Neutral Citation Number: [2008] IEHC 79

THE HIGH COURT

JUDICIAL REVIEW

2007 No. 916 J.R.

BETWEEN

VICKY LEONARD

APPLICANT

AND

DUBLIN CITY COUNCIL, IRELAND AND THE ATTORNEY GENERAL

RESPONDENT

Judgment of Ms. Justice Dunne delivered on the 31st day of March, 2008.

1. The applicant herein was the tenant of the first named respondent, (The Council) at 17 Robert Emmett Walk, Bridgefoot Street, Dublin, (the premises) under a tenancy agreement dated 30th November, 2005. The premises were provided by the Council to the applicant under the provisions of the Housing Act, 1966 (as amended) (The Act). Previously, the applicant was the tenant of the council at other premises which were the subject of redevelopment by the Council.

2. The tenancy agreement contained a number of terms which are relevant to the proceedings. The tenancy was a tenancy from week to week commencing on the 4th December, 2005. The tenancy agreement provided *inter alia* as follows:

> "13(a) Neither the tenant nor any member of his household or any household or any sub-tenant or visitor shall cause any nuisance, annoyance or disturbance to any neighbours, their children or visitors or to council staff.
>
> 13(c)(vii) The tenant must not, at any time, invite or allow to remain on any part of the dwelling or garden, any persons in respect of whom the council has notified the tenant that they should not enter or remain on the property.
>
> 26. The tenancy may be terminated at anytime on the giving of four weeks notice by the tenant or the council…
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> 28. The tenant shall on the termination of the tenancy, peaceably and quietly deliver up possession of the dwelling to the council."

3. A number of matters are not in dispute between the parties. It appears from the affidavit of the applicant sworn herein on the 13th July, 2007 that she is a heroin addict and has been attempting to deal with her addiction through a methadone programme. She has a son who lives with her and a partner, Mark Keating, who is also a heroin addict. Prior to the tenancy at the premises the subject of these proceedings, members of the Gardaí had found drugs at the premises previously occupied by the applicant. She was brought before the District Court and fined as a result of that incident.

4. When the applicant attended the offices of the Council to sign the tenancy agreement on the 30th November, 2005, she was presented with a letter dated the 29th November, 2005 drawing her attention to Clause 13(c)(vii) of the tenancy agreement. The letter stated that the council was invoking Clause 13(c)(vii) in respect of Mark Keating. She signed the agreement and an undertaking contained in the letter of the 29th November, 2005 to abide by the terms and conditions of the letter which stated:

> "if at any time in the future, Mark Keating is found to be or have been in dwelling 17 Robert Emmett Walk, you are in breach of the terms of your tenancy and Dublin City Council will be entitled to bring proceedings to recover possession of the dwelling… under s. 62 of the Housing Act, 1966, in the interests of good estate management."

5. In the affidavit of Michael Clarke sworn herein on behalf of the Council, he averred as follows:

> "9. By letter dated the 10th February, 2006 your deponent wrote to the applicant for the purpose of drawing to her attention Clause 13(vii) of her tenancy agreement and to point out that as Mark Keating had been found in her dwelling she was in breach of her tenancy agreement. The applicant was requested to attend for interview, and on the 21st February, 2006 both the applicant and Mark Keating attended a meeting with your deponent. Following that meeting the council issued a final warning to the applicant by letter dated 27th April, 2006 that the council would consider terminating her tenancy if she breached Clause 13 of her tenancy agreement. I beg to refer to true copies of the said letters upon which pined together and marked with the letters and number MC3, I have endorsed by name prior to the swearing hereof.
>
> 10. On the 9th May, 2006 the council received a complaint that Mark Keating was visiting No. 17 Robert Emmett Walk, and on the 10th May, 2006 a further complaint was received that Mark Keating was residing there. I wrote to the applicant by letter dated the 12th May, 2006 to inform her that complaints had been received that she was in breach of her tenancy agreement, and I requested her to attend for interview and advised her that a recommendation would be made to terminate her tenancy. On foot of that request, both the applicant and Mark Keating attended a meeting with your deponent on the 29th May, 2006 and in the course of that meeting it was admitted that Mark Keating had been on the premises. At the conclusion of the meeting I informed the applicant that a notice to quit would be served on her for breach of the tenancy agreement. Following that meeting the council wrote again to the applicant by letter dated the 26th July, 2006 to advise her that she could request a review of her case within a period of ten days, as it was intended to terminate her tenancy. By letter dated 8th August, 2006, the council received a request for review from Brophy Solicitors on behalf of the applicant. Further correspondence dated the 11th August, 2006 was received from Brophy Solicitors and the council responded thereto by letter dated 25th August, 2006. By letters dated the 8th and the 11th September, 2006, Brophy Solicitors made further representations on the applicants behalf and by letter dated 21st September, 2006 furnished certificates in support of her application for review."

6. These averments are not contested by the applicant. It is clear that the Council had the benefit of representations made on behalf of the applicant by her then solicitors. Ultimately a decision was made by the Council to terminate the applicant's tenancy. A notice to quit and a demand for possession dated the 25th October, 2006 was served on the applicant requiring her to deliver up possession of the premises on the 11th December, 2006. It is contended by the Council that as and from that date her tenancy was terminated and she was no longer entitled to possession of the premises.

7. The applicant failed to deliver up possession of the premises on the 11th December, 2006 and on the 14th December, 2006 the

Council issued a summons pursuant to s. 62 of the Housing Act, 1966 as amended by s. 13 of the Housing Act, 1970 (s. 62) to recover possession of the premises. The summons was duly served on the applicant and was returnable before the District Court on the 15th February, 2007. A warrant for possession of the premises was granted that day.

The Application for Judicial Review
8. The applicant applied for leave to seek relief by way of judicial review on notice to the Council on the 23rd July, 2007. Leave was granted on that date but on the 30th July, 2007 an application was brought on behalf of the Council to set aside the order granting leave. An order was made setting aside so much of the order of the 23rd July, 2007 as granted leave to the applicant herein to challenge the constitutionality of s. 62 of the Housing Act, 1966 and the warrant issued by the District Court on the 15th February, 2007 pursuant to s. 62 of the Housing Act, 1966. A stay granted in respect of the appeal by the applicant from the District Court to the Circuit Court was lifted. The appeal proceeded and was determined on the 9th November, 2007 when the Circuit Court dismissed the applicant's appeal and affirmed the order of the District Court granting the Council a warrant for possession of the premises herein.

9. Accordingly, the relief sought by the applicant herein is for:

> 1. A declaration pursuant to s. 5 of the European Convention on Human Rights Act, 2003 that s. 62 of the Housing Act, 1966 (as amended) is incompatible with Ireland's obligations under the Convention.
>
> 2. A declaration that the determination by the Dublin District Court on the 15th day of February, 2007 in respect of a notice to quit served on the plaintiff pursuant to s. 62 of the Housing Act, 1966 (as amended) was in breach of the plaintiffs rights under the European Convention on Human Rights and in particular, Articles 3 and/or 6 and/or 8 and/or 13 and/or 14 thereof.

10. The applicant also sought damages for breach of her rights under the European Convention on Human Rights.

11. The grounds upon which the application is brought are set out in the Statement required to ground the Application for Judicial Review and some of the background set out above is referred to in the grounds. In addition the Statement contained the following grounds:

> "8. When the applicant attended the District Court hearing on the 15th February, 2007 she no longer had legal representation. When her case was called she applied for an adjournment in order to try to seek alternative legal advice, but this application was opposed by the first named respondent and refused by the learned District Judge. Thereupon the first named respondent gave evidence by an officer or employee of various matters pertaining to the tenancy and to the demand made for the possession of the premises. However, the applicant is not in a position to say what actually occurred as it all went by very quickly and she did not understand what was happening.
>
> 9. The fact is that the summons commanding her to appear at the said District Court invited her to show cause why a warrant under s. 62 of the Housing Act, 1966 should not issue. Not withstanding that fact the learned District Judge did not call upon, or invite the applicant to address the court or otherwise afford her the opportunity of being heard or to take any part in the proceedings. As a result, the applicant was unable to show what steps she had taken to cease any alleged anti-social behaviour at her said dwelling house by e.g., avoiding former associates in the dangerous drug taking community and refusing to allow them to come to her home. She was unable to point out that Mark Keating had never been convicted of drug trafficking or drug dealing, either at her home or anywhere else. Neither could she give any undertakings to the court to ensure that she and her partner would continue on the methadone treatment programmes they had embarked on. In short, there was no opportunity for the applicant to advance any relevant considerations, excuses or extenuating circumstances either in person or by a representative on her behalf.
>
> 10. The District Judge being duly satisfied by the formal proofs provided by the first named respondent, he issued a warrant under s. 62 of the Housing Act, 1966 for delivery of possession of the said dwelling house to the first named respondent. The applicant has appealed this order and her appeal is now pending before the Circuit Court.
>
> 11. Accordingly, the procedure before the District Court on the 15th day of February, 2007 was in breach of the applicant's constitutional rights and of the principles of constitutional and natural justice and of the applicant's rights under the European Convention on Human Rights."

The Housing Act 1966
12. In essence, the applicant contends that s. 62 of the Housing Act, 1962 is incompatible with the European Convention on Human Rights. Section 62 provides for a summary procedure for the recovery of possession of dwellings by local authorities from their tenants. The applicant contends that under s. 62 she and local authority tenants are precluded from any meaningful involvement in the District Court proceedings. In this case the applicant was not permitted to put forward any arguments, explanations, excuses or other mitigating circumstances to the District Court to prevent the grant of an order for possession.

13. It would be useful at this stage to refer to the relevant provisions of s. 62 of the Housing Act, 1966 (as amended):

> S. 62(1) In case,
>
> (a) there is no tenancy in
> (i) a dwelling provided by a housing authority under this Act,
>
> (ii) any building or part of a building of which the authority are the owner and which is required by them for the purposes of this Act, or
>
> (iii) a dwelling of which the National Building Agency Ltd is the owner, whether by reason of determination of a tenancy or otherwise, and
>
> (b) there is an occupier of the dwelling or building or any part thereof who neglects or refuses to deliver up possession of the dwelling or building or part thereof on a demand being made therefore by the authority or agency as the case may be, and

(c) there is a statement in the demand of the intention of the authority or agency to make application under this subsection in the event of the requirements of the demand not being complied with, the authority or agency may (without prejudice to any other method of recovering possession) apply to the justice of the District Court having jurisdiction in the District Court district in which the dwelling or building is situate for the issue of a warrant under this section…

(3). Upon the hearing of an application duly made under subsection 1 of this section , the justice of the District Court hearing the application shall, in case he is satisfied that the demand mentioned in the said subsection 1 has been duly made, issue the warrant…

(5). In any proceedings for the recovery of possession of a dwelling or building or part thereof mentioned in subsection 1 of this section, a document purporting to be the relevant tenancy agreement produced by the body by whom the proceedings are brought shall be *prima facie* evidence of the agreement as it shall not be necessary to prove any signature on the document and in case there is not tenancy in the premises to which the proceedings relate by reason of the termination of a tenancy by notice to quit and the person to whom such notice was given is the person against whom the proceedings are brought, the following additional provisions shall apply:

(a) Any demand or requirement contained in such notice that the person deliver up possession of the said premises to the authority or the agency, shall be a sufficient demand for the purposes or paragraph b of the said subsection 1;

(b) any statement in the said notice of the intention of the authority or the agency to make application under subsection 1 of this section in respect of the premises shall be a sufficient statement for the purposes of paragraph C of the said subsection 1.

(6). Nothing in the Landlord and Tenant Acts, 1931 and 1958 or the Rent Restrictions Act, 1960 shall be deemed to affect the provisions of this Act relating to the obtaining of possession of a dwelling or building or part thereof mentioned in subsection 1 of this section."

14. Section 62 has been considered in a number of decisions over the years. As a result of those decisions in cases such as *The State (Kathleen Litzouw) v. Dublin Corporation* [1981] ILRM 273, *The State (O'Rourke) v. Kelly* [1983] I.R. 58, *Dublin Corporation v. Hamilton* [1999] 2 I.R. 486 and *Byrne v. Scally* Unreported, High Court, 12th October, 2000, it has been clearly established that a District Court Judge hearing an application under s. 62 for a warrant for possession is obliged to grant the warrant provided the formal proofs under the section are complied with. The constitutionality of s. 62 was upheld in the case of *The State (O'Rourke) v. Kelly* referred to above in trenchant terms in an *ex tempore* judgment of the Supreme Court delivered by O'Higgins C.J.. The basis of the challenge in that case was that s. 62 deprived the District Court Judge of any real judicial discretion on the hearing of such an application. O'Higgins C.J., stated at p. 61 of the judgment :

"It will be seen that it is only when the provisions of subs. 1 of s. 62 have been complied with and the demand duly made to the satisfaction of the District Justice that he must issue the warrant. In other words, it is only following the establishment of specified matters that the subsection operates. This is no different to many of the statutory provisions which, on proof of certain matters, make it mandatory on a court to make a specified order. Such legislative provisions are within the competence of the Oireachtas. The court, therefore rejects the complaint that the section is invalid having regard to the provisions of the Constitution on the ground alleged."

15. The case of *Dublin Corporation v. Hamilton* referred to above also considered the defendant's constitutional rights to equal treatment, fair procedures and bodily integrity as guaranteed under the Constitution. In that case, one of the arguments related to the interpretation of the word "duly" as contained in s. 62 of the Housing Act, 1966, Geoghegan J., set out the arguments in this regard at p. 492 of his judgment:

"Counsel for the defendant, in his oral argument, relies almost exclusively on the interpretation to be placed on word "duly" which appears twice in the section. As provided for in subs. 3 the judge of the District Court must be satisfied both that the application before him is duly made and, if so satisfied, he must be further satisfied that the demand mentioned in subs. 1 has been duly made. Counsel for the defendant made the ingenious argument that the word "duly" brings into play not just the formal proofs but the entire question of whether the plaintiff is carrying out its statutory obligations of housing towards the defendant, both in a substantive sense and in the sense of affording the defendant fair procedures. In making this argument, counsel for the defendant relies (*inter alia*) on the modern case law and jurisprudence relating to the obligations to house members of the travelling community, and the general tendency of the courts more and more to ensure that statutory obligations be fairly and constitutionally complied with. For instance, counsel for the defendant would argue that the District Judge should concern himself with whether the housing authority in ejecting the defendant is then in breach of its own housing obligations towards the defendant, that if there is a breach of that obligation, particularly in the context of no provision of reasonable alternative accommodation, the application for the warrant cannot be said to be duly made. Counsel for the defendant would further argue that the defendant is entitled to know the reason for the plaintiff's desire to recover possession as a matter of fair procedures and that in the absence of such alleged fair procedures the District Judge should not regard the application as duly made. Counsel for the defendant says that having regard to the provisions of the Constitution and having regard to the Housing Acts generally, which form a single code, and the obligations of the housing authority thereunder, the section must be interpreted in this way."

16. Geoghegan J. went on to deal with those arguments as follows:

"While I see the force of these arguments, I find myself unable to accept them. I agree with counsel for the defendant that in considering the meaning of any one section in the Housing Acts, the entire statutory code must be considered and of course the Constitution always has be considered, but it would seem to me to be both reasonable and constitutional that there be available to a housing authority a rapid method of recovering possession of any one dwelling provided by it, without having to give reasons for so doing. The local authority has to consider its overall management of housing and it owes an obligation to all the persons in need of housing, as well as to any one individual. In that context, it is and ought to be entitled to plan its arrangements for providing housing, and furthermore there may be very good reason why confidentiality should be maintained in relation to any particular decision to recover possession of a dwelling provided by

the housing authority, even though the person, the subject matter of the warrant may then become a person in need of housing."

17. The decision in the *Hamilton* case was considered at length by Ó Caoimh J., in the case of *Byrne v. Scally* referred to above. In the course of his judgment Ó Caoimh J. noted that in the *Hamilton* case Geoghegan J. indicated that the procedure provided for in the District Court was one whereby the housing authority had a rapid method of possession of a dwelling without having to give reasons for so doing. He went on to note at p. 32 of his judgment:-

> "In particular this court must have regard to the views expressed by Geoghegan J. when he stated that it would inconsistent with the purpose of s. 62 of the 1996 Act to interpret it in any other way than that formal proofs set out in the section alone are required and the district judge is not entitled to inquire into anything else. In reaching this conclusion, Geoghegan J. relied in particular upon the judgment of the Supreme Court in the case of *The State (O'Rourke) v Kelly* [1983] I.R. 58. Accordingly the issue that remains is whether having regard to the particular nature of the proceedings in the District Court, the applicant was entitled to the benefit of legal aid and whether in the circumstances where the respondent proceeded to entertain the application of Dublin Corporation when the applicant was bereft of legal aid and was not legally represented, he thereby exceeded his jurisdiction. It is to be noted that the proceedings before the District Court were in no way altered in their nature by reference to the fact that if successful the applicant would not be entitled to be re-housed by Dublin Corporation, unless this court were to hold that the District Court was entitled to consider the background to the application before it brought by Dublin Corporation. Notwithstanding the consequences of a decision made by the District Court in an application for a warrant under s. 62, I am of the opinion that the jurisdiction of the District Court is not enlarged if the consequences are greater for one tenant as opposed to another. Accordingly, I am of the view that the decision of Geoghegan J. in the *Hamilton* case is a correct statement of the jurisdiction of the District Court in an application such as that made by Dublin Corporation seeking possession of the applicant's premises. … I am of the view that having regard to the restricted jurisdiction of the District Court in an application under s. 62 of the Housing Act, 1966 that the procedures involved are straightforward and relatively simple and involves certain straightforward proofs to be satisfied. … Essentially I come to the conclusion, contrary to the submission made by Mr. O'Donnell, that the case being presented by Dublin Corporation against the applicant was technical and complex and warranted legal representation being granted to her, that a true examination of the facts reveal that the case being presented to the District Court was not complex and while the term 'technical' has been used it simply relates to the procedures to be followed which were straightforward in themselves. This involved the proof of the tenancy agreement which would have been furnished to the applicant previously and secondly the service upon her of a notice to quit. These matters are proved by the production of the letting agreement and the notice to quit to the District Court judge."

18. It seems to me that certain matters are clear from the judgments referred to above. Firstly, in considering the interpretation of any one section of the Housing Acts and in particular in this case, the interpretation of s. 62, the entire statutory code of which it is a part must be considered.

19. Secondly, it is both reasonable and constitutional that a housing authority have available to it a rapid method of recovery of possession of a dwelling without having to furnish reasons to the court for so doing.

20. Thirdly, upon proof of certain formal matters under s. 62, namely, (a) that the dwelling is provided by a housing authority under the Act, (b) that there is no tenancy in the dwelling, (c) that possession of the dwelling has been duly demanded, (d) that the occupier has failed to deliver up possession of the dwelling and (e) that the demand for possession includes a statement of intention to apply for the issue of a warrant for possession of the dwelling under s. 62(1), then the District Court Judge must issue the warrant.

21. Fourthly, if an abuse occurs in relation to the exercise by a Housing Authority of its obligations, this would be subject to the remedy of judicial review.

22. As Geoghegan J. noted at p. 494 of his judgment in the *Hamilton* case:-

> "But it would be inconsistent with the purpose of the section to interpret it in any other way than that formal proofs that the matters set out in this section alone are required and the District Court Judge is not entitled to inquire into anything else. If there are wider complaints, there is another forum for dealing with them."

23. Thus, it is clear that the District Court Judge has no jurisdiction to conduct a hearing on the merits.

The European Convention on Human Rights

24. The absence of a hearing on the merits before the District Court on the application for a warrant for possession as provided for in s. 62 is at the heart of this challenge to the provisions of s. 62 under the provisions of the European Convention on Human Rights, (ECHR). The applicant seeks to challenge the provisions of s. 62 on the basis that it is incompatible with Ireland's obligations under the European Convention on Human Rights and in particular Articles 6, 8, 13 and 14. There was also a claim pursuant to Article 3 but that claim was dropped during the course of the hearing as it has no application to the circumstances of this case.

25. It would be of assistance to set out the relevant Articles of the ECHR at this point. Article 6 of the Convention provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

26. Article 8 :

> "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.

27. Article 13 :

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a

national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

28. Article 14 :

> "The enjoyment of the rights and freedoms set forth in this 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."

29. Finally it may be of assistance to refer to s. 5(1) of the European Convention on Human Rights Act, 2003 which states as follows:

> "In any proceedings, the High Court, or the Supreme Court when exercising its appellate jurisdiction, may, having regard to the provisions of section 2, on application to it in that behalf by a party, or of its own motion, and where no other legal remedy is adequate and available, make a declaration (referred to in this Act as 'a declaration of incompatibility') that a statutory provision or rule of law is incompatible with the State's obligations under the convention provisions."

30. It will be seen that the main question that arises is whether the procedures under s. 62 are in violation of any of the applicant's rights under the EHCR. If not, then the question of a declaration of incompatibility with the European Convention on Human Rights in respect of s. 62 does not arise.

The applicant's submissions

31. The first point made on behalf of the applicant was that on the 15th February, 2007 when the applicant appeared before the District Court on foot of the summons seeking the warrant for possession pursuant to s. 62, she asked for but was not granted an adjournment in order to apply for legal aid to defend the proceedings. It was submitted that the applicant was not in a position to raise any issue on s. 62 of the Housing Act, without the opportunity to get legal advice and that in those circumstances an injustice has been done to her. Counsel relied on the decision in *J.F. v. Director of Public Prosecutions* [2005] 2 I.R. 174 a decision of the Supreme Court in which it was stated by Hardiman J. in the course of his judgment at p. 182:

> "The point here is that *égalité des armes* is not a new concept but rather a new and striking expression of a value which has long been rooted in Irish procedural law. In *Steel and Morris v. United Kingdom* (Application 68146/01) (ECHR, Unreported, 15th February, 2005), the European Court of Human Rights said:
>
> > '50. The adversarial system … is based on the idea that justice can be achieved if the parties to a legal dispute are able to adduce their evidence and test their opponent's evidence in circumstances of reasonable equality…
> >
> > 59. The court recalls that the Convention is intended to guarantee practical and effective rights. This is particularly so of the right of access to court in view of the prominent place held in a democratic society by the right to a fair trial (see the *Airey v. Ireland* [1980] E.H.R.R. 305). It is central to the concept of fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the Court and that he or she is able to enjoy equality of arms with the opposing side.'

32. At paragraph 61, addressing the question of legal aid, the Court went on:

> 'The question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend *inter alia* on the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent himself or herself effectively.'"

33. Counsel also referred to the decision in the case of *Kerry County Council v McCarthy* [1997] 2 I.L.R.M. 481 a decision of the Supreme Court in relation to a case stated in relation to s. 62 proceedings.

34. In the course of his judgment at p. 4, O'Flaherty J. stated:

> "The important distinction to note between the O'Flaherty case, the Lynch case and the Rainey cases as well, indeed, as the other cases cited by Walsh J. in his judgment in the Lynch case is that they were all concerned with criminal proceedings in one shape or other; in contrast we are here dealing with civil proceedings. The purpose of the summons in this present type of proceeding is to give the party against whom possession of the dwelling house is sought notice that his case will be heard in the District Court on a particular date; that he will be given an opportunity of making his defence and that possession cannot be given against him, unless he gets a chance to make his case and that the District Justice is satisfied that all the statutory requirements entitling the local authority to an order for possession are in place; see *State (O'Rourke) v Kelly* [1983] I.R. 58."

35. Mr. O'Loughlin S.C. on behalf of the applicant emphasised the comments of O'Flaherty J. in that case as to giving the tenant the opportunity of making his defence and making his case.

36. Counsel for the applicant referred to two other decisions in the course of his submissions. The first of these was a Supreme Court decision in the case of *Dublin City Council v Fennell* [2005] I.L.R.M. 288. That was a case in which a case in section 62 was challenged following the passage of the European Convention on Human Rights Act 2003. That challenge was unsuccessful because the Supreme Court held that the 2003 Act did not have retrospective effect. However in the course of his judgment in that case Kearns J at p. 9 noted:

> "It goes without saying therefore that the position of the tenant of a housing authority compares unfavourably with that of a private law tenant under contract or under the Landlord and Tenant Acts, the Rent Restrictions Act or a variety of other statutes. It may also be seen that the summary method whereby possession of such dwellings may be recovered, notably in circumstances where the tenant is regarded as having through misbehaviour brought about the termination of his own tenancy and thus forfeited the right to any alternative accommodation, may arguable infringe certain articles of the European Convention on Human Rights, and in particular Articles 6, 8 and 13 there of, and also Article 1 of Protocol 1 (protection of property) of the Convention."

37. Not surprisingly, counsel on behalf of the applicant places reliance on that passage from the judgment of Kearns J.

38. The question of the retrospective effect of the European Convention on Human Rights Act 2003 was also considered in the case

of *McConnell v Dublin City Council* (Unreported High Court 18th January 2005) in which Smyth J commented "that this new act imposes new obligations on housing authorities and that it may operate to change the interpretation and effect of section 62 of the Housing Act, 1966".

The Council's Submissions

39. Mr. Connolly S.C. in his submissions outlined the background which lead to the termination of the tenancy. He referred to the fact that it was pointed out to the applicant prior to taking up the tenancy agreement that Mark Keating was required not to be residing in the premises. He referred to the correspondence with the applicant and meetings with her prior to the decision to issue the notice to quit. He emphasised that the applicant had had a number of opportunities to bring to the attention of the Council any matter she wished to rely on with a view to ensuring that a decision to terminate her tenancy was not taken. He also submitted that if there was anything wrong in the procedures involved in the making of the decision to serve a notice to quit on the applicant or if there was a lack of reasonableness on the part of the Council that the appropriate course of action was to challenge the decision to issue a notice to quit thereby terminating the tenancy and not to challenge the district court proceedings. He noted that the applicant exercised her right of appeal from the order of the District Court and that on the 9th of November 2007 the Circuit Court had dismissed her appeal.

40. He opened the provisions of clause 13 of the tenancy agreement and in particular clause 13 (c) (vii): "The tenant must not, at any time, invite or allow to remain on any part of the dwelling or garden any persons in respect of whom the council had notified the tenant that they should not enter or remain on the property." References also made to clause 13(a) which provides

> "neither the tenant or any member of the household or any household or any sub tenant or visitor should cause a nuisance, annoyance or disturbance to any neighbours, their children or visitors or to council staff."

41. He referred to letters which had been sent to the applicant including one on the 29th November 2006 which noted as follows:

> "Complaints have been received in this office in relation to antisocial behaviour for which, it is alleged, a member or members of your household are responsible, namely a Garda report received outlining details of a search of 17 Robert Emmett Walk where heroin and drug paraphernalia were seized. Also reports received in relation to people coming and going from 17 Robert Emmett Walk believed to be drug users, also allegations of harassment and intimidation of other residents."

42. That letter invited the applicant to attend for interview in relation to those allegations and noted that if confirmed they could lead to initiation of legal proceedings to recover possession of her dwelling. A reminder was sent subsequent to that letter.

43. It was emphasised by counsel on behalf of the first named respondent that the applicant had been given warnings and had been invited to attend for a meeting. All of this occurred before proceedings were initiated. Therefore the applicant had the opportunity to put her case on the merits at that stage to the representatives of the Council. Finally he referred to the Affidavit of Michael Clarke sworn here in on the 27th July 2007 on behalf of the Council. It is not necessary to refer to that affidavit in detail as it sets out some of the matters already to referred to by way of background. However in that affidavit it was noted that the Council was the Housing Authority for the city of Dublin having statutory duties under the Housing Acts 1966 – 2002 to provide accommodation for those who are homeless and are unable to provide accommodation for themselves from their own resources. Mr. Clarke averred that:

> "The Council as landlord of approximately 27,500 dwellings has a duty to manage and control those dwellings and to secure and protect the interests of its tenants as far as reasonably possible in the peaceful enjoyment of their dwellings. The interests of good estate management require that the Council takes steps to avoid, prevent or abate anti-social behaviour in local authority housing areas. Anti-social behaviour adversely effects individuals' health and well being, prevents them from enjoying their homes and such behaviour can cause a general deterioration in the surrounding living environment."

44. He then went on to describe the premises at Robert Emmett Walk, Bridgefoot Street, Dublin. He noted:

> "The Bridgefoot Street dwellings and the adjacent Oliver Bond Street Flats are situated in a City Centre residential area with serious social problems caused by high unemployment and serious anti-social behaviour which takes many forms but in particular, such behaviour consists of violence, threats, criminal damage to property and drug related activity. The presence of drug dealers and their customers have had a very serious impact on this local authority housing area. The Council and the local community are now working together to reverse the changes that have taken place and to provide a better living environment. As part of the redevelopment programme, the Bridgefoot Street flats were demolished and replaced with modern good quality duplex housing."

45. It is one of those properties that is the dwelling of the heart of these proceedings. He went on to describe the tenancy entered into by the applicant and the terms there of together with the requirement prior to the entry into the tenancy on the part of the Council that the applicant would not permit Mark Keating to be in or on or have been in the dwelling at number 17 Robert Emmett Walk. She was then advised that if she permitted him onto her dwelling she would be in breach of her tenancy agreement.

46. Mr. Connolly S. C. then proceeded to carry out an analysis of a number of decisions in which the relevant provisions of the European Convention on Human Rights have been considered in the context of local authority housing. The first of those decisions is the case of *Harrow London Burrow Council v Qazi* [2003] 3 LR 792, a decision of the House of Lords. That was a case in which the local housing authority had in 1992 let the house to the defendant and his then wife as joint tenants under a secure tenancy. In 1999 the wife having left the defendant, gave the housing authority notice to quit in accordance with the tenancy agreement. On expiry of the notice to quit the defendant applied for sole tenancy but the housing authority refused his application on the ground that as a single person he was not entitled to family sized accommodation and they requested him to vacate the premises. He did not do so and he remarried and continued to live there with his wife and family. Proceedings were brought by the housing authority to recover the house but he resisted the granting of an order for possession on the basis that the local authority were not giving effect to his right to respect for his home under article 8 of the ECHR.

47. In the course of his judgment, Lord Millett at paragraph 109 stated:

> "In the exceptional case where the applicant believes the local authority is acting unfairly or from improper or ulterior motives, he can apply to the High Court for judicial review. The availability of this remedy, coupled with the fact an occupier cannot be evicted without a court order, so that the court can consider whether the claimant is entitled as of right to possession, is sufficient to supply the necessary and appropriate degree of respect for the applicant's home."

48. Lord Hope of Craighead in his judgment in the same case stated at paragraph 50:

> "It seems to me that the following conclusions can be drawn from the language of article 8 (1) in the light of the observations in *Marckx v Belgium* 2 E.H.R.R. 330. The right to respect referred to in this paragraph extends to the person's home. But the essence of this right lies in the concept of respect for the home as one among various things that affect a person's right to privacy. The context in which the reference to the person's "home" must be understood is indicated by the references in the same paragraph to his private and family life and to his correspondence. The emphasis is on the person's home as a place where he is entitled to be free from arbitrary interference by the public authorities. Article 8 (1) does not concern itself with the person's right to the peaceful enjoyment of his home as a possession or a property right. Rights of that kind are protected article 1 of the First Protocol.
>
> 51. The article must be read as a whole and the wording of article 8 (2) helps to explain article 8 (1). It refers to "interference" by a public authority "with the exercise of" the right described in article described in article 8 (1). The circumstances in which such interference is permissible indicate the limits within the article as a whole was designed to operate. Any interference with the right to respect for the person's privacy has to be measured against what is in accordance with the law and, in certain strictly defined respects, is necessary in a democratic society. Here too the emphasis is on the balance between the rights to privacy on the one hand and the wider interest of the community in a democratic society on the other, rather than with issues about a person's right to own or occupy his home as an item of property…
>
> 53. As the jurisprudence of the European Court of Human Rights and of the European Commission of Human Rights is developed, it has tended to reinforce the impression which is conveyed by *Marckx v Belgium* 2 E.H.R.R. 330 that the object of article 8 is to protect the individual against arbitrary interference by the public authorities with his right to privacy and that it is not concerned, as such, with the protection of his right to own or occupy property."

49. He added at paragraph 78:

> "78. In *Lambert London Borough Council v Howard* 33 H.L.R. 636, 645, para 32 where possession was sought against a secure tenant on the grounds of nuisance under ground two of Part I of Schedule 2 to the Housing Act, 1985, Sedley L.J said:
>
> > 'A legal threat to a secure home will, in the ordinary way, engage article 8 (1). In situations where the law affords an unqualified right to possession on proof of entitlement, it maybe that article 8 (2) is met, but that is not the present class of case and nothing in this judgment should be taken as impinging on it.'
>
> As I have already indicated, I respectfully agree with the opinion which he has expressed in the first sentence of this quotation. But I think the point which he make of the outset of the second sentence can be expressed more strongly. My understanding of the European jurisprudence leads me to the conclusion that article 8(2) is met were the law affords an unqualified right to possession on proof that the tenancy has been terminated."

50. The final passages referred to from that judgment are from the judgment of Lord Scott of Foscote at paragraphs 125 and 145 respectively where he stated:

> "It is, of course, the case that the United Kingdom in common, I expected with all other signatories to the Convention have enacted elaborate social housing legislation. The degree of security of tenure provided to tenants of residential property on the expiry of the tenancies is highly complex. There are assured short hold tenancies, secure tenancies, non secure tenancies, introductory tenancies, service tenancies, furnished tenancies and, no doubt, others. The manner in which these tenancies can be brought to an end varies and depends on the contents of the relevant legislation. The respective rights of landlord and tenants, after termination of the tenancy depend on the content of the legislation. If, under the relevant provisions to the relevant legislation the tenant has no right to remain in possession, the case is no different from that in which there is no relevant legislation at all. If, pursuant to the provisions of the relevant legislation the tenant is entitled to remain in possession after the termination of his tenancy, there will have been a corresponding diminution of the landlord's property rights. This diminution will put article 1 of the First Protocol into play. But social housing legislation of this character is well justifiable on the public interest grounds provided for by the article, *James v United Kingdom* [1986] E.H.R.R. 123. If, on the other hand, the tenant has no right to remain in possession against the landlord he cannot claim such right under article 8. To hold otherwise that article 8 can vest property rights in the tenant and diminish the landlord's contractual and property rights, would be to attribute to article 8 an effect that it was never intended to have. Article 8 was intended to deal with the arbitrary intrusion by state or public authorities into a citizen's home life. It was not intended to operate as an amendment or improvement of whatever social housing legislation the signatory state has chosen to enact. There is nothing in Strasbourg case law to suggest the contrary…
>
> 145. The third of these cases is *Sheffield City Council v Smart* [2002] LGR 467. This case concerned non secure tenancies. The tenancies had been duly determined by the local authority landlords. Possession was sought. Laws L.J, with whose judgment the other two members of the Court of Appeal agreed, said, at pages 480 to 481, paragraph 26, that:
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> > 'The premises… were without question the women's homes. Since the effect of the possession orders would be to throw them out, I think it inescapable that those orders amount to an interference with the tenants right of respect of their homes' and, at paragraph 27, that 'eviction of these tenants would constitute a prima facie violation of their right to respect for their family homes.'
>
> I respectfully disagree. Each home had been established on the basis of a proprietary interest in the premises obtained under the contractual tenancy granted by the landlord. How could the termination of that tenancy in a manner consistent with its contractual and proprietary incidents be held to constitute a lack of respect for the home that had been established? The home was always subject to contractual and proprietary incidents. The contrary view seems to me to treat a "home" as something ethereal, floating in the air, unconnected to bricks and mortar and land."

51. That decision is an authority for the proposition that article 8 in guaranteeing a right to respect for a person's home protected an aspect of his right to privacy from arbitrary interference by public authorities and did not secure either proprietary or contractual

rights to possession or a right to be provided with a home. It was also held that "home" as referred to in Article 8 (1) was an autonomous concept independent of classification in domestic law and bore an ordinary and natural meaning connoting the place where a person lived; that whether a particular habitation constituted a person's home was a question of fact which depended on whether he had sufficient and continuous links with it and not whether his occupation was lawful; and that since the defendant had lived in the house as his only home and had remained there after his right to do so had ceased on expiry on notice to quit he had established sufficient and continuous links for the house to constitute as home for the purposes of Article 8(1). It was also held that having regard to its object, Article 8 could not be relied on to defeat proprietary or contractual rights to possession; that the domestic law gave the housing authority to an unqualified right to immediate possession once service of the notice to quit had terminated the joint tenancy; that since it had been clear from the tenancy at its outset that it could so be terminated and since the premises, once recovered would be available for letting to other persons in need of housing within the authority's area there was no infringement of the defendant's right under article 8 to respect for his home; accordingly, no question arose for determination under article 8 (2).

52. Reference was then made to the case of *Albert and Le Compte v Belgium* [1983] 5 E.H.R.R. 533. That case concerned the provisions of article 6. It arose in the context of two applicants who were suspended from practicing medicine following allegations of professional misconduct. In the course of the judgment, the European Court of Human Rights noted at paragraph 29:

> "Since the 'contestation' (dispute) over the decisions taken against them concerned a 'civil right', the applicants were entitled to have their cases (in French: 'causes') heard by a 'tribunal' satisfying the conditions laid down in Article 6 (1). In many member states of the Council of Europe the duty of adjudicating on disciplinary offences is conferred on jurisdictional organs of professional associations. Even in instances where Article 6 (1) is applicable, conferring powers in this manner does not in itself infringe the convention. None the less, in such circumstances the Convention calls for least one of the two following systems: either the jurisdictional organs themselves comply with the requirements of Article 6(1), or they do not so comply but are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6(1)."

53 *Bryan v United Kingdom* [1995] 21 E.H.R.R. 342 is also a decision which concerns the applicability of article 6 (1). That was a case in which the applicant had been served with an enforcement notice which required him to demolish buildings erected without planning permission. He complained, *inter alia*, that the review by the High Court of the Inspector's decision was insufficient to comply with Article 6(1) of the convention. It was held unanimously that there had been no violation of Article 6(1) of the convention. In the course of the judgment it was stated at paragraph 44:

> "The court notes that the appeal to the High Court, being on 'points of law', was not capable of embracing all aspects of the inspector's decision concerning the enforcement notice served on Mr. Bryan. In particular, as is not infrequently the case in relation to administrative law appeals in the Council of Europe member states, there was no real hearing as such of the original complaints submitted to the inspector; the High Court could not substitute its own decision on the merits of that of the inspector; and its jurisdiction over the facts was limited.
>
> However apart from the classic grounds of unlawfulness under English law (going to such issues as fairness, procedural propriety, independence and impartiality), the inspector's decision could have been quashed by the High Court if it had been made by reference to irrelevant factors or without regard to relevant factors; or if the evidence relied on by the inspector was not capable of supporting a finding of fact; or if the decision was based on an inference from facts which was perverse or irrational in the sense that no inspector properly directing himself would have drawn such an inference."

54. The judgment went on at paragraph 45 as follows:

> "Further more, in assessing the sufficiency of the review available to Mr. Bryan on appeal to the High Court, it is necessary to have regard to matters such as the subject matter of the decision appealed against, the manner in which that decision was arrived at, and the contents of the dispute, including the desired and actual grounds of appeal."

55. The decision of the House of Lords in the case of *Begum v London Bureau of Tower Hamlets* [2003] UKHL 5 also considered the effect of Article 6(1) of the Convention. The question in that case related to a housing officer's decision that the claimant had been unreasonable in rejecting the accommodation offered to her and whether the existence of judicial review of the housing officer's decision amounted to sufficiency of review for the purposes of Article 6(1). Lord Bingham of Cornhill at paragraph 11 of his judgment stated:

> "In relation to the requirements of Article 6(1) as applied to the review by a court of an administrative decision made by a body not clothed with the independence and impartiality required of a judicial tribunal, the Strasbourg jurisprudence (as in relation to 'civil rights') has shown a degree of flexibility in its search for just and workman like solutions. Certain recent authorities are of particular importance… none of these cases is indistinguishable from the present, but taken together they provide compelling support for the conclusion that in a context such as this, the absence of a full fact-finding jurisdiction in the tribunal to which appeal lies from an administrative decision making body does not disqualify that tribunal for purposes of Article 6(1). This is a conclusion which I accept the more readily because it gives effect to a procedure laid down by Parliament which should, properly operated, ensure fair treatment of applicants such as Runa Begum."

56. Hoffman L.J. in his judgment at paragraph 33 stated:

> "The Strasbourg court however has preferred to approach the matter in a different way. It has said, first, that an administrative decision within the extended scope of Article 6 is a determination of civil rights and obligations and therefore *prima facie* has to be made by an independent tribunal. But, secondly, if the administrator is not independent (as will virtually by definition be the case) it is permissible to consider whether the composite procedure of administrate decision together with the right of appeal to a court is sufficient. Thirdly, it will be sufficient if the appellate (or reviewing) court has 'full jurisdiction' over the administrative decision. And fourthly, as established in the landmark case of *Bryan v United Kingdom* [1995] 21 E.H.R.R. 342, 'full jurisdiction' does not necessarily mean jurisdiction to re-examine the merits of the case but, as I said in Alconbury, at page 1416, para 87, 'jurisdiction to deal with the case as the nature of the decision requires.'
>
> It may be that the effect of *Bryan* is that the Strasbourg Court has arrived by the scenic route at the same solution as the Commission advocated in *Kaplan*, namely that administrative action falling within article 6 (a good deal of administrative action still does not) should be subject to an examination of its legality rather than its merits by an

independent and impartial tribunal. Perhaps that is a larger generalisation than the present state of the law will allow. But, looking at the matter as an English lawyer, it seems to me (as it did to the Commission in *Kaplan*) that an extension of the scope of article 6 into administrative decision making must be linked to a willingness to accept by way of compliance something less than a full review of the administrators decision."

57. At para 37 he added:

> "This resolves itself, following the Strasbourg reasoning which I have described, into the question of whether the County Court has jurisdiction to deal with the case as nature of the decision required. Mr. Morgan said that *Bryan* and *Alconbury* showed that when a decision turns upon questions of policy or "expediency", it is not necessary for the appellate court to be able to substitute its own opinion for that of the decision maker. That would be contrary to the principles of democratic accountability. But, when, as in this case, the decision turns upon a question of contested fact, it is necessary either that the appellate court has full jurisdiction to review the facts or that the primary decision-making process be attended with sufficient safeguards as to make it virtually judicial."

58. A number of passages from the judgment of Lord Millett were also referred to and part of the consideration related to whether the reviewing officer's decision in that case to the effect that the council no longer owed a full housing duty to the applicant constituted a determination of her "civil rights" within the meaning of article 6 (1). Lord Millett noted that the European Court of Human Rights had repeatedly said that the first step is to ascertain whether there was a dispute over a "right" which can be said at least on arguable grounds to be recognised under national law. He analysed the Strasbourg *jurisprudence* and the nature of the issues in the case before him. At paragraph 91 he noted:

> "The present case undoubtedly goes further still. It has four features which take it beyond the existing case law:
>
> I. it is concerned with a benefit in kind;
>
> II. it therefore involves priority between competing claimants. There is only finite amount of housing stock. Whether it belongs to the local housing authority or is bought in; and if one applicant is allowed to remain on the unintentionally homeless register it will be to the detriment of other homeless persons;
>
> III. the housing authority has a discretion as to the manner in which it will discharge its duties;
>
> IV. ultimately the question for determination calls for an exercise of judgment, whether the applicant has behaved reasonably in refusing an offer of accommodation, having regard to all the circumstances, and in particular housing conditions in the area."

He went on at paragraph 94 to say as follows:-

> "I am persuaded by these considerations that extending the scope of article 6 (1) is a desirable end in itself, but needs to go hand in hand with moderating its requirements in the interest of efficient administration where administrative decisions are involved. In the light of the unsettled state of the *jurisprudence* of the Strasbourg Court therefore, I am content to assume, without deciding, that Runa Begum's claim involved a determination of her civil right within the meaning of article 6 (1)."

59. At paragraph 99 he noted :

> " The court cannot substitute its own findings of fact for those of the decision making authority if there was evidence to support them; and questions as to the weight to be given to a particular piece of evidence and credibility of witnesses are for the decision making authority and not the court. But these are the only significant limitations on the court's jurisdiction, and they are not very different from the limitations which practical considerations impose on an appellate court with full jurisdiction to entertain appeals on fact or law but which deals with them on the papers only and without hearing oral evidence."

60. Finally at paragraph 105 he commented:-

> "In the present case the subject matter of the decision was the distribution of welfare benefits in kind and critically depended upon local conditions and the quality and extent of available housing stock. The content of the dispute related to the reasonableness of the claimant's behaviour in refusing an offer made to her which, if refused by her, would have to be offered to others on the homeless register. Any factual issue arising in the course of the dispute, even if critical to the outcome, would be incidental to the final decision. In my opinion the subject matter of the decision and the content of the dispute demanded that the decision be made by an administrative officer with experience of local housing conditions subject to a proper degree of judicial control; and that a right of appeal to the court on law only was sufficient for this purpose."

61. Having referred to that case at length, counsel on behalf of the Council noted that both in that case and in the case of Bryan the issues to be determined required a measure of professional knowledge or experience as to local conditions and involved the exercise of administrative discretion having regard to policy aims. In this case the officials involved did not have to make any findings of facts in reaching their decision. The facts were admitted, namely, that the applicant here was in breach of the terms of the tenancy agreement. Having reached the decision to terminate the tenancy, the matter was then brought in the normal way before the District Court which would only make an order for the issue of a warrant for possession if satisfied as to the necessary proofs.

62. In reliance on the decisions in the *Bryan* and *Begum* cases counsel submitted that in matters involving the exercise of discretionary judgment in relation to housing matters, the absence of a full fact finding jurisdiction in the court to which an appeal or reviews lies from the decision of a housing authority does not disqualify the court for the purposes of article 6(1). The availability of judicial review to control a decision by a housing authority to terminate a tenancy in a local authority dwelling, it was submitted, is sufficient to satisfy the requirements of article 6(1), particularly where there is no factual dispute concerning the reason given for the termination of the tenancy. Indeed it was pointed out in the oral submissions that judicial review would be a merit based review of the circumstances of this case had it been a review of the decision of the Council and not that of the District Court.

63. The Council accepts that the premises the subject matter of these proceedings is the applicant's home within the meaning of

Article 8 of the ECHR. However, they submitted that the service of a notice to quit on the applicant and an application for a warrant for possession does not constitute a violation of the applicant's right to respect for her home under article 8(1). It was emphasised that article 8 (1) provided for respect for a home as opposed to a right to a home. In this context reference was made to the passage already referred to from the decision in the case of *London Borough of Harrow v Qazi* referred to above and in particular the passage from the judgment of Lord Hope of Craighead in which he stated at para 53:

> "The emphasis is on the person's home as a place where he is entitled to be free from arbitrary interference by the public authorities. Article 8(1) does not concern itself with the person's right to the peaceful enjoyment of his home as a possession or as a property right."

64. It was emphasised that the applicant herein as is the case with all local authority tenants does not have the statutory security of tenure provided to non local authority tenant under the provisions of the Landlord and Tenant acts or the Rent Restrictions Acts. Thus it was emphasised that Article 8 is not directed to the protection of property interests or contractual rights. What it guarantees is respect for the home. I have already referred to the lengthy passages from the judgment of Lord Hope in the *Qazi* case and the references made by him to the decision in *Marckx v Belgium* referred to above. In that decision, as already referred to, ultimately, the House of Lords ruled that Article 8 could not be relied on to defeat proprietory or contractual rights to possession; that the domestic law gave the housing authority an unqualified right to immediate possession once service of the notice to quit had terminated the joint tenancy; that since it had been clear from the tenancy at its outset that it could be so terminated and the premises, once recovered, would be available for letting to other persons in need of housing within the authority's area, there was no infringement of the defendant's right under Article 8 to respect for his home; and accordingly, no question arose for determination under Article 8(2).

65. In the present case it was submitted that the applicant was no longer entitled to enjoy the premises because she failed to abide by the conditions of the tenancy leading to the termination of her interest. Therefore she no longer had a property right in the premises.

66. It is interesting to note that subsequently the European Court of Human Rights decided that an application in the *Qazi* did not disclose any appearance of a violation of the Convention or its protocols and his application was declared inadmissible.

67. Reference was also made to the decision in the case of *Donohue v Poplar Housing and Generation Community Association Ltd* [2002] QB 48. In that case the Court of Appeal had to consider whether an assured shorthold tenancy, subject to s. 21 of the Housing Act, 1988 which imposed a mandatory obligation on the court to make an order for possession where the appropriate notice has been given violated Article 8. Lord Woolf C.J. giving the court's judgment referred to Article 8 and noted:

> "70 The defendant's lack of security is due to her low priority under the legislation because she was found to be intentionally homeless. She was and must be taken to be aware that she was never more than a tenant as a temporary measure. In the case of someone in her position, even if she is a mother of young children, it is perfectly understandable that Parliament should have provided a procedure which ensured possession could be obtained expeditiously and that Poplar should have availed itself of that procedure…
>
> 72 We are satisfied that notwithstanding its mandatory terms, section 21 (4) of the 1998 Act did not conflict with the defendant's right to family life. Section 21(4) is certainly necessary in a democratic society in so far as there must be a procedure for recovering possession of property at the end of a tenancy. The question is whether the restricted power of the court is legitimate and proportionate. This is the area of policy where the court should defer to the decision of Parliament. We have come to the conclusion that there were no contraventions of Article 8 or of Article 6."

68. It was submitted that Article 8 is not applicable to the facts of this case but if Article 8 rights of the applicant have been engaged contrary to the contention of the Council then it is submitted that any such interference with the applicant's rights was in accordance with law. Such interference was necessary in the interest of public safety and for the prevention of disorder or crime and for the protection of health and the protection of the rights and freedom of others.

69. The role of the Council as landlord of some 27,000 dwellings with the duty to manage those dwellings and to secure the interest of all of its tenants as far as reasonably possible in the enjoyment of their dwellings was emphasised. On that basis it was argued that the interest of good estate management required the Council to take steps to avoid, prevent or abate anti-social behaviour in its local authority housing areas. It was submitted that the court should treat the decisions of the legislator in the area of local authority housing with particular deference. It was submitted that the Council has the special skills, competence and experience in dealing with housing problems and anti-social behaviour in particular localities in its administrative area.

70. The next case considered was *Chapman v UK* [2001] 33 E.H.R.R. 138, a decision of the European Court of Human Rights which concerned an applicant who was a gypsy who lived with her family in a caravan on her own land. She was refused planning permission which she needed to be allowed to live there. Enforcement measures were taken against her and she complained that her rights under Articles 6, 8 and 14 and Article 1 of the First Protocol had been violated. In that case the UK government accepted that her complaints concerned her right to respect for her home and further accepted that there had been an interference by a public authority with her right to respect for her home as a result of refusal of planning permission to allow her to live in her caravan on her own land together with pursuit of enforcement measures against her. The applicant accepted that the measures to which she was subjected were in accordance with law. It had been submitted by the UK Government that the measures in question were in support of the enforcement of planning controls which were in the interest of the economic well being of the country and the preservation of the environment and public health. The court found that the measures pursued the legitimate aim of protecting "the rights of others" through preservation of the environment. The court went on to consider whether the interference was "necessary in a democratic society" and in the course of its judgment at para 90 - 91 the general principles were stated:

> "90 An interference will be considered "necessary in a democratic society" for a legitimate aim and 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 reason cited for the interference are relevant and sufficient remains subject to review by the court for conformity with the requirements of the Convention.
>
> In this regard, a margin of appreciation must, inevitably, be left to the national authorities who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, it's importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions."

71. The court went on at paragraph 99 to state:

> "99 It is important to recall that Article 8 does not in terms give a right to be provided with a home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being has a place where he or she can live in dignity which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision."

72. Finally the court in that case dealt with briefly with Article 6 as follows in para 124:

> "124 The court recalls that in the case of Bryan it held that in the specialised area of town planning law full review of the facts may not be required by Article 6 of the Convention. It finds in this case that the scope of review of the High Court, which was available to the applicant after a public procedure before an inspector, was sufficient in this case to comply with Article 6 (1). It enabled a decision to be challenged on the basis that it was perverse, irrational, had no basis on the evidence or had been made with reference to irrelevant factors or without regard to relevant factors. This may be regarded as an affording adequate judicial control of the administrative decisions in issue."

73. Accordingly the court found that there had been no violation of Article 6 (1) in that case.

74. An important decision is that of *Connors v UK* [2005] 40 E.H.R.R. 189. During the course of submissions herein it was made clear that the applicant places great reliance on the decision on the European Court in the *Connor's* case. Somewhat surprisingly however, it was not referred to in the written submissions of the applicant or in the opening oral submissions on behalf of the applicant. The applicant and his family were gypsies who were licensed to occupy a plot at a site provided that they did not cause "nuisance". Ultimately a notice to quit was served on the family requiring them to vacate two plots which they occupied. No written or detailed reasons were given by the Council for the termination of the licence. Proceedings for summary possession of the plots were brought against the applicants. It was asserted by the site manager that the defendants had breached the licence agreement. This allegation was in dispute. Relying upon Article 8 of the Convention, the applicant complained that he was not given the opportunity to challenge in court the allegations which were the basis for his family's eviction and that, unlike the owners of privately runs sites, housing associations and local authority landlords, local authorities running gypsy sites were not required to prove allegations against tenants. He also invoked Articles 6, 13 and 14 of the Convention and Article 1 of the Protocol No. 1. In that case it was held that there had been a violation of Article 8 of the Convention. It was also held that no separate issue arose under Article 6 of the Convention. In the course of its judgment the court referred to the general principles applicable. It stated at paras. 81 to 84 as follows:-

> "81 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 reason cited for the interference are relevant and sufficient remains subject to review by the court for conformity with the requirements of the Convention.
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> 82 In this regard a margin of appreciation must inevitably be left to the national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. The margin will vary according to the nature of the Convention right in issue, its importance for the individual in the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions. The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights. On the other hand, in spheres involving the application of social or economic authorities, there is authority that the margin of appreciation is wide, as in the planning context where the court has found that:
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> > 'insofar as the exercise of the discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principal enjoy a wide margin of appreciation.'
>
> The court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislative judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation. It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individuals identity, self determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community. Where general and social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant.
>
> 83 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.
>
> The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases. To this extent, there is thus a positive obligation imposed on the contracting States by virtue of Article 8 to facilitate the gypsy way of life."

75. The court went on at para. 92 to state:-

> "The existence of other procedural safeguards is however a crucial consideration in this Court's assessment of the proportionality of the interference. The Government has relied on the possibility for the applicant to apply for judicial review and to obtain a scrutiny by the courts of the lawfulness and reasonableness of the Council's decisions. It would also be possible to challenge the Council for any failure to take into account in its decision making relevant matters such as duties towards children. The Court would recall that the applicant sought permission to apply for judicial review and that permission was refused. In the applicant's case, his principal objection was placed not on any lack of compliance of the Council with its duties or in any failure to act lawfully but on the fact that he and the members of the families living with him on the plot were not responsible for any nuisance and could not be held responsible for the nuisance caused by others who visited the site. Whether or not he would have succeeded in that argument, a factual dispute clearly existed between the parties. Nonetheless the local authority was not required to establish any substantive justification for

evicting him and on this point judicial review could not provide any opportunity for an examination of the facts in dispute between the parties. Indeed, the Government drew the Court's attention to the Court of Appeal's decision in *Smart*, where it was held, that to entitle persons housed under homelessness provisions, without security of tenure, to have a court decide on the facts of their case as to the proportionality of their evictions would convert their occupation into a form of secure tenure and in effect undermine the statutory scheme. While therefore the existence of judicial review may provide a valuable safeguard against abuse or an oppressive conduct by local authorities in some areas, the court does not consider that it can be regarded as assisting the applicant, or other gypsies, in circumstances where the local authority terminates licences in accordance with the applicable law."

76. The court when on to note the difficulty of finding appropriate accommodation for the gypsy and traveller population and accepted that there was a margin of appreciation in this regard. It went on however to say at para. 94:-

> "However, even allowing for the margin of appreciation which is afforded to the State in such circumstances, the Court is not persuaded that the necessity for a statutory scheme which permitted the summary eviction of the applicant and his family has been sufficiently demonstrated by the Government. The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community. The references of 'flexibility' or 'administrative burden' have not been supported by any concrete indications of the difficulties that the regime is thereby intended to avoid. It would rather appear that the situation in England as it has developed, for which the authorities must take some responsibility, places considerable obstacles in the way of gypsies pursuing an actively nomadic lifestyle while at the same time excluding from procedural protection those who decide to take up a more settled lifestyle."

77. In those circumstances the Court went on to find that the eviction of the applicant and his family was not attended by "the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a "pressing social need" or proportionate to the legitimate aim being pursued", thus it was held that there had been a violation of Article 8.

78. The final judgment to which reference was made was that of the House of Lords in the cases of *Kay and Others v. Lambeth London Borough Council and Leeds City Council v Price and Others* [2006] 2 A.C. 465, two cases which were heard together. In that case the House of Lords was invited to reconsider the decision in the *Qazii* case in the light of the judgment of the European Convention on Human Rights in Connors and in a case entitled *Blecic v Croatia* [2004] 41 E.H.R.R. to which I shall refer briefly later. In each case, the local authority had brought proceedings against the occupiers of property on the basis that they were trespassers. In the case of *Leeds City Council v Price and Others* the defendants were gypsies who had moved caravans onto a recreation ground owned by the local authority without its consent. In each case the occupiers of the respective properties sought to rely on Article 8 of the Convention on the basis that their right to respect for their homes was infringed by the local authority's claims for possession. This claim was unsuccessful. As stated in the head note at para 4:-

> "That, since the local authority in each case had an unqualified right to possession and the defendants had no right under domestic law to occupy their respective premises or remain on the land, their claims under Article 8 were unsustainable."

79. It would be helpful to refer briefly to a number of passages from the judgment of Lord Bingham of Cornhill. He stated at paras. 34 – 35:-

> "34. Under some statutory regimes, as where discretionary grounds are relied on to terminate a secure tenancy under the Housing Act 1985, the court may make an order for possession only where, other conditions for making such an order being met, the court thinks it reasonable to do so. This enables the court to take account of all circumstances which it judges to be relevant. If, in any case covered by such a regime, the statutory conditions are satisfied and the court does, on consideration of all the circumstances, think it reasonable to make a possession order, the court will in effect have undertaken the very assessment which Article 8(2) requires. In such a situation Article 8(2) adds nothing of substance to the protection which the occupier already enjoys.
>
> 35. Under some statutory regimes the court may be required to make an order for possession if certain conditions are met and there is no overriding requirement that the court considers it reasonable or just to make such an order, the statutory scheme is nonetheless likely to satisfiy the Article 8(2) requirement of proportionality if it is clear that the statutory scheme represents a democratic solution to the problems inherent in housing allocation. Thus in *Poplar Housing and Regeneration Community Association Ltd v Donoghue* [2002] QB 48, the Court of Appeal found no breach of Article 8(2) in the use of s. 21(4) of the Housing Act 1988, as amended, to gain possession of an assured shorthold tenancy granted to a person who had been intentionally homeless, because (para. 69) Parliament had intended to give preference to the needs of those dependent on social housing as a whole over those who, like the tenant, had been intentionally homeless. Similarly, in *R(McLellan) v Bracknell Forest Borough Council* [2002] Q.B. 1129, the Court of Appeal found no breach of Article 8 where a housing authority determined the introductory tenancies of tenants whose rent was in arrears under s. 127(2) of the Housing Act 1996, since (para. 63) Parliament had decided that it was necessary in the interest of tenants generally and the local authorities to have a scheme whereby, during the first twelve months, tenants were on probation and could be evicted without long battles in the county court, there being, it was held, adequate procedural safeguards. The Court of Appeal took a similar approach when holding, in *Sheffield City Council v Smart* [2002] H.L.R. 639, para 37, that Parliament clearly enacted the relevant statutory provisions upon the premise that while a tenant is housed as a homeless person he enjoys no security of tenure. … Where a statutory scheme covers the case of an occupier, and conditions are prescribed for obtaining possession, and those conditions are met, it will only be in highly exceptional circumstances that the occupier will gain additional protection from Article 8."

80. He added at para. 47:-

> "The question then arises whether these cases should, even after this lapse of time, be remitted to the county court for consideration whether eviction is necessary in a democratic society, as that expression has been defined in the Strasbourg jurisprudence. I would favour that course if there appeared any reasonable prospect of the court deciding that it was not necessary. But it is clear that under domestic property law the appellants have no right to occupy their respective premises, of which the local authority has an unqualified right to possession. The appellants fall outside the categories to which Parliament has extended a measure of protection. The local authority has no duty to accommodate the appellants, but has a power and duty to manage its housing stock. The appellants have not pleaded or alleged facts which give them a special claim to remain. I am satisfied that if these cases were remitted, possession orders would necessarily be made."

81. It is also interesting to consider the judgment of Lord Nicholls of Birkenhead in that case at para. 53 he stated as follows:-

> "The starting point is clear enough. A possession order made by a court in respect of a defendant's home will be, at least ordinarily, an interference with the defendant's right to respect for his home within the meaning of Article 8. Equally clearly, in almost all cases of the two types mentioned above that interference will be justified as 'necessary in a democratic society' on one or more of the grounds set out in Article 8(2). The interference will be justified because in one case the defendants never had any right to be on the property at all. In the other case the defendants had only the limited rights afforded by the housing legislation. This complex, ever-changing law is testimony to the elaborate steps taken by Parliament to strike an appropriate balance between the competing interests of all those who are in need of homes. The country's housing stock is finite, and for many years the legislature has striven repeatedly to achieve the best and fairest use of the available housing. Parliament's decisions on this extremely difficult and intricate social problem are to be respected.
>
> 54. I said 'in almost all cases' because inevitably there may be the exceedingly rare case where the legislative code or, indeed, the common law is impeachable on human rights grounds. *Connors v United Kingdom* 40 E.H.R.R. 189, regarding the lack of protection for gypsies, is an example. It is this possibility, rare and exceptional though it may be, which gives rise to a hugely important practical problem. Day in, day out, possession orders are routinely made in county courts all over the country after comparatively brief hearings. The hearings are mostly brief because the time needed to dispose fairly of the formalities and also of questions of reasonableness, where they arise, is usually short. This will no longer be the position if, as has been contended, local authorities must now plead and prove in every case that domestic law meets the requirements of Article 8.
>
> 55. I am unable to accept this remarkable contention. The course proposed would be a recipe for a colossal waste of time and money, in case after case, on futile challenges to the Convention-compatibility of domestic law. On the contrary, despite the possibility of a successful challenge under Article 8, I see no reason for the present practice to change. Courts should proceed on the assumption that domestic law strikes a fair balance and that it is compatible with the requirements of Article 8 and also Article 1 of the First Protocol."

82. I think it would also be helpful to refer briefly to a passage from the judgment of Lord Hope of Craighead in that case at para. 98:-

> "I agree with the Court of Appeal's conclusion in the *Leeds* appeal that the decision in Connors is incompatible with the proposition that the exercise by a public authority of an unqualified right to possession will *never* constitute an interference with the occupier's right to respect for his home, and that it will *always* be justified under Article 8(2): [2005] 1 W.L.R. 1825, para 26. Nowhere in my speech in *Qazi* did I subscribe to a proposition in such extreme terms. On the other hand, as I read the Strasbourg court's judgment, it did not go so far as to say that the recovery of possession will constitute an interference with that right in every case where the premises are occupied by the person as his home. *Connors* was decided, as is usual in that court, on a relatively narrow ground which was related to its own facts.
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> 99. As the court said in Connors at the end of para. 85, the central issue was whether, in the circumstances, the framework applicable to the occupation of pitches on local authority gypsy sites provided the applicant with sufficient procedural protection of his rights. There is an echo here of the point made in para. 84 about the vulnerable position of gypsies as a minority and the need for some special consideration to be given to their needs and different lifestyles. No mention is made of the general principles or their application to the situation that was discussed in *Qazi*, where the issue was whether the procedure by which a public authority landlord recovers possession of residential accommodation from a former tenant whose tenancy has come to an end by operation of law by asserting its unqualified right to possession was incompatible with the rights guaranteed by Article 8. It is, of course, possible to envisage special cases other than that of gypsies. But the fact that special consideration must be given to their needs does not justify the proposition that this must be done in every case. As the Court of Appeal acknowledged in para. 29, a statutory regime may itself achieve the balance required by Article 8(2) so that, if the judge complies with it, the requirements of Article 8(2) will be satisfied."

83. He went on to say at para. 112:-

> "But it needs to be stressed that the facts in Connors were entirely different from those in *Qazi*. There was no need in *Qazi's* case to give special consideration to the needs of gypsies and their different lifestyles, and the background to the local authority's decision to seek a possession order was that a valid notice to quit had been served on the local authority by one of the tenants of the tenancy. *Connors* does not resolve the problem as to how the need to give special consideration to cases of that kind where the law itself is defective - and I do not confine this category to gypsies - can be fitted in to the domestic system which requires that orders for possession must be sought in the county court. So I do not think that the decision in *Connors* is incompatible with the view of the majority in *Qazi* that there is no need for a review of the issues raised by Article 8(2) to be conducted in the county court if the case is of a type where the law itself provides the answer, as in that situation a merits review would be a pointless exercise. In such a case the Article 8 defence, if raised, should simply be struck out.
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> 113. For these reasons I do not think that the reasoning of the majority in *Qazi* should be departed from. But I accept that the reasoning needs to be clarified. In the light of the subsequent Strasbourg cases I would now place greater emphasis on the need for the court to provide a remedy in those special cases of a kind not considered in *Qazi* where it is seriously arguable that the right to possession which is afforded by domestic law violates the Convention right. Lord Millett suggested in para. 109 of his speech in *Qazi* that judicial review would provide the appropriate remedy. On balance I think that it would be better for the issue to be dealt with by way of defence to the proceedings in the county court, to the extent that the limits on the jurisdiction of that court permit it to do so."

84. The final judgment in that case to which I wish to refer is that of Lord Scott of Foscote. At para. 169 he said:-

> "As for these appeals, may I consider first the *Lambeth* appeals. The possession orders sought by Lambeth engage the Article 8 right to respect for the home of the respective occupiers from whom possession was sought. But an order for possession was in accordance with domestic law. As against Lambeth the occupiers had become trespassers with no right to remain in occupation. There was nothing discriminatory or unusual about the statutory and common law framework that produced that result nor about the absence of any statutory protection given to the occupiers by the housing legislation. I respectfully agree with my noble and learned friend Lord Bingham of Cornhill's remarks in para. 36 of his opinion that the balance required by Article 8(2) to be struck was struck by the general law, that the public authority owner had a right to

manage and control its property within the bounds set by statute, that the occupier acquired only a limited right to occupy and that on due determination of that right, a claim by the owner must ordinarily succeed. The appellants, the *Bruton* tenants of LQHT, could not resist Lambeth's possession applications on Article 8 grounds unless either they mounted an Article 8 attack on the legal framework that entitled Lambeth to possession or they attacked on Article 8 grounds Lambeth's decision to seek possession. The first attack was not attempted, and, if it had been, would in my opinion have been bound to fail. There is nothing the matter, from an Article 8 standpoint, with a common law rule which gives the owner of property, which is occupied as a home by a person who has no right as against the owner to remain there, the right to recover possession of the property. Parliament's omission to provide any statutory security of tenure for home occupiers in the position in which the *Bruton* tenants found themselves is well within the wide margin of appreciation referred to in *Blecic* .

170. As to the decision of Lambeth to seek possession of the properties occupied by the *Bruton* tenants, I agree with and adopt the conclusion expressed by Lord Bingham in para. 47 of his opinion. No facts have been pleaded or alleged by the appellants which outweigh the right and the duty of Lambeth to manage its housing stock. The wide margin of appreciation referred to in *Blecic* must be accorded to Lambeth.

171. The Article 8 defences were struck out by Judge Roger Cooke. They were in my opinion rightly struck out. If a defendant does not plead or allege sufficient facts which, if made good, could constitute a defence, the defence can be struck out. On the facts pleaded and alleged in the Article 8 defences the defences could not have succeeded.

172. Nor, in my opinion, where a home occupier has no contractual or proprietary right to remain in possession as against the owner of the property, could an Article 8 defence based on no more than the personal circumstances of the occupier and his family ever succeed. *Connors* is no authority to the contrary. The successful Article 8 defence in *Connors* was founded on a combination of Mr Connors inability to enjoy the security of tenure advantages afforded by statute to occupiers of privately owned caravan sites and on the Strasbourg court's perception (which I think was an unjustified perception) of a lack of sufficient procedural safeguards enabling him to dispute the grounds which had led the council to terminate his site licence."

85. On the basis of that decision it was submitted on behalf of the Council that *Connors* can be distinguished on a number of grounds reflecting the fact that the *Connors* case was an exceptional decision namely that there had been unjustified discrimination between occupiers of local authority sites and those of private caravan sites, the "special consideration" required by Strasbourg law for gypsies and the lack of suitable procedural means to resolve the factual issues which lay behind the authority's action. Further it was submitted that the facts of the case before this court can be distinguished from that in *Connors* because unlike *Connors*, the applicant herein was informed of the reason for the termination of her tenancy. There is no factual dispute between the Council and the applicant as the applicant has admitted a breach of clause 13 of the Tenancy Agreement.

86. The general statement of principle in para 83 of the Connors judgment is based upon the court's decisions in the *Buckley* and *Chapman* cases to which it refers, both of which were considered by the House of Lords in *Qazi*. Accordingly it was submitted that the Connors case is of assistance to the courts only in relation to cases involving gypsies/travellers.

87. I want to refer briefly at this point to a passage from the judgment of the European Court of Human Rights in *Blecic v. Croatia* which was as can be seen referred to in the course of the judgment in the *Kay* case. At para. 64 the court stated as follows:-

"64. The court accepts that where State authorities reconcile the competing interests of different groups in society, they must inevitably draw a line marking where a particular interest prevails and another one yields, without knowing precisely its ideal location. Making a reasonable assessment as to where the line is most properly drawn, especially if that assessment involves balancing conflicting interests and allocating scarce resources on this basis, falls within the States margin of appreciation.

65. State intervention in socio-economic matters such as housing is often necessary in securing social justice and public benefit. In this area, the margin of appreciation available to the State in implementing social and economic policies is necessarily a wide one. The domestic authorities' judgment as to what is necessary to achieve the objectives of those policies should be respected unless the judgment is manifestly without reasonable foundation."

88. At this point I want to mention the submissions made by Mr. McGarry on behalf of the second and third named respondents. Counsel emphasised that he was dealing principally with the argument that the procedure provided by s. 62 was a breach of Article 8. He went through a very careful analysis of the decisions from the United Kingdom and the European Court of Human Rights. His primary submission was to the effect that Article 8 is not engaged at all in circumstances where the local authority had served a notice to quit and the tenancy had been lawfully terminated in accordance with law. He pointed out that as of that time the applicant had no interest, possessory or otherwise, in the dwelling. He submitted that *Connors* was the only case in which Article 8 had been successfully invoked and he pointed out that if the applicant was correct in the contentions made then the net effect would be that Article 8 conferred a possessory right on a tenant.

89. He commented on the basis for the decision of the European Court of Human Rights in the *Connors* case. He submitted that it had to be understood in the context of the particular circumstances of that case which involved to a large extent an element of discrimination. He pointed out that the decision in *Qazi* which predated *Connors* was considered in *Kay* and that the House of Lords held that *Connors* did not displace the decision in *Qazi*.

90. Counsel also referred at length to the later decision of the European Court of *Blecic v Croatia* to which I have already referred. In that case, the applicant had for nearly forty years before 1992 been a specially protected tenant of a publicly owned flat. Under the domestic law of Croatia a specially protected tenancy could be terminated if the tenant ceased to occupy the flat for a continuous period of six months but termination might not be affected on that ground if the tenant's failure to use the flat was attributable to medical treatment, military service or "justified reasons". The applicant had left her flat in July 1991 to visit her daughter in Rome. War intervened, conditions at home were bad and the applicant did not return until May 1992 by which time another person had, without permission moved into the flat. In February 1992 the local authority initiated proceedings to terminate the tenancy. The applicant argued that she had had justified reasons for not using the flat and ultimately the Supreme Court rejected that argument. The European Court of Human Rights held that the premises were her home for the purposes of Article 8 and that the facts disclosed an interference with the applicant's right to respect for her home. However, it held that the interference with her right to respect for her home had a legitimate aim. He submitted that the applicant in this case could not rely on Article 8 in circumstances where the tenancy had been determined "in accordance with law". He submitted that the opinions of the House of Lords in *Qazi* and *Kay* are authority for the proposition that the court should conclude that the requirements of Article 8(2) were met by the law that applies in

this case despite the decision in Connors. He added that as Lord Millett put it in *Kay* there is no balance for the court to strike between the interference with the applicant's right and the legitimate aim that was being pursued by the local authority. The tenancy has come to an end and the applicant no longer had any right to remain in occupation of the premises. Therefore he submitted that the summary procedure provided by s. 62 was appropriate. If there was any issue at all, the applicant should have reviewed the reasonableness of the decision to terminate the tenancy. Finally he submitted that there was no element of discrimination or suggestion that the applicant is being treated differently from anyone else in the same situation and that accordingly the provisions of Article 14 were not engaged.

Decision
91. In the course of legal argument in this case a number of decisions of the European Court of Human Rights were cited to this Court. I am mindful of the provisions of s. 4 of the European Convention on Human Rights Act, 2003 regarding the taking of judicial notice of decisions of the European Court. The other decisions cited include a number of decisions of the Courts of the United Kingdom and those decisions are of some assistance in the interpretation of the relevant provisions of the ECHR.

92. I now propose to look at the relevant provisions of the ECHR relied on by the applicant in support of her arguments in this case.

Article 6
93. The complaint of the applicant under this heading relates to the nature of the summary proceedings provided for under s. 62 of the Act and focused on the inability of the tenant to mount any challenge to the local authority in the course of the summary proceedings. Complaint was thus made as to the absence of a hearing on the merits in the course of the proceedings under s. 62, the inability to put forward any mitigating circumstances as to why the warrant for possession should not issue and the absence of recourse to legal aid in respect of the hearing. Given the features described above of a hearing pursuant to s. 62 the question has to be asked, does such a hearing infringe the requirements of Article 6?

94. Certain things are clear from the facts of this particular case. The necessary proofs required for the issue of a warrant for possession provide for in s. 62 were in order. No suggestion to the contrary is made by the applicant. Once a decision is taken to terminate a tenancy and provided the steps laid down in s. 62 are complied with, the tenancy is at an end. There is no further right to possession of the premises and thus the Council is entitled to recover possession of the premises, as can be seen from the decision in cases such as *The State (O'Rourke) v Kelly* and *Dublin Corporation v Hamilton*. The tenant in that situation is unable to challenge the entitlement of the Council to possession of the premises save to ensure that the procedures provided for under s. 62 have been complied with. To put it another way, provided that the provisions of s. 62 have been complied with by the Council, there is no defence in law open to the tenant. It has never been suggested otherwise by the applicant in this case.

95. In this case, Mr. Connolly S.C. pointed out that if the applicant had a complaint about the decision of the Council to terminate the tenancy the she could have challenged that decision in the way that administrative decisions are subject to challenge, that is, by way of judicial review. If the decision of the Council was not reasonable or lawful, then, judicial review would provide an effective remedy to the applicant in such a situation. He argued that the question is not whether s. 62 is incompatible with the ECHR but whether the applicant has an effective remedy to deal with the reasonableness or otherwise of the decision to terminate the tenancy. Thus he argued that the fact that s. 62 provides for a summary procedure is not incompatible with the EHCR in circumstances where that procedure is coupled with the availability of judicial review.

96. The use of a summary procedure coupled with the availability of judicial review was considered in a number of the judgments cited in the course of argument, notably the decisions in *Qazi, Albert and Le Compte, Bryan and Begum*, referred to above.

97. I have already referred to passages from the judgment of Lord Millett and in particular at para. 109 in the case of *Qazi* where he made observations as to the availability of the remedy of judicial review in circumstances where an applicant was of the view that the local authority was acting unfairly. That decision was concerned however, not with the provisions of Article 6 but Article 8 and Lord Millett concluded that the availability of judicial review supplied the necessary degree of respect for the applicant's home in the circumstances of that case.

98. The case of *Albert and Le Compte* is of more immediate relevance. I have set out the relevant passage (para. 29 of the judgment) above. The question that that decision prompts is whether the availability of judicial review provides the necessary compliance with Article 6(1), that is, the right to a fair and public hearing by an independent and impartial tribunal established by law in the determination of civil rights and obligations. It is clear from the decision, which concerned a disciplinary hearing of a professional body, that Article 6 requires either that the disciplinary tribunal itself complied with Article 6 or that it was subject to subsequent control by a judicial body that has full jurisdiction.

99. The decision in the *Bryan* case is also relevant. One of the features of that case was whether in the context of a planning issue, a decision of an Inspector was sufficient to comply with Article 6(1). It was held in that case that the proceedings before the Inspector constituted a fair hearing but one of the questions to be determined was whether the hearing was before an independent and impartial tribunal. It was found that the hearing before the Inspector did not satisfy this requirement but nonetheless, it was held that there was no violation of Article 6(1) if the proceedings are subject to control by a judicial body that has full jurisdiction. The European Court of Human Rights in that case noted at para. 44 of the decision the limits on the appeal process from the Inspectors decision. I have already set out para. 44 above and it is not necessary to repeat here. In essence the procedure in that case provided for an appeal by way of judicial review and such a process was found not to violate Article 6(1). The appeal was on a point of law and not capable of embracing all aspects of the Inspector's decision. Nevertheless, the European Court of Human Rights held that there was no violation of Article 6(1).

100. There is no doubt that the rights of the applicant are limited in the course of a hearing before the District Court on foot of an application under s. 62 for the issue of a warrant for possession. However, a person in the position of the applicant is entitled to judicially review the decision of the Council to terminate a tenancy. In the present case it does not appear that the applicant herein has any basis upon which she could have challenged the decision in the present case. I accept the submissions of Mr. Connolly S.C. to the effect that there was sufficient protection for the tenant by way of judicial review of the decision of the Council and that in this way the tenant's rights under the Convention are protected. It seems to me that on the basis of the decision of the European Court of Human Rights in *Bryan* that the availability of judicial review proceedings meets the requirements of Article 6(1).

101. Another case to which reference was made in the context of Article 6 was the decision in the House of Lords in the case of *Begum* referred to above. That case is of particular assistance. It concerned a housing officer's decision as to the unreasonableness of the claimant's decision to reject accommodation which she had been offered and whether the existence of judicial review of the housing officer's decisions sufficed for the purposes of Article 6(1).

102. That case is helpful in its analysis of the development of the jurisprudence of the European Court of Human Rights in relation to administrative decisions and the scope of Article 6(1). I have referred extensively to the passages cited to me from the decision of the House of Lords in that case and in particular from the speech of Lord Millett. The comments made by him at para. 105 of his judgment set out above and in which he described the importance of local conditions and the extent of available housing stock seem to me to be particularly apt in the context of this case. The decision of the Council in the present case to terminate the tenancy of the applicant is an administrative decision. It is a decision made in reliance on the particular expertise of the Council and its officials in relation to such matters as the local housing conditions, issues such as anti-social behaviour, the nature of the community concerned and of the relevant housing stock.

103. In the context of a consideration as to whether the availability of the remedy of judicial review ensures that the applicant's rights are not violated, it should be remembered that in this case, before the decision to terminate the tenancy was made, the applicant was written to on a number of occasions and attended meetings with the Council officials. No complaint is made in the course of these proceedings as to any procedural unfairness on the part of the Council in the course of its dealings with the applicant and it is clear that the applicant had every opportunity to put her case to the Council as to why the tenancy should not be terminated and she availed of the opportunity to put her side of the case.

104. Accordingly in considering whether the applicant's rights have been violated by the provisions of s. 62 and the summary procedure provided for therein I am of the view that one cannot ignore the fact that the administrative decision to terminate the tenancy could be the subject of judicial review in an appropriate case. Having regard to the decisions to which I have referred and in particular the decisions in *Bryan* and *Begum*, the jurisprudence of the European Court of Human Rights recognises that in certain areas for example, when dealing with issues of professional discipline or in dealing with matters such as the appropriate distribution and supply of local authority housing, a degree of specialised or local knowledge or expertise may be necessary. In such circumstances, there is nothing wrong in principle with a decision being made by an officer of a local authority as in the *Bryan* case. The issue is whether that decision can be reviewed by a court with full jurisdiction. The fact that the administrative decision is enforced by means of a court order in summary proceedings which do not permit a full hearing on the merits does not, in my view, violate article 6 (1). The requirement for review by a court exercising full jurisdiction is met by a court exercising the jurisdiction of judicial review in respect of the administrative decision. S. 62 cannot be looked at in isolation from the process which leads to the application to court under that section for the issue of a warrant for possession. The process which led to the invocation of the s. 62 procedure in this case was subject to the possibility of judicial review. As such I am satisfied that the procedure under s. 62 and the process leading to such an application does not violate the applicant's rights under Article 6(1), given the availability of the procedural safeguards provided by the availability of the remedy of judicial review in respect of the decision to terminate the tenancy.

Article 8

105. I think it would be helpful to recall briefly the factual situation in relation to the applicant and the Council for the purpose of considering the provisions of Article 8.

106. The applicant entered into the housing agreement with the Council on the 30th November, 2005. At the time she entered into the agreement, she had been advised of a complaint in respect of her previous dwelling which involved her partner, Mark Keating. She received a letter dated the 29th November, 2005 prior to entering into the tenancy agreement which warned her that clause 13(vii) of the agreement was being invoked in respect of the Mark Keating. It was made clear to her that if Mark Keating was found on the premises, it could result in ejectment "in the interest of good estate management".

107. Complaints were made to the Council about the presence of Mark Keating at the premises and the applicant was invited to attend a number of meetings with Council officials in relation to issues of anti-social behaviour and the fact that the applicant allowed Mark Keating to be present at her home. I have also referred above to correspondence between the Council and the applicant and the applicant's solicitors and to representations made on behalf of the applicant by her then solicitors.

108. The Council as mentioned previously is the housing authority for the City of Dublin and has statutory duties under the Housing Acts, 1966 – 2002 to provide accommodation for those who are homeless and unable to provide accommodation for themselves from their own resources. As such the Council is landlord of some 27,500 dwellings. It has a duty to manage and control those dwellings and to protect the interests of its tenants in the peaceful enjoyment of their dwellings. As such, the interests of good estate management require the Council to take steps to avoid or prevent anti-social behaviour in local authority housing areas. One of the areas of concern as described in the affidavit of Michael Clarke herein on behalf of the Council is the issue of drug related activities. He described anti-social behaviour in the area in which the dwelling the subject of these proceedings is located. He noted that the Council and the local community are working together to provide a better living environment for all those resident in the area. Clearly, the Council has a duty and responsibility not just to deal with the immediate housing needs of people such as the applicant who are homeless or unable to provide accommodation for themselves but the Council also has a responsibility to all of its tenants as it acknowledged in the affidavit of Mr. Clarke to avoid and prevent anti-social behaviour in local authority areas.

109. The factual background outlined above explains the context in which the tenancy of the applicant herein was terminated by the Council. It was accepted by the Council that the premises, the subject matter of these proceedings is the applicant's home within the meaning of Article 8 of the ECHR. It was however, emphasised that the right provided for in Article 8(1) is a right to respect for a home as opposed to a right to a home. On that basis it was submitted that the service of a notice to quit on the applicant and the application for a warrant for possession did not constitute a violation of the applicant's right to respect for her home under Article 8(1). In the course of the submissions, Mr. Connolly S.C. on behalf of the Council and Mr. McGarry engaged in a helpful analysis of the relevant decisionsto which I have referred at length. I think it is clear from decisions such as that in *Qazi* that the emphasis in Article 8(1) is not on an individual's enjoyment of his home as a possession or as a property right. (See, for example, para. 53 of the judgment of Lord Hope of Craighead referred to above).

110. Considering the authorities referred to above and the lengthy analysis carried out in respect of Article 8 it is difficult to see how the guarantee of respect for the home could confer a right to possession on the part of a tenant in circumstances where the tenancy has been lawfully terminated. The decision in the *Qazi* case is of particular interest because whilst it was a decision of the House of Lords, it was subsequently the subject of an application to the European Court of Human Rights but it was decided that the facts of the case did not disclose any appearance of a violation of the Convention or its Protocols and the application was declared inadmissible.

111. The Court of Appeal in the United Kingdom in the case of *Donoghue v Poplar Housing and Generation Community Association Limited* was dealing with circumstances not entirely dissimilar from those applicable to the facts of the present case. The court in that case was considering a summary procedure provided under s. 21(4) of the 1998 Housing Act for the recovery of possession and it concluded that the summary procedure provided in the case for the recovery of possession of a tenancy was in compliance with Article 8. Lord Woolf C.J. in that case described the summary procedure provided for in s. 21(4) as:-

> "…necessary in a democratic society insofar as there must be a procedure for recovering possession of property at the end of a tenancy. The question is whether the restricted power of the Court is legitimate and proportionate."

112. He also commented that the area of policy concerned was one where the Court should defer to the decision of Parliament. The Court in that case went on to conclude that there were no contraventions of Article 8 or indeed of Article 6(1).

113. The decisions referred to above dealt with the concept of respect for the home as set out in Article 8. In the instant case, as already pointed out, the Council acknowledges that the applicant is entitled to respect for the home in the sense described by Article 8 but also went on to point out that the right to respect for the home is not the same as the right to a home. It is important to note that in cases cited to the Court in which an individual has relied on Article 8 in similar circumstances to that of the applicant herein, the right to respect for a home has not as a general proposition been seen to equate with a property right or a right to possession. In the case of *Chapman* to which I have referred above, it was stated at paragraph 99:-

> "Article 8 does not in terms give a right to be provided with a home. Nor does any of the jurisdiction of the Court acknowledge such a right".

114. Only in the case of *Connors* referred to above has Article 8 been successfully invoked by an applicant. During the course of argument it was suggested on behalf of the Council and the State that the effect of that decision was not to overturn the ruling of the House of Lords in the *Qazi* case and subsequently, the House of Lords in the decision in *Kay* considered precisely that issue. I propose therefore to examine the arguments in this regard in some detail.

115. The decision in the *Qazi* case was a decision of the House of Lords. It concerned possession proceedings against the defendant. The defendant in that case had been one of two joint tenants. The tenancy was terminated by service of a notice to quit by the other joint tenant, his ex-wife. He was unsuccessful in an application for a sole tenancy. The local authority sought possession and he resisted the same on the basis that the local authority was not giving effect to his right to respect for his home. It seems to me that certain points emerge from the passages referred to extensively from that case in the earlier part of this judgment.

> (1) Article 8(1) is concerned not with the right to possession or a property right to the home but with freedom from arbitrary interference by public authorities. (Lord Hope at para. 50).
>
> (2) Article 8 must be read as a whole. Any interference with respect for the person's privacy has to be measured against what is in accordance with law. (Lord Hope at para. 51).
>
> (3) The requirements of Article 8(2) are met when there is an unqualified right to possession on proof that a tenancy has been terminated. (Lord Hope at para. 78).
>
> (4) If the tenant has no right to remain in possession following the termination of the tenancy, he cannot claim such a right under Article 8. (Lord Scott of Foscote at para 125).

116. That case considered in detail the nature of social housing, the role of legislation in determining the respective rights of landlords and tenants, the nature of the home, the purposes of Article 8 and the fact that Article 8 did not secure proprietary or contractual rights to possession or a right to be provided with a home. One of the points emphasised in that case was that it was clear from the outset of the tenancy that it could be terminated and that once possession was recovered, it could be let to other needy persons by the local authority. In the absence of any contrary authority, it seems to me that the decision in the *Qazi* case is very persuasive in supporting the view that Article 8 could not avail a tenant in the position of the applicant herein. Like the defendant in the Qazi case, she knew at the outset that her tenancy could be terminated. Once lawfully terminated, she had no right or entitlement of any kind to retain possession against the Council. The Council in this case like the Council in the *Qazi* case are entitled and indeed duty bound to let the premises to someone else in need of housing. There is a limited supply of such housing and demand outstrips the available supply.

117. Has the decision of the European Court of Human Rights in the *Connors* case changed the position in any way? I have already set out the facts of the *Connors* case but it would be helpful to refer again briefly to the circumstances. The applicant and his family were Gypsies who were licensed to occupy plots at a site provided they did not cause "nuisance". A notice to quit was served on them requiring them to vacate the plots which they occupied. No written or detailed reasons were given by the Council for the termination of the license. Proceedings for summary possession of the plots were brought against the applicants. There was an assertion by the site manager that the applicant and his family had breached the license agreement but this was disputed by them.

118. In his application to the European Court of Human Rights, the applicant relied upon Article 8 of the Convention and complained that he was not given the opportunity to challenge in the course of the summary proceedings the allegations which were the basis for his eviction and that, unlike the owners of privately run sites, local authority landlords, housing associations and local authorities running Gypsy sites were not required to prove allegations against tenants. It was held that there was a violation of Article 8 of the Convention.

119. That decision set out the relevant principles to be considered in relation to respect for the home as provided for in Article 8(1) and the extent to which interference with the right to respect for the home will be considered "necessary in a democratic society". It seems to me that from the principles set out in that decision to which I have already referred above a number of points emerge.

> (1) A wide margin of appreciation is given to the national authorities in this area. The European Court of Human Rights recognised that the national authorities are better placed than an International Court to evaluate local needs and conditions.
>
> (2) The Court noted that in spheres such as housing it would respect the legislative judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation.
>
> (3) The procedural safeguards available to an individual are especially material in considering whether the State has remained within the margin of appreciation in setting up the relevant regularity framework. Thus the European Court will examine whether the decision making process leading to the measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8.

120. In that particular case the court noted (at para. 83) that the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyles both in the relevant regulatory framework and in

reaching decisions in particular cases. To this extent, there is a positive obligation imposed on the contracting states of Article 8 to facilitate the Gypsy "way of life".

121. In the *Connors* case the United Kingdom Government had argued that the possibility of an applicant applying for judicial review and to have scrutiny of the Council's decisions was sufficient to meet the requirements of Article 8. The court noted that the existence of other procedural safeguards was a crucial consideration in the assessment of the proportionality of the interference. However, the court noted in that case that the applicant therein sought permission to apply for judicial review and was refused that permission. In that case the principle objection relied on by the applicant was not on any lack of compliance of the Council with its duties or any failure to act lawfully, but on the fact that he and the members of the family living with him were not responsible for any nuisance and could not be held responsible for the nuisance caused by others who visited the site. There was a factual dispute clearly in existence between the parties on this point. Thus it was noted that as the Council was not required to establish a substantive justification for evicting him the availability of judicial review would not have and could not have provided an opportunity for an examination of the facts in dispute between the parties. Allowing for the margin of appreciation which is afforded to a State, the court was not persuaded in that case that the necessity for a statutory scheme which permitted the summary eviction of the applicant had been sufficiently demonstrated by the Government. The power to evict without giving reasons liable to be examined as to their merits had not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community. Thus the court held that the eviction of the applicant and his family was not attended by "the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a 'pressing social need' or proportionate to the legitimate aim being pursued".

122. It seems to be to be clear that in considering the issues that arise in the present case in the light of the decision in *Connors,* a procedure which provides for summary eviction such as that contained in s. 62 will not necessarily fall foul of Article 8 provided that there are sufficient safeguards available to the individual concerned. It is also clear from that decision that the availably of judicial review may provide the necessary protection to an individual under Article 8. Unlike the *Connors* case, the applicant in the present case was provided with the reason for the decision to terminate her tenancy. She could have availed of the remedy of judicial review had the Council abused its position or behaved oppressively towards her. It is not suggested that the conduct of the Council in reaching its decision was in any improper. In this case, the Council gave reasons for the decision to terminate the tenancy. Those reasons could be examined by a court in judicial review proceedings and the decision could have been quashed had the Council abused its position or behaved oppressively towards the applicant. It is not suggested that the conduct of the Council in reaching its decision was in any way improper. There is no factual dispute between the applicant and the Council. I am satisfied that the Council has established proper justification for the interference with the rights of the applicant in relation to the need to protect other tenants from anti-social behaviour and to have speedy access to it's housing stock. I think therefore that the decision in the *Connors* case has to viewed through the prism of the special consideration of the needs of the gypsy community as a vulnerable minority in society.

123. The final decision I want to refer to briefly is the decision of the House of Lords in the case of *Kay and Others v Lambeth London Borough Counci*l and *Leeds City Council v Price and Others* to which reference has been made already. The House of Lords in that case considered the decision in the *Qazi* case in the light of the judgment in *Connors* and the case of *Blecic v Croatia*.

124. In the *Kay* case, the point was made that generally a possession order will be an interference with the individual's right to respect for his home and equally, an individual would not be likely to succeed in challenging an interference with the right to respect to the home. In almost all cases the interference will be justified as being necessary in a democratic State (see para 53 of the judgment). It was acknowledged that in what was described as "the exceedingly rare case" the relevant legislation or common law may be impeachable on a human rights ground such as in the *Connors* case. Lord Hope of Craighead in para. 98 of the decision distinguished the facts of the *Qazi* case from those in the *Connors* case and he noted the narrow grounds in which the European Court of Human Rights found that Article 8 had been violated in the *Connors* case. As he pointed out, the central issue in that case was whether in the circumstances, the framework applicable to the occupation of pitches on local authority gypsy sites provided the applicant with sufficient procedural protection of his rights. In the *Qazi* case the general principles involved an issue as to whether the procedure by which a public authority landlord recovers possession of residential accommodation from a former tenant whose tenancy has come to an end by operation of law by asserting its unqualified right to possession was incompatible with rights guaranteed by Article 8. He went on to note that in the *Qazi* case there was no need to give special consideration as in the *Connors* case and that the background to the local authority's decision to seek a possession order was that a valid notice to quit had been served on the local authority by one of the tenants of the tenancy. He went to add that in the light of subsequent Strasbourg cases

> "I would not place greater emphasis on the need for the court to provide a remedy in those special cases of a kind not considered in *Qazi* where it is seriously arguable that the right to possession which is afforded by domestic law violates the Convention right." (para. 113)

125. Lord Scott of Foscote in his judgment commented at para. 169 that:-

> "An order for possession was in accordance with domestic law. As against Lambeth the occupiers had become trespassers with no right to remain in occupation. There was nothing discriminatory or unusual about the statutory and common law framework that produced that result nor about the absence of any statutory protection given to the occupiers by the housing legislation. ...
>
> There is nothing the matter, from an Article 8 standpoint, with a common law rule with gives the owner of property, which is occupied as a home by a person who has no right as against the owner to remain there, the right to recover possession of the property. …"

126. At para. 172 he commented:

> "Nor, in my opinion where a home occupier has no contractual or proprietary right to remain in possession as against the owner of the property, could an Article 8 defence based on no more than the personal circumstances of the occupier and his family ever succeed. *Connors* is no authority to the contrary. The successful Article 8 defence in *Connors* was founded on a combination of Mr. Connors inability to enjoy the security of tenure advantages afforded by statute to occupiers of privately owned caravan sites and on the Strasbourg Court's perception (which I think was an unjustified perception) of a lack of sufficient procedural safeguards enabling him to dispute the grounds which had led the Council to terminate his site licence."

127. I think it can be seen from the judgments in the cases to which I was referred and which I have considered that the Strasbourg jurisprudence is to some extent evolving so far as the application of Article 8 is concerned. The decision in the *Connors* case was

based very much on the particular facts and circumstances of that case, in particular the fact that the applicants were from a vulnerable minority and the fact that there was no forum open to the applicant in that case to challenge the decision to terminate the licence bearing in mind the factual disputes between the Council and the applicants therein. In other words there was a lack of appropriate procedural safeguards. It was noted in the *Kay* decision that no facts or circumstances were pleaded or alleged by the appellants in that case which outweighed the right and the duty of the Council to manage its housing stock. In the present case, the applicant herein has not pleaded any facts of circumstances which could possibly outweigh the right and duty of the Council herein to manage its housing stock. It has to borne in mind that the Council is operating within the legislative framework contained in s. 62 of the Housing Act, 1966 as amended and indeed within the framework of the entire statutory code contained in the Housing Act, 1966 as amended. It has a duty to have regard to the housing needs of the applicant but it must also have regard to the housing needs of others in a similar situation. It is best placed to have regard to the needs of all those who fall within its obligations in respect of providing social housing.

128. The European Court of Human Rights has made it clear in cases such as *Blecic v Croatia* that there is a wide margin of appreciation afforded to a State in allocating housing resources and balancing conflicting interests in that regard. It has consistently recognised the difficulty in achieving that balance. As it noted in the *Blecic* decision at para. 65 of the judgment:-

> "The domestic authority's judgment as to what is necessary to achieve the objectives of those policies should be respected unless the judgment is manifestly without reasonable foundation."

129. In this case, the position under s. 62 is that the local authority has the right to seek a warrant for possession in summary proceedings without the tenant being afforded an opportunity to raise any issue on the merits. The scheme of the Housing Act 1966 as amended is designed to provide housing for those who are unable to do so from their own means. As has been noted in many of the decisions referred, the housing stock is finite. Although the procedure provided for in s. 62 does not allow for the decision of the Council in any given case to be challenged on the merits in the course of the summary proceedings, a tenant does have sufficient procedural safeguards which afford the necessary degree of respect for the home by way of the availability of judicial review proceedings. Further, there is nothing pleaded and there is nothing in the facts and circumstances of this case to show that the applicant herein has been deprived of any procedural safeguards such that her rights outweigh the right and duty of the Council to manage it's housing stock. In other words, in the absence of any particular or special circumstances pleaded by the applicant, the procedure provided for under s. 62 coupled with the right to judicially review the decision of the Council to terminate the tenancy is such as to ensure that the rights of the applicant under Article 8 have not been violated.

Article 13
130. There is nothing in the facts and circumstances of this case to show that there has been any violation of the applicant's rights under article 13.

Article 14
131. The only other point raised on behalf of the applicant herein was on the basis that her rights under Article 14 of the ECHR have been violated. No evidence has been adduced by or on behalf the applicant to sustain such a complaint. The only point made by the applicant is that a different system or regime applies in the case of local authority tenants as against tenants of private landlords. There is, of course, such a difference. The fact that there is a difference however, does not mean that the different treatment of different classes of tenant amounts to discrimination under Article 14. It is clear from the authorities that have been cited in the course of this case that the variety of tenancies, whether privately arranged or local authority or social housing tenancies, is considerable. The fact that a private tenant in this jurisdiction may have greater security of tenure than a local authority tenant is not in my view an element of discrimination but is merely one of the incidents of being a local authority tenant and is a reflection of the importance of the prudent management of the limited availability of local authority housing. I can see no basis whatsoever for any challenge on the basis of Article 14.

132. In all of the circumstances I have to refuse the reliefs sought herein.