



Raising proportionality defences in the private rented sector: A right to housing perspective

Juan Carlos Benito Sánchez

F.R.S.-FNRS (FRESH), UCLouvain

European Court of Human Rights, Art. 8 ECHR

The loss of one's home is a most extreme form of interference with the right to respect for the home.

Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end

McCann (2008)

European Court of Human Rights, Art. 8 ECHR

- *Connors* (2004): publicly owned land, site made available by local authority
- *Yordanova* (2012): publicly owned land, site was *de facto* tolerated by authorities
- *Winterstein* (2013): privately owned land, site was *de facto* tolerated by authorities
- *Bagdonavicius* (2016): land ownership contested, site was *de facto* tolerated by authorities

European Court of Human Rights, UK cases

	UK judiciary	ECtHR
<i>Qazi</i> (2003) / <i>McCann</i> (2008)	No proportionality defence for public sector tenants	Proportionality defence for public sector tenants
<i>Pinnock</i> (2011) / <i>Pinnock and Walker</i> (2013)	Proportionality defence for public sector tenants, but exceptionally	Proportionality defence for public sector tenants, but exceptionally
<i>McDonald v McDonald</i> (2016) / <i>FJM</i> (2018)	No proportionality defence for private sector tenants	No proportionality defence for private sector tenants

European Court of Human Rights, Art. 8 ECHR

- *(Vrzić), FJM:*
 - “Everyone should in principle be able to have the proportionality of the measure determined by an independent tribunal”
 - Applies in cases where applicants lived in state-owned or socially owned accommodation, but an important aspect of this principle is that no other private interests be at stake
 - In the private rented sector, the balance between the rights of tenants and private landlords can be struck by legislation

European Court of Human Rights, Art. 8 ECHR

If, once [the tenancy] comes to an end, [the tenant] could require a court to conduct a proportionality assessment before making a possession order, the resulting impact on the private rental sector would be wholly unpredictable and potentially very damaging

FJM (2018)

European Court of Human Rights, Art. 8 ECHR

Do tenants have the right to raise a proportionality defence under European human rights law?

1. It is a public landlord ➤ Yes!
2. It is a private landlord or the ownership is contested, and:
 - A. The state *de facto* tolerated ➤ Yes!
 - B. The state did not tolerate ➤ Not necessarily

European Court of Human Rights, Art. 8 ECHR

Some additional considerations:

- Possibility of a summary judgment in most cases
- Even in countries which foresee proportionality defences for private sector tenants, these are not always very successful
- Vulnerable groups and the right to equality and nondiscrimination: Article 14 ECHR often overlooked

Committee on Economic, Social and Cultural Rights

- UN-based treaty monitoring body, not a court
- Two decisions against Spain regarding the proportionality of evictions in the private rented sector: *Ben Djazia* (2017) and *López Albán* (2019)
- Are CESCR decisions binding?
- Divergent interpretations under European human rights law and international human rights law?

More information

- F.J.M. v. the United Kingdom: Judicial review of the proportionality of an eviction in private rental housing
- The CESCR Decision in M.B.D. et al. v. Spain: Evictions without suitable alternative accommodation
- The CESCR Decision in López Albán v. Spain: Proportionality of an eviction in cases of illegal occupation

medium.com/@jcbensan

