CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31888/03
by Martin WARD
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 9 November 2004 as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 17 September 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Martin Ward, is an Irish national born in 1941 and living in London. He is represented by Mr C. Johnson, a solicitor practising in London.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant is a traveller who, since 1972, has lived with his family in a caravan on Westway Travellers' Site. This site was established as an official local authority site in 1975 under the duty to provide gypsy sites contained in the Caravan Sites Act 1968. The site is now leased by the Royal Borough of Kensington and Chelsea and managed by the London Borough of Hammersmith and Fulham. It is located beneath two flyovers that make up part of the motorway bridge known as the Westway leading from Marylebone Road in London. A railway line also passes nearby. Plots 1 and 20 were directly under the flyover, the carriageways to the east and west were separated from the site by a concrete barrier and vehicles passed within several metres of residential caravans.

Virtually since the opening of the site, the applicant has been campaigning for its relocation because of the pollution and noise, coming from the adjacent highways.

In November 1992 two independent Environmental Health Officers inspected the site and concluded:

> "The present conditions are unsatisfactory, and are prejudicial to health within the meaning of s. 79 of the Environmental Protection Act 1990.
>
> Environmental issues, such as rat infestations, lead levels in dust and noise levels, smells and nuisance from adjoining premises are largely beyond the control of the managing authority. In our opinion the site is not suitable for residential occupation. The original decision to locate the site in such a position fails any commonsense assessment of the suitability of the environment."

They noted that while a number of items could be remedied by works, for example, site drainage, other problems, such as, nitrous oxide poisoning and noise levels resulted from the site's location and could not be remedied.

Following the coming into force of the Human Rights Act 1998, the applicant instructed his solicitors to obtain an updated environmental report from the two officers who produced the 1992 report. This was finalised in February 2002 and confirmed the earlier conclusion that it was not a suitable location for a gypsy site. The two experts noted that lead levels had dropped since 1992 due to a ban on leaded petrol and this was no longer a ground of concern. It found the residents at the site were being exposed to

nitrogen dioxide levels above the air quality objective of 21 ppb (a mean concentration in 1992 of 24.2 and in 2001 of 25.6). The report noted that air pollution in the United Kingdom was unlikely to cause any serious health effects in the population as a whole but that young children, the elderly or those suffering from respiratory problems might be more sensitive to air pollution. No formal measurement of noise levels was made but it was noted that road traffic noise was intrusive and almost continuous during both their visits. Given the location between major roads and adjacent to a railway they recommended formal monitoring of noise levels be undertaken.

The applicant presented the report to the Royal Borough and renewed requests for relocation of the site, invoking arguments under the Convention.

By letter of 23 August 2002, the Royal Borough responded to the applicant's complaints stating that the alleged treatment failed to satisfy the degree of severity for a breach of Article 3 and that no claim arose under Article 8 as it would be akin to interpreting the provision as requiring a right to be given a home. It denied that it was under any duty to provide a new site.

The Royal Borough obtained that year Government approval of a major grant for 75% of the total expenditure for refurbishment of the site then estimated at GBP 700,000.

The applicant commenced judicial review proceedings in December 2002.

On 12 May 2003, the High Court judge refused the application on the ground of delay.

Following a hearing on 30 July 2003, the Court of Appeal dismissed his appeal. Lord Justice Carnwath noted the delay in bringing the proceedings:

> "In this case it seems to me that the important issue is the delay in bringing the proceedings. From October 2000 the rights under the Human Rights Act 1998 were established. Mr Ward was being advised by his present solicitors ... In November 2000 he was also being advised by [counsel] who appeared before us. There was no doubt as to the nature of his rights. The only excuse put forward for the delay until the end of 2002 was the time taken to get this report. However the report itself, although detailed, is reiterating matters which [the applicant] had been asserting for many years. The council has had its own reports in 2000 which showed as a matter of principle that there were major problems with the site.
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> It seems to me that during this time the council was, to [the applicant's] knowledge presumably, putting forward major proposals for refurbishment with the support of the majority of the residents. It was crucial that, if there was some legal error in the way the council approached it, it should be established as soon as possible. In my view the judge was right to refuse permission on the ground of delay. I see no arguable basis for appeal."

Concerning the substantive issues, he held:

> ".. The problem in this case is that it is accepted that, as a result of changes in the law since the 1968 Act, the council is under no duty to provide [the applicant] with a

site here or anywhere else. In those circumstances, it seems difficult to see that he can argue for a right to be relocated to another and better site. If the argument is right, it is difficult to see what distinction there would be between [the applicant] and any other inhabitant of a caravan or a house who is concerned about pollution levels in his home.

In my view, there is nothing in European law or, more particularly the cases we have been shown, which provides any support for such a claim. Under English law, [the applicant] has potential remedies under the Environmental Health Act which do not seem to have been activated. As I understand from the evidence, the council is taking active measures to improve the site.

The more general problems about which [the applicant] complains are the pollution levels, nitrogen dioxide and noise. Those are problems which, unhappily, are shared by a number of urban sites. The council's Environmental Health Officer has acknowledged the problems but considers they do not cause unacceptable conditions ..."

COMPLAINTS

The applicant complains that the failure of the Royal Borough to consider properly or at all the relocation of the site and the subsequent decisions of the courts infringed his rights under Articles 3 and 8 of the Convention. The applicant refers to the terrible noise and pollution and claims that although it is intolerable he and his family have no other alternative due to the severe eviction powers existing relative to unauthorised encampments.

THE LAW

The applicant complains of the conditions at the Westway caravan site and in essence the inadequate response of the authorities, local and judicial, to the situation. He invokes Articles 3 and 8 of the Convention.

Article 3 provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 provides:

"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."

1. As regards Article 3 of the Convention, the Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1517, § 52).

In the present case, the Court observes that the applicant has obtained two reports concerning the conditions on the site, dated respectively 1992 and 2002. Both concluded that the site was not suitable for the location of a caravan site, due primarily to the noise and the levels of nitrogen oxide. The applicant has not, however, provided any evidence concerning the effect on health, physical or mental, of occupation of the site. While the noise from the roads was considered intrusive and almost continuous by the experts, their report did not contain any formal evaluation or monitoring of the level of noise or its effects. Nor does it appear from the materials before the Court that the levels of pollution, while above desirable norms, are substantially higher than other residential areas in the vicinity or that this places the applicant or members of his family at a significant risk of harm.

In the circumstances, it has not been shown that the conditions at the Westway site are of such a nature or degree as to fall within the scope of Article 3 or to raise issues of State responsibility as to any positive obligations to take measures in that regard.

It follows that this part of the application is manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Turning to Article 8 of the Convention, the Court accepts, for the purposes of this case, that the problems of pollution and noise may be regarded as affecting the applicant's private life and home and that his complaints fall within the scope of this provision.

The Court has therefore examined whether there has been an interference by any public body with the applicant's right to respect for these rights, or any lack of respect for such.

First of all, it would note that the pollution and noise are not the result of any activity carried out by, or in any sense, authorised by a local authority or linked to any unlawfulness in domestic terms (see *mutatis mutandis*, *López Ostra v. Spain,* judgment of 9 December 1994, Series A No. 303-C; *Fadeyeva v. Russia*, no. 55723/00, (Dec.) 16.10. 2003).

Secondly, it recalls that the applicant moved onto the Westway site in 1972 before it was made an official site, a step that must be regarded as

voluntary notwithstanding the applicant's assertion that he had little or no choice. He has remained there to the present day, some thirty two years, in full awareness of the conditions and could have left at any time. The difficulties facing gypsies in finding alternative places to live in their caravans have been examined in other cases before the Court which found that notwithstanding a shortfall of official sites many gypsy families still lived itinerant lives without recourse to official sites and that it could not be doubted that vacancies arose on official sites periodically (see *Chapman v. the United Kingdom*, no. 27238/95, ECHR 2001-I, § 111). As in the *Chapman* case, no information has been provided as to the applicant's efforts to find other sites and it cannot be considered as established that no other alternatives are available.

While increasingly authorities are taking on responsibility for minimising or controlling pollution, no right can be derived from Article 8 that they provide housing, or conditions for housing, that meet particular environmental standards or in any particular location (see, *mutatis mutandis Chapman*, cited above, §§ 99). In exceptional circumstances, such as the above-cited *Lopez-Ostra* case, where there is substantiated and serious risk to health from an activity which the local authority has sanctioned in breach of the law, an interference may arise. The Court is not satisfied that such circumstances arise in the present case.

The Court would observe, in any event, that official measures have been taken which have improved conditions for example, the banning of leaded petrol has eradicated a major source of health concern for children in the 1992 report and that the Court of Appeal judgment noted that the local authority had obtained a large Government grant for refurbishing the site which steps the majority of the site population supported and that remedies existed under the environmental protection legislation which could be activated. It finds no basis in the present case for imposing any obligation on the authorities above and beyond those existing in domestic law.

In all the circumstances therefore, the Court does not find that the authorities may be regarded as either interfering with the applicant's right to respect for home or private life or as having shown any lack of respect.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄA
President