App 27

EUROPEAN COURT OF HUMAN RIGHTS

# CASE OF CHAPMAN v. THE UNITED KINGDOM

*(Application no. 27238/95)*

JUDGMENT

STRASBOURG

18 January 2001

**In the case of Chapman 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. Kuris,

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,

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") [*Note by the Registry*. Protocol No. 11 came into force on 1 November 1998.], by the European Commission of Human Rights ("the Commission") on 30 October 1999 and by the United Kingdom Government ("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. 27238/95) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under former Article 25 of the Convention by a British citizen, Mrs Sally Chapman ("the applicant"), on 31 May 1994.

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 her home and her private and family life contrary to Article 8 of the Convention. She complained that these also disclosed an interference with the peaceful enjoyment of her possessions contrary to Article 1 of Protocol No. 1 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 subjected to discrimination as a Gypsy contrary to Article 14 of the Convention.

4. The Commission declared the application admissible on 4 March 1998. In its report of 25 October 1999 (former Article 31 of the Convention) [*Note by the Registry*. The report is obtainable from the Registry.], it expressed the opinion that there had been no violation of Article 8 of the Convention (eighteen votes to nine), that there had been no violation of Article 1 of Protocol No. 1 (nineteen votes to eight), that there had been no violation of Article 6 of the Convention (twenty-five

votes to two) and that there had been no violation of Article 14 of the Convention (eighteen votes to nine).

5 Before the Court the applicant, who had been granted legal aid, was represented by Messrs Lance Kent & Co., solicitors practising in Berkhamsted.

6. On 13 December 1999 a 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 (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 the 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 Government*

Mr H. Llewellyn, Foreign and Commonwealth Office, *Agent*,

Mr D. Pannick QC,

Mr D. Elvin QC,

Mr M. Shaw, *Counsel*,

Mr D. Russell,

Mr S. Marshall-Camm, *Advisers*;

(b) *for the applicant*

Mr R. Drabble QC,

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 J. Makarczyk, who was unable to take part in the further consideration of the case, was replaced by Mr G Bonello (Rule 24 § 5 (b)).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

10. The applicant is a Gypsy by birth. Since her birth she has travelled constantly with her family, mainly in the Hertfordshire area, in search of work. When she married, the applicant and her husband continued to live in caravans. They have four children.

11. The applicant and her husband used to stop for as long as possible on temporary or unofficial sites while he found work as a landscape gardener. They stayed for several years on an unofficial site in St Albans. They travelled for some years in the Watford area. They were on the waiting list for a permanent site but were never offered a place. They were constantly moved from place to place by the police and representatives of local authorities. Their children's education was constantly interrupted because they had to move about.

12. Due to harassment while she led a travelling life, which was detrimental to the health of the family and the education of the children, the applicant bought a piece of land in 1985 with the intention of living on it in a mobile home. The land is within the area of Three Rivers District Council in Hertfordshire where there is no official Gypsy site. The applicant alleges that a County Council official had told her in 1984 when she was encamped on the roadside that if she bought land she would be allowed to live on it. The Government state that there is no record of such a promise being made and that it would be unlikely that such a promise would be made, since it would be for the District Council, not the County Council, to decide any application. The land was also subject to a 1961 discontinuance order requiring the site not to be used for the stationing of three caravans.

13. The applicant and her family moved on to the land and applied for planning permission. This was to enable the children to attend school immediately. The District Council refused the application for planning permission on 11 September 1986 and served enforcement notices.

14. Appeals were lodged against the enforcement notices. In July 1987 a public inquiry was held by an inspector appointed by the Department of the Environment. He dismissed the appeal and upheld the decision of the Council as the land was in the Metropolitan Green Belt and he considered that the national and local planning policies should override the needs of the appellant. Since there was no official Gypsy site in the Three Rivers district the family was given fifteen months to move from their land, the Council having stated that a suitable location was being sought for them and that they would be able to move to a new official site within a year.

15. When the fifteen-month period expired, the family remained on the site since they had nowhere else to go. The applicant applied for planning permission for a bungalow, as it had been stated at the public inquiry that this would be a more appropriate use of the land than a mobile home. Planning permission was refused and the Council's decision was upheld at a further local inquiry. The family remained on the site and the Council served summonses on the applicant and her husband for failure to comply with an enforcement notice. On 18 August 1989 they were both fined 100 pounds sterling (GBP), with costs of GBP 50 in the Magistrates' Court. On 23 February 1990 they were again fined, this time GBP 500 each, with costs of GBP 50. To avoid further court action, the family returned to a nomadic life and were constantly moved from place to place by Council officials. The applicant's eldest daughter had started a hairdressing course at a college of further education and the second daughter was about to start studying at college for a diploma in forestry. Both of these courses had to be abandoned and the two younger children could no longer attend school.

16. During this period the applicant made a further planning application for a bungalow on her land. Again her application was refused and failed after an inquiry. In August 1992 the applicant and her family returned to their land in a caravan. Enforcement notices were issued by the Council on 11 March 1993. The applicant appealed against them and there was a planning inquiry on 2 November 1993.

17. By a decision letter of 18 March 1994, the inspector dismissed the appeal. In his decision, he stated, *inter alia*:

"15. Local policies in the Hertfordshire County Structure Plan Review of 1986, as revised by the Approved Alterations of 1991 and the Three Rivers District Plan of 1982, reaffirm that Sarratt and the surrounding countryside lie within the Metropolitan Green Belt ... The Structure Plan contains policies also on Landscape Conservation and Gypsy sites. The District Plan shows that the site lies outside the core of the village, but within an Agricultural Priority Area and also, within an Area of Great Landscape Value, now, by virtue of the Structure Plan, termed a Landscape Conservation Area.

...

19. The appeal site is a deep plot of some 0.77 ha on the frontage of Dawes Lane which leads from Sarratt, a village in the Metropolitan Green Belt; past the site to the west are a few dwellings, a nursery and the Chess Valley. ...

...

24. From the evidence before me and from my inspection of the site and the surrounding area it is clear to me that the principal issues in these matters are, first, whether the developments for which permissions are sought would be appropriate within the Green Belt and, second, whether there are any very special circumstances in your client's cases which would outweigh the general strong presumption against inappropriate development in the Green Belt.

25. Structure Plan policies presume against planning permission in the Green Belt, except in very strong circumstances, for the construction of new buildings, including residential caravans, or certain other specified categories of development. Para. 13 of Planning Policy Guidance 2 - Green Belts - states that, inside a Green Belt, approval should not be given, except in very special circumstances, for other than certain categories of appropriate developments. The previous paragraph emphasises the national presumption against inappropriate development within Green Belts.

26. The latest national guidance, in Circular 1/94, on Gypsy Sites and Planning states in the introduction that a main intention of the document is to withdraw the previous guidance indicating that it may be necessary to accept the establishment of gypsy sites in protected areas, including Green Belt sites. Paragraph 13 goes on to say that gypsy sites are not regarded as being amongst those uses of land which are normally appropriate in Green Belts.

27. None of [the applicant's] projects fall within the categories identified as exempt from national or local assumptions against inappropriate development in Green Belts. ..

28. I hold the very firm conviction that none of the developments referred to in these notices could properly and reasonably be regarded as appropriate in the terms of strong national guidance or long established local policies which all seek to protect the value of the Green Belt designation of the area.

29. This site is in a part of the Metropolitan Green Belt, near to a motorway and particularly vulnerable to development pressure. In my judgment the local and national worthwhile policies that seek to protect the Green Belt would undoubtedly be frustrated for a main purpose of Green Belts is to protect the surrounding countryside from further encroachment.

30. As for alternative accommodation for [the applicant], I was referred to the statutory duty of the County Council to provide a site for [the applicant], who is a gypsy resident in the area, to place her caravan; 23 years after statutory requirement to provide better living conditions for gypsies there were not sufficient sites in the County. The Council would save public money by letting [the applicant] remain here and not put another caravan on the roadside; there had never been an official gypsy caravan site in the District, which, in consequence, had not acquired the benefit of a statutorily designated area.

31. [The applicant] also said that the County Council were under a Direction from the Secretary of State for the Environment, under section 9 of the Caravan Sites Act of 1968 to provide further accommodations for gypsies in the County, but the County Council were not able to confirm progress to establish a 15 pitch gypsy caravan site at Langlebury Lane, Langlebury. ...

...

33. I note that the Council did not refute [the applicant's] comment on caravan site provision in the area, but I do not accept her argument as of sufficient weight to overturn, in the absence of very special circumstances, the cogent planning argument against inappropriate development in the Green Belt here.

...

35. Your client said that the site had been tidied; rubbish, undergrowth and some neglected buildings had been removed; a building had been renovated. ... The caravans are set further back on the site and partly screened by the previously erected large brick building; moreover they were considerably less conspicuous than the previous mobile home which was stationed close to Dawes Lane. ... As for the caravans, your client said that there were few places from which they are likely to be seen by very many members of the public, apart from drivers on Dawes Lane whose attention was likely to be on traffic conditions.

36. I attach more weight to the fact that this site lies in an attractive setting of mainly sporadic dwellings in extensive grounds and in a designated Landscape Conservation Area. To the north-west is the built-up area of the village and to the south-west attractive open countryside in the Chess Valley; it was agreed that the area is popular for recreational walking and riding.

37. I do not consider that the arguments put forward by [the applicant] would justify allowing residential development of this site. I find no reason to differ from the conclusions of my predecessors who considered that it would be wrong to grant permission for this site in a part of the Metropolitan Green Belt which is particularly vulnerable to development pressure. Whatever the conditions attached to specific grants of permission, stationing a residential caravan here would detract significantly from the quiet rural character and appearance of the site. As well as the caravan itself and the external signs

of occupation there would be the activities associated with a family on the site and the comings and goings inevitable with the residential occupation.

...

40 There is another factor which reinforces, to my mind, rejection of [the applicant's] appeals. Whilst the local planning authority has to consider every application on its merits at the time, these projects, if allowed, would be very likely to encourage similar schemes. The Council would undoubtedly find it more difficult to refuse such other schemes, with this site as a precedent, and those additional developments would cause significant harm to interests of acknowledged importance, which I consider to be unacceptable.

...

43. At the inquiry in 1987, following enforcement action, the Council told that Inspector that a suitable location for a gypsy caravan site was being sought; [the applicant] would be able to move to the new site within a year. ...

...

45. It appears that little progress has been made since the appeal in 1987. Paragraphs 30 and 31 above indicate that the information given in 1987 to the Inspector about the provision of gypsy caravan sites in the County was optimistic; estimates among Council officers apparently varied between 1 year and 5 years.

46. I note the Council's statement that [the applicant] had not shown interest in a pitch on a Council caravan site but, to my mind, other factors militate against their argument. First, it is not unreasonable for [the applicant] to wait the outcome of these appeals; second, [the applicant] might not unreasonably have declined to make an application for a caravan pitch site provided by the Council, for, as agreed at this inquiry, she has no prospect of obtaining one. ...

...

47. ... As I believe [the applicant] to have no better prospect now of obtaining another pitch than in 1987, I shall in the exceptional circumstances of this case, vary the notice, as before, to specify a period of 15 months for compliance with it."

18. The applicant's father, aged 90, who suffers from senile dementia, now lives with the applicant as he needs constant care and has no one else to look after him. He receives weekly injections from a doctor. The applicant, who has suffered bereavement in respect of her son and grandson since 1993, suffers from depression and has a heart condition. Her husband receives treatment from his doctor and the hospital for arthritis. The applicant's children, previously living on the site, have moved away.

19. There are no local authority sites or private authorised sites in the Three Rivers district. However, the Government submit that there are local authority and authorised private sites elsewhere in the same county of Hertfordshire, which contains 12 local authority sites which can accommodate 377 caravans.

20. According to the draft Local Plan applied by the Council to planning, policy GB.1 specifies that the Green Belt area covers the entire Three Rivers district save for defined urban areas and GB.6 specifies that with the exception of the villages

planning permission for development was to be refused except in very special circumstances.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. General planning law

21. 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). 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).

22. 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).

23. 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 *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).

24. 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 relevant considerations (section 172(1) of the 1990 Act).

25. 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.

26. 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.

27. Where any steps required to be taken by an enforcement notice are not taken within the specified time-limit, the local authority may enter the land to take the required 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

28. The purpose of Green Belts and the operation of the policy to protect them is set out in 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 of including land 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

29. 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".

30. 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".

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

32. 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).

33. 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).

34. 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

35. 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").

36. Sir John Cripps 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."

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

## E. Circular 28/77

38. 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.

39. 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

40. 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".

41. In addition, approximately GBP 100,000,000 were spent under a scheme by which 100% grants were made available to local authorities to cover the costs of creating Gypsy sites.

## G. The Criminal Justice and Public Order Act 1994

42. 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 to12 of the 1968 Act and the grant scheme referred to above.

43. 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".

44. 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).

45. 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

46 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:

"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." (paragraph 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. ..." (paragraph 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 and 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

47. Further guidance issued by the Secretary of State dated 23 November 1994 concerned the unauthorised camping of Gypsies and the power to give a direction to leave the land (see the 1994 Act above). Paragraphs 6 to 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."

48. Paragraphs 10 to 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

49. 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 shown 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.

## K. 1998 ACERT research into provision for private Gypsy sites

50. The Advisory Council for the Education of Romany and other Travellers (ACERT) which had carried out research sponsored by the Department of the Environment, Transport and Regions, noted in this 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 Gypsies and Travellers would be protected.

51. 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 (for example, Green Belt, conservation area locations). For most of the 50 Gypsy site applicants interviewed, obtaining permission for their own land was an important factor in improving the quality of life and gaining independence and security. For many, the education of their children was another important reason for private site application. All save one had applied for permission retrospectively

52. The report stated that the success rate in 624 planning appeals before 1992 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%, being the figures given 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 authorities would permit development. The granting of permission for private sites remained haphazard and unpredictable.

### L. Overall statistics concerning Gypsy caravans

53. In January 2000 the Department of the Environment, Transport and Regions figures on Gypsy caravans in England disclosed that of 13,134 caravans counted, 6,118 were stationed 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

54. 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 (for example, 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 ensure that accommodation was made available to 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 accommodation.

## III. RELEVANT INTERNATIONAL TEXTS

### A. The Council of Europe Framework Convention for the Protection of National Minorities

55. 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."

56. 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.

57. The convention does 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

58. 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:

"xv. 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; ..."

59. In 1998 the European Commission against Racism and Intolerance adopted 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 way of life of the persons concerned;"

## C. The European Union

60. On 21 April 1994 the European Parliament adopted a Resolution on the situation of Gypsies in the Community (Official Journal of the European Communities no. C 128/372 of 9 May 1994), 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".

61. 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 on Roma/Gypsies and those of the OSCE High Commissioner on National Minorities.

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

62. 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 on National Minorities – also concerned protection of Roma and Sinti as minorities.

63. 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 policies of forced sedentarisation in the past:

"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)

64. The report stated that for those Roma who maintained a nomadic or semi-nomadic lifestyle the availability of legal and suitable parking sites 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 compared to 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 unauthorised location, even though authorised sites may not be available." (pp. 108-09)

65. The report dealt specifically with the situation of Gypsies in the United Kingdom (pp. 109-14). 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. 112-13).

66. Concerning the planning regime which requires planning permission for the development of land towards the stationing of 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 in so far 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 authorised 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 113-14)

67. 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 regularise 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

68. 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, which reads as follows:

"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."

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

70. 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 *Buckley v. the United Kingdom* (judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV). Both parties have referred extensively to the findings of the Court in that case, as well as to 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, *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

71. The applicant submitted that measures threatening her occupation of her land in caravans 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 referred to the consistent approach of the Commission in her own and similar cases (see, for example, *Buckley*, cited above, opinion of the Commission, p. 1309, § 64).

72. The Government accepted that the applicant's complaints concerned her right to respect for her home and stated that it was unnecessary to consider whether the applicant's right to respect for her private and family life was also in issue (see *Buckley*, cited above, pp. 1287-88, §§ 54-55).

73. 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 by their own choice, 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 affecting the applicant's stationing of her caravans therefore have an impact going beyond the right to respect for her 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.

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

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

75. 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 enforcement measures taken against her.

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

77. 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.

78. Having regard to the facts of this case, it 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 within the meaning of Article 8 § 1 of the Convention. It will therefore examine 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"

79. 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

80. 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.

81. 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.

82. The Court notes that the Government have not put forward any details 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 interference 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

83 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 the issue concerned not only the security of her home but also her right to live, with her family, in the traditional Gypsy lifestyle. The growing international consensus about the importance of providing the rights of minorities with legal protection, as illustrated, *inter alia*, by the Framework Convention for the Protection of National 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.

84. The applicant argued that the procedural safeguards in the decision-making process only gave limited recognition to those considerations in her case. The government policy Circulars 28/77 and 57/78 (see paragraphs 38-41), which expressly made allowance for the special situation of Gypsies and which were taken into account by this Court in *Buckley* (judgment cited above, p. 1293, § 80), had been withdrawn and replaced by Circular 1/94 which provided that Gypsies should be regarded as being in the same position as any other developer of land under the planning system. Furthermore, in reaching their decisions the planning inspectors were constrained by laws and policies applying to land development, 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.

85. The applicant also submitted that there must exist particularly compelling reasons to justify the seriousness of the interference disclosed by the measures of eviction from her land, where there had not been shown to be an alternative site to which she could reasonably be expected to move. She pointed out that in her case she and her family had moved on to her land after being harassed and moved on from place to place. This enabled her children to attend school. She had never been offered a place on an official site. During the planning procedures, it was acknowledged that there were no official sites in the Three Rivers district and that there had been insufficient provision in Hertfordshire since 1985. Forced off their land by enforcement measures, they returned as they had no other option. She and her family still lived under the threat of further enforcement action, including physical eviction, with still no secure alternative site to go to.

**(b) The Government**

86. The Government emphasised that, as recognised by the Court in *Buckley* (judgment cited above, pp. 1291-92, §§ 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.

87. While the applicant was entitled to have her interests carefully considered by the national authorities and weighed in the balance 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 regard 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 47-48 above) and that large numbers of caravans on unauthorised sites were tolerated (see the statistics cited in paragraph 53 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.

88. The Government further submitted that, while there were no official sites in the Three Rivers district, there were sites elsewhere in Hertfordshire and 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 her land, which was in an Agricultural Priority Area and an Area of Great Landscape Value 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 at hearings before two inspectors, who 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 greater weight than the general interest. Finally, in assessing the proportionality of the measures, it should be taken into account that the applicant had made two applications for bungalows, indicating that she was willing to live in settled, conventional accommodation.

**(c) Intervention by the European Roma Rights Centre**

89. The European Roma Rights Centre drew the attention of the Court to 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 therefore be interpreted in the light of the clear international consensus about the plight of Roma and the need for urgent action.

*2. The Court's assessment*

**(a) General principles**

90. 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, among other authorities, *Lustig-Prean and Beckett v. the United Kingdom*, nos 31417/96 and 32377/96, 27 September 1999, §§ 80-81, unreported).

91. 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 *Dudgeon*, cited above, p. 21, § 52, and *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, p. 22, § 55).

92. The judgment by the national authorities in any particular case 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 cannot visit each site to assess the impact of a particular proposal on a particular area in terms of 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 the examination of witnesses, they are better placed than the Court to weigh the arguments. Hence, as the Court observed in *Buckley* (judgment cited above, p. 1292, § 75 *in fine*), "[i]n 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 will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court 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 *Buckley*, cited above, pp. 1292-93, § 76).

93. The applicant urged the Court to take into account recent international developments, in particular the Framework Convention for the Protection of National 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 55-59 above, in particular the Framework Convention for the Protection of National 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.

94. 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 the signatory States were unable to agree on means of 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.

95. Moreover, to accord to a Gypsy who has unlawfully stationed 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.

96. Nonetheless, although the fact of belonging to a minority with a traditional lifestyle different from that of the majority does not confer an immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment, it may have an incidence on the manner in which such laws are to be implemented. As intimated in *Buckley*, 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 reaching decisions in particular cases (judgment cited above, pp. 1292-95, §§ 76, 80 and 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*, *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 15, § 31; *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49; and *Kroon and Others v. the Netherlands*, judgment of 27 October 1994, Series A no. 297-C, p. 56, § 31).

97. 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.

98. The Court does not, however, accept the argument that, because statistically the number of Gypsies is greater than the number of places available on 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 as implying for States such a far-reaching positive obligation of general social policy (see paragraphs 93-94 above).

99. It is important to recall that Article 8 does not in terms recognise 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 have 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.

100. In sum, the issue to be determined by 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 of whether the particular circumstances of the case disclose a violation of the applicant's – Mrs Chapman's – right to respect for her home under Article 8 of the Convention.

101. In this connection, the legal and social context in which the impugned measure of expulsion was taken against the applicant is, however, a relevant factor.

102. 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 81 above). 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 the 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.

103. 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.

104. 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

105. The seriousness of what is at stake for the 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 her caravans. Planning permission for this was refused, however, and she was required to leave. The applicant was fined twice. She left her land, but returned as she had been moved on constantly from place to place. It would appear that the applicant does not in fact wish to pursue an itinerant lifestyle. She was resident on the site from 1986 to 1990, and between 1992 and these proceedings. Thus, the present case is not concerned as such with the traditional itinerant Gypsy lifestyle.

106. 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 they regard as relevant to their case and in particular their personal financial and other circumstances, their views as to the suitability of alternative sites and the length of time needed to find a suitable alternative site.

107. The Court recalls that the applicant moved on to her land in her caravans 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 in two public inquiries by inspectors who were qualified independent experts. In both appeals, the inspectors visited the site themselves and considered the applicant's representations. As is evidenced by the extension of the time-limit for compliance (see paragraph 47 of the inspector's report set out in paragraph 17 above), some notice was taken of the points which the applicant advanced.

108. The first inspector had regard to the location of the site in the Metropolitan Green Belt and found that the planning considerations, both national and local, outweighed the needs of the applicant (see paragraph 14 above). The second inspector considered that the use of the site for the stationing of caravans was seriously detrimental to the environment, and would "detract significantly from the quiet rural character" of the site, which was both in a Green Belt and an Area of Great Landscape Value. He concluded that development of the site would frustrate the purpose of the Green Belt in protecting the countryside from encroachment. The arguments of the applicant did not in his judgment justify overriding these important interests (see paragraph 17 above).

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

110. It is clear from the inspectors' reports (cited in paragraphs 14 and 17 above) 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 applicant felt that the inspectors, or the Secretary of State,

had not taken into account a relevant consideration or had based the contested decision on irrelevant considerations.

111. The Court observes that during the planning procedures it was acknowledged that there were no 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 other sites elsewhere in the county do exist 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.

112. 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 expenses need to be met by her, what locational requirements are essential for her and why 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. Nor does the Court have any information as to the efforts she has made to find alternative sites.

113. 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 *Buckley*, 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.

114. 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 interests 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.

115. The humanitarian considerations which might have supported another outcome at national level cannot be used as the basis for 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 pursued.

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

## II. ALLEGED VIOLATION OF ARTICLE 1 of Protocol no. 1

117. 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."

118. The applicant argued 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 submitted that the fact that she took up residence on her land without prior permission was irrelevant and that the findings of the planning inspectors concerning the impact of her caravans on visual amenity were not so significant if taken in the context of the policy framework governing their decisions. If, however, the Court found a violation of Article 8, she accepted that no separate issue arose under this provision.

119. The Government, adopting the view 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.

120. For the same reasons as those 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. There has, accordingly, been no breach of that provision.

## III. ALLEGED VIOLATION OF ARTICLE 6 of THE CONVENTION

121. Relying on Article 6 of the Convention, the applicant complained that she had no access to a court to determine the merits of her claims that she should have permission to occupy her land. The relevant part of Article 6 § 1 provides:

"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...."

122. 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 meant that planning procedures complied with Article 6. The *Bryan* case (judgment cited above, pp. 17-18, §§ 44-47) was, she submitted, decided on its particular facts. Specifically, 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 a Gypsy family in pursuing their lifestyle on their land, as long as he did not expressly disregard this as an 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 *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, §§ 135-38, ECHR 1999-VI).

123. The Government, agreeing with the majority of the Commission, considered that in light of the *Bryan* judgment (cited above) 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.

124. The Court recalls that in *Bryan* (judgment cited above, pp. 14-18, §§ 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 it was 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.

125. There has, therefore, been no violation of Article 6 § 1 of the Convention in this case.

## IV. ALLEGED VIOLATION OF ARTICLE 14 Of THE CONVENTION

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

"The enjoyment of the rights and freedoms set forth in [the] 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 Gypsies' traditional way of life, by treating them in the same way as the majority population, or disadvantaging them relatively to 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 Gypsy 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 National 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.

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 (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV), the Court does not find, in the circumstances of this case, any lack of objective and reasonable justification for the measures taken against the applicant.

130. There has, therefore, been no violation of Article 14 of the Convention in this case.

## 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;

3. *Holds* unanimously that there has been no violation of Article 6 of 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 separate opinions are annexed to this judgment:

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

(b) separate opinion of Mr Bonello.

L.W.

M. de S.

## JOINT DISSENTING OPINION

## OF JUDGES PASTOR RIDRUEJO, BONELLO,

## TULKENS, STRÁZNICKÁ, 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. This is one of five cases brought before our Court concerning the problems experienced by Gypsies in the United Kingdom. There are more awaiting our examination. All disclose elements of hardship and pressure on a vulnerable group within the community. While complaints about the planning and enforcement measures imposed on a Gypsy family who occupied their own land without planning permission have a precedent in *Buckley v. the United Kingdom* (judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV) which concluded in a finding of no violation, we consider that this cannot bind the Court, whose first task is to implement effectively the Convention system for the protection of human rights. We must pay attention to the changing conditions in Contracting States and give recognition to any emerging consensus in Europe as to the standards to be achieved. We would note that the *Buckley* case was decided four years ago by a Chamber of the Court prior to the reforms instituted by Protocol No. 11. Its finding of no violation was reached by six votes to three. This Court, constituted as a Grand Chamber of seventeen judges, has the duty to review the

approach adopted in the *Buckley* case in the light of current conditions and the arguments put forward by the parties and, if necessary, to adapt that approach to give practical effect to the rights guaranteed under the Convention.

2. We agree with the majority as to the scope of the rights under Article 8 which are affected in this case (see paragraphs 73-74 of the judgment). The traditional way in which the applicant exercises her right to respect for her home, and her private and family life attracts the protection of this provision. We also agree with the majority that there has been an interference with the enjoyment by the applicant of these rights under Article 8 of the Convention. We would recall however that, although the essential object of Article 8 is to protect the individual against arbitrary action by public authorities, there may in addition be positive obligations inherent in an effective "respect for private and family life and home". The boundaries between the State's positive and negative obligations do not lend themselves to precise definition and, indeed, in particular cases such as the present, may overlap. The applicable principles are nonetheless similar. In both contexts, regard must be had to the fair balance which has to be struck

between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see, amongst other authorities, *Kroon and Others v. the Netherlands*, judgment of 27 October 1994, Series A no. 297-C, p. 56, § 31, and *Marzari v. Italy* (dec.), no. 36448/97, 4 May 1999, unreported). While it is therefore not inappropriate to examine the impact of the measures affecting the applicant in terms of the second paragraph of Article 8 of the Convention, we consider that this examination must take into account that positive obligations may arise and that the authorities may, through inaction, fail to respect the balance between the interests of the individual Gypsy and the community.

3. Our principal disagreement with the majority lies in their assessment that the interference was "necessary in a democratic society". We accept that the examination of planning objections to the particular use of a site is not a role for which this Court is well suited (see paragraph 92 of the judgment). Where town and country planning is concerned, the Court has previously noted that this involves the exercise of discretionary judgment in the implementation of policies adopted in the interest of the community (see *Buckley*, cited above, p. 1292, § 75, and *Bryan v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-A, p. 18, § 47). It is indeed not for us to substitute our own view of what would be the best policy in the planning sphere or the most appropriate individual measure in planning cases, which involve a multitude of local factors.

In *Buckley* (judgment cited above, p. 1292, § 75) it was stated that in principle national authorities, for the above reasons, enjoyed a wide margin of appreciation in the choice and implementation of planning policies. However, in our view, this statement cannot apply automatically to any case which involves the planning sphere. The Convention has always to be interpreted and applied in the light of current circumstances (see *Cossey v. the United Kingdom*, judgment of 27 September 1990, Series A no. 184, p. 17, § 42). There is an emerging consensus amongst the member States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle (see paragraphs 55-67 of the judgment, in particular the Framework Convention for the Protection of National

Minorities), not only for the purpose of safeguarding the interests of the minorities themselves but also in order to preserve a cultural diversity of value to the whole community. This consensus includes a recognition that the protection of the rights of minorities, such as Gypsies, requires not only that Contracting States refrain from policies or practices which discriminate against them but also that, where necessary, they should take positive steps to improve their situation through, for example, legislation or specific programmes. We cannot therefore agree with the

majority's assertion that the consensus is not sufficiently concrete or with their conclusion that the complexity of the competing interests renders the Court's role a strictly supervisory one (see paragraphs 93-94 of the judgment). In our view, this does not reflect the clearly recognised need of Gypsies for protection of the effective enjoyment of their rights and perpetuates their vulnerability as a minority whose needs and values differ from those of the general community. The impact of planning and enforcement measures on the enjoyment by a Gypsy of the right to respect for his or her home, private and family life therefore has a dimension beyond environmental concerns. Having regard to the potential seriousness of an interference which prohibits a Gypsy from pursuing his or her lifestyle at a particular location, we consider that, where the planning authorities have not made any finding that there is available to the Gypsy any alternative, lawful site to which he or she can reasonably be expected to move, there must exist compelling reasons for the measures concerned.

4. In the present case, the seriousness of what is at stake for the applicant is readily apparent. The applicant and her family followed an itinerant lifestyle for many years, stopping on temporary or unofficial sites and being increasingly moved on by police and local authority officials. Moved by 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. However, planning permission for this was refused and they were required to leave. The applicant was fined twice and left her land. She returned, however, as they had again been moved on constantly from place to place. She and her family remain on their land subject to the threat of further enforcement measures. Her situation is insecure and vulnerable.

We would observe that it was acknowledged during the planning procedures that there were no alternative sites available for the applicant to go to, either in the district or in the county as a whole. The Government referred to other sites in the county and 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 53 of the judgment), there was still a significant shortfall of official, lawful sites available for Gypsies in the country as a whole and that it could not be taken for granted that vacancies existed or were available elsewhere. It is also apparent that the legislation and planning policies which have been introduced over the last half century have drastically reduced the land on which Gypsies may station their caravans lawfully while travelling. Following the latest legislation, the Criminal Justice and Public Order Act 1994, unauthorised campers – persons who station a caravan on the highway, on occupied land without the owner's consent or on any other unoccupied land – commit a criminal offence if they fail to comply with directions to move on.

The Government have argued that the applicant's applications for planning permission for a bungalow should be taken into account as showing that her

accommodation needs attract no very special considerations. We are not persuaded of the relevance of this argument. The applicant applied for permission for a bungalow after her application for her caravans had been refused and when she was facing imminent removal from her land. Nor does the fact that she has shown an intention to settle on land on a long-term basis detract from the seriousness of the interference. The pressure on the historic nomadic lifestyle of Gypsies from the legislation passed from 1960 onwards has had the effect of inducing many Gypsies to adopt the solution of finding a secure, long-term base for their caravans on their own land, while retaining the ability to travel seasonally or from time to time. Indeed, it may be noted that the official policy for some decades has been to encourage Gypsies to find their own private sites (see paragraphs 38-40 and 46 of the judgment).

The applicant, however, in adopting this course for her own family, did not obtain planning permission for stationing her caravans on her land. Furthermore, the land in question was in a Green Belt area. The inspectors who conducted the planning inquiries found that, notwithstanding the tidying, improving and screening of the site, her occupation of the land detracted significantly from the quiet, rural character of the countryside which the Green Belt was intended to preserve from encroachment. It is not for us to dispute this assessment.

The Government have further placed significant weight on the safeguards afforded by the planning procedures, submitting that the applicant's interests were properly and fairly taken into account by the inspectors in reaching their decisions that the environmental interests outweighed hers. We note, however, that the planning inspectors reach their decisions having regard to the applicable planning laws and policies. These indicated that there was a general presumption against inappropriate development in the Green Belt, that Gypsy sites were not regarded as appropriate developments in the Green Belt and that very special circumstances would be required to justify such an inappropriate development. Having regard to the fact that in this case it was accepted that no other official sites were available to the applicant to station her caravans and that she had worked to improve and screen the site, we consider that the burden placed on the applicant to prove very special circumstances is extremely high, if not insuperable. We are accordingly not persuaded that the planning framework was able to give anything more than marginal or token weight to the applicant's interests or to the associated public interest in preserving cultural diversity through protection of traditional ethnic lifestyles.

We have therefore weighed the seriousness of the interference with the applicant's rights with the environmental arguments which militate against her occupation. While the latter are not of negligible importance, they are not, in our view, of either such a nature or degree as to disclose a "pressing social need" when compared with what was at stake for the applicant. There was no indication in the planning procedures that the applicant had anywhere else to which she could reasonably be expected to move her caravans. The local authority had been found in breach of their duty to make adequate provision for Gypsies in the area in 1985 and had been under a direction from the Secretary of State to comply with their statutory duty, without any concrete improvement of the situation resulting since. In these circumstances, we find that the planning and enforcement measures exceeded the margin of appreciation accorded to the domestic authorities and were disproportionate to the legitimate aim of

environmental protection. They cannot therefore be regarded as "necessary in a democratic society".

5. In reaching this conclusion, we have given consideration to whether, as the Government warned, this would be tantamount to excluding Gypsies from planning enforcement mechanisms and giving them *carte blanche* to settle wherever they choose. The long-term failure of local authorities to make effective provision for Gypsies in their planning policies is evident from the history of implementation of measures concerning Gypsy sites, both public and private (see paragraphs 36-37, 46 and 49 of the judgment). Recognition has been given domestically to the difficulties of the Gypsies' situation through the "toleration" of some unlawful sites and the sensitivity urged on local authorities in the exercise of their "Draconic" enforcement powers (see paragraphs 47-48 of the judgment). This indicates that the government is already well aware that the legislative and policy framework does not provide in practice for the needs of the Gypsy minority and that its policy of leaving it to local authorities to make provision for Gypsies has been of limited effectiveness (see paragraphs 49-52 of the judgment). The complexities of the problem have been adverted to above and it is not for us to impose any particular solution on the United Kingdom. However, it is in our opinion disproportionate to take steps to evict a Gypsy family from their home on their own land in circumstances where there has not been shown to be any other lawful, alternative site reasonably open to them (see, *mutatis mutandis*, *Buckley*, cited above, p. 1281, § 26, and p. 1294, § 81, where the problems of vandalism alleged to exist on the official site 700 metres from the applicant's land did not appear to pose any specific threat to her or her family's health or security). It would accordingly be for the authorities to adopt such measures as they consider appropriate to ensure that the planning system affords effective respect for the home, private life and family life of Gypsies such as the applicant.

6. The reference by the majority to the alleged liberty of Gypsies to camp on any caravan site with planning permission (see paragraph 97 of the judgment) ignores the reality that Gypsies are not welcome on private residential sites which are, in any event, often prohibitively expensive. Nor are they able to use such private residential sites for seasonal or temporary transit. The planning authorities themselves recognise that the only practicable options open to Gypsies are local authority-owned sites or privately owned Gypsy sites. It is not a question of Gypsies imposing particular preferences as to location and facilities without realistic reference to their own resources (see paragraph 112 of the judgment). The options open to them are, as in this case, severely limited, if they exist at all.

7. We would also take issue with the relevance or validity of the statement in paragraph 99 of the judgment to the effect that Article 8 does not recognise a right to be provided with a home. In this case, the applicant had a home, in her caravan on her land, but was being prevented from settling there. Furthermore, it is not the Court's case-law that a right to be provided with a home is totally outside the ambit of Article 8. The Court has accepted that there may be circumstances where the authorities' refusal to take steps to assist in housing problems could disclose a problem under Article 8 – see, for example, *Marzari*, cited above, where the Court held that a refusal of the authorities to provide housing assistance to an individual suffering from a serious illness might in certain circumstances raise an issue because of the impact of such refusal on the private life of the individual. Obligations on the State arise

therefore where there is a direct and immediate link between the measures sought by an applicant and the latter's private life (see *Botta v Italy*, judgment of 24 February 1998, *Reports* 1998-I, p. 422, §§ 33-34).

8. Finally, we cannot agree with the view expressed by the majority that to accord protection under Article 8 to a Gypsy in unlawful residence in a caravan on her land would raise problems under Article 14 where planning laws continued to prevent individuals from setting up houses on their land in the same area (see paragraph 95 of the judgment). This approach ignores the fact, earlier acknowledged by the majority, that in this case the applicant's lifestyle as a Gypsy widens the scope to Article 8, which would not necessarily be the case for a person who lives in conventional housing, the supply of which is subject to fewer constraints. The situations would not be likely to be analogous. On the contrary, discrimination may arise where States, without objective and reasonable justification, fail to treat differently persons whose situations are significantly different (see *Thlimmenos v. Greece*, no. 34369/97, § 44, ECHR 2000-IV).

9. In conclusion, we would reiterate that it is not a necessary consequence of finding a violation in this case that Gypsies could, freely, take up residence on any land in the country. Where there were shown to be other sites available to them, the balance between the interests of protecting the environmental value of the site and the interests of the Gypsy family in residing on it would tip more strongly towards the former. United Kingdom legislation and policies in this area have long recognised the objective of providing for Gypsies' special needs. The homeless have a right under domestic legislation to be provided with accommodation (see paragraph 54 of the judgment). Our view that Article 8 of the Convention imposes a positive obligation on the authorities to ensure that Gypsies have a practical and effective opportunity to enjoy their right to respect for their home, and their private and family life, in accordance with their traditional lifestyle, is not a startling innovation.

10. We conclude that there has been a violation of Article 8 of the Convention.

11. We voted for non-violation of Article 1 of Protocol No. 1 and Article 14 of the Convention as, in the 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

1. I voted for a finding of a violation of Article 8 for the reasons laid out in the joint dissenting opinion in which I participated.

2. I endorsed, albeit grudgingly, the view common to the majority and the minority, that the measures to which the applicant was subjected were "in accordance with the law". This conclusion is, I believe, difficult to escape, in the light of the current case-law of the Convention. I suggest that the Court should be looking beyond that.

3 Any measure that inhibits the enjoyment of a fundamental right has to respect the principle of legality: the restriction must be in accordance with the law. My view is

that, on a proper reading of Article 8, a different conclusion could, and perhaps ought to, have been reached in this case.

4. The authorities were manifestly in a state of illegality from before the time the applicant took the law in her own hands. Section 6 of the Caravan Sites Act 1968 (until it was revoked by the Criminal Justice and Public Order Act 1994 – see paragraph 42 of the judgment), imposed a legal duty on local authorities "so far as may be necessary to provide adequate accommodation for gypsies residing in or resorting to their area". Indeed, the local authorities had been found in breach of their duty to make adequate provision for Gypsies in the area in 1985 and had disregarded a directive from the Secretary of State to comply with their statutory duties.

5. I believe that a public authority which is in breach of its legal obligations should not be allowed to plead that it is acting "in accordance with the law". The classic constitutional doctrine of "clean hands" precludes those who are in prior contravention of the law from claiming the law's protection.

6. A public authority has as great an obligation to comply with the law as any individual. Its responsibility is eminently more than that of individuals belonging to vulnerable classes who are virtually forced to disregard the law in order to be able to exercise their fundamental right to a private and family life – individuals who have to contravene the law due to the operation of the prior failings of the public authorities.

7. In the present case, both the public authorities and the individual had undoubtedly trespassed the boundaries of legality. But it was the public authority's default in observing the law that precipitated and induced the subsequent default by the individual. That failing of the authorities has brought about a situation which almost justifies the defence of necessity. Why a human rights court should look with more sympathy at the far-

reaching breach of law committed by the powerful than at that forced on the weak has not yet been properly explained.

8. Here, we are confronted with a situation in which an individual was "entrapped" into breaking the law because a public authority was protected in its own breach. A court's finding in favour of the latter, to the prejudice of the former, is, I believe, a disquieting event. A human rights court, in finding that an authority, manifestly on the wrong side of the rule of law, has acted "in accordance with the law" creates an even graver disturbance to recognised ethical scales of value.