to enforce a ruling by a Cypriot court concerning property in northern Cyprus, notwithstanding that the Cypriot Government does not exercise effective control in northern Cyprus. By adopting a formalistic technical approach to the Regulation, the CJEU was able to avoid the political difficulties and tensions experienced by the ECtHR in *Demopoulos* (Editorial, 'Who wants to be Pandora? The Court of Justice and the Cyprus Problem' [2009] 34 E.L. Rev. 345).

The second issue in this case relates to the Court's concern over handling a deluge of property claims relating to the occupation of northern Cyprus. Aside from the practical difficulties – there are approximately 1475 cases pending before the ECtHR concerning property claims – the Court is also anxious about performing the functions of a first instance court. In the Court's view, some of the key issues in these cases, such as the finding of basic facts or the calculation of monetary compensation, are "as a matter of principle and effective practice… [within] the domain of domestic jurisdiction" (at [65]).

Finally, there is the question of how this decision – that a fair and impartial remedy should be used in preference to full restitution – will be interpreted in light of the general international law understanding that a right of return effectively includes full restitution. Will the decision change the international law standard or will the international law standard still prevail in negotiations and legal advice? In the meantime, this decision is likely to prejudice negotiations for a political settlement (insofar as it may affect the relative bargaining position of parties), both for northern Cyprus and for other long-term occupations.

ANDREW SANGER

POSSESSION PROCEEDINGS AND HUMAN RIGHTS – THE FINAL WORD?

CAN an occupier, faced with eviction from local authority land, rely on Article 8 of the European Convention on Human Rights, which guarantees respect for one's home, to resist the consequences of domestic property law? Recent years have witnessed a fierce contest on the issue between the House of Lords and the European Court of Human Rights and the Supreme Court has now had the opportunity to consider this in *Manchester CC* v. *Pinnock* [2010] UKSC 45; [2010] 3 W.L.R. 1441.

On the one hand, the ECtHR has regarded it as fundamental that any person at risk of losing their home should be able to raise Article 8 to defend a possession action (see, *e.g. Connors* v. *UK* (2005) 40 E.H.R.R. 9, *McCann* v. *UK* (2008) 47 E.H.R.R. 40 and *Kay* v. *UK* (2010) App. No. 37341/06). On the other hand, the Lords, acting by a

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majority, were reluctant to admit Article 8 into property disputes, for fear that human rights might destabilise established property law principles (see *e.g. Harrow LBC* v. *Qazi* [2003] UKHL 43; [2004] 1 A.C. 983). Accordingly, the Lords fortified property law against human rights attacks by restricting the situations in which an occupier might challenge an eviction to two narrow "gateways" (*Kay* v. *Lambeth LBC*; *Leeds* v. *Price* [2006] UKHL 10; [2006] 2 A.C. 465; and *Doherty* v. *Birmingham CC* [2008] UKHL 57; [2009] 1 A.C. 367). One gateway permitted a Convention challenge to "the law" leading to the occupier's eviction. However, such an attack was almost impossible to launch, for a challenge would only be heard in "exceptional cases"; further it had to be targeted at the abstract legal rules, taking no account of the occupier's personal circumstances. The other gateway recognised that the local authority's decision to evict the particular occupier was susceptible to judicial review although – crucially – not on grounds related to the Convention. Significantly, the ECtHR in *McCann* regarded the Lords' restrictive approach to Article 8 as unacceptable; furthermore, the House of Lords itself was divided internally as to the correctness of its decisions.

In *Manchester CC* v. *Pinnock* a local authority landlord sought to evict a secured tenant on the basis of his children's severe antisocial behaviour. The authority had first made a successful application to the court for a "demotion order" which had removed the tenant's secured status. The tenant then breached the terms of his demoted tenancy, prompting the authority to terminate the lease and apply to the court for possession. The tenant argued that Article 8 should protect him against eviction. Sitting as a committee of nine, the judges of the Supreme Court revisited the three previous decisions of the House of Lords which had been decided by committees of five (*Qazi* and *Doherty*) and seven (*Kay*) respectively. Lord Neuberger, in a superbly clear speech, gave the court's unanimous judgment.

In terms of the *applicability* of Article 8 in property disputes, his Lordship reached the somewhat inevitable conclusion that "it would be wrong" for the domestic courts to continue fighting against the "clear and constant" Strasbourg view (at [48]). In practice this means a domestic court now has the power to review the Convention compatibility of decisions made by a local authority and to decide afresh, according to its own assessment of the facts, whether it would be proportionate to evict a particular occupier. Lord Neuberger emphasised that Article 8 considerations should not be confined to "exceptional cases", exceptionality being an "outcome not a guide" (at [51]); instead, courts should perform the proportionality test whenever the occupier raises Article 8. Thus, no longer are possession proceedings fortified against human rights attacks: gone are the two restrictive gateways and in

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their place stands a wide door granting Article 8 full access to property law. This change is to be warmly welcomed, for it brings domestic law – finally – in line with the UK's Convention obligations. It is remarkable, and indeed unacceptable, that the House of Lords had for so long sheltered possessory claims by local authorities from thorough Convention scrutiny.

As for assessing the *compatibility* of an eviction with Article 8, Lord Neuberger gave some guidance. Two factors, he said, would weigh heavily in favour of the authority's eviction being proportionate: the existence of the local authority's "unencumbered property rights"; and the authority's "right – indeed the obligation … to decide who should occupy its residential property" (at [54]). This means that repossession by an authority will almost always comply with the Convention. Crucially, however, and in direct contrast to earlier decisions of the House of Lords, Lord Neuberger accepted that in some cases the occupier's "personal circumstances" would lead to a different outcome, for example, where the occupier is especially vulnerable (at [53]). This reasoning might explain the ECtHR's finding in *McCann* that Article 8 had been violated: there, a local authority persuaded an occupier to renounce her tenancy without explaining the consequences, and subsequently evicted her. The occupier's ignorance arguably placed her in a position of vulnerability. By contrast, the Supreme Court held that the eviction in *Pinnock* itself was proportionate: the demoted tenant, having failed to halt his sons' antisocial behaviour, had no prospect of outweighing the two factors counting in the authority's favour: its property rights and its duty to manage its housing stock for the benefit of the public as a whole.

Lord Neuberger's approach to the proportionality test represents a harmonious balance of principle and pragmatism. The decision that courts should consider the Convention in eviction cases, whilst correct as a matter of principle, carried two practical risks. First, County Court judges hearing possession cases might have been unduly burdened by their new Convention obligations. To alleviate this problem, Lord Neuberger stated that Article 8 should only be considered if raised by the occupier and, even then, only summarily at first. Secondly, there were concerns, voiced by the House of Lords in previous cases, that existing property rights might have been destabilised by occupiers' increased reliance on Article 8. However, such fears are allayed by Lord Neuberger's recognition that property rights carry significant weight in the proportionality test. This means that Article 8 only prevents the enforcement of existing property rights where to do so would exploit another's particular vulnerability. In this way, the guidance in *Pinnock* strikes an eminently sensible balance between an authority's property rights and an occupier's rights under Article 8.

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Whilst the Supreme Court in *Pinnock* is to be congratulated for the much-needed clarity it brings to the relationship between property law and Article 8, an important question remains unanswered. Lord Neuberger carefully confined his judgment to proceedings brought by local authorities, rather than private owners (at [50]). It remains to be seen just how far the Convention rights, via the Human Rights Act 1998, will infiltrate property law as applied between private parties. It is to be hoped that future cases begin to tackle this important issue.

AMY GOYMOUR

PREVENTING DISORDER AND PROTECTING FAMILY AND PRIVATE LIFE

UNDER section 3(5)(a) of the Immigration Act 1971 the Secretary of State has the power to order deportation of an individual if it is deemed to be conducive to the public good. When applied to settled migrants with family links in the United Kingdom such deportation orders risk infringing the right to respect for family and private life under Article 8 ECHR, a situation often arising with migrants who have committed criminal offences, as in *KB (Trinidad and Tobago)* v. *Secretary of State for the Home Department* [2010] EWCA Civ 11, [2010] 1 W.L.R. 1630. The case is of particular interest because it raises the issues of the approach to be taken to deportation cases involving criminal offending and of the decisiveness of such offending in assessing the proportionality of the interference with the Article 8 rights, trying to strike a balance between preventing crime or disorder and respecting private and family life.

KB, a citizen of Trinidad and Tobago who had arrived in the United Kingdom in 1992 aged 22 and subsequently obtained indefinite leave to remain, was to be deported by order of the Secretary of State on the grounds that such deportation was conducive to the public good in light of his criminal offending. In his time in the United Kingdom KB was in a two-year relationship with a British citizen, with whom he had a son. Following the breakdown of that relationship, he married another British citizen in 1997. They separated for a period of time between 2002 and late 2004/early 2005, but reconciled shortly after KB committed serious Class A drug offences for which he was sentenced to six years' imprisonment.

The Asylum and Immigration Tribunal on appeal against the deportation order found that at the material times, including while in prison, KB had been exercising family life with his wife and with his son, as well as private life within the community. Having found that KB had a subsisting family/private life which would be interfered with

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