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

CASE OF LEE v. THE UNITED KINGDOM

(Application no. 25289/94)

JUDGMENT

STRASBOURG

18 January 2001

In the case of Lee 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. 25289/94) against the United Kingdom lodged with the Commission under former Article 25 of the Convention by a British citizen, Mr Thomas Lee ("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 him in respect of his occupation of his land in his caravan violated his right to respect for home, family and private life contrary to Article 8 of the Convention. He complained that these also disclosed an interference with the peaceful enjoyment of his possessions contrary to Article 1 of Protocol No. 1 to the Convention and disclosed a denial of education to his grandchildren contrary to Article 2 of Protocol No. 1. He further complained that he was subject to discrimination as a gypsy contrary to Article 14 of the Convention. While he invoked Article 10 of the Convention before the Commission, he did not pursue this complaint in the proceedings before the Court.

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 (20 votes to 6), that there had been no violation of Article 2 of Protocol No. 1 (20 votes to 6), that there had been no violation of Article 10 of the Convention (unanimously) 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 Mr Mark Tilbury, a solicitor practising in King's Lynn. 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).

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).

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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.

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*,
Mr M. Tilbury, *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 and his wife are gypsies by birth. They were born and bred in Kent. They have a nomadic lifestyle and have travelled extensively around the south of England in pursuit of work and to attend traditional gypsy social gatherings.

11. Throughout the years, the applicant was prosecuted frequently for illegal encampment. Over a four year period he claimed to have been evicted from more than 40 sites. To rectify this situation, in 1991 he bought a plot of land which measures approximately 0.4 hectares.

12. The applicant's land was situated on a hillside of the Stour Valley to the east of the village of Chartham. The surrounding land was mostly open agricultural land but in the valley bottom there was mineral working and industrial development. The land contained three caravans, which were occupied by the applicant, his wife, two children and grandchildren. It also had an area for grazing horses and contained a stable. The site was in an area designated within the relevant development plan as a Special Landscape Area where special planning policies applied.

13. The applicant's grandchildren attended school regularly receiving an education that in the past they frequently had not had the opportunity to receive.

14. The applicant and his family have mainly been employed in agricultural work all their lives. He bought the site with the intention that it would provide a settled home and also a living from market garden produce and horticulture.

15. On 20 November 1992, an enforcement notice was issued by Canterbury City Council ("the Council"), requiring the applicant to cease the use of the land for the stationing of residential caravans. He was given six months within which to remove the caravans.

16. In January 1993, the applicant lodged an appeal against the enforcement notice. An Inspector was appointed by the Secretary of State for the Environment to determine the appeal.

17. On 20 September 1993, the Inspector, in a decision letter, denied planning permission and dismissed the appeal. He stated *inter alia*:

> "6. From my inspection of the site and the surrounding area and from the written representations I consider that the main issues are whether the impact of the residential caravans on the surrounding area is acceptable having regard to relevant planning policies, and also, if the impact is not acceptable whether the stationing of residential caravans is nevertheless justified by the agricultural needs of the proposed enterprise or by the needs of the three gypsy families involved.
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> 7. There are three approved development plans for the area: the 1990 Kent Structure Plan; the 1983 Kent Countryside Local Plan; and the 1982 Stour Valley Countryside Plan. Policy S6 of the Structure Plan imposes a general presumption against development of fresh land in the countryside although policy RS6 recognises that the needs of agriculture may constitute an exception. However even so policy RS1 requires that all development shall be appropriate in location and appearance while policies in all the plans provide that in such Special Landscape Areas as this conserving the landscape will normally have priority over other planning considerations.
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> 8. The site is in a corner of an open field on the southern hillside of the Stour Valley and surrounded by agricultural land. In this position it is highly visible at various points along the Cockering Road below and from the A28 in the valley bottom. It is also visible from footpaths in the vicinity and particularly from one that runs along the back of the site. The group of three caravans within the fenced site is a most conspicuous and alien form of development in this exposed rural location and is in conflict with the character and appearance of its surroundings. An attempt has been made to screen the caravans on the hillside by planting evergreens but many have died. However neither screening nor painting the caravans, as offered, is likely to make the development less obtrusive in such an isolated and open situation, and there is no doubt in my mind that it seriously conflicts with the policies designed to conserve and enhance the countryside. …

11. … In my opinion, and on the evidence submitted the proposed enterprise <market gardening and horticulture> even taking into account the further land available is not likely to support the three families who would be engaged in it so as to justify their living on the site.

12. As regards the agricultural need for living on the site, I am not satisfied that the type of horticulture outlined demands living on the site … I do not doubt that the families wish to continue earning their living from agricultural pursuits but the offer to tie their occupation to agriculture … does not overcome the lack of agricultural need to live on the site which might justify setting aside the strong amenity objection. …

13. In support of allowing the development as a gypsy caravan site it is stated that <the applicant> has been evicted from 40 sites over a 4 year period and was exasperated by the Council's inability to provide suitable sites. He took the opportunity to acquire the present site to provide a permanent home and an income. This <he claims> is in line with the guidance in DOE Circular 28/77 which recognises that even in sensitive locations it may be necessary to accept the establishment of caravan sites or to refrain from enforcement actions until sites are available.

14. The Council recognise that, despite being a 'designated area' under the 1968 Act, there is a shortfall of some 22 pitches and further provision needs to be made. A number of sites are being evaluated and in addition the draft local plan contains a policy for permitting gypsies to establish sites on their own land providing it is suitable. The Council do not consider that the Department's guidance implies that private sites should be allowed without regard to the consequences.

15. Having considered the evidence, I accept that there is a shortfall of pitches in the Canterbury area but I recognise too <the applicant's> willingness, if not a preference, for providing a small site for the family group and I do not consider it unlikely that a less inappropriate place can be found. While therefore I accept that the loss of the present site would create a need for an alternative, in the circumstances of this case I find that the complete unsuitability of the present site outweighs that need. I have considered whether a temporary permission might be granted for this small group until the Council's provision of other sites comes to fruition and I have taken account of <the applicant's> willingness to accept a planning condition restricting the number of caravans on the site so as not to create a precedent for the use of adjoining land. However I can see no way of preventing it from being a precedent if other gypsy families sought to acquire plots of land nearby. … I am satisfied that even a temporary planning permission could be a signal for the establishment of other sites which would have a very harmful effect on the landscape of this attractive valley. …"

18. The applicant then applied for permission to use the land for winter stationing of three caravans for residential purposes.

19. On 1 March 1994, after having requested the applicant to explain what change in material considerations had taken place, the Council declined to determine the above application in accordance with Section 70A of the Town and Country Planning Act 1990. The Council did not consider

that there were material differences between the planning application for winter stationing of caravans and the applicant's earlier application.

20. The applicant now lives under the threat of criminal prosecution and forcible eviction.

21. While the applicant had been on a number of occasions offered places on official sites, he refused primarily because the sites in question were in a very poor state. One site, at Broomfield was next to a rubbish tip and the other, at Vauxhall Road, was built on an old sewage bed and adjacent to an operational sewage works and with a steel works adjoining the southern boundary of the site, which operated 24 hours per day. The applicant stated that they were unfit for human habitation (photographs were attached to his application in support of his contention) and that the noise of the steelworks deprived inhabitants of the site of sleep. While the Government disputed before the Commission that the Broomfield site was unfit for habitation, referring to repairs being carried out when required due to the vandalism of occupants, the Government confirmed at the hearing before the Court that this site had now closed. The Government also provided the information that planning permission had been granted for the upgrading and extension of the site at Vauxhall Road and that a grant was made by the Secretary of State for this purpose. The original 16 pitches had now been refurbished, and two further pitches added, at a cost of GBP 495,000. The Council had served a Noise Abatement Notice on the steelworks with a view to improving the residential environment for the gypsy site and discussions were ongoing regarding the creation of a boundary between the two sites.

22. The Government also stated that in 1998 in the Canterbury area there were two official sites comprising 30 pitches (with eight currently vacant) and in addition 28 caravans on authorised private sites and 14 caravans on unauthorised private sites. The July 1999 Department of the Environment figures showed however that the number of authorised private sites had dropped from 28 to 8, the number of public sites fell from 27 to 21, while the number of unauthorised encampments almost tripled from 14 to 38.

23. The applicant stated that planning permission had been given to a non-gypsy to station a caravan on the site adjacent to the applicant's. Outline planning permission had also been given for a development of 600 residential units 600 yards from his site. The Government have provided information and documents concerning both developments.

Temporary planning permission was granted for two years in August 1994 for a caravan on a site called Larkey Wood Farm. The purpose of this was to enable the owner to establish the viability of his pig unit and the permission limited to occupation by an agricultural worker. Permission was granted recently for a permanent dwelling of the site given the established agricultural need and the owner's establishment of the viability of his pig farm. In the Inspector's decision of 17 August 1994, he found that this site

did not have as unfortunate effect on the landscape as the applicant's, though it did detract from the openness of the countryside and the natural appearance of the landscape.

The Government have also explained that in the 1990's a hospital (St. Augustine's), which was a large complex of buildings, closed down and it has been considered by the Council as suitable for residential development. The outline planning permission was granted to accommodate 600 houses and took into account the need to landscape the site. The applicant provided photographs of his own site and the Larkey Wood Farm site and the Government provided an aerial photograph identifying the locations of these developments relative to the applicant's land.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. General planning law

24. 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).

25. 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).

26. 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).

27. 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).

28. 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.

29. 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.

30. 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. The Caravan Sites Act 1968

31. 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".

32. 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".

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

34. 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).

35. 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).

36. 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.

C. The Cripps Report

37. 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").

38. 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."

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

D. Circular 28/77

40. 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.

41. 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.

E. Circular 57/78

42. 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".

43. In addition, approximately GBP 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.

F. The Criminal Justice and Public Order Act 1994

44. 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.

45. 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".

46. 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).

47. 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…"

G. Circular 1/94

48. 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).

H. Circular 18/94

49. 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.
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> 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."

50. 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.

I. Gypsy sites policies in development plans

51. 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 that 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.

J. 1998 ACERT research into provision for private gypsy sites

52. 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 1998 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.

53. 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.

54. 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.

K. Overall statistics concerning gypsy caravans

55. In January 2000, the Department of the Environment, Regions and Transport figures for caravans in 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.

L. Local authority duties to the homeless

56. 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

57. 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."

58. 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.

59. 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

60. 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. …"

61. 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

62. 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."

63. 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)

64. 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 concern protection of Roma and Sinti as minorities.

65. 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)

66. 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)

67. 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).

68. 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)

69. 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

70. The applicant complained that the refusal of planning permission to station caravans on his land and the enforcement measures implemented in respect of his occupation of his 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."

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

72. 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

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

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

75. The Court considers that the applicant's occupation of his caravan is an integral part of his 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 his caravans have therefore a wider impact than on the right to respect for home. They also affect his ability to maintain his identity as a gypsy and to lead his private and family life in accordance with that tradition.

76. The Court finds therefore that the applicant's rights to respect for his 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?

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

78. The applicant contended that, in addition to these measures constituting an interference with his 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 him to live securely as a gypsy – either he was forced off his land and would have to station his caravans unlawfully, at risk of being continually moved on or he would have to accept conventional housing or "forced assimilation".

79. 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.

80. 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 his land in his caravans and the measures of enforcement taken in respect of that occupation constituted an interference with his right to respect for his 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"?

81. It was not contested by the applicant that the measures to which he 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?

82. 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.

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

84. 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

85. The applicant submitted that, in assessing the necessity of the measures in this case, the importance of what was at stake for him weighed very heavily in the balance, as it not only concerned the security of his home but also his right to live, with his 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.

86. The applicant argued that the procedural safeguards in the decision-making process only gave limited recognition to those considerations in his case. Planning inspectors approached their decisions constrained by the laws and policies applying to development of land, which placed, for example, particular weight on the protection of Special Landscape 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.

87. The applicant also submitted that there must exist particularly compelling reasons to justify the seriousness of the interference disclosed by measures of eviction from his land, where there had not been shown to be an alternative site to which he could be reasonably expected to move. He pointed out that in his case he and his family had moved onto his land after being harassed and moved on over 40 times. This enabled his grandchildren to attend school. During the planning procedures, it was acknowledged that there were no official sites available in the Canterbury area and that there was a shortfall of sites notwithstanding designation of the area. Now he and his family lived on their land under the threat of further enforcement action, including physical eviction with still no secure alternative site to go to. The site at Broomfield Road had been closed and the site at Vauxhall Road was unfit for human habitation, in particular as it was next to a sewage works and a steel works which operated 24 hours a day.

(b) The Government

88. 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.

89. While the applicant was entitled to have his 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 his 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 49-50 above) and that large numbers of caravans on unauthorised sites were tolerated (see the statistics cited at paragraph 55 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.

90. The Government further submitted that the Planning Inspector had found it likely that other sites would be available in the area and pointed out that it was 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 his land, which was in an Special Landscape Area, without obtaining, or even applying for the prior planning permission necessary to render that occupation lawful. When he did apply for planning permission, the applicant had the opportunity of presenting the arguments in his favour in proceedings conducted by an Inspector, who gave his personal circumstances careful consideration. However, the Inspector found that his occupation of his land was very harmful to the landscape of the attractive area. The applicant could not rely on Article 8 as giving his preference as to his place of residence to outweigh the general interest. Finally, it should be noted that the applicant has not been subject to any prosecutions.

(c) Intervention by the European Roma Rights Centre

91. 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

92. 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).

93. 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).

94. 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, p. 1292-3, §§ 76-77).

95. 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 56-60 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.

96. 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.

97. 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.

98. 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).

99. 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.

100. 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 95-96 above).

101. 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.

102. 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, Mr Lee's, right to respect for his home under Article 8 of the Convention.

103. 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.

104. 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 83). 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.

105. 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.

106. 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

107. 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. He took up residence on his own land by way of finding a long term and secure place to station his caravans. Planning permission was however refused for this and he has been required to leave. He remains on his land under threat of enforcement measures. It would appear that the applicant does not in fact wish to pursue an itinerant lifestyle. He has been resident on the site from about 1993 to the present day. Thus the present case is not concerned as such with traditional itinerant gypsy life styles.

108. 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 Inspector any material which he regarded as relevant to his argument and in particular his personal, financial and other circumstances, his views as to the suitability of alternative sites and the length of time needed to find a suitable alternative site.

109. The Court recalls that the applicant moved onto his land in his caravans without obtaining the prior planning permission which he knew was necessary to render that occupation lawful. In accordance with the applicable procedures, the applicant's appeal against the enforcement notice were conducted in a public enquiry by an Inspector, who was a qualified independent expert. The Inspector saw the site himself and considered the applicant's representations.

110. The Inspector identified the main issue of the appeal as whether the impact of the caravans on the landscape was justified by the needs of the applicant's family as gypsies. The site, located in an open situation, was obtrusive and seriously conflicted with the applicable policies of conserving and enhancing the countryside. He identified the risk that planning permission could lead to the establishment of other sites with a very harmful effect to an attractive valley in a Special Landscape Area. Conversely, it was not unlikely that a less inappropriate place could be found by the applicant for placing his caravans. Thus, he concluded that the complete unsuitability of the site outweighed the applicant's needs.

111. Consideration was given to the applicant's arguments, both concerning the work that he had done on the site by painting and screening and concerning the difficulties of finding other sites in the area. However, the Inspector weighed those factors against the general interest of preserving the rural character of the countryside found that the latter prevailed.

112. It is clear from the report cited at paragraph 17 above that there were strong, environmental reasons for the refusal of planning permission and that the applicant's interests have also been taken into account in the decision-making process. The Court notes that appeal to the High Court would have been available to the applicant if he had felt that the Ispector, 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.

113. The Court observes that during the planning procedures it was acknowledged that there was a shortfall of sites in the district. The Government have pointed out that official sites in the district and elsewhere in the county did exist offering alternative possibilities for stationing the applicant's caravans and also 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.

114. 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 him 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 him, what locational requirements are essential

for him 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. He has not placed before the Court any information as to his financial situation, or as to the qualities a site must have before it will be locationally suitable for him, nor does the Court have any information as to the efforts he has made to find alternative sites. 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 Special Landscape 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 he 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.

115. 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 his interests under Article 8 and by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of his 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.

116. 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 on the facts of this case be regarded as disproportionate to the legitimate aim being pursued.

(c) Conclusion

117. 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

118. The applicant claims that he has been denied the right to live peacefully on his land and has therefore suffered a breach of the right to peaceful enjoyment of his 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."

119. The applicant argues that notwithstanding the admittedly broad discretion left to national planning decision-makers a fair balance has not been struck between his interests and those of the general community. He submits that the fact that he took up residence on his land without prior permission is irrelevant and that the findings of the Planning Inspector concerning the impact on visual amenity of his 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, he accepts that no separate issue arises under this provision.

120. 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 his land in contravention of planning law and to the findings of the Planning Inspector concerning the detrimental impact of his occupation.

121. For the same reasons given under Article 8 of the Convention, the Court finds that any interference with the applicant's peaceful enjoyment of his 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

122. The applicant complains that the measures taken against him violated Article 2 of Protocol No. 1 which provides as relevant:

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

123. The applicant referred, before the Commission, to the risk posed to his grandchildren, currently receiving a proper education, by the refusal of permission for him and his family to remain on his own land. This threatened him with the prospect of having again to move on from place to place. He placed great importance on the stability of his grandchildren's education from his own experience of being illiterate.

124. 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 grandchildren from going to school.

125. The Court notes that the applicant's grandchildren have been attending school near their home on the applicant's land. It finds that applicant has failed to substantiate his complaints that his children have 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 14 OF THE CONVENTION

126. The applicant complained that he had been discriminated against on the basis of his 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."

127. The applicant submitted that the legal system's failure to accommodate his 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 his rights under the Convention based on his 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 are inappropriate in certain areas, and unlike house dwellers, they did not benefit from a systematic assessment of and provision for their needs. In his own case, the grant of planning permission on nearby sites for a caravan used for agriculture and for a large residential development demonstrated that preservation of landscape as a priority concern, and the concern with visual amenity, was applied differentially between different types of applicants for planning permission, to the detriment of gypsy applicants. Further, the application to gypsies of general laws and policies failed to accommodate their particular needs arising from their tradition of living and

travelling in caravans. He 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.

128. 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. No discrimination was disclosed by the planning permissions granted to two sites nearby as these developments were different in character, scenic impact and purpose from the applicant's.

129. 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 (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.

130. 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 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 his family followed an itinerant lifestyle for many years, stopping on temporary or unofficial sites and being frequently moved on by police and local authority officials. Due to considerations of security and the education of his grandchildren, the applicant took the step of buying land on which to station his caravans. Planning permission was however refused for this and they were required to leave. He and his family remain on their land subject to the threat of further enforcement measures. His situation is insecure and vulnerable.

During the planning procedures it was acknowledged that there was a shortfall of official sites in the area. No available alternative site was identified where the applicant to go either in the district or in the county as a whole. The Government referred to the Inspector's opinion that it was not unlikely that other sites might be available in the area. While the applicant was subsequently offered places on two official sites, he has submitted that these were unfit for habitation. It appears that the Broomfield site, next to a rubbish tip, has since been closed down. The Vauxhall site, next to a sewage works and a steelworks operating 24 hours a day, has only recently been refurbished. The applicant's allegations that the level of noise was such as to interfere seriously with the sleep of site residents were substantiated by the fact that the Council has issued a Noise Abatement Notice against the steelworks.

The Government also said that the applicant was free to seek sites outside the county. It is apparent however that, notwithstanding the statistics relied on by the Government (see paragraph 55), there is still a significant shortfall of official, lawful sites available for gypsies in the country as a whole and that it cannot be taken for granted that vacancies exist or are available elsewhere.

3. Consequently, the measures taken to evict the applicant from his home on his own land, in circumstances where there has not been shown to be any other lawful, alternative site reasonably open to him, 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.