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

COURT (CHAMBER)

CASE OF BUCKLEY v. THE UNITED KINGDOM

(Application no. 20348/92)

JUDGMENT

STRASBOURG

29 September 1996

In the case of Buckley v. the United Kingdom[1],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr Thór VILHJÁLMSSON,
Mr L.-E. PETTITI,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,
Sir John FREELAND,
Mr B. REPIK,
Mr K. JUNGWIERT,
Mr U. LOHMUS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 23 February and 26 August 1996, Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the United Kingdom of Great Britain and Northern Ireland ("the Government") on 1 and 7 March 1995 respectively, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 20348/92) against the United Kingdom lodged with the Commission under Article 25 (art. 25) on 7 February 1992 by a British national, Mrs June Buckley.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (art. 48). The object of the request and of the application was to obtain a decision as to whether the facts of the case

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[1] The case is numbered 23/1995/529/615. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

disclosed a breach by the respondent State of its obligations under Article 8 of the Convention (art. 8).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 5 May 1995, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr L.-E. Pettiti, Mr A.N. Loizou, Mr J.M. Morenilla, Mr B. Repik, Mr K. Jungwiert and Mr U. Lohmus (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the British Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 2 November 1995. Supplementary memorials were received from the Government and the applicant on 21 December 1995 and 5 February 1996 respectively.

5. On 25 January 1996 the President of the Chamber decided to admit to the case file certain documents received at the registry on 8 January from Mr A.J. Buck, Neighbourhood Watch Co-ordinator, of Willingham, Cambridgeshire (Rule 37 para. 2).

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 19 February 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr I. CHRISTIE, Assistant Legal Adviser, Foreign and Commonwealth Office, *Agent*,
Mr D. PANNICK QC,
Mr M. SHAW, *Counsel*,
Mr D. RUSSELL, Department of the Environment,
Ms P. PROSSER, Department of the Environment,
Mr R. HORSMAN, Department of the Environment,
Mrs K. CRANDALL, South Cambridgeshire District Council,
Advisers;

(b) for the Commission

Mr N. BRATZA, *Delegate*;

(c) for the applicant

Mr P. DUFFY, Barrister-at-Law,

Mr T. JONES, Barrister-at-Law, *Counsel*,
Mr L. CLEMENTS, *Solicitor*.
The Court heard addresses by Mr Bratza, Mr Duffy and Mr Pannick.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. The background

7. The applicant is a British citizen and a Gypsy. She lives with her three children in caravans parked on land owned by her off Meadow Drove, Willingham, South Cambridgeshire, England. She is married but separated from her husband in 1991.

8. As far back as can be traced, the applicant's family have been Gypsies based in South Cambridgeshire. She has lived in caravans all her life and as a child travelled with her parents in this area. She continued this itinerant life until shortly before the birth of her third child in 1988.

9. In 1988 the applicant's sister and brother-in-law acquired a one-acre (approximately 4000 square metres) site off Meadow Drove, Willingham, and were granted personal, temporary planning permission for one living unit, comprising two caravans.

10. At her sister's invitation she moved on to this site in November 1988 when she was expecting her third child, because she had found it hard being constantly on the move with young children. During this period of settled living the two eldest children were able to attend a local school, where they integrated well.

11. On an unspecified date in 1988, the applicant acquired part of her sister's land (0.16 hectare) to the rear of the site, furthest away from Meadow Drove. She moved her three caravans on to this plot.

12. Her land is now part of a group of six adjacent sites which are occupied by Gypsies. One plot has received permanent planning permission for the residential use of three caravans. The site occupied by the applicant's sister enjoyed temporary permission until 4 August 1995. The remaining three sites have been occupied without planning permission and the occupants have been subject to enforcement proceedings (see paragraph 32 below). The occupants of two of those sites have also introduced applications before the European Commission of Human Rights.

13. The applicant has stated that she intends to resume her travelling life sometime in the future, and to pass on this tradition to her children. In 1993

she travelled with her sister to Saint Neots in Cambridgeshire because her father-in-law was dying. She was able to park on waste ground for two weeks, but had to move on shortly after the funeral.

B. The application for planning permission

14. On 4 December 1989 the applicant applied retrospectively to South Cambridgeshire District Council for planning permission for the three caravans on her site.

She was refused on 8 March 1990 on the grounds that (1) adequate provision had been made for Gypsy caravans elsewhere in the South Cambridgeshire area, which had in the Council's opinion reached "saturation point" for Gypsy accommodation; (2) the planned use of the land would detract from the rural and open quality of the landscape, contrary to the aim of the local development plan which was to protect the countryside from all but essential development (see paragraph 30 below); and (3) Meadow Drove was an agricultural drove road which was too narrow to allow two vehicles to pass in safety.

15. On 9 April 1990 the Council issued an enforcement notice requiring the caravans to be removed within a month.

The applicant appealed against the enforcement notice to the Secretary of State for the Environment (see paragraph 33 below).

16. An inspector was appointed by the Secretary of State to report on the appeal (see paragraph 33 below). The inspector visited the site and considered written representations submitted by the applicant and the District Council.

In her report issued on 14 February 1991 the inspector observed that the local authority had granted planning permission to two caravan sites between the applicant's site and Meadow Drove (the applicant's sister's site and another), and to an agricultural workshop on land to the east of the site (which was occupied at the time of the inspection by an unauthorised road haulage business). The applicant's caravans were screened from the road because of these authorised and unauthorised developments. However, the inspector wrote that:

> "... whether seen or not, the development subject of these notices [i.e. the applicant's caravan site] extends development further from the road than that permitted. It thus intrudes into the open countryside, contrary to the aim of the Structure Plan [see paragraph 30 below] to protect the countryside from all but essential development." The inspector also found that the access road to the site was too narrow for two vehicles to pass, and thus that the use of the site for caravans would not be in the interests of road safety. She considered the applicant's special status as a Gypsy and observed that in January 1990 there were over sixty Gypsy families on unauthorised sites in the district of South Cambridgeshire. She continued: "It is therefore clear in my mind that a need exists for more authorised spaces. ... Nevertheless, I consider it important to keep concentrations of sites for gypsies small, because in this way they

> are more readily accepted by the local community. ... [T]he concentration of gypsy sites in Willingham has reached the desirable maximum and I do not consider that the overall need for sites should, in this case, outweigh the planning objections."

She concluded by recommending that the appeal be dismissed.

17. The Secretary of State dismissed the appeal on 16 April 1991. The reasons given included the following:

> "The decisive issue in regard to the planning merits of your appeals is considered to be whether the undisputed need for additional gypsies' caravan site provision, in the administrative areas of the District Council, and of the County Council, is so pressing that it should be permitted to override the objections on planning policy and highway safety grounds to the retention of the use of the appeal site as a residential caravan site for gypsies. On this approach, the view is taken that the objections to the continued use of the appeal site as a residential gypsy caravan site are so strong, on planning policy and highway safety grounds, that a grant of planning permission could not be justified, either on a temporary or personal basis. In reaching this conclusion, full consideration has been given to policy advice in the Department's Circular 28/77, giving guidance to Councils on the need to provide adequate accommodation in the form of caravan sites, for gypsies residing in or resorting to their area. However, on the available evidence, the view is taken, in agreement with the officer's appraisal, that the concentration of gypsy caravan sites around the Willingham area has reached the desirable maximum, and the overall need for additional sites should not outweigh the planning and highway objections arising from the continued use of this particular site."

The applicant did not appeal to the High Court because she was advised by counsel that no grounds arose in her case (see paragraph 34 below).

C. Criminal proceedings against the applicant

18. The applicant has been prosecuted for failure to comply with the enforcement notice of May 1990. On 7 January 1992 she was fined £50 and required to pay £10 costs. She has again been prosecuted on two occasions after the introduction of her application to the Commission on 7 February 1992. On 12 January 1994 the magistrates granted her an absolute discharge but ordered her to pay the prosecution costs. Finally, on 16 November 1994 she was fined £75 and ordered to pay £75 costs.

D. Designation

19. By a letter dated 20 May 1993, the Department of the Environment informed the District Council that the Secretary of State had decided to designate the area of South Cambridgeshire under section 12 of the Caravan Sites Act 1968 (see paragraph 37 below). It was noted that a small number of Gypsies still remained on unauthorised sites but that, in light of the provision made for sites which was greater than in any other district, it was considered "not expedient for adequate accommodation to be provided for Gypsies residing in or resorting to South Cambridgeshire district". The

order designating the district of South Cambridgeshire came into force on 13 August 1993, but no longer applies because of the provisions of the Criminal Justice and Public Order Act 1994 (see paragraph 41 below).

E. Subsequent developments

20. On 19 September 1994 the applicant again applied for permission to station her caravans on her site, in the light of a change in the law (see paragraphs 40-42 below).

21. She was refused on 14 November 1994 on the grounds that (1) local planning policy dictated that development in open countryside should be restricted and no evidence to justify a departure from this policy had been advanced, and (2) adequate provision for Gypsies had been made along Meadow Drove (see paragraph 24 below).

22. The applicant (together with others occupying the neighbouring sites) appealed against this decision to the Secretary of State. A report was prepared by an inspector in May 1995. The inspector considered, first, whether the continued use of the land as a Gypsy caravan site would detract from the rural nature of the area, and, secondly, if so, whether there were any special circumstances sufficient to outweigh this objection. She found that the road safety objection, which had been one of the grounds of refusal in April 1991 (see paragraph 16 above), no longer applied. With regard to the first question, the inspector found that the applicant had a mobile home, three touring caravans and three sheds on her site. These were hidden from the road by the caravans on the sites in front and by an agricultural engineering business, the same depth as the applicant's site to the east. They were visible from other vantage points but could be adequately screened by planting hedges. However, she concluded that:

> "... the continued use of the rear plots considerably extends the depth of development south of the road. This intensification of use in itself inevitably detracts from the rural appearance and generally open character of the area, contrary to the objectives of national and local countryside policy. I must therefore conclude that the continued occupation of the land as gypsy caravan sites is harmful to the character and appearance of the countryside."

With regard to the special circumstances of the case, in particular the applicant's Gypsy status, the inspector made the following observations. She described the applicant's site as "clean, spacious and well-ordered". By contrast, the council-run site on Meadow Drove (see paragraphs 24-26 below) was "isolated, exposed and somewhat uncared for". Nevertheless, it was

> "a relevant consideration that there is available alternative accommodation close by, which would enable the appellants to stay in the Willingham area and their children to continue at the local schools".

On the other hand,

> "little weight [could] be given to the private sites at Cottenham. No substantive evidence was given by either the Council or the appellants as to whether plots were actually available there or their price".

The inspector considered the impact of Circular 1/94 (see paragraph 43 below) on the applicant's case, but concluded that, although it placed greater emphasis on the provision of sites by Gypsies themselves, it was government policy that proposals for Gypsy sites should continue to be determined solely in relation to land-use factors. She concluded that there had been no material changes since the last appeal was heard and the present appeal should therefore be dismissed.

23. Accepting the inspector's conclusions and recommendations, the Secretary of State dismissed the appeal on 12 December 1995. The applicant has filed an appeal to the High Court, which is now pending.

F. Authorised Gypsy sites in the district of South Cambridgeshire

24. In November 1992 the County Council opened an official Gypsy caravan site in Meadow Drove, about 700 metres away from the applicant's land. The site consists of fifteen pitches, each comprising a fenced, partially grassed area with hard standing for caravans and its own brick building containing a kitchen, shower and toilet. Each pitch is designed to accommodate one permanent caravan, one touring caravan, one lorry and one car. They are joined by a central road and the site stands in open countryside.

25. Between November 1992 (when the site opened) and August 1995, twenty-eight vacancies have arisen there. The District Council contacted the applicant by letters dated 17 February 1992 and 20 January 1994, informing her of the possible availability of pitches on this site and advising her to apply for one to the County Council. The applicant has never taken any action in this regard.

26. Since the site opened, the following incidents have reportedly taken place there: (1) an unsubstantiated allegation in May 1993 that one of the residents was in possession of a firearm; (2) a fight in December 1993 during which a resident on the site was punched in the eye by another; (3) in 1994 a car was brought on to the site and set alight; (4) in the same year there was an incident of domestic violence; (5) also in 1994, the warden's office on the site was burgled and damaged when temporarily vacant; (6) in 1995 a site resident was convicted of conduct likely to cause a breach of the peace after exchanging words and threatening gestures with a District Council refuse collector on the site; (7) in March 1995 four pitches were damaged by vandalism and/or fire.

27. There are authorised privately run sites at Smithy Fen, Cottenham, about 7 kilometres from Willingham. In May 1995 the cost of purchasing a pitch on one of them reportedly varied between £7,000 and £40,000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. General planning law

28. The Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) ("the 1990 Act") consolidated pre-existing planning law.

29. It provides that planning permission is required for the carrying out of any development of land (section 57 of the 1990 Act). A change in the use of land for the stationing of caravans can constitute a development (Restormel Borough Council v. Secretary of State for the Environment and Rabey [1982] Journal of Planning Law 785; John Davies v. Secretary of State for the Environment and South Hertfordshire District Council [1989] Journal of Planning Law 601).

30. 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). The local development plan in South Cambridgeshire restricts development in the countryside to that essential to the efficient operation of particular rural uses, such as horticulture, agriculture and forestry.

31. The 1990 Act provides for an appeal to the Secretary of State in the event of a refusal of permission (section 78). With immaterial exceptions, the Secretary of State must, if either the appellant or the authority so desire, give each of them the opportunity of making representations to an inspector appointed by the Secretary of State. It is established practice that each inspector must exercise independent judgment and must not be subject to any improper influence (see the Bryan v. the United Kingdom judgment of 22 November 1995, Series A no. 335-A, p. 11, para. 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).

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

33. 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.

34. 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.

B. Gypsy caravan sites provision

1. The Caravan Sites Act 1968

35. 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. Section 16 defined "gipsies" 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".

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

37. 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). 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). 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.

2. The Cripps Report

38. 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"). Sir John estimated that there were approximately 40,000 Gypsies living in England and Wales. He found that: "Six-and-a-half years after the coming into operation of Part II of the 1968 Act, provision exists for only one-quarter of the estimated total number of gypsy families with no sites of their own. Three-quarters of them are still without the possibility of finding a legal abode ... Only when they are travelling on the road can they remain within the law: when they stop for the night they have no alternative but to break the law." The report made numerous recommendations for improving this situation.

3. Circular 28/77

39. 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. 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.

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

5. The Criminal Justice and Public Order Act 1994

41. Section 80 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"), which came into force on 3 November 1994, repealed sections 6-12 of the 1968 Act (see paragraphs 35-37 above) and the grant scheme referred to in paragraph 40 above.

42. 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". 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).

6. Circular 1/94

43. 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 paragraph 40 above). Councils were told that:

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

PROCEEDINGS BEFORE THE COMMISSION

44. In her application (no. 20348/92) of 7 February 1992 to the Commission, Mrs Buckley alleged that she was prevented from living with her family in caravans on her own land and from following the traditional lifestyle of a Gypsy, contrary to Article 8 of the Convention (art. 8). 45. On 3 March 1994 the Commission declared the application admissible. In its report of 11 January 1995 (Article 31) (art. 31) the Commission expressed the opinion that there had been a violation of Article 8 (art. 8) (seven votes to five). The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment[3].

FINAL SUBMISSIONS TO THE COURT

46. In their memorial the Government requested the Court "to decide and declare that the facts [disclosed] no breach of the applicant's rights under Article 8 of the Convention (art. 8)". The applicant requested the Court "to decide and declare that the facts [disclosed] a breach of [her] rights under Article 8 (art. 8) and/or Article 8 in conjunction with Article 14 (art. 14+8)" and to award her just satisfaction.

AS TO THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

A. Applicant's complaint under Article 14 of the Convention taken together with Article 8 (art. 14+8)

47. In her application to the Commission, the applicant claimed that the designation system under the Caravan Sites Act 1968 (see paragraph 37 above) and the criminalisation of "unauthorised camping" under the Criminal Justice and Public Order Act 1994 (see paragraph 42 above) discriminated against Gypsies by preventing them from pursuing their traditional lifestyle. In its report the Commission did not express an opinion on this point. The Commission's Delegate, speaking at the Court's hearing, stated that the Commission had come to the conclusion that it could not examine the complaint as such because the applicant could not show that she had been directly and immediately affected by either of the Acts in question.

48. Although the Commission considered the case only under Article 8 of the Convention (art. 8), this additional complaint is encompassed in the Commission's decision declaring the application admissible. The Court accordingly has jurisdiction to examine it (see the Philis v. Greece judgment of 27 August 1991, Series A no. 209, p. 19, para. 56).

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[3] For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-IV), but a copy of the Commission's report is obtainable from the registry.

B. Applicant's "formal objections"

49. At the Court's hearing on 19 February 1996, the Government mentioned, in support of their contention that the applicant had had available to her sufficient procedural safeguards, that the applicant did not appeal to the High Court against the Secretary of State's decision of 16 April 1991 (see paragraph 17 above). In a letter received at the registry on 21 February 1996, the applicant's solicitor sought to place on record "formal objections" against the Government's reliance on that fact. The Government had based no preliminary objection on it at any time prior to the Court's hearing. Accordingly, any such objection should be dismissed as out of time (Rule 48 para. 1 of Rules of Court A) and barred by estoppel.

50. The Court observes that the applicant decided not to bring an appeal before the competent court after being advised by counsel that such an appeal was bound to fail (see paragraph 17 above). However, as indicated above, the Government have not framed their comment as a preliminary objection. It is an argument going to the merits, to be considered by the Court at the appropriate juncture (see paragraph 79 below).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION (art. 8)

51. The applicant submitted that since she was prevented from living in caravans on her own land with her family and from following a travelling life there had been, and continued to be, a violation of her right to respect for her private and family life and her home. She relied on Article 8 of the Convention (art. 8), which provides 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."

The Government contested this argument but the Commission accepted it.

A. Whether a right protected by Article 8 (art. 8) is in issue

52. The Government disputed that any of the applicant's rights under Article 8 (art. 8) was in issue. In its contention, only a "home" legally established could attract the protection of that provision (art. 8).

53. In the submission of the applicant and the Commission there was nothing in the wording of Article 8 (art. 8) or in the case-law of the Court or Commission to suggest that the concept of "home" was limited to residences

which had been lawfully established. They considered, in addition, that since the traditional Gypsy lifestyle involved living in caravans and travelling, the applicant's "private life" and "family life" were also concerned.

54. The Court, in its Gillow v. the United Kingdom judgment of 24 November 1986 (Series A no. 109), noted that the applicants had established the property in question as their home, had retained ownership of it intending to return there, had lived in it with a view to taking up permanent residence, had relinquished their other home and had not established any other in the United Kingdom. That property was therefore to be considered their "home" for the purposes of Article 8 (art. 8) (loc. cit., p. 19, para. 46). Although in the Gillow case the applicant's home had initially been established legally, similar considerations apply in the present case. The Court is satisfied that the applicant bought the land to establish her residence there. She has lived there almost continuously since 1988 - save for an absence of two weeks, for family reasons, in 1993 (see paragraphs 11 and 13 above) - and it has not been suggested that she has established, or intends to establish, another residence elsewhere. The case therefore concerns the applicant's right to respect for her "home".

55. In view of the above conclusion it is unnecessary for the Court to decide whether the case also concerns the applicant's right to respect for her "private life" and "family life".

B. Whether there was an "interference by a public authority"

56. The applicant asked the Court to review the designation regime under the Caravan Sites Act 1968 (see paragraphs 35-37 above), which in her contention made it extremely difficult for Gypsies to follow their traditional lifestyle, and the criminalisation of "unauthorised campers" by the Criminal Justice and Public Order Act 1994 (see paragraphs 41-42 above), which, she submitted, was even more restrictive.

57. The Commission considered that it was empowered only to examine the applicant's complaints in so far as she had been directly affected by the measures in question. Neither the Caravan Sites Act 1968 nor the Criminal Justice and Public Order Act 1994 had ever been applied to the detriment of the applicant.

58. The Government submitted that "to the extent that there [had] been any interference with the applicant's rights under Article 8 para. 1 (art. 8-1)", such interference consisted of the enforcement against her of planning controls.

59. It not being the Court's task to review legislation in the abstract, the Court will confine itself as far as possible to examining the specific issues raised by the case before it (see, as a recent authority, the Bellet v. France judgment of 4 December 1995, Series A no. 333-B, p. 42, para. 34). It does

not appear that any measures based on either the Caravan Sites Act 1968 or the Criminal Justice and Public Order Act 1994 have ever been taken against the applicant. What is more, the order designating South Cambridgeshire entered into force only on 13 August 1993 (see paragraph 19 above), well after the enforcement notice (9 April 1990 - see paragraph 15 above) and the decision of the Secretary of State (16 April 1991 - see paragraph 17 above). It is not therefore within the competence of the Court to entertain those of the applicant's claims which are based on these Acts.

60. On the other hand, the applicant was refused the planning permission which would have allowed her to live in the caravans on her land, was required to remove the caravans and prosecuted for failing to do so (see paragraphs 14-18 above), all pursuant to the relevant sections of the Town and Country Planning Act 1990. This undoubtedly constitutes "interference by a public authority" with the applicant's exercise of her right to respect for her home (see, mutatis mutandis, the above-mentioned Gillow judgment, p. 19, para. 47).

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

61. It was not contested that the measures to which the applicant was subjected were "in accordance with the law". The Court finds no cause to arrive at a different conclusion.

D. Whether the interference pursued a "legitimate aim"

62. According to the Government, the measures in question were taken in the enforcement of planning controls aimed at furthering highway safety, the preservation of the environment and public health. The legitimate aims pursued were therefore public safety, the economic well-being of the country, the protection of health and the protection of the rights of others. The Commission accepted this in substance but noted that the aspect of highway safety, which figured prominently in the Council's decisions of 8 March 1990, the inspector's report of 14 February 1991 and, by implication, the Secretary of State's decision of 16 April 1991 (see paragraphs 14-17 above), was no longer relied on in later decisions. The applicant did not dispute that the authorities had acted in the furtherance of a legitimate aim.

63. On the facts of the case the Court sees no reason to doubt that the measures in question pursued the legitimate aims stated by the Government.

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

1. Arguments before the Court

(a) The applicant

64. The applicant accepted that Gypsies should not be immune from planning controls but argued that the burden placed on her was disproportionate. She stated that, seeking to act within the law, she had purchased the site to provide a safe and stable environment for her children and to be near the school they were attending.

65. She drew attention to the fact that at the time of the events complained of, the official site further down Meadow Drove had not yet opened. In any event, the official site had since proved unsuitable for a single woman with children. There had been reports of crime and violence there and the inspector's report of May 1995 had noted that the site was bleak and exposed (see paragraph 22 above). In the circumstances, therefore, the official site could not be considered an acceptable alternative for the applicant's own site. On the other hand, the same report had noted that the applicant's site was well maintained. It could also be adequately screened by vegetation, which would lessen its visual impact on the countryside.

66. Finally, the applicant considered that there was no further alternative open to her as the cost of stationing her caravans on a private site in the vicinity was prohibitive.

(b) The Government

67. The Government noted that planning laws were necessary in a modern society for the preservation of urban and rural landscape. This reflected the needs of the entire population. In assessing the need for particular measures, the domestic authorities required a wide margin of appreciation. In the present context, it was necessary to construe Article 8 of the Convention (art. 8) consistently with Article 1 of Protocol No. 1 (P1-1), which allowed the State, amongst other things, to enforce such laws as it deemed necessary to control the use of property in accordance with the general interest.

68. National law was designed to achieve a fair balance between the interests of individuals and those of the community as a whole. In particular, it provided for a quasi-judicial procedure allowing individuals to challenge planning decisions (see paragraph 31 above); this procedure, moreover, had been found by the Court in its Bryan judgment cited above to meet the requirements of Article 6 of the Convention (art. 6).

69. In so far as it was necessary to afford Gypsies special protection, this need had been taken into account. The Government had provided

legislation and guidelines requiring authorities involved in the planning process to have particular regard to the specific constraints imposed by Gypsy life (see paragraphs 35-37 and 39 above). Moreover, Gypsies' accommodation needs were met by local authorities through the provision of authorised caravan sites and by advising Gypsies on the prospects of planning permission for private sites. In the applicant's case, the reports of the inspectors showed that her Gypsy status had been weighed in her favour, as indeed was required by the pertinent guidelines (see paragraph 16 above). In any event, it was unacceptable to exempt any section of the community from planning controls, or to allow any group the benefit of more lenient standards than those to which the general population was subject.

70. The applicant had had sufficient alternative options open to her. She had been invited to apply for a pitch on the official site further down Meadow Drove, both before and after it opened (see paragraph 25 above). She had failed to do so on each occasion. The Government denied that crime and violence were rife there; in any event, in so far as the applicant's failure was based on such allegations, it was clear that they could not have been material considerations before the site had even opened. Moreover, in the Government's contention, sufficient private sites were available in the area (see paragraph 27 above), most of them owned by Gypsies. The true position was that the applicant had consistently refused to countenance living anywhere else than on her own land. Finally, the sanctions which had been applied to the applicant had been limited to small fines (see paragraph 18 above).

(c) The Commission

71. The Commission submitted that Gypsies following a traditional lifestyle required special consideration in planning matters and considered that this had been recognised by the Government. In the specific circumstances of the applicant's case, however, a proper balance had not been achieved.

72. The area in question had not been singled out for special protection, whether as a national park, as an area of outstanding natural beauty or as a green belt. The stationing of caravans on the frontage of the site had been authorised, as had the erection of buildings belonging to an agricultural engineering business on neighbouring land (see paragraph 16 above). An official Gypsy caravan site had been opened further down Meadow Drove (see paragraph 24 above). Moreover, the inspector, in her report of May 1995, had found that the applicant's site could be adequately screened from view by planting hedges (see paragraph 22 above).

73. For the same reasons as given by the applicant, the Commission accepted that the applicant could not be required to move to the official site further down Meadow Drove. It further accepted that the space available on other official caravan sites in the South Cambridgeshire area was

insufficient (see paragraph 16 above). Nor could the applicant be required to move to a private authorised site, the inspector herself having expressed doubts as to the availability of plots on such sites and their price (see paragraph 22 above).

2. The Court's assessment

(a) General principles

74. As is well established in the Court's case-law, it is for the national authorities to make the initial assessment of the "necessity" for an interference, as regards both the legislative framework and the particular measure of implementation (see, inter alia and mutatis mutandis, the Leander v. Sweden judgment of 26 March 1987, Series A no. 116, p. 25, para. 59, and the Miailhe v. France (no. 1) judgment of 25 February 1993, Series A no. 256-C, p. 89, para. 36). Although a margin of appreciation is thereby left to the national authorities, their decision remains subject to review by the Court for conformity with the requirements of the Convention. The scope of this margin of appreciation is not identical in each case but will vary according to the context (see, inter alia and mutatis mutandis, the above-mentioned Leander judgment, ibid.). Relevant factors include the nature of the Convention right in issue, its importance for the individual and the nature of the activities concerned.

75. The Court has already had occasion to note that town and country planning schemes involve the exercise of discretionary judgment in the implementation of policies adopted in the interest of the community (in the context of Article 6 para. 1 (art. 6-1), see the Bryan judgment cited above, p. 18, para. 47; in the context of Article 1 of Protocol No. 1 (P1-1), see the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 26, para. 69; the Erkner and Hofauer v. Austria judgment of 23 April 1987, Series A no. 117, pp. 65-66, paras. 74-75 and 78; the Poiss v. Austria judgment of 23 April 1987, Series A no. 117, p. 108, paras. 64-65, and p. 109, para. 68; the Allan Jacobsson v. Sweden judgment of 25 October 1989, Series A no. 163, p. 17, para. 57, and p. 19, para. 63). It is not for the Court to substitute its own view of what would be the best policy in the planning sphere or the most appropriate individual measure in planning cases (see, mutatis mutandis, the Klass and Others v. Germany judgment of 6 September 1978, Series A no. 28, p. 23, para. 49). By reason of their direct and continuous contact with the vital forces of their countries, the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation.

76. The Court cannot ignore, however, that in the instant case the interests of the community are to be balanced against the applicant's right to respect for her "home", a right which is pertinent to her and her children's personal security and well-being (see the above-mentioned Gillow judgment, p. 22, para. 55). The importance of that right for the applicant and her family must also be taken into account in determining the scope of the margin of appreciation allowed to the respondent State. Whenever discretion capable of interfering with the enjoyment of a Convention right such as the one in issue in the present case is conferred on national authorities, 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. Indeed it is settled case-law that, whilst Article 8 (art. 8) contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (art. 8) (see the McMichael v. the United Kingdom judgment of 24 February 1995, Series A no. 307-B, p. 55, para. 87).

77. The Court's task is to determine, on the basis of the above principles, whether the reasons relied on to justify the interference in question are relevant and sufficient under Article 8 para. 2 (art. 8-2).

(b) Application of the above principles

78. The applicant complained about the rejection of her appeal against the enforcement notice.

79. The law governing the decision-making process leading to the contested decision entitled the applicant to appeal to the Secretary of State on the ground, inter alia, that planning permission ought to be granted. Moreover, the appeal procedure comprised an assessment by a qualified independent expert, the inspector, to whom the applicant was entitled to make representations (see paragraphs 16 and 33 above). The Court is satisfied that the procedural safeguards provided for in the regulatory framework were therefore such as to afford due respect to the applicant's interests under Article 8 (art. 8). Subsequent judicial review by the High Court was also available, notably in so far as the applicant felt that the inspector (or the Secretary of State) had not taken into account relevant considerations or had based the contested decision on irrelevant considerations (see paragraph 34 above). In the event, the applicant declined to appeal to the High Court on the advice of counsel that such an appeal was bound to fail (see paragraph 17 above).

80. In the instant case, an investigation was carried out by the inspector, who actually saw the land for herself and considered written representations submitted by the applicant and the District Council (see paragraph 16 above). In conformity with government policy, as set out in Circulars 28/77

and 57/78 (see paragraphs 39 and 40 above), the special needs of the applicant as a Gypsy following a traditional lifestyle were taken into account. The inspector and later the Secretary of State had regard to the shortage of Gypsy caravan sites in the area and weighed the applicant's interest in being allowed to continue living on her land in caravans against the general interest of conforming to planning policy (see paragraphs 16 and 17 above). They found the latter interest to have greater weight given the particular circumstances pertaining to the area in question. Thus, in her report the inspector stated:

> "... [the applicant's caravan site] extends development further from the road than that permitted. It thus intrudes into the open countryside, contrary to the aim of the Structure Plan to protect the countryside from all but essential development."

and:

> "It is ... clear in my mind that a need exists for more authorised spaces. ... Nevertheless, I consider it important to keep concentrations of sites for gypsies small, because in this way they are more readily accepted by the local community. ... [T]he concentration of gypsy sites in Willingham has reached the desirable maximum and I do not consider that the overall need for sites should, in this case, outweigh the planning objections."

The Secretary of State's reasoning in his decision included the following:

> "The decisive issue in regard to the planning merits of your appeals is considered to be whether the undisputed need for additional gypsies' caravan site provision, in the administrative areas of the District Council, and of the County Council, is so pressing that it should be permitted to override the objections on planning policy and highway safety grounds to the retention of the use of the appeal site as a residential caravan site for gypsies. On this approach, the view is taken that the objections to the continued use of the appeal site as a residential gypsy caravan site are so strong, on planning policy and highway safety grounds, that a grant of planning permission could not be justified, either on a temporary or personal basis. In reaching this conclusion, full consideration has been given to policy advice in the Department's Circular 28/77, giving guidance to Councils on the need to provide adequate accommodation in the form of caravan sites, for gypsies residing in or resorting to their area."

81. The applicant was offered the opportunity, first in February 1992 and again in January 1994, to apply for a pitch on the official caravan site situated about 700 metres from the land which she currently occupies (see paragraphs 24 and 25 above). Evidence has been adduced which tends to show that the alternative accommodation available at this location was not as satisfactory as the dwelling which she had established in contravention of the legal requirements (see paragraph 26 above). However, Article 8 (art. 8) does not necessarily go so far as to allow individuals' preferences as to their place of residence to override the general interest.

82. It is also true that subsequently, in her report of July 1995, the second inspector found that the applicant's caravans could have been adequately screened from view by planting hedges; this would have hidden them from view but, so the inspector concluded, would not have reduced

their intrusion into open countryside in a way which national and local planning policy sought to prevent (see paragraph 22 above).

83. After the refusal of planning permission the applicant was fined relatively small sums for failing to remove her caravans (see paragraph 18 above). To date she has not been forcibly evicted from her land but has continued to reside there (see paragraph 7 above).

84. In the light of the foregoing, the Court considers that proper regard was had to the applicant's predicament both under the terms of the regulatory framework, which contained adequate procedural safeguards protecting her interest under Article 8 (art. 8), and by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of her case. The latter authorities arrived at the contested decision after weighing in the balance the various competing interests in issue. As pointed out above (at paragraph 75), it is not the Court's task to sit in appeal on the merits of that decision. Although facts were adduced arguing in favour of another outcome at national level, the Court is satisfied that the reasons relied on by the responsible planning authorities were relevant and sufficient, for the purposes of Article 8 (art. 8), to justify the resultant interference with the exercise by the applicant of her right to respect for her home. In particular, the means employed to achieve the legitimate aims pursued cannot be regarded as disproportionate. In sum, the Court does not find that in the present case the national authorities exceeded their margin of appreciation.

(c) Conclusion

85. In conclusion, there has been no violation of Article 8 (art. 8).

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 8 (art. 14+8)

86. The applicant claimed to be the victim of discrimination on the ground of her Gypsy status, contrary to Article 14 of the Convention taken together with Article 8 (art. 14+8). Article 14 of the Convention (art. 14) 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."

In her contention, both the 1968 Act and the Criminal Justice and Public Order Act 1994 prevented Gypsies from pursuing their traditional lifestyle by making it illegal for them to locate their caravans on unoccupied land.

87. The Government denied that the applicant had been the victim of any difference of treatment. The Commission confined itself to noting that

she had never been directly and immediately affected by either of the Acts in question.

88. The Court has already found (at paragraph 59 above) that it cannot consider any of the applicant's claims based on the Caravan Sites Act 1968 or the Criminal Justice and Public Order Act 1994. More generally, it does not appear that the applicant was at any time penalised or subjected to any detrimental treatment for attempting to follow a traditional Gypsy lifestyle. In fact, it appears that the relevant national policy was aimed at enabling Gypsies to cater for their own needs (see paragraphs 39 and 40 above).

89. That being so, the applicant cannot claim to have been the victim of discrimination contrary to Article 14 taken together with Article 8 (art. 14+8). Accordingly, there has been no violation under this head (art. 14+8).

FOR THESE REASONS, THE COURT

1. Holds, unanimously, that Article 8 of the Convention (art. 8) is applicable in the present case;

2. Holds, by six votes to three, that there has been no violation of Article 8 of the Convention (art. 8);

3. Holds, by eight votes to one, that there has been no violation of Article 14 of the Convention taken together with Article 8 (art. 14+8).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 September 1996.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 53 para. 2 of Rules of Court A, the following dissenting opinions are annexed to this judgment:

(a) partly dissenting opinion of Mr Repik;

(b) partly dissenting opinion of Mr Lohmus;

(c) dissenting opinion of Mr Pettiti.

R. B.
H. P.

PARTLY DISSENTING OPINION OF JUDGE REPIK

(Translation)

I voted with the majority in favour of finding that Article 8 (art. 8) was applicable in this case and that there had been no violation of Article 14 (art. 14). However, I regret that I am unable to agree with the majority finding that there has been no violation of Article 8 (art. 8). It is with the majority's finding that the interference in issue was necessary in a democratic society (paragraphs 78 to 84 of the judgment) that I disagree. The observations which I make in this partly dissenting opinion are strictly limited to the instant case. I have no intention of questioning the United Kingdom's policy towards the Gypsy minority or that minority's position, which seems to be incomparably more favourable than that in many other States, in particular in certain new member States of the Council of Europe. However, it must be borne in mind that this is the first case before the Court concerning the right of a member of the Gypsy minority; I am concerned about how the Court's first judgment on this subject will be interpreted and how it will be received by the Gypsy minority. The concept of necessity implies a pressing social need; in particular, the measure taken must be proportionate to the legitimate aim pursued. It has to be determined whether a fair balance has been struck between the aim pursued and the right concerned, regard being had to the latter's importance and to the seriousness of the infringement. All that is well known and has been reiterated by the Court on a number of occasions in its case-law (see, in particular, the following judgments: Gillow v. the United Kingdom, 24 November 1986, Series A no. 109, p. 22, para. 55; Olsson v. Sweden (no. 1), 24 March 1988, Series A no. 130, p. 32, para. 67; Berrehab v. the Netherlands, 21 June 1988, Series A no. 138, p. 16, para. 29). In the present case the national authorities did not properly assess whether the aim pursued was proportionate to the applicant's right to respect for her home and to the seriousness of the infringement of that right. At no stage during the domestic proceedings was the problem before the authorities considered in terms of a right of the applicant protected by the Convention, for the Government denied throughout that a right to respect for the home was in issue and therefore that there had been any interference with that right. The applicant's interests, confronted with the requirements of the protection of the countryside, were only taken into account in abstract, general terms, such as "the undisputed need for additional gypsies' caravan site provision" (paragraph 17 of the judgment) or "the applicant's Gypsy status" (paragraph 22 of the judgment). There was never any mention of the applicant's right to respect for her home or of the importance of that right to her given her financial and family situation. Nor was any account taken of the possible consequences for the applicant and her children were she to be evicted from

her land. In these circumstances the Court, in order to fulfil its supervisory role, ought itself to have considered whether the interference was proportionate to the right in issue and to its importance to the applicant, all the more so as where a fundamental right of a member of a minority is concerned, especially a minority as vulnerable as the Gypsies, the Court has an obligation to subject any such interference to particularly close scrutiny. In my opinion, the Court has not fully performed its duty as it has not taken into account all the relevant matters adduced by the Commission and was too hasty in invoking the margin of appreciation left to the State. Respect for planning policy, in particular protection of the countryside, has been placed on one side of the scales. The Court has not taken into account that the weight of that interest is considerably reduced by the fact, reported by the Commission, that the applicant did not park her caravans either on land under special protection or in unspoilt open countryside. There are in fact already a number of buildings on neighbouring land (see paragraph 72 of the judgment) and the applicant's caravans could have been adequately screened from view by planting hedges (see paragraph 82 of the judgment). In any event, the fact that the applicant's caravans were parked there did not impair the rural, open character of the countryside any more than it had been impaired previously. Much importance was attached to the fact that the applicant could have moved to a different site. The Commission considered that it was not reasonably open to the applicant to move to a private site and that the official Meadow Drove site was not suitable for her (see paragraphs 79 and 82 of the Commission's opinion). As regards the possibility of moving to Meadow Drove, the Court found that from the applicant's point of view the question was merely one of individual preference as to her place of residence and that such preferences are not protected by Article 8 (art. 8) (see paragraph 81 of the judgment). The Court underestimates the cogency of the arguments advanced by the Commission, which reported in detail on the condition of the Meadow Drove site and the numerous incidents which have occurred there. The safety of the applicant's family is not guaranteed there and it is an unsuitable place for bringing up her children. The applicant did not, therefore, refuse to move there out of sheer capriciousness. Moreover, that argument cannot apply to the measures taken before 1992, which were the matters primarily complained of in the application lodged with the Commission on 7 February 1992, as the Meadow Drove site was only opened in November 1992. Whilst the applicant wishes to find a safe and stable place to set up home, she also wishes to retain the possibility of travelling during school holidays - a legitimate objective given the traditional way of life and culture of the Gypsy minority[1]. However, she would not be sure of finding a vacant pitch on the official site on returning from her travels.

[1] Travelling is a need that is deeply rooted in Gypsy psychology. "The traveller who loses

If the applicant were obliged to leave her land, she would be exposed to the constant worry of having to find a place where she could lawfully stay, her children's education would be jeopardised and so on (see the precarious situation of travelling Gypsies described in the Cripps Report, cited in paragraph 38 of the judgment). Lastly, as regards the extent of the interference, the Court only takes into account the relatively small amount of the fines imposed on the applicant for failing to remove her caravans (see paragraph 83 of the judgment) not her overall position; she still faces prosecution, further fines and eviction from her land, with all that entails in the way of insecurity and disruption of her family life. To my mind, the fair balance between the applicant's rights and the interests of society has not been struck and the interference has therefore not been justified under Article 8 para. 2 (art. 8-2). That does not mean to say that Gypsies, as a group, are exempt from lawful constraints under town and country planning law. The question whether a fair balance has been struck between the relevant opposing interests depends on the particular facts of each case. In sum, there has been a violation of Article 8 of the Convention (art. 8).

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the possibility, and the hope, of travelling on, loses with it his very reason for living." Extract from Roma, Gypsies and Travellers by Jean-Pierre Liégeois, Council of Europe Press, Strasbourg, 1994, p. 79.

PARTLY DISSENTING OPINION OF JUDGE LOHMUS

Unlike the majority of the Court I am of the opinion that in the present case Article 8 of the Convention (art. 8) has been violated. The majority of the Court did not find that the national authorities exceeded their margin of appreciation in the present case (see paragraph 84 of the judgment). My opinion coincides with the conclusions of the Commission. Living in a caravan and travelling are vital parts of Gypsies' cultural heritage and traditional lifestyle. This fact is important to my mind in deciding whether the correct balance has been struck between the rights of a Gypsy family and the general interest of the community. The Council of Europe Committee of Ministers Resolution (75) 13 noted the need to safeguard the cultural heritage and identity of nomads. It has been stated before the Court that the applicant as a Gypsy has the same rights and duties as all the other members of the community. I think that this is an oversimplification of the question of minority rights. It may not be enough to prevent discrimination so that members of minority groups receive equal treatment under the law. In order to establish equality in fact, different treatment may be necessary to preserve their special cultural heritage. Even allowing the existence of genuine and substantial planning objections to the continuing occupation of the land, the factors weighing in favour of the public interest in planning controls are of a slight and general nature. Mrs Buckley lives with her three children in caravans parked on land owned by her since 1988. In 1994 the inspector described the applicant's site as "clean, spacious and well-ordered". By contrast, the council-run site on Meadow Drove was "isolated, exposed and somewhat uncared for". Although alternative accommodation is available on the official site, it appears doubtful whether it is suitable for Mrs Buckley's needs.

DISSENTING OPINION OF JUDGE PETTITI

(Translation)

I have not voted with the majority of the Court as I consider that there has been a violation of Article 8 and of Article 14 (art. 8, art. 14) in this case. Before analysing the reasons that have led me to this opinion, I have a general observation to make. This is the first time that a problem concerning Gypsy communities and "travellers" has been referred to the European Court. Europe has a special responsibility towards Gypsies. During the Second World War States concealed the genocide suffered by Gypsies. After the Second World War, this direct or indirect concealment continued (even with regard to compensation). Throughout Europe, and in member States of the Council of Europe, the Gypsy minority have been subject to discrimination, and rejection and exclusion measures have been taken against them. There has been a refusal to recognise Gypsy culture and the Gypsy way of life. In eastern Europe the return to the democracy has not helped them. Can the European Convention provide a remedy for this situation? The answer must be yes, since the purpose of the Convention is to impose a positive obligation on the States to ensure that fundamental rights are guaranteed without discrimination. Did the present case afford the opportunity for a positive application of the Convention in this sphere? That is the question which the Court had to answer in the Buckley case. In order to conclude that there has been no violation of Article 8 (art. 8), the Court partly adopts an initial analysis of the facts similar to the Commission's, that is to say the findings of fact set out in particular in paragraphs 76 to 78 of its report, although the Court makes a number of changes to the wording. However, the Court rejects the reasoning in paragraphs 79 to 84 of the report, which led the Commission to express the opinion that there had been a violation. In order to do that, the Court attaches greater weight to the report cited in paragraph 16 of the judgment than to the one cited in paragraph 22, which is equally substantiated. The Strasbourg institutions' difficulty in identifying this type of problem is that the deliberate superimposition and accumulation of administrative rules (each of which would be acceptable taken singly) result, firstly, in its being totally impossible for a Gypsy family to make suitable arrangements for its accommodation, social life and the integration of its children at school and, secondly, in different government departments combining measures relating to town planning, nature conservation, the viability of access roads, planning permission requirements, road safety and public health that, in the instant case, mean the Buckley family are caught in a "vicious circle". In attempting to comply with the disproportionate requirements of an authority or a rule, a family runs the risk of contravening other rules. Such unreasonable combinations of measures are in fact only employed against

Gypsy families to prevent them living in certain areas. The British Government denied that their policy was discriminatory. Yet a number of legal provisions expressly refer to Gypsies in order to restrict their rights by means of administrative rules. However, the only acceptable discrimination under Article 14 (art. 14) is positive discrimination, which implies that in order to achieve equality of rights through equality of opportunity it is necessary in certain cases to grant additional rights to the deprived members of the population such as the underclasses of developed countries, and the Gypsy and Jenische[1] communities.

The discrimination results equally from the fact that if in similar circumstances a British citizen who was not a Gypsy wished to live on his land in a caravan, the authorities would not raise any difficulties, even if they considered his conduct to be unorthodox. If the Buckley case were transposed to a family of ecologists or adherents of a religion instead of Gypsies, the harassment to which Mrs Buckley was subjected would not have occurred; even supposing that it had, domestic remedies or an application under the European Convention on Human Rights would have allowed such an interference with family life to be brought to an end, which was not so under the domestic law in the case of Gypsy families. If the facts of the case are analysed, not by combining the different areas of law and legal provisions concerned, but taking them individually under the Convention, the Commission's report (paragraphs 21 to 38) and the factors relating to Article 8 (art. 8) and Protocol No. 1 (P1) lead to the following conclusions: (a) with regard to the free movement of persons and the individual's freedom of establishment with his family, the obstacles placed in the way of Gypsies go beyond the general law. Forcing them to live in a designated area is equivalent to placing them or assigning them to a territory, all the more so where the area proves to be unhealthy or not adapted to the children's schooling needs; (b) with regard to the right to family property, there is a breach of the right to family life - in respect of which reference could have been made to the use of property within the meaning of Protocol No. 1 (P1) - on account of the systematic refusal to convert retrospective planning permission into permanent permission to park the caravans. The fact that there had been an exchange of occupation of the land by the families (two sisters) could not justify such a refusal; (c) with regard to the minimum right to accommodation, one of the constituents of Article 8 (art. 8), where the accommodation is a substantial and essential part of family life, the authority's requirement that an owner move because of the concentration of Gypsy sites in the area amounts to an unacceptable or disproportionate interference, since the owner is not liable for the acts or omissions of others (Commission's report, paragraph 27); (d) with regard to the impairment of the "rural and open quality of the landscape" and

[1] A nomadic community in Alsace.

environment protection (Commission's report, paragraph 24) which, in the Government's submission, would justify an interference even under Article 8 (art. 8), the fact that the authorities rely on this argument only against Gypsy families also amounts to a disproportionate interference for, in the hierarchy of the State's positive obligations, the survival of families must come before bucolic or aesthetic concerns. The Court was asked to consider this case under Articles 8 and 14 of the Convention (art. 8, art. 14) only, but in this sphere and in situations similar to the Buckley family's, the aspects of discrimination and breach of the right to accommodation and a home, inasmuch as they necessarily have an impact on the right to respect for family life, are indissociable from such respect. In my view, therefore, the Court is wrong in paragraphs 54 and 55 to restrict the scope of its review and analysis. The Government's reliance on the lawful aim pursued was not justified, because the grounds of public safety, economic well-being of the country and protection of health and of the rights of others were not established and should not therefore have been accepted in paragraph 63. The question of the sites was an important consideration. The Government had, moreover, recognised that Gypsies following a traditional way of life required special consideration (paragraph 71). However, as the Commission noted, a proper balance had not been achieved although the Buckley family had been living on the site without incident since 1988. The official Meadow Drove site was quite unsuitable. The capacity of other official sites was insufficient (applicant's memorial, paragraphs 66 to 69) and no other privately owned site offering acceptable conditions was available (Commission's report, paragraphs 78 and 79). Other private sites were likewise unavailable. On the other hand, Mrs Buckley's site was properly maintained (applicant's memorial, paragraph 65). In her report of July 1995 the second inspector found that the objection relating to protection of the site could have been overcome by planting hedges, but the Government concluded that that "would not have reduced [the] intrusion into [the] countryside" (paragraph 82 of the judgment). The Court, which rightly recalls that it cannot act as an appeal court, nonetheless states its conviction that the authority's grounds were relevant, a statement that may appear self-contradictory. But the grounds could not be relevant under the Convention as the Government's approach is to give priority to protection of the landscape over respect for family life. The ranking of fundamental rights under Article 8 and Protocol No. 1 (art. 8, P1) is thereby reversed and, moreover, the traditional aptitude for travel is impeded. In addition, in the present case, there was no effective procedural safeguard to enable a remedy for the administrative harassment to be provided under Article 8 (art. 8) (see the McMichael v. the United Kingdom judgment of 24 February 1995, Series A no. 307-B, p. 57, paras. 91 and 92). With regard to the reasons for the interference, the Court relies on the inspector's report from which it quotes (in paragraph 80 of the judgment) extracts that are favourable to the

Government's case; but there are other passages in the report that support the applicant's case. It suffices to refer to the passages from the reports quoted in the applicant's memorial to see that the passages relied on were not necessarily the most relevant ones (applicant's memorial, paragraphs 65, 66, 69 and 71; verbatim record of hearing pp. 11, 20 and 23). Reasons are given in paragraph 75 of the judgment which would have been justified under Protocol No. 1 (P1), but which in my opinion are not valid because what is at stake is family life, not planning considerations. The demands of family life have consequently not been taken into consideration (paragraph 80). The following passage quoted from the inspector's report (paragraph 80 of the judgment) is revealing: "...in this way they are more readily accepted by the local community" (sic)!! It is not in keeping with the spirit of Article 8 (art. 8) to subordinate respect for the applicant's right to family life, as the Government maintain, to the greater convenience of the local community and its greater willingness to accept others (paragraph 80), or to give the applicant's special needs lower priority than the objectives of government policy (paragraph 80). The Bryan and Sporrong and Lönnroth judgments were concerned with different situations in international law, in particular Protocol No. 1 (P1) (paragraph 75). The Court afforded greater protection of the home and accommodation in the Niemietz and Gillow judgments, situations in which there was in fact less risk to family life. Essentially, the Convention ought, in the case of Gypsy families, to inspire the greatest possible respect for family life, transcending planning considerations. With regard to Article 14 taken together with Article 8 (art. 14+8), the Court holds that there has been no violation (see paragraphs 59 and 88 of the judgment) because it considers that the 1968 and 1994 Acts had not been applied to the applicant's detriment. However, in the general context of Article 14 and Article 8 (art. 14, art. 8) all of the applicant's complaints relate to the effect of the de jure and de facto measures, which, in being discriminatory prevented respect for family life. With regard to Article 14 of the Convention (art. 14), relied on here but also included in the assessment of the case under Article 8 (art. 8), section 16 of the Caravan Sites Act 1968 expressly refers to Gypsies, thereby discriminating in its treatment of them compared with other nationals. The apparent aim of the British legislation is to promote acceptance of Gypsies in towns and villages (section 6 of the 1968 Act) but the use made of this section has achieved the opposite result. The same occurs in other Council of Europe States where the family life of Gypsy groups is frustrated by various administrative constraints - for instance, allowing them to set up camp but denying them access to water or schools. Providing caravan sites for travellers does not meet the real needs. It is this which has given rise to the numerous proposals made by the international movement ATD Fourth World in Europe, a non-governmental organisation consulted by States. Mrs Buckley's position is comparable to that of this category of deprived groups

(travellers, Gypsies and Jenische). The paragraphs from the inspectors' reports on which the Government relied are contradicted by other paragraphs from the reports cited by the Commission and the applicant. To my mind, it is therefore not possible to conclude that the interference was justified. The Commission rightly found that it was impossible to live on a private site (other than the one originally purchased by Mrs Buckley or her sister). It was similarly impossible to live on waste ground. The Commission recognised that the proposal that they live on the neighbouring official site came up against the problems of the various incidents that had occurred there, which would give rise to a situation incompatible with family life within the meaning of Article 8 (art. 8) and lead to discriminatory treatment affecting only travellers. Thus, either there are too many administrative obstacles or else the alternative proposals are inadequate, and this considerably destabilises the family and makes the children's future unsettled. The pretexts of planning controls and road safety appear to be unfounded or derisory in comparison with the major problem of preserving family life. Admittedly, only Articles 8 and 14 (art. 8, art. 14) are in issue, but the failure to comply with those provisions (art. 8, art. 14) in this case could, in similar cases, be considered also under Article 1 of Protocol No. 1 (P1-1). When Article 8 (art. 8) is being interpreted, the discriminatory aspects serve indirectly to show that the claimed justification for the interference is unfounded. In any event, the findings taken as a whole should not, in my view, allow the harassment and alleged safety measures directed at the Buckley family to be considered proportionate to the aim pursued, and necessary in a democratic society such as the Council of Europe has the role of consolidating through the guarantees provided by Articles 8 and 14 taken individually or together (art. 8, art. 14, art. 14+8). The Court uses the notion of margin of appreciation in formulations (see paragraph 84 of the judgment) which appear to me to extend that concept too far when compared with the Court's previous case-law and without laying down any precise criteria. The practice established under the Court's case-law has been to restrict the States' margin of appreciation by making it subject to review by the Court by reference to the criteria which the Court has laid down by virtue of its autonomous power to interpret the Convention. The comprehensive wording adopted also seems to me to be different from that used in the Court's judgments concerning the application of Protocol No. 1 (P1). In the present case, moreover, there was no necessity for the measures in a democratic State (on the contrary) and the interference was, at the very least, disproportionate. International organisations have been very attentive to the situation of the Gypsies (see Second Report United Nations ECOSOC E/CN4/Sub2/1995/15). The European Union and the Council of Europe have examined the problem on a number of occasions, whilst noting the indifference of both west and east European States. Many studies have been carried out which come to the

same conclusion (see Droit du quart monde, Revue Editions Centre ATD nos. 1 to 9). In my view, the European Court had, in the Buckley case, an opportunity to produce, in the spirit of the European Convention, a critique of national law and practice with regard to Gypsies and travellers in the United Kingdom that would have been transposable to the rest of Europe, and thereby partly compensate for the injustices they suffer.