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

CASE OF JANE SMITH v. THE UNITED KINGDOM

(Application no. 25154/94)

JUDGMENT

STRASBOURG

18 January 2001

In the case of Jane Smith v. the United Kingdom,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mr J.-P. COSTA,
Mr A. PASTOR RIDRUEJO,
Mr G. BONELLO,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mrs S. BOTOUCHAROVA,
Mr M. UGREKHELIDZE, *judges,*
Lord Justice SCHIEMANN, ad hoc *judge*,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 24 May and 29 November 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"),[1] by the European Commission of Human Rights ("the Commission") on 30 October 1999 and by the United Kingdom of Great Britain and Northern Ireland ("the Government"), on 10 December 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 25154/94) against the United Kingdom lodged with the Commission under former Article 25 of the Convention by a British citizen, Mrs Jane Smith ("the applicant"), on 4 May 1994.

Notes by the Registry

1. Protocol No. 11 came into force on 1 November 1998.

3. The applicant alleged that planning and enforcement measures taken against her in respect of her occupation of her land in her caravans violated her right to respect for home, her family and private life contrary to Article 8 of the Convention. She complained that these measures also disclosed an interference with the peaceful enjoyment of her possessions contrary to Article 1 of Protocol No. 1 to the Convention and that she had no effective access to court to challenge the decisions taken by the planning authorities contrary to Article 6 of the Convention. She further complained that she was subject to discrimination as a gypsy contrary to Article 14 of the Convention and that her children had been denied education contrary to Article 2 of Protocol No. 1.

4. The Commission declared the application admissible on 4 March 1998. In its report of 25 October 1999 (former Article 31 of the Convention), it expressed the opinion that there had been no violation of Article 8 of the Convention (18 votes to 8), that there had been no violation of Article 1 of Protocol No. 1 (21 votes to 5), that there had been no violation of Article 2 of Protocol No. 1 (21 votes to 5), that there had been no violation of Article 6 of the Convention (24 votes to 2) and that there had been no violation of Article 14 of the Convention (18 votes to 8).[1]

5. Before the Court the applicant, who had been granted legal aid, was represented by Messrs Lance Kent & Co., solicitors practising in Berkhamsted. The United Kingdom Government were represented by their Agent, Mr Llewellyn of the Foreign and Commonwealth Office.

6. On 13 December 1999, the panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court). The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court. Sir Nicolas Bratza, the judge elected in respect of the United Kingdom, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Lord Justice Schiemann to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

1. The full text of the Commission's opinion and of the separate opinions contained in the report will be reproduced as an annex to the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but in the meantime a copy of the Commission's report is obtainable from the Registry.

7. The applicant and the Government each filed a memorial. Third-party comments were also received from European Roma Rights Centre, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 24 May 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the respondent Government*
Mr H. Llewellyn, *Agent*,
Mr D. Pannick Q.C.,
Mr D. Elvin Q.C.,
Mr M. Shaw, *Counsel,*
Mr D. Russell,
Mr S. Marshall-Camm, *Advisers;*

(b) *for the applicant*
Mr R. Drabble Q.C.,
Mr T. Jones,
Mr M. Hunt, *Counsel*,
Mrs D. Allen, *Solicitor.*

The Court heard addresses by Mr Drabble and Mr Pannick.

9. On 29 November 2000, Mr Makarczyk, who was unable to take part in further consideration of the case, was replaced by Mr Bonello (Rules 24 § 5 (b) and 28).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant is a gypsy by birth. Since her birth she has travelled constantly, mainly in the Surrey area, with her family in search of work. After marrying her husband, A, approximately 20 years ago, this nomadic way of life continued. They have five children, born in 1975, 1977, 1982, 1989 and 1994.

11. The applicant and A are illiterate, as, due to their way of life, they have received little, if any, formal education. They regard travelling as detrimental to both the health of their family and to the education of their children. The applicant suffers from depression, her husband from severe gout and several of her children are asthmatic.

12. In pursuit of a more stable existence, the applicant and her husband applied repeatedly throughout the years for places on many of the local private and official sites in Surrey including the official sites in Runnymede. Their applications proved unsuccessful as all the sites were full with long waiting lists. Consequently, the applicant and her husband had no option but to continue travelling. They were required to move on from roadside to roadside on innumerable occasions. For a period of time they stayed at a private site but when it was redeveloped as an official site, they were forced to move on as no space was available for them. In 1984 they stayed on a relative's site for a period of time but were forced to leave. While the Government have suggested that in fact the applicants owned this land and that it received planning permission, this was denied by the applicant. According to the applicant, the land belonged to her brother. When, following his divorce, the land was ordered to be sold by the court as part of the financial settlement, the applicant had to leave.

13. In March 1993, the applicant bought land known as 111A Almners Road, Runnymede. It was a portion of a garden in a Green Belt area where there was already some residential development. The applicant moved a mobile home onto the land and took up residence with her family. In a declaration dated 7 March 1996 the applicant's uncle, Jasper Smith, a member of the Gypsy Council and an employee of Surrey County Council, stated that he had attempted on numerous occasions prior to 1993 to obtain a site on an official site on behalf of the applicant without success.

14. On 25 June 1993, Runnymede Borough Council ("the Council") rejected the applicant's application to join the waiting list for rented council accommodation on the basis that they had not lived in the borough for a minimum of three years. The applicant alleged that by this time they had lived for many years in the Runnymede area, although they had been compelled to move on frequently from place to place.

15. In 1988, the High Court had granted a declaration that Surrey County Council was in breach of its duty under section 6 of the Caravan Sites Act 1968 to provide provision for gypsies (*R. v. Secretary of State ex parte Smith* [1988] C.O.D. 3). In June 1989, the Secretary of State issued a direction under section 9 of the 1968 Act directing that 190 caravans should be accommodated. However, on 18 August 1989, the Borough of Runnymede was declared a designated area pursuant to section 12 of the Caravan Sites Act 1968. The area was designated on the basis that it was not expedient for adequate provision to be made for gypsies residing in or resorting to the borough.

16. The previous owner of 111A Almners Road, also a gypsy, had been refused planning permission in January 1993 to live on the land in a caravan on the basis that it conflicted with local and national planning policies. The Council considered that the stationing of a caravan would be detrimental to the character of the Green Belt. An enforcement notice had been issued requiring discontinuance of the unauthorised use. The applicant was aware of this situation and the fact that the previous owner had appealed to the Secretary of State for the Environment against the refusal of planning permission and the enforcement order. When the applicant purchased the land, she was advised that there was a special concession for granting planning permission to gypsies in Green Belt areas under Circular 28/77. Accordingly, she took over the appeal from the previous owner.

17. On 20 April 1993, a Public Enquiry was held. An Inspector appointed by the Department of Environment heard evidence and representations from the applicant and the Council. By a letter dated 3 June 1993, the Inspector dismissed the appeal.

> "10. The mobile home is situated on an enclosed plot of land fronting Almners Road, adjacent to No. 111. This land is separated from the adjacent house by a screen fence, which continues along the rear boundary of the appeal site. The site is contained on its other side boundary by a row of conifer trees. The land has a frontage of about 19 m to the road, most of which is formed by a hedge. …
>
> 12. From my inspection of the site and its surroundings and from the representations made I consider that there are two main issues… Firstly, whether the use of the land as a residential caravan site for a mobile home and associated operational development is appropriate to this part of the Metropolitan Green Belt; and, if not, secondly, whether there are very special circumstances that would justify the retention of inappropriate development in the Green Belt.
>
> 13. On the first issue, the use of land as a residential caravan site is not one of the purposes listed as being appropriate to the green belt in Planning Policy Guidance Note 2 (PPG2). However, policy C4 of the approved Surrey Structure Plan 1989 and policy PE2 of … the Replacement Structure Plan 1992 provide that gypsy caravan sites may be appropriate and necessary in the green belt, but they will not be considered acceptable as of right.
>
> 14. The appeals site lies within the south west sector of the Metropolitan Green Belt. This section is described as containing valuable green wedges which thrust inwards to the Thames west of Molesey. Lyne is a small settlement located within one of these wedges. Given its location within a narrow stretch of generally open countryside between Virginia Water and Chertsey I agree with the council that the appeals site lies within a particularly sensitive part of the green belt.

15. From my own observations I agree … that Almners Road comprises three distinct parts and that the appeals site lies within the significant gap between Nos 99 and 131 which is predominantly rural in character despite the presence of Nos 109 and 111. The rustic feel of the locality is enhanced by the woodlands to the rear of <the applicants'> land and the field on the opposite side… Notwithstanding the previous use of the land as part of the garden of No. 111, the unauthorised use and works represent an encroachment of additional development into a predominantly rural locality. It also contributes towards the coalescence of the nearby built up frontages on Almners Road and thereby the merger of nearby settlements. As a result I consider that the development subject to the appeals conflicts with the second and third objectives of government green belt policy listed in PPG2. …

16. Whilst the mobile home is set behind the front of the adjoining house and its range of visibility from the other direction on Almners Road is limited by conifers on its western boundary, it, and the related operational development is significantly different to the character of the touring caravans that are parked in some of the nearby gardens, which are incidental to the enjoyment of the residential curtilages within which they stand. Notwithstanding the support of some nearby residents, I consider that the discernible presence of the unauthorised development on the appeals site is harmful to the appearance of this mainly rural location. … In light of this and its particular impact on the aims of green belt policy, I conclude … that the use of the land for a residential caravan site for a mobile home and associated operational development is not appropriate to this part of the Metropolitan Green Belt.

17. Turning to my second issue, Circular 28/77 states that it may be necessary to accept the establishment of gypsy caravan sites in green belt areas and that there are advantages in gypsies providing their own sites. However, in designating Runnymede under the Caravan Sites Act 1968 on the grounds of expediency the Secretary of State gave significant weight to the extent of and characteristics of the green belt within the borough and the number of sites that had already been provided within these areas. …

18. Circular 28/77 advises that after a district or borough has been designated, authorities may have to be prepared to increase the provision they have made if there is a subsequent expansion of the gypsy population in their area and it is nearly 4 years since the designation of Runnymede in June 1989. However since then the quarterly surveys indicate that the number of vans parked illegally in the borough has tended to decline. Consequently, having regard to the reasons given for designation, there does not appear to be a case at this time for permitting additional gypsy caravan sites, in the green belt in Runnymede, contrary to policies H12 and H09, unless there are very special circumstances.

19. Having regard to the personal circumstances of <the applicants> none of the family requires regular hospital treatment and I do not consider the ailments of <the applicant and her husband> and two of their children are so exceptional or debilitating as to constitute compelling reasons for allowing inappropriate development in the green belt. Whilst I sympathise with <the applicants'> aim to have the two youngest children educated, only one of these is currently at school and there is no evidence that this locality is preferable to any other in terms of access to educational facilities.

> 20. I can appreciate <the applicants'> current desire to settle in one place but there is no specific reason why this has to be in the green belt. With regard to the consequences of <the applicants> having to vacate the site you state that they would have no alternative to reverting to their previous existence of moving from one unauthorised site to another, with consequent hardship for the family and inconvenience to the general public. In this respect … the borough and district councils have no record that <the applicants> have sought a place on any of the official sites and <the applicant> stated that she has not enquired whether there was any space on any of the sites occupied by her relatives. Additionally, it would be open to <the applicants> to seek priority housing from the Council.
>
> 21. … I accept that <the applicant and her husband> have lived and worked in this area for some time and that it might not be possible to accommodate <their> mobile home on any authorised site within the area. However, on the basis of the evidence at the inquiry I am not convinced that all avenues relating to possible alternative accommodation have been fully explored. I am not, therefore, assured that <the applicants> inevitably would have to return to living on unauthorised sites… In any event, I am not persuaded that such a consequence … together with any limited benefits that might arise in terms of the health and education of the family represent very special circumstances that would justify the retention of this inappropriate development in this particularly sensitive part of the Metropolitan Green Belt. …"

18. The applicant remained on her land in the caravan as the family had not been offered a place on an official campsite and thus had no alternative legal site to place their caravan.

19. On 29 July 1993, the applicant applied to the Council for planning permission to build a bungalow, of which there were already some 20 on Almners Road. The Council refused planning permission. On 16 September 1993, the applicant appealed this decision by written statement as she could not afford a public enquiry.

20. On 29 November 1993, an Inspector appointed by the Department of the Environment dismissed the appeal on similar grounds to the earlier appeal, namely that the bungalow was inappropriate within the Green Belt and that there were no special circumstances which would override the strong presumption against such a development, which in this case would contribute to the coalescence of existing developments and further diminish the rural character of the area. As a consequence, the applicant and her husband were in breach of the enforcement notice and liable to receive a summons issued by the Council for breach of Planning Regulations.

21. Injunction proceedings were instituted against the applicant and her family by the Council. On 5 September 1994, the Council obtained an injunction in the High Court requiring the applicant and her family to move off their land immediately. The applicant applied for judicial review of this

decision and was granted limited legal aid. However, she received counsel's opinion which advised that the application was doomed to failure.

22. In light of the new Criminal Justice and Public Order Act 1994, which came into force on 3 November 1994, the applicant, in fear of being on the roadside, applied to be placed on the local authority homeless list on 4 August 1994. The Council informed the applicant's solicitors on 4 November 1994 that the applicant had been placed on the list.

23. The applicant was offered accommodation in two flats in a town. However, the rent was excessively high and there was no facility to keep her husband's van nor his tarmacadaming and landscape gardening equipment. Moreover, the environment next to a busy, treeless road was contrary to the country existence which she and her family had enjoyed all their lives. They have applied for accommodation in a more natural environment but no offer has yet been made. The Council had previously offered three alternative pieces of land which were subsequently withdrawn due to a methane gas leak, boggy ground and vicinity to a rubbish dump respectively.

24. The local authority has stated that, in the event that the applicant is forced to leave the site, the authority will provide temporary accommodation for her until permanent accommodation becomes available. However, in view of the restrictions on development within the Green Belt, all accommodation offered will be in urban areas.

25. The 1995 Annual Report from Surrey County Council planning department revealed that following the coming into force of the Criminal Justice and Public Order Act 1994 the County Council no longer had an obligation to identify new gypsy caravan sites and that unless very special circumstances were proved it was unlikely that new sites would be allowed in Green Belt and sensitive areas. The statistics for 1994 showed that the official sites in the area catered for 44 caravans while there were another 26 caravans on unauthorised sites.

26. The applicant stated that in May 1997 the local authority decided to institute proceedings against her. Though no proceedings were issued, the Council threatened to do so from time to time and she lived under the threat of committal for contempt. The applicant's husband continued to suffer from severe gout and was recently in hospital for treatment. He and the applicant both suffer from depression. Her eldest son, his wife, their son and baby lived with her, as well as three other children. The applicant's children of school age were attending the local school regularly. The applicant stated that she continued to visit gypsy sites to see whether pitches were available but she has not been offered a pitch on any site and has not received any visits from the local authority.

27. In the Runnymede area, there were two local authority sites accommodating 50 caravans. In addition there were 12 caravans on authorised sites and 18 caravans on unauthorised sites. The applicant submitted that since the 1989 direction by the Secretary of State only 22 additional pitches were provided. Since 1996, there had been no increase in provision in either public or private sites and no decrease in the number of unlawful encampments.

The applicant submitted that all the area of the Council was in the Metropolitan Green Belt area while the Government stated that only a large part of it was. The diagram and materials submitted from the Surrey Structure Plan 1994 indicates that 70% of the County was Green Belt, 20% urban and 10% countryside beyond the Green Belt, which includes some areas designated as areas of outstanding natural beauty (AONB) or designated landscape value (ADLV). Parts of the Green Belt area are also classed as AONB and ADLV. AONB and ADLV areas account for 40% of the County. According to the diagram, the Runnymede area consists entirely of Green Belt and urban centres.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. General planning law

28. The Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) ("the 1990 Act") consolidated pre-existing planning law. It provides that planning permission is required for the carrying out of any development of land (section 57 of the 1990 Act). A change in the use of land for the stationing of caravans can constitute a development (*Restormel Borough Council v. Secretary of State for the Environment and Rabey* [1982] Journal of Planning Law 785; *John Davies v. Secretary of State for the Environment and South Hertfordshire District Council* [1989] Journal of Planning Law 601).

29. An application for planning permission must be made to the local planning authority, which has to determine the application in accordance with the local development plan, unless material considerations indicate otherwise (section 54A of the 1990 Act).

30. The 1990 Act provides for an appeal to the Secretary of State in the event of a refusal of permission (section 78). With immaterial exceptions, the Secretary of State must, if either the appellant or the authority so desire, give each of them the opportunity of making representations to an inspector appointed by the Secretary of State. It is established practice that each

inspector must exercise independent judgment and must not be subject to any improper influence (see the Bryan v. the United Kingdom judgment of 22 November 1995, Series A no. 335-A, p. 11, § 21). There is a further appeal to the High Court on the ground that the Secretary of State's decision was not within the powers conferred by the 1990 Act, or that the relevant requirements of the 1990 Act were not complied with (section 288).

31. If a development is carried out without the grant of the required planning permission, the local authority may issue an "enforcement notice" if it considers it expedient to do so having regard to the provisions of the development plan and to any other material considerations (section 172 (1) of the 1990 Act).

32. There is a right of appeal against an enforcement notice to the Secretary of State on the grounds, *inter alia*, that planning permission ought to be granted for the development in question (section 174). As with the appeal against refusal of permission, the Secretary of State must give each of the parties the opportunity of making representations to an inspector.

33. Again there is a further right of appeal "on a point of law" to the High Court against a decision of the Secretary of State under section 174 (section 289). Such an appeal may be brought on grounds identical to an application for judicial review. It therefore includes a review as to whether a decision or inference based on a finding of fact is perverse or irrational (*R. v. Secretary of State for the Home Department, ex parte Brind* [1991] Appeal Cases 696, 764 H-765 D). The High Court will also grant a remedy if the inspector's decision was such that there was no evidence to support a particular finding of fact; or the decision was made by reference to irrelevant factors or without regard to relevant factors; or made for an improper purpose, in a procedurally unfair manner or in a manner which breached any governing legislation or statutory instrument. However, the court of review cannot substitute its own decision on the merits of the case for that of the decision-making authority.

34. Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local authority may enter the land and take the steps and recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so (section 178 of the 1990 Act).

B. Green Belt policy

35. The purpose of Green Belts and the operation of the policy to protect them is set out in the national policy document PPG 2 (January 1995).

> "1.1. The Government attaches great importance to Green Belts, which have been an essential element of planning policy for some four decades …

1.4. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belts can shape patterns of urban development at sub-regional and regional scale, and help to ensure that development occurs in locations allocated in development plans. They help to protect the countryside, be it in agricultural, forestry or other use. They can assist in moving towards more sustainable patterns of urban development.

1.5. There are five purposes in Green Belts:

– to check the unrestricted sprawl of large built-up areas;

– to prevent neighbouring towns from merging into one another;

– to assist in safeguarding the countryside from encroachment;

– to preserve the setting and special character of historic towns; and

– to assist in urban regeneration by encouraging the recycling of derelict and other urban land. …

2.1. The essential characteristic of Green Belts is their permanence. Their protection must be maintained as far as can be seen ahead. …

3.1. The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances…

3.2. Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development."

C. The Caravan Sites Act 1968

36. Part II of the Caravan Sites Act 1968 ("the 1968 Act") was intended to combat the problems caused by the reduction in the number of lawful stopping places available to gypsies as a result of planning and other legislation and social changes in the post-war years, in particular the closure

of commons carried out by local authorities pursuant to section 23 of the Caravan Sites and Control of Development Act 1960. Section 16 of the 1968 Act defined "gypsies" as:

> "persons of nomadic habit of life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or of persons engaged in travelling circuses, travelling together as such".

37. Section 6 of the 1968 Act provided that it should be the duty of local authorities:

> "to exercise their powers ... so far as may be necessary to provide adequate accommodation for gipsies residing in or resorting to their area".

38. The Secretary of State could direct local authorities to provide caravan sites where it appeared to him to be necessary (section 9).

39. Where the Secretary of State was satisfied either that a local authority had made adequate provision for the accommodation of Gypsies, or that it was not necessary or expedient to make such provision, he could "designate" that district or county (section 12 of the 1968 Act).

40. The effect of designation was to make it an offence for any gypsy to station a caravan within the designated area with the intention of living in it for any period of time on the highway, on any other unoccupied land or on any occupied land without the consent of the occupier (section 10).

41. In addition, section 11 of the 1968 Act gave to local authorities within designated areas power to apply to a magistrates' court for an order authorising them to remove caravans parked in contravention of section 10.

D. The Cripps Report

42. By the mid-1970s it had become apparent that the rate of site provision under section 6 of the 1968 Act was inadequate, and that unauthorised encampments were leading to a number of social problems. In February 1976, therefore, the Government asked Sir John Cripps to carry out a study into the operation of the 1968 Act. He reported in July 1976 (Accommodation for Gypsies: A report on the working of the Caravan Sites Act 1968, "the Cripps Report").

43. Sir John estimated that there were approximately 40,000 Gypsies living in England and Wales. He found that:

> "Six-and-a-half years after the coming into operation of Part II of the 1968 Act, provision exists for only one-quarter of the estimated total number of gypsy families with no sites of their own. Three-quarters of them are still without the possibility of finding a legal abode ... Only when they are travelling on the road can they remain within the law: when they stop for the night they have no alternative but to break the law."

44. The report made numerous recommendations for improving this situation.

E. Circular 28/77

45. Circular 28/77 was issued by the Department of the Environment on 25 March 1977. Its stated purpose was to provide local authorities with guidance on "statutory procedures, alternative forms of gypsy accommodation and practical points about site provision and management". It was intended to apply until such time as more final action could be taken on the recommendations of the Cripps Report.

46. Among other advice, it encouraged local authorities to enable self-help by gypsies through the adoption of a "sympathetic and flexible approach to [Gypsies'] applications for planning permission and site licences". Making express reference to cases where gypsies had bought a plot of land and stationed caravans on it only to find that planning permission was not forthcoming, it recommended that in such cases enforcement action not be taken until alternative sites were available in the area.

F. Circular 57/78

47. Circular 57/78, which was issued on 15 August 1978, stated, *inter alia*, that "it would be to everyone's advantage if as many gypsies as possible were enabled to find their own accommodation", and thus advised local authorities that "the special need to accommodate gypsies ... should be taken into account as a material consideration in reaching planning decisions".

48. In addition, approximately £100 million was spent under a scheme by which one hundred per cent grants were made available to local authorities to cover the costs of creating gypsy sites.

G. The Criminal Justice and Public Order Act 1994

49. Section 80 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"), which came into force on 3 November 1994, repealed sections 6-12 of the 1968 Act and the grant scheme referred to above.

50. Section 77 of the 1994 Act gives to a local authority power to direct an unauthorised camper to move. An unauthorised camper is defined as

> "a person for the time being residing in a vehicle on any land forming part of the highway, any other unoccupied land or any occupied land without the owner's consent".

51. Failure to comply with such a direction as soon as practicable, or re-entry upon the land within three months, is a criminal offence. Local authorities are able to apply to a magistrates' court for an order authorising them to remove caravans parked in contravention of such a direction (section 78 of the 1994 Act).

52. In the case of *R. v. Lincolnshire County Council, ex parte Atkinson* (22 September 1995), Sedley J. referred to the 1994 Act as "Draconic" legislation. He commented that:

> "For centuries the commons of England provided lawful stopping places for people whose way of life was or had become nomadic. Enough common land had survived the centuries of enclosure to make this way of life still sustainable, but by s.23 of the Caravan Sites and Control of Development Act 1960 local authorities were given the power to close the commons to travellers. This they proceeded to do with great energy, but made no use of the concomitant powers given them by s.24 of the same Act to open caravan sites to compensate for the closure of the commons. By the Caravans Act 1968, therefore Parliament legislated to make the s.24 power a duty, resting in rural areas upon county councils rather than district councils… For the next quarter of a century there followed a history of non-compliance with the duties imposed by the Act of 1968, marked by a series of decisions of this court holding local authorities to be in breach of their statutory duty, to apparently little practical effect. The default powers vested in central government to which the court was required to defer, were rarely, if ever used.
>
> The culmination of the tensions underlying the history of non-compliance was the enactment of … the Act of 1994 …"

H. Circular 1/94

53. New guidance on gypsy sites and planning, in the light of the 1994 Act, was issued to local authorities by the Government in Circular 1/94 (5 January 1994), which cancelled Circular 57/78 (see above).

Councils were told that:

> "In order to encourage private site provision, local planning authorities should offer advice and practical help with planning procedures to gypsies who wish to acquire their own land for development. ... The aim should be as far as possible to help gypsies to help themselves, to allow them to secure the kind of sites they require and thus help avoid breaches of planning control." (para. 20)

However:

> "As with other planning applications, proposals for gypsy sites should continue to be determined solely in relation to land-use factors. Whilst gypsy sites might be acceptable in some rural locations, the granting of permission must be consistent with agricultural, archaeological, countryside, environmental, and Green Belt policies ..." (para. 22).

It was indicated that as a rule it would not be appropriate to make provision for gypsy sites in areas of open land where development was severely restricted, for example Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest. Nor were gypsy sites regarded as being among those uses of land normally appropriate in a Green Belt (paragraph 13).

I. Circular 18/94

54. Further guidance issued by the Secretary of State dated 23 November 1994 concerned the unauthorised camping by gypsies and the power to give a direction to leave the land (CJPOA above). Paragraphs 6-9 required local authorities to adopt "a policy of toleration towards unauthorised gypsy encampments:

> "6. ... Where gypsies are camped unlawfully on council land and are not causing a level of nuisance which cannot be effectively controlled, an immediate forced eviction might result in unauthorised camping on a site elsewhere in the area which could give rise to greater nuisance. Accordingly, authorities should consider tolerating gypsies' presence on the land for short periods and could examine the ways of minimising the level of nuisance on such tolerated sites, for example by providing basic services for gypsies e.g. toilets, a skip for refuse and a supply of drinking water.

8. Where gypsies are unlawfully camped on Government-owned land, it is for the local authority, with the agreement of the land-owning Department, to take any necessary steps to ensure that the encampment does not constitute a hazard to public health. It will continue to be the policy of the Secretaries of State that Government Departments should act in conformity with the advice that gypsies should not be moved unnecessarily from unauthorised encampments when they are causing no nuisance.

9. The Secretaries of State continue to consider that local authorities should not use their powers to evict gypsies needlessly. They should use their powers in a humane and compassionate fashion and primarily to reduce nuisance and to afford a higher level of protection to private owners of land."

55. Paragraphs 10-13 further require local authorities to consider their obligations under other legislation before taking any decisions under the 1994 Act. These obligations include their duties concerning pregnant women and newly-born children, the welfare and education of children and the housing of homeless persons. In a judgment of 22 September 1995 (*R. v. Lincolnshire County Council, ex parte Atkinson*, *R. v. Wealden District Council, ex parte Wales* and *R. v. Wealden District Council, ex parte Stratford*, unreported), the High Court held that it would be an error of law for any local authority to ignore those duties which must be considered from the earliest stages.

J. Gypsy sites policies in development plans

56. In a letter dated 25 May 1998, the Department of the Environment drew to the attention of all local planning authorities in England that Circular 1/94 required local planning authorities to assess the need for gypsy accommodation in their areas and make suitable locational and/or criteria based policies against which to decide planning applications. The Government was concerned that this guidance had not been taken up. ACERT research (see below) had showed that 24% of local authorities (96) had no policy at all on gypsy sites and that many in the process of reviewing their plans at the time of the survey did not feel it necessary to include policies on gypsy provision. It was emphasised that it was important to include consideration of gypsy needs at an early stage in drawing up structure and development plans and the detailed policies should be provided. Compliance with this guidance was essential in fulfilling the Government's objective that gypsies should seek to provide their own

accommodation, applying for planning permission like everyone else. It was necessary, therefore, that adequate gypsy site provision be made in development plans to facilitate this process.

K. 1998 ACERT research into provision for private gypsy sites

57. The Advisory Council for the Education of Romany and Other Travellers (ACERT) which carried out research sponsored by the Department of the Environment, Transport and Regions, noted in its report that since 1994 private site provision had increased by 30 caravans per year while the pace of public site provision had declined by 100 caravans, disclosing that the pace of private site provision had not increased sufficiently to counterbalance decreases in public site provision. Noting the increase of gypsies in housing and the increased enforcement powers under the 1994 Act, it questioned, if these trends continued, the extent to which the ethnic, cultural and linguistic identity of Gypsy and Traveller people would be protected.

58. The research looked, *inter alia*, at 114 refused private site applications, which showed that 97% related to land within the countryside and that 96% were refused on grounds relating to the amenity value (e.g. Green Belt, conservation area locations). Of the 50 gypsy site applicants interviewed, for most acquiring permission for their own land was an important factor in improving the quality of life, gaining independence and providing security. For many, the education of their children was another important reason for private site application. All save one had applied for permission retrospectively.

59. The report stated that the figures for success rates in 624 planning appeals showed that before 1992 the success rate had averaged 35% but had decreased since. Having regard however to the way in which data was recorded, the actual success rate was probably between 35% and 10% as given as the figures in 1992 and 1996 by the gypsy groups and Department of the Environment respectively. Notwithstanding the objectives of planning policy that local authorities make provision for gypsies, most local authorities did not identify any areas of land as suitable for potential development by gypsies and reached planning decisions on the basis of land-use criteria in the particular case. It was therefore not surprising that

most gypsies made retrospective applications and that they had little success in identifying land on which local authority would permit development. Granting of permission for private sites remained haphazard and unpredictable.

L. Overall statistics concerning gypsy caravans

60. In January 2000, the Department of the Environment, Regions and Transport survey on caravans England disclosed that of 13,134 caravans counted, 6,118 were accommodated on local authority pitches, 4,500 on privately owned sites and 2,516 on unauthorised sites. Of the latter, 684 gypsy caravans were being tolerated on land owned by non-gypsies (mainly local authority land) and 299 gypsy caravans tolerated on land owned by gypsies themselves. On these figures, about 1,500 caravans were therefore on unauthorised and untolerated sites while over 80% of caravans were stationed on authorised sites.

M. Local authority duties to the homeless

61. Local authority duties to the homeless were contained in Part VII of the Housing Act 1996, which came fully into force on 20 January 1997. Where the local housing authority was satisfied that an applicant was homeless, eligible for assistance, had a priority need (e.g. the applicant was a person with whom dependant children resided or was vulnerable due to old age, physical disability etc), and did not become homeless intentionally, the authority was required, if it did not refer the application to another housing authority, to secure that accommodation was available for occupation by the applicant for a minimum period of two years. Where an applicant was homeless, eligible for assistance and not homeless intentionally, but was not a priority case, the local housing authority was required to provide the applicant with advice and such assistance as it considered appropriate in the circumstances in any attempt he might make to secure that accommodation became available for his occupation.

III. RELEVANT INTERNATIONAL TEXTS

A. The Framework Convention for the Protection of National Minorities

62. This Convention, opened for signature on 1 February 1995, provides *inter alia*:

"Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2. The parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority; In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation."

63. The Convention entered into force on 1 February 1998. The United Kingdom signed the Convention on the date it opened for signature and ratified it on 15 January 1998. It entered into force for the United Kingdom on 1 May 1998. By 9 February 2000, it had been signed by 37 of the Council of Europe's 41 member states and ratified by 28.

64. The Convention did not contain any definition of "national minority". However the United Kingdom in its Report of July 1999 to the Advisory Committee concerned with the Convention accepted that gypsies are within the definition.

B. Other Council of Europe texts

65. Recommendation 1203(1993) of the Parliamentary Assembly on Gypsies in Europe included the recognition that gypsies, as one of the very few non-territorial minorities in Europe, "need special protection". In its general observations, the Assembly stated *inter alia*:

> "6. Respect for the rights of Gypsies, individual, fundamental and human rights and their rights as a minority, is essential to improve their situation.
>
> 7. Guarantees for equal rights, equal chances, equal treatment and measures to improve their situation will make a revival of Gypsy language and culture possible, thus enriching the European cultural diversity."

Its recommendations included:

> "xiv. member states should alter national legislation and regulations which discriminate directly or indirectly against Gypsies; …
>
> xviii. further programmes should be set up in the member states to improve the housing situation, education… of those Gypsies who are living in less favourable circumstances. …"

66. In 1998, the European Commission against Racism and Intolerance issued General Policy Recommendation No. 3: Combating Racism and Intolerance against Roma/Gypsies. Its recommendations included:

> "… to ensure that discrimination as such, as well as discriminatory practices, are combated through adequate legislation and to introduce into civil law specific provisions to this end, particularly in the fields of … housing and education. …
>
> … to ensure that the questions relating to 'travelling' within a country, in particular, regulations concerning residence and town planning, are solved in a way which does not hinder the life of the persons concerned; …"

C. The European Union

67. On 21 April 1994, the European Parliament passed a Resolution on the situation of Gypsies in the Community, calling on the governments of member states "to introduce legal, administrative and social measures to improve the social situation of Gypsies and Travelling People in Europe"; and recommending that "the Commission, the Council and the governments

of Member States should do everything in their power to assist in the economic, social and political integration of Gypsies, with the objective of eliminating the deprivation and poverty in which the great majority of Europe's Gypsy population still lives at the present time".

68. Protection of minorities has become one of the preconditions for accession to the European Union. In November 1999, the European Union adopted "Guiding Principles" for improving the situation of Roma in candidate countries, based expressly on the recommendations of the Council of Europe's Specialist Group of Roma/Gypsies and the OSCE High Commissioner on National Minorities' recommendations.

D. The Organisation for Security and Co-operation in Europe (OSCE)

69. The situation of Roma and Sinti has become a standard item on the Human Dimension section of the agenda of OSCE Review Conferences. Two structural developments – the Office of Democratic Institutions and Human Rights (ODIHR) and the appointment of a High Commissioner for National Minorities – also concerned protection of Roma and Sinti as minorities.

70. On 7 April 2000, the High Commissioner's Report on the Situation of Roma and Sinti in the OSCE Area was published. Part IV of the Report dealt with the living conditions of Roma, noting that while nomadism had been central to Romani history and culture a majority of Roma were now sedentary (one estimation gave 20% as nomadic, 20% as semi-nomadic, moving seasonally, while 60% were sedentary). This was particularly true of Central and Eastern Europe, where there had been in the past policies of forced sedentarization:

> "It must be emphasised that whether an individual is nomadic, semi-nomadic or sedentary should, like other aspects of his or her ethnic identity, be solely a matter of personal choice. The policies of some OSCE participating States have at times breached this principle, either by making a determination of a group's fundamental lifestyle that is inconsistent with its members' choices or by making it virtually impossible for individuals to pursue the lifestyle that expresses their group identity." (pp. 98-99)

71. The Report stated that for those Roma who maintained a nomadic or semi-nomadic lifestyle the availability of legal and suitable parking was a paramount need and precondition to the maintenance of their group identity. It observed however that even in those countries that encouraged or advised local authorities to maintain parking sites, the number and size of available sites was insufficient in light of the need:

> "… The effect is to place nomadic Roma in the position of breaking the law – in some countries, committing a crime – if they park in an unauthorized location, even though authorized sites may not be available." (pp. 108-109)

72. The Report dealt specifically with the situation of Gypsies in the United Kingdom (pp. 109-114). It found:

> "Under current law, Gypsies have three options for lawful camping: parking on public caravan sites – which the Government acknowledges to be insufficient; parking on occupied land with the consent of the occupier; and parking on property owned by the campers themselves. The British Government has issued guidance to local authorities aimed at encouraging the last approach. In practice, however, and notwithstanding official recognition of their special situation and needs, many Gypsies have encountered formidable obstacles to obtaining the requisite permission to park their caravans on their own property …" (pp. 112-113).

73. Concerning the planning regime which requires planning permission for the development of land disclosed by the stationing caravans, it stated:

> "… This scheme allows wide play for the exercise of discretion – and that discretion has repeatedly been exercised to the detriment of Gypsies. A 1986 report by the Department of the Environment described the prospects of applying for planning permission for a Gypsy site as 'a daunting one laced with many opportunities for failure'. In 1991, the last years in which the success of application rates was evaluated, it was ascertained that 90 per cent of applications for planning permission by Gypsies were denied. In contrast, 80 per cent of all planning applications were granted during the same period. It is to be noted that, as a category, Gypsy planning applications are relatively unique insofar as they typically request permission to park caravans in areas or sites which are subject to restriction by local planning authorities. As such, virtually all Gypsy planning applications are highly contentious. Nonetheless, the fact remains that there is inadequate provision or availability of authorized halting sites (private or public), which the high rate of denial of planning permission only exacerbates. Moreover, there are indications that the situation has deteriorated since 1994. … In face of these difficulties , the itinerant lifestyle which has typified the Gypsies is under threat." (pp. 113-114)

74. The report's recommendations included the following:

> "… in view of the extreme insecurity many Roma now experience in respect of housing, governments should endeavour to regularize the legal status of Roma who now live in circumstances of unsettled legality." (pp. 126 and 162)

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

75. The applicant complained that the refusal of planning permission to station caravans on her land and the enforcement measures implemented in respect of her occupation of her land disclosed a violation of Article 8 of the Convention.

> "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."

76. The Government disputed those allegations. The Commission by eighteen votes to nine found that there had been no violation of this provision.

77. The Court recalls that it has already examined complaints about the planning and enforcement measures imposed on a gypsy family who occupied their own land without planning permission in the case of Buckley v. the United Kingdom (judgment of 25 September 1996, *Reports* 1996-IV, p. 1271). Both parties have referred extensively to the findings of the Court in that case, as well as the differing approach of the Commission.

The Court considers that, while it is not formally bound to follow any of its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases. Since the Convention is first and foremost a system for the protection of human rights, the Court must however have regard to the changing conditions in Contracting States and respond, for example, to any emerging consensus as to the standards to be achieved (see, amongst other authorities, the Cossey v. the United Kingdom judgment of 27 September 1990, Series A no. 184, p. 14, § 35).

A. As to the rights in issue under Article 8 of the Convention

78. The applicant submitted that measures threatening her occupation in caravan on her land affected not only her home, but also her private and family life as a gypsy with a traditional lifestyle of living in mobile homes which allow travelling. She refers to the consistent approach of the Commission in her own and similar cases (see, for example, the Buckley case, cited above, Comm. Rep. 11.1.95, § 64).

79. The Government accepted that the applicant's complaints concerned her right to respect for home and stated that it was unnecessary to consider whether the applicant's right to respect for her private life and family life was also in issue (Buckley judgment, cited above, §§ 54-55).

80. The Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures which affect the applicant's occupation of her caravan have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a gypsy and to lead her private and family life in accordance with that tradition.

81. The Court finds therefore that the applicant's right to respect for her private life, family life and home are in issue in the present case.

B. Whether there was an "interference" with the applicant's rights under Article 8 of the Convention?

82. The Government accepted that there had been "an interference by a public authority" with the applicant's right to respect for her home disclosed by the refusal of planning permission to allow her to live in her caravan on her own land and the pursuit of enforcement measures against her.

83. The applicant contended that, in addition to these measures constituting an interference with her rights, the framework of legislation and planning policy and regulations disclosed a lack of respect for those rights as they effectively made it impossible for her to live securely as a gypsy – either she was forced off her land and would have to station her caravans

unlawfully, at risk of being continually moved on or she would have to accept conventional housing or "forced assimilation".

84. The Court considers that it cannot examine legislation and policy in the abstract, its task rather being to examine the application of specific measures or policies to the facts of each individual case. There is no direct measure of "criminalisation" of a particular lifestyle as was the case in Dudgeon v. the United Kingdom (judgment of 22 October 1981, Series A no. 45), which concerned legislation rendering adult consensual homosexual relations a criminal offence.

85. Having regard to the facts of the present case, the Court finds that the decisions of the planning authorities refusing to allow the applicant to remain on her land in her caravans and the measures of enforcement taken in respect of her continued occupation constituted an interference with her right to respect for her private life, family life and home. It therefore examines below whether this interference was justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing a legitimate aim or aims and as being "necessary in a democratic society" in pursuit of that aim or aims.

C. Whether the interference was "in accordance with the law"?

86. It was not contested by the applicant that the measures to which she was subjected were "in accordance with the law".

The Court finds no reason to reach a different conclusion.

D. Whether the interference pursued a legitimate aim?

87. The Government submitted that the measures in question pursued the enforcement of planning controls which were in the interests of the economic well-being of the country and the preservation of the environment and public health.

88. The applicant accepted that the measures pursued the legitimate aim of protecting the "rights of others" in the sense of environmental protection. She did not accept that any other legitimate aim was concerned.

89. The Court notes that the Government have not put forward any detail concerning the aims allegedly pursued in this case and that they rely on a general assertion. It is also apparent that the reasons given for the interferences in the planning procedures in this case were expressed primarily in terms of environmental policy. In these circumstances, the Court finds that the measures pursued the legitimate aim of protecting the "rights of others" through preservation of the environment. It does not find it necessary to determine whether any other aims were involved.

E. Whether the interference was "necessary in a democratic society"?

1. Arguments before the Court

(a) The applicant

90. The applicant submitted that, in assessing the necessity of the measures in this case, the importance of what was at stake for her weighed very heavily in the balance, as it not only concerned the security of her home but also her right to live, with her family, the traditional gypsy lifestyle. The growing international consensus about the importance of providing legal protection to the rights of minorities, as illustrated, *inter alia*, by the Framework Convention for the Protection of Minorities emphasised that this was also of significance to the community as a whole as a fundamental value of a civilised democracy. In these circumstances, any margin of appreciation accorded to the domestic decision-making bodies should be narrower, rather than wider.

91. The applicant argued that the procedural safeguards in the decision-making process only gave limited recognition to those considerations in her case. Planning inspectors approached decisions constrained by laws and policies applying to development of land, which placed, for example, particular weight on the protection of Green Belt areas. The interest of gypsies in residing on their land was not seen as a useful or indispensable land-use feature and therefore automatically carried much less weight in the domestic balancing exercise. Thus, the "personal circumstances" of the gypsies could seldom outweigh the more general planning considerations.

92. The applicant also submitted that there must exist particularly compelling reasons to justify the seriousness of the interference disclosed by measures of eviction from her land, where there had not been shown to be an alternative site to which she could be reasonably expected to move. She pointed out that in her case she and her family had taken up residence on her land due to considerations of health and security. This also enabled her children to attend school. She had never been offered a place on an official site. During the planning procedures, it was not shown that there were any viable alternatives. There had been insufficient provision for gypsy caravans in the area for decades. She and her family still lived under the threat of enforcement action, including physical eviction, with still no secure alternative site to go to.

(b) The Government

93. The Government emphasised that, as recognised by the Court in the Buckley case (cited above, §§ 74-75), in the context of town and country planning, which involved the exercise of discretionary judgment in implementing policies in the interests of the community, national authorities were in a better position to evaluate local needs and conditions than an international court. It was not for the Court to substitute its view of what would be the best planning policy or the most appropriate measure in a particular case.

94. While the applicant was entitled to have her interests carefully considered by the national authorities and weighed in the balance as against the needs of planning control, an examination of the applicable system, and the facts of this case, showed that the procedural safeguards contained in national law as to the way in which planning judgments were made (an assessment by a qualified independent expert, an Inspector, followed by judicial review in the High Court) were such as to give due respect to her interests. The Government pointed out that local planning authorities were encouraged to adopt a sympathetic approach to any question of enforcement action under Circular 18/94 (see paragraphs 54-55 above) and that large numbers of caravans on unauthorised sites were tolerated (see the statistics cited at paragraph 60 above). However, gypsies could not claim the right to live wherever they liked in defiance of planning control, particularly when they were now seeking to live a settled existence indefinitely on their own land.

95. The Government further submitted that, though the accommodation that could be offered to the applicant was limited as much of the local authority area was in the Green Belt, the applicant had had the lawful alternative of a local authority site where vacancies periodically arose. It was also open to the applicant to travel to other caravan sites outside that local authority area. They pointed out that the applicant took up residence on her land, which was within the Green Belt, without obtaining, or even applying for the prior planning permission necessary to render that occupation lawful. When she did apply for planning permission, the applicant had the opportunity of presenting the arguments in her favour before two Inspectors, both of whom gave her personal circumstances careful consideration. However, both Inspectors found that her occupation of her land was detrimental to the rural character of the site situated in the Green Belt and that this outweighed her interests. The applicant could not rely on Article 8 as giving her preference as to her place of residence to

outweigh the general interest. Finally, it should be taken into account in assessing the proportionality of the measures that the applicant had made an application for planning permission for a bungalow on her land, indicating that she was willing to live in settled, conventional accommodation.

(c) Intervention by the European Roma Rights Centre

96. The European Roma Rights Centre drew to the attention of the Court the recently published "Report on the Situation of Roma and Sinti in the OSCE Area" prepared by the OSCE High Commissioner on National Minorities and other international texts and materials concerning the position of Roma. They submitted that there had emerged a growing consensus amongst international organisations about the need to take specific measures to address the position of Roma, *inter alia*, concerning accommodation and general living conditions. Articles 8 and 14 should be interpreted therefore in the light of the clear international consensus about the plight of the Roma and the need for urgent action.

2. The Court's assessment

(a) General principles

97. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, amongst other authorities, the Lustig-Prean and Beckett v. the United Kingdom judgment of 27 September 1999, to be reported in *Reports* 1999-…, §§ 80-81).

98. In this regard, a margin of appreciation must, inevitably, be left to the national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions (see the Dudgeon v. the United Kingdom judgment 22 October 1982, Series A no. 45, p. 21, § 52; the Gillow v. the United Kingdom judgment of 24 November 1986, Series A no. 109, p. 22, § 55).

99. The judgment in any particular case by the national authorities that there are legitimate planning objections to a particular use of a site is one which the Court is not well equipped to challenge. It can not visit each site to assess the impact of a particular proposal on a particular area in terms of impact on beauty, traffic conditions, sewerage and water facilities, educational facilities, medical facilities, employment opportunities and so on. Because Planning Inspectors visit the site, hear the arguments on all sides and allow examination of witnesses, they are better situated than the Court to weigh the arguments. Hence, as the Court observed in Buckley (*loc. cit.*, p. 1292, § 75 *in fine),* "in so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation", although it remains open to the Court to conclude that there has been a manifest error of appreciation by the national authorities. In these circumstances, the procedural safeguards available to the individual applicant will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, it must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see the Buckley judgment, cited above, pp. 1292-3, §§ 76-77).

100. The applicant urged the Court to take into account recent international developments, in particular the Framework Convention for the Protection of Minorities, in reducing the margin of appreciation accorded to States in light of the recognition of the problems of vulnerable groups, such as gypsies. The Court observes that there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle (see paragraphs 62-66 above, in particular the Framework Convention for the Protection of Minorities), not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community.

101. However, the Court is not persuaded that the consensus is sufficiently concrete for it to derive any guidance as to the conduct or standards which Contracting States consider desirable in any particular situation. The Framework Convention, for example, sets out general principles and goals but signatory states were unable to agree on means or implementation. This reinforces the Court's view that the complexity and sensitivity of the issues involved in policies balancing the interests of the

general population, in particular with regard to environmental protection and the interests of a minority with possibly conflicting requirements, renders the Court's role a strictly supervisory one.

102. Moreover, to accord to a gypsy who has unlawfully established a caravan site at a particular place different treatment from that accorded to non-gypsies who have established a caravan site at that place or from that accorded to any individual who has established a house in that particular place would raise substantial problems under Article 14 of the Convention.

103. Nonetheless, although the fact of being a member of a minority with a traditional lifestyle different from that of the majority of a society does not confer an immunity from general laws intended to safeguard assets common to the whole society such as the environment, it may have an incidence on the manner in which such laws are to be implemented. As intimated in the Buckley judgment, the vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the decisions in particular cases (*loc. cit.*, pp. 1292-95, §§ 76, 80, 84). To this extent there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see, *mutatis mutandis*, the Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, p. 15, § 31; the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, p. 19, § 49, and the Kroon and Others v. the Netherlands judgment of 27 October 1994, Series A no. 297-C, p. 56, § 31).

104. It is important to appreciate that in principle gypsies are at liberty to camp on any caravan site which has planning permission; there has been no suggestion that permissions exclude gypsies as a group. They are not treated worse than any non-gypsy who wants to live in a caravan and finds it disagreeable to live in a house. However, it appears from the material placed before the Court, including judgments of the English courts, that the provision of an adequate number of sites which the gypsies find acceptable and on which they can lawfully place their caravans at a price which they can afford is something which has not been achieved.

105. The Court does not, however, accept the argument that, because statistically the number of gypsies is greater than the number of places available in authorised gypsy sites, the decision not to allow the applicant gypsy family to occupy land where they wished in order to install their caravan in itself, and without more, constituted a violation of Article 8. This would be tantamount to imposing on the United Kingdom, as on all the other Contracting States, an obligation by virtue of Article 8 to make available to the gypsy community an adequate number of suitably equipped sites. The Court is not convinced, despite the undoubted evolution that has taken place in both international law, as evidenced by the Framework

Convention, and domestic legislations in regard to protection of minorities, that Article 8 can be interpreted to involve such a far-reaching positive obligation of general social policy being imposed on States (see paragraphs 100-101 above).

106. It is important to recall that Article 8 does not in terms give a right to be provided with a home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being has a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision.

107. In sum, the issue for determination before the Court in the present case is not the acceptability or not of a general situation, however deplorable, in the United Kingdom in the light of the United Kingdom's undertakings in international law, but the narrower one whether the particular circumstances of the case disclose a violation of the applicant's, Mrs Smith's, right to respect for her home under Article 8 of the Convention.

108. In this connection, the legal and social context in which the impugned measure of expulsion was taken against the applicants is, however, a material factor.

109. Where a dwelling has been established without the planning permission which is needed under the national law, there is a conflict of interest between the right of the individual under Article 8 of the Convention to respect for his or her home and the right of others in the community to environmental protection (see paragraph 88). When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community.

110. A further relevant consideration, to be taken into account in the first place by the national authorities, is that if no alternative accommodation is available, the interference is more serious than where such accommodation is available. The more suitable the alternative accommodation is, the less serious is the interference constituted by moving the applicant from his or her existing accommodation.

111. The evaluation of the suitability of alternative accommodation will involve a consideration of, on the one hand, the particular needs of the person concerned – his or her family requirements and financial resources – and, on the other hand, the rights of the local community to environmental protection. This is a task in respect of which it is appropriate to give a wide margin of appreciation to national authorities, who are evidently better placed to make the requisite assessment.

(b) Application of the above principles

112. The seriousness of what is at stake for this applicant is demonstrated by the facts of this case. The applicant followed an itinerant lifestyle for many years, stopping on temporary or unofficial sites. She took up residence on her own land by way of finding a long term and secure place to station their caravans. Planning permission was however refused for this and she was required to leave. An injunction was issued against the applicant and she remains on her land under threat of further enforcement measures. It would appear that the applicant does not in fact wish to pursue an itinerant lifestyle. She has been on the site from 1993 to the present day.

113. It is evident that individuals affected by an enforcement notice have in principle, and this applicant had in practice, a full and fair opportunity to put before the Planning Inspectors any material which she regarded as relevant to her argument and in particular her personal, financial and other circumstances, her views as to the suitability of alternative sites and the length of time needed to find a suitable alternative site.

114. The Court recalls that the applicant moved onto her land in a caravan without obtaining the prior planning permission which she knew was necessary to render that occupation lawful. In accordance with the applicable procedures, the applicant's appeals against refusal of planning permission and enforcement notices were conducted by Inspectors, who were qualified independent experts. A public enquiry was held on the first occasion. The Inspectors in both appeals saw the site themselves and considered the applicant's representations.

115. In his report of 3 June 1993 (see paragraph 17), the first Inspector took into account that according to the local structure plans and national planning guidance gypsy caravans could be appropriate and necessary in the Green Belt and that there were advantages in gypsies having their own private sites. He found however that site lay within a particularly sensitive part of the Green Belt and that the development was an encroachment into predominantly rural land, contributing to the merger of settlements. Its

appearance was harmful to the area and it was therefore in conflict with the purposes of the Green Belt. He noted that the numbers of gypsy caravans in the area had in fact tended to decline over the four year period since Runnymede had been designated as providing adequate accommodation for gypsies and that there was not a strong case for permitting additional gypsy caravans in the Green Belt at that time. Further, he was not satisfied that the applicant had explored the other alternatives available to her besides taking up residence in a sensitive part of the Green Belt and concluded that there were no very special circumstances justifying what was an inappropriate development. The second Inspector likewise in his report of 29 November 1993 (see paragraph 20) found that there were no factors overriding the strong presumption against the development which would run counter to the purposes of the Green Belt in preserving the rural character of the area.

116. It is clear from the Inspectors' reports (cited in paragraphs 17 and 20) that there were strong, environmental reasons for the refusal of planning permission and that the applicant's personal circumstances had been taken into account in the decision-making process. The Court also notes that appeal to the High Court was available in so far as the applicants felt that the Inspectors, or Secretary of State, had not taken into account a relevant consideration or had based the contested decision on irrelevant considerations. In the event, however, the applicant declined to make such appeal.

117. The Court observes that during the planning procedures it was not shown that there were any vacant sites immediately available for the applicant to go to, either in the district or in the county as a whole. The Government have pointed out that official sites existed in the county offering possible alternatives for stationing her caravan and that the applicant was free to seek sites outside the county. Notwithstanding that the statistics show that there is a shortfall of local authority sites available for gypsies in the country as a whole, it may be noted that many gypsy families still live an itinerant life without recourse to official sites and it cannot be doubted that vacancies on official sites arise periodically.

118. Moreover, given that there are many caravan sites with planning permission, whether suitable sites were available to the applicant during the long period of grace given to her was dependent upon what was required of a site to make it suitable. In this context, the cost of a site compared with the applicant's assets, and its location compared with the applicant's desires are clearly relevant. Since how much the applicant has by way of assets, what outgoings need to be met by her, what locational requirements are essential for her and why they are essential are factors exclusively within the knowledge of the applicant it is for the applicant to adduce evidence on

these matters. She has not placed before the Court any information as to her financial situation, or as to the qualities a site must have before it will be locationally suitable for her. The Court is therefore not persuaded that there were no alternatives available to the applicant besides remaining in occupation on land without planning permission in a Green Belt area. As stated in the Buckley case, Article 8 does not necessarily go so far as to allow individuals' preferences as to their place of residence to override the general interest (judgment cited above, p. 1294, § 81). If the applicant's problem arises through lack of money, then she is in the same unfortunate position as many others who are not able to afford to continue to reside on sites or in houses attractive to them.

119. In the circumstances, the Court considers that proper regard was had to the applicant's predicament both under the terms of the regulatory framework, which contained adequate procedural safeguards protecting her interest under Article 8 and, by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of her case. The decisions were reached by those authorities after weighing in the balance the various competing interests. It is not for this Court to sit in appeal on the merits of those decisions, which were based on reasons which were relevant and sufficient, for the purposes of Article 8, to justify the interferences with the exercise of the applicant's rights.

120. The humanitarian considerations which might have supported another outcome at national level cannot be used as the basis of a finding by the Court which would be tantamount to exempting the applicant from the implementation of the national planning laws and obliging governments to ensure that every gypsy family has available for its use accommodation appropriate to its needs. Furthermore, the effect of these decisions cannot in the circumstances of the case be regarded as disproportionate to the legitimate aim being pursued.

(c) Conclusion

121. In conclusion, there has been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

122. The applicant claims that she has been denied the right to live peacefully on her land and has therefore suffered a breach of the right to peaceful enjoyment of her possessions contrary to Article 1 of Protocol No. 1 to the Convention which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

123. The applicant argues that notwithstanding the admittedly broad discretion left to national planning decision-makers a fair balance has not been struck between her interests and those of the general community. She submits that the fact that she took up residence on her land without prior permission is irrelevant and that the findings of the Planning Inspectors concerning the impact on visual amenity of her caravans are not so significant if taken in context of the policy framework governing their decisions. If however the Court finds a violation of Article 8, she accepts that no separate issue arises under this provision.

124. The Government, adopting the views of the majority of the Commission, submitted that a fair balance had been struck between the individual and general interest, in particular having regard to the fact that the applicant occupied her land in contravention of planning law and to the findings of the Planning Inspectors concerning the detrimental impact of her occupation.

125. For the same reasons given under Article 8 of the Convention, the Court finds that any interference with the applicant's peaceful enjoyment of her property was proportionate and struck a fair balance in compliance with the requirements of Article 1 of Protocol No. 1 of the Convention. There has, accordingly, been no breach of this provision.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1

126. The applicant complained that the measures taken against her violated Article 2 of Protocol No. 1 which provides as relevant:

"No person shall be denied the right to education. …"

127. The applicant submitted that the refusal to allow her to remain with her family on their own land rendered precarious her children's access to satisfactory education.

128. The Government argued that there was no right under the above provision for children to be educated at any particular school and that in any case there was no evidence that the enforcement measures had had the effect of preventing the applicant's children from going to school.

129. The Court notes that the applicant has remained on her land since 1993. It finds that she has failed to substantiate her complaints that her children were effectively denied the right to education as a result of the planning measures complained of. There has, accordingly, been no violation of Article 2 of Protocol No. 1 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

130. The applicant invoked Article 6 of the Convention, complaining that she had no access to court to determine the merits of her claims that she should have permission to occupy her land. Article 6 § 1 provides as relevant:

> "1. In the determination of his civil rights and obligations …, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. …"

131. The applicant argued that the Court's case-law did not support any general proposition that the right of appeal to the High Court on points of law rendered planning procedures in compliance with Article 6. The case of Bryan (Bryan v. the United Kingdom judgment of 22 November 1995, Series A no. 335, pp. 17-18, §§ 44-47) was, she submitted, decided on its particular facts. In particular, she argued that the High Court could not review any questions of fact. Nor could it examine complaints that a planning inspector gave too little weight to the needs of gypsy family in pursuing their lifestyle on their land as long as he did not expressly disregard it as irrelevant factor. She also submitted that a review which failed to take account of the proportionality of a measure must be inadequate for the purpose of Article 6 (referring, *mutatis mutandis*, to the Court's findings on Article 13 in the Smith and Grady v. the United Kingdom judgment of 27 September 1999, to be reported in *Reports* 1999-…, §§ 135-138).

132. The Government, agreeing with the majority of the Commission, considered that in light of the Bryan case (*op. cit.*, §§ 44-47) the scope of review provided by the High Court concerning planning decisions satisfied the requirements of Article 6, notwithstanding that the court would not revisit the facts of the case.

133. The Court recalls that in the case of Bryan (judgment cited above, §§ 34-47) it held that in the specialised area of town planning law full review of the facts may not be required by Article 6 of the Convention. It finds in this case that the scope of review of the High Court, which was available to the applicant after a public procedure before an inspector, was

sufficient in this case to comply with Article 6 § 1. It enabled a decision to be challenged on the basis that is it perverse, irrational, had no basis on the evidence or had been made with reference to irrelevant factors or without regard to relevant factors. This may be regarded as affording adequate judicial control of the administrative decisions in issue.

134. There has therefore been no violation of Article 6 § 1 in this case.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

135. The applicant complained that she had been discriminated against on the basis of her status as a gypsy, contrary to Article 14 which provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

136. The applicant submitted that the legal system's failure to accommodate her traditional way of life, by treating gypsies as if they were the same as members of the majority population, or disadvantaging them relative to members of the general population, amounted to discrimination in the enjoyment of her rights under the Convention based on her status as a member of an ethnic minority. For example, gypsies alone were singled out for special treatment by the policy which declared that gypsies sites were inappropriate in certain areas, and unlike house dwellers, they did not benefit from a systematic assessment of and provision for their needs. Further, the application to them of general laws and policies failed to accommodate their particular needs arising from their tradition of living and travelling in caravans. She referred, *inter alia*, to the Framework Convention on Minorities, as supporting an obligation on the United Kingdom to adopt measures to ensure the full and effective equality of gypsies.

137. The Government, referring to the Commission's majority opinion, found that any difference in treatment pursued legitimate aims, was proportionate to those aims and had in the circumstances reasonable and objective justification.

138. Having regard to its findings above under Article 8 of the Convention that any interference with the applicant's rights was proportionate to the legitimate aim of preservation of the environment, the Court concludes that there has been no discrimination contrary to Article 14 of the Convention. While discrimination may arise where States without an objective and reasonable justification fail to treat differently persons whose

situations are significantly different (the Thlimmenos v. Greece judgment of 6 April 2000, to be reported in *Reports* 2000-…, § 44), the Court does not find, in the circumstances of this case, any lack of objective and reasonable justification for the measures taken against this applicant.

139. Accordingly there has been no violation of Article 14 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds* by ten votes to seven that there has been no violation of Article 8 of the Convention;

2. *Holds* unanimously that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* unanimously that there has been no violation of Article 2 of Protocol No. 1 to the Convention;

4. *Holds* unanimously that there has been no violation of Article 6 of the Convention;

5. *Holds* unanimously that there has been no violation of Article 14 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 January 2001.

Luzius WILDHABER
President

Michele DE SALVIA
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinions are annexed to this judgment:

(a) the joint dissenting opinion of Mr Pastor Ridruejo, Mr Bonello, Mrs Tulkens, Mrs Strážnická, Mr Lorenzen, Mr Fischbach and Mr Casadevall;

(b) the separate opinion of Mr Bonello.

L.W.
M. de S.

JOINT DISSENTING OPINION OF JUDGES PASTOR RIDRUEJO, BONELLO, TULKENS, STRÁŽNICKÁ, LORENZEN, FISCHBACH AND CASADEVALL

1. We regret that we are unable to share the opinion of the majority that there has been no violation of Article 8 in this case. We refer to our joint dissenting opinion in the case of Chapman v. the United Kingdom (no. 27238, judgment of 18 January 2001), the leading case of the five applications brought before our Court concerning the problems experienced by gypsies in the United Kingdom.

2. Identical considerations arise in this application. The applicant and her family followed an itinerant lifestyle for many years, stopping on temporary or unofficial sites. Due to considerations of family health and the education of the children, the applicant took the step of buying land on which to station her caravans with security. Planning permission was however refused for this and they were required to leave. The applicant was subject to injunction proceedings and lives on her land under threat of committal for contempt or other enforcement measures. Her situation is insecure and vulnerable.

During the planning procedures, it was not shown that there were any alternative sites available for the applicant to go to either in the district or in the county as a whole. The Government referred to official sites existing in the county as offering possible accommodation. Following the applicant's request to the local authority for assistance as being homeless however, the Council offered the applicant three pieces of unsuitable land which were later withdrawn and the option of accommodation in flats in town. No vacancies have been shown to have arisen for caravans on any sites within the area. The Government also stated that the applicant was free to seek sites outside the county. Notwithstanding the statistics relied on by the Government (see paragraph 61), we observe that there was nonetheless a significant shortfall of official, lawful sites available for gypsies in the country as a whole and we consider that it cannot be assumed that vacancies existed or were available elsewhere.

3. Consequently, the measures taken to evict the applicant from her home on her own land, in circumstances where there has not been shown to be any other lawful, alternative site reasonably open to her were, in our view, disproportionate and disclosed a violation of Article 8 of the Convention.

4. We voted for non-violation of Article 1 of Protocol No. 1 and Article 14 as, in light of our firm conviction that Article 8 had been violated in the circumstances of this case, no separate issues remained to be examined.

SEPARATE OPINION OF JUDGE BONELLO

I refer to the terms of my separate opinion in the Chapman v. the United Kingdom judgment of this date.