has been put forward that is seriously arguable that it will be necessary for the judge to adjourn the case for further consideration of the issues of lawfulness or proportionality. If this test is not met, the order for possession should be granted. This is all that is needed to satisfy the procedural imperative that has been laid down by the Strasbourg court."

COMPLAINTS

39. The applicant complained under Article 8 of the Convention that the possession proceedings brought against her had violated her right to respect for her home. The applicant further complained that in view of her

"different situation" the decision to grant the Ministry of Defence the right to evict her before alternative accommodation was available had violated her rights under Article 14 read together with Article 8 of the Convention.

THE LAW

40. The Government submitted that the key issue in cases where Article 8 was engaged in possession proceedings was whether the proportionality of the measure had been – or had the opportunity of being – determined by an independent tribunal. As the proportionality of the applicant's eviction had – exceptionally – been fully considered by an independent tribunal at the enforcement stage, subsequent to the lodging of her application, the Government submitted that she was no longer a victim under Article 34 of the Convention.

41. In response, the applicant submitted that she remained a victim under Article 34. In particular, she argued that the decision of the Court of Appeal had been in breach of Article 8 of the Convention because following *Pinnock* and *Powell* it was based on an assessment of exceptionality rather than the usual relevant factors. She further contended that the opportunity to challenge the proportionality of the eviction did not cure the violation of her Article 8 rights which resulted from the bar to challenging the proportionality of the order for possession.

42. Under the terms of Article 34 of the Convention the Court may only entertain applications from persons in a position to claim "to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ...". In assessing whether an applicant can claim to be a genuine victim of an alleged violation, account should be taken not only of the formal position at the time when the application was lodged with the Court but of all the circumstances of the case in question, including any developments prior to the date of the examination of the case by the Court (*Tănase v. Moldova* [GC], no. 7/08, § 105, ECHR 2010). The status of "victim", although present at the time of the lodging of the application, may therefore be lost by an applicant as a consequence of intervening measures which have the effect of removing the interference alleged to give rise to the violation of the Convention.

43. In eviction cases vis-à-vis a public authority the Court has repeatedly emphasised that the loss of one's home is the most extreme form of interference with the right to respect for the home and, as such, 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). However, it has also recognised, albeit in the context of Article 1 of Protocol No. 1 to the Convention, that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 45, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 49). Consequently, insofar as the Court has found violations of Article 8 in housing cases, it has principally done so in cases where there has been a lack of procedural safeguards (see, for example, *McCann* and *Kay*, cited above, in which the domestic courts were not permitted to consider proportionality in deciding whether or not to make an order for possession).

44. As in *McCann* and *Kay*, the domestic courts in the present case could not consider proportionality when deciding whether or not to make a possession order. It was this shortcoming in the possession proceedings that was relied on in the application as entailing a violation of the applicant's right to respect for her home under Article 8 of the Convention. However, the proportionality of dispossessing the applicant of the property she occupied and of evicting her from her "home" was, exceptionally, subsequently scrutinised by the domestic courts at the enforcement stage of the proceedings taken against her (see paragraphs 21-24 above). In this connection, the applicant contends, in effect, that the assessment of proportionality carried out at this stage was not sufficiently wide for the purposes of Article 8 and, in any event, did not efface the previous violation that had occurred as a result of the inadequate possession proceedings (see paragraph 41 above). The Court is not convinced by the applicant's contentions for the following reasons.

45. In the cases of *Paulić v. Croatia*, no. 3572/06, § 44, 22 October 2009 and *Bjedov v. Croatia*, no. 42150/09, § 71, 29 May 2012 the Court held that enforcement proceedings in Croatia were inadequate for a proportionality review because they were "by their nature non-contentious", their "primary purpose is to secure the effective execution of the judgment debt", and unlike regular civil proceedings, they were "neither designated nor properly equipped with procedural tools and safeguards for the thorough and adversarial examination of such complex legal issues".

46. Those cases can be distinguished from the present one on two grounds. First, the Court's criticisms were specifically directed at the enforcement regime in Croatia and its conclusions cannot necessarily be applied to enforcement regimes in other Member States. Secondly, in the present case the proportionality assessment did not take place in the normal course of the enforcement proceedings (namely, when the Secretary of State

applied for a writ of possession). Rather, it took place when the applicant brought judicial review proceedings against the decision of the Secretary of State to enforce the order for possession. There is no doubt that these judicial review proceedings were contentious and the applicant was legally represented throughout. The High Court fully considered the applicant's longstanding mobility and ill-health difficulties; her daughter's longstanding psychiatric disorder and the impact a forced eviction would have on her; the family's need for particular and accessible accommodation; and the hardship they would face if required to move, but considered that those circumstances did not render it disproportionate to seek enforcement of the possession order. The applicant was able to appeal the decision of the High Court to the Court of Appeal. Consequently, it cannot be said that these proceedings were not properly equipped with the procedural tools and safeguards to conduct the proportionality review at the enforcement stage.

47. The full and careful assessment of proportionality carried out by the British courts at two levels of jurisdiction was, in the Court's view, adequate for the purposes of ensuring the protection afforded by Article 8 of the Convention. This Article 8 compliant assessment took place before the threatened eviction of the applicant from her home, this being the measure which constituted the alleged interference with her enjoyment of her right under Article 8 to respect for her home (*Brogan v. the United Kingdom* (dec), no. 74946/10, 13 May 2014).

48. This being so, insofar as she complains about the lack of a proportionality assessment at the possession order stage, the Court considers that the applicant is no longer a victim of any violation of Article 8 for the purposes of Article 34 of the Convention.

49. Insofar as the applicant argues that the proportionality assessment which took place at the enforcement stage did not meet the requirements of Article 8 of the Convention, the Court considers this complaint to be inadmissible as manifestly ill-founded pursuant to Article 35 § 3(a) of the Convention for the reasons set out above.

50. In respect of the applicant's complaint under Article 14 of the Convention, the Court notes that she has not explained how she has been treated differently or on what ground she believes that she has been discriminated against. It therefore considers this complaint to be manifestly ill-founded pursuant to Article 35 § 3(a) of the Convention.

Application of Rule 43 § 4 of the Rules of Court

51. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court. ..."

52. The applicant has requested that the Court exercise its discretion pursuant to Rule 43 § 4 of the Rules of Court to award her costs to cover the domestic possession proceedings, the judicial review proceedings, and her application to this Court. However, the Court notes that this discretion can only be exercised when an application is struck from its list of cases; it has no discretion under the Rules of Court to award costs when an application is declared inadmissible.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President