



3 November 2010

PRESS SUMMARY

Manchester City Council (Respondent) v Pinnock (Appellant) [2010] UKSC 45
On appeal from the Court of Appeal [2009] EWCA Civ 852

JUSTICES: Lord Phillips (President), Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lady Hale, Lord Brown, Lord Mance, Lord Neuberger and Lord Collins

BACKGROUND TO THE APPEAL

This appeal concerns the question of whether article 8 of the European Convention on Human Rights (“**article 8**”) requires UK courts to consider the proportionality of evicting an occupier from his home in claims for possession by local authorities and, if so, whether the demoted tenancy regime in the Housing Acts 1985 and 1996 (the “**1985 Act**” and “**1996 Act**” respectively) can properly be interpreted so as to comply with the requirements of article 8.

Most residential occupiers of local authority properties are “secure tenants” under Part IV of the 1985 Act who cannot be evicted other than pursuant to the grounds in section 84 of the 1985 Act. The Anti-Social Behaviour Act 2003 Act gave the courts power, however, to remove this security of tenure by making a “demotion order”. A demoted tenancy will last for a year and then revert to being a secure tenancy, unless within that year the landlord brings possession proceedings under section 143D of the 1996 Act effectively requesting a court to end the demoted tenancy. Section 143D(2) provides that “the court must make an order for possession unless it thinks that the procedure under sections 143E and 143F has not been followed”. Under sections 143E and 143F of the 1996 Act, before issuing possession proceedings against a demoted tenant, the landlord must serve a notice informing the tenant, *inter alia*, of its decisions (with reasons why) to seek possession and, if so requested by the tenant, must carry out a review of its decision.

The Appellant, Cleveland Pinnock, is a demoted tenant. He contests a possession order made against him under section 143D. Mr Pinnock has lived in a property owned by the Respondent local authority, Manchester City Council (the “**Council**”), for over 30 years with his partner, Ms Walker, and, from time to time, with all or some of their five children. The demotion order was made on the basis of a number of incidents of serious anti-social behaviour caused by all members of Mr Pinnock’s family (other than Mr Pinnock himself) at or near the property. A day before the effective lapse of the demoted tenancy, the Council served a notice under section 143E seeking possession of the

property and citing further incidents of anti-social behaviour by Mr Pinnock's sons which had occurred after the demotion order. A review under section 143F effectively upheld the Council's possession notice. The Council then issued a claim for possession in the Manchester County Court. Following a two-day hearing, the court granted an order for possession of the property. Mr Pinnock appealed to the Court of Appeal, who dismissed his appeal. Mr Pinnock then appealed to the Supreme Court.

Mr Pinnock's main contention is that the possession order violates his right to respect for his home under article 8 as it is disproportionate. In view of the previous line of the House of Lords authorities, both the Manchester County Court and the Court of Appeal rejected Mr Pinnock's article 8 arguments on the basis that it was not open to them to review the Council's decision on the ground that it was disproportionate. Approaching the matter on a domestic law basis, both courts concluded that the Council's decision to seek possession was rational.

JUDGMENT

In a judgment of the Court delivered by Lord Neuberger, the Supreme Court unanimously dismissed the appeal (but for different reasons from those of the County Court and the Court of Appeal).

REASONS FOR THE JUDGMENT

The Court identified four issues of increasing specificity facing the court in this appeal [21]:

- (1) whether the European Convention on Human Rights (the “**Convention**”) requires domestic courts to consider the proportionality of evicting a person from his home before making an order for possession;
- (2) if so, the general implications of this conclusion in practice for claims for possession;
- (3) the implications of this conclusion on the compatibility of the statutory demoted tenancy regime with the Convention; and
- (4) the application of conclusions (1)-(3) above to the facts of Mr Pinnock's appeal.

In light of the clear and constant line of jurisprudence of the European Court of Human Rights, the Court departed from the previous line of the House of Lords authorities and concluded that a court, which is asked by a local authority to make an order for possession of a person's home, must have the power to assess the proportionality of making the order and, in making that assessment, to resolve any factual disputes between the parties [49], [74].

The Court emphasised that this conclusion relates to possession claims by local authorities and is not intended to bear on cases where the person seeking possession is a private landlord, which issue will have to be determined when it arises [50].

The Court noted that the appeal involved a comparatively rare type of possession claim, a claim against a demoted tenant. Nevertheless, the Court was able to make certain general points [61]-[64]:

- (1) article 8 only comes into play where a person's “home” is involved;

- (2) as a general rule, the proportionality of seeking possession will only need to be considered if the point is raised by the occupier concerned;
- (3) any article 8 defence should initially be considered summarily;
- (4) even where an outright order for possession is valid under domestic law, article 8 may justify granting an extended period for possession, suspending any possession order or refusing an order altogether;
- (5) the conclusion that the court must have the ability to consider the article 8 proportionality of making a possession order may require certain statutory and procedural provisions to be revisited; and
- (6) article 8 proportionality is more likely to be relevant in respect of occupiers who are vulnerable, due to either a mental or a physical disability.

The Court went on to conclude that it was possible to read and give effect to section 143D(2) in a way that would permit the court to review the proportionality of a landlord's decision to seek possession and, if necessary, to make its own assessment of facts in dispute. In particular, he concluded that, by virtue of section 7(1) of the Human Rights Act, County Court judges have the necessary jurisdiction to carry out the article 8 proportionality review [77]-[80]. It therefore followed that the demoted tenancy regime is compatible with the Convention [104].

Given the above conclusions, the Court went on to consider whether it was proportionate to evict Mr Pinnock and his family from the property in light of their article 8 Convention rights. Having regard to the undisputed evidence of three serious offences committed by Mr Pinnock's sons in, or in the vicinity of, the property during the year when the demotion order was in force, the Court concluded that the possession order against Mr Pinnock was indeed proportionate and should be upheld [127]-[132].

References in square brackets are to paragraph numbers in the judgment.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgements are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html