

# Housing Rights Watch

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# Article 8 ECHR

*‘Since Article 8 concerns rights of central importance to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community, where general 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...’ [Yordanova and Others v Bulgaria (Application No 25446/06, judgment 24 September 2012), para 118.]*

# Land and Conveyancing Law Reform (Amendment) Act 2019 (LCLRAA)

- Originally introduced as *Keeping People in their Homes Bill 2017* – sought to amend the LCLRA 2009
- Modelled on the range of issues considered in Art 8. ‘proportionality’ ECHR cases – which in Ireland was confined to LA housing possessions – vertical application of HR
- Most significant – court must consider the impact of any order on the borrower and any dependants especially children – inspired by Art 42A of Irish Constitution and family law model.
- Also included some factors relating to vulture fund sales – such as price the loan was sold for; suitability of MTR, suitability of lifetime mortgage, sale of loan to an AHB, suitability of a PIA, lender compliance with all EU law regulatory and consumer obligations?

# (Original) Keeping People in their Homes Bill

## Factors to be considered by Court:

- availability of suitable and affordable alternative accommodation that will allow the family or household to continue to live together
- where there are older persons, persons with disabilities, other vulnerable persons, or dependants in the household -
  - A. the extent to which such alternative accommodation will ensure their independence, social and occupational integration and participation in life of the community, and.
  - B. the extent to which care and support arrangements in place for children and vulnerable members, and dependants in the household, and
  - C. evidence of an examination of the impact of relocation or repossession on such persons, including whether the best interests of any children have been prioritised ,
- the extent to which an order will affect the physical and mental health of all members of the household
- the extent to which an order **will intrude into the personal sphere of the household**, including the effect on the maintenance of relationships with others, and (Yordanova)
- the extent to which an order will impact the future aspirations and opportunities of all members of the household

# Land and Conveyancing Law Reform (Amendment) Act 2019 (LCLRAA)

- When considering whether to make or refuse a possession order the court **SHALL**; and for any other order **MAY**; take account of:
  - Whether the making of the order would be proportionate ‘**in all the circumstances**’
  - The circumstances of the borrower and their dependents
  - Whether the mortgagee has made a statement to the borrower on the terms in which the borrower and their dependents could remain in the home and settle the matter
  - Any proposal made by the borrower to enable them and their dependents to remain in the home and settle the matter, including a proposal for mortgage to rent or alternative accommodation
  - The conduct of **BOTH** parties in their attempts to find a solution to dealing with arrears
  - And ‘**such additional matters as it consider appropriate**’

# LCLRAA

- The LCLRAA creates **horizontal application** of human rights - proportionality test applies between private parties where loss of home is involved.
- Adds another layer to the defences of the borrower – through the proportionality test and any proposal made by the borrower to remain in the home, must be considered by the court.
- Opens some possibilities .....