

## Procedural Safeguards, Evictions and the Right to Privacy and the Home

*McCann v United Kingdom* [2008] ECHR 19009/04 (13 May 2008)

The European Court of Human Rights has found that the United Kingdom violated art 8 of the *European Convention on Human Rights* by failing to provide adequate procedural safeguards to protect the right to respect of a person's home in the context of public housing.

### Facts

The applicant, Mr McCann, and his wife were joint tenants of a house owned by the local housing authority in Birmingham. Following accusations of domestic violence against the applicant by Mrs McCann, he was temporarily removed by ouster order. Mrs McCann and their two children successfully applied to be re-housed. The house remained unoccupied until November 2001, when the applicant returned. The local authority continued to assume that the house was uninhabited.

In January 2002 the local authority discovered that the applicant was living there. The local authority asked Mrs McCann, as joint tenant, to formally end her tenancy of the old house by signing a notice to quit. Mrs McCann signed the notice. The legal effect of this was to end the joint tenancy, extinguishing the applicant's right to live in the house or exchange it for another council property.

Mrs McCann claimed that she was not advised and had no understanding of the consequences of signing the notice to quit. She attempted to withdraw the notice a week after signing it, but was unsuccessful.

Proceedings for possession were brought by the local authority against the applicant. The applicant was successful in claiming relief under the *Convention* at first instance in the County Court. This decision was overturned in the Court of Appeal and all further appeals by the applicant were unsuccessful. The applicant argued before the European Court of Human Rights that the manner in which the notice to quit was obtained, and the applicant's consequent eviction from his home, breached his right to respect for the home under art 8 of the *Convention*.

### Decision

The parties agreed that the notice to quit, and the accompanying proceedings for possession, engaged the applicant's right to respect for his home under art 8. However, they disagreed on whether the interference with the applicant's rights was 'proportionate to the aim pursued and thus "necessary in a democratic society"'.

The Court acknowledged that the interference was in accordance with the law and was pursued with the aims of protecting the rights and freedoms of others. It held that the public authority, in attempting to evict the applicant, was ensuring that the statutory scheme for the provision of public housing was properly applied. This in turn protects and benefits the rights of others in society who may be eligible for assistance under the scheme.

The scheme included provisions intended to protect secure tenants of public landlords. However, the public authority bypassed these provisions by requesting Mrs McCann to sign the notice to quit, effectively denying the applicant the opportunity for appropriate independent review as to whether the loss of his home was proportionate to the aim pursued.

Consequently, the 'procedural safeguards' protecting the applicant's rights under art 8 were considered to be insufficient. The local authority had requested Mrs McCann sign the notice to quit without 'any consideration to the applicant's right to respect for his home'. There was no independent tribunal to examine the proportionality of the decision to evict the applicant, and judicial review was inadequate because the proportionality of the possession order was not open for the domestic courts to consider. The applicant's rights under art 8 were therefore held to have been violated.

### **Relevance to the Victorian *Charter***

On its face, *McCann* may appear to set a precedent for a human rights charter interfering with the legitimate aims and lawful decision making of a public housing authority. However, the Court was careful to note that art 8 was only breached in a procedural sense, and that given the claims of domestic violence against the applicant, his status as a single man, and the scarcity of public housing, it was by no means clear that the applicant would have been successful were his case to be subjected to independent review.

Section 13 of the *Charter* provides that a person has the right not to have his or her home unlawfully or arbitrarily interfered with, while s 38 prohibits a public authority from acting in a way that is incompatible with a human right, or failing to give proper consideration to a human right in its decision making processes. The combined effect of these sections is broadly similar to art 8 of the *Convention*.

In a Victorian context, *McCann* suggests that where rights to the home under the *Charter* are interfered with by a public housing authority, a robust decision-making process, and access to an independent tribunal to review the proportionality of the relevant decision, are necessary 'procedural safeguards' to which individuals are entitled.

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