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

FIRST SECTION

CASE OF CONNORS v. THE UNITED KINGDOM

(Application no. 66746/01)

JUDGMENT

STRASBOURG

27 May 2004

FINAL

27/08/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Connors v. the United Kingdom,

The European Court of Human Rights (First Section), sitting as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs S. BOTOUCHAROVA,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 22 January and 6 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 66746/01) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a United Kingdom national, Mr James Connors ("the applicant"), on 29 January 2001.

2. The applicant was represented by Mr K. Lomax, a lawyer practising in Leeds. The United Kingdom Government ("the Government") were represented by their Agent, Mr D. Walton of the Foreign and Commonwealth Office, London.

3. The applicant complained that he and his family had been evicted from a local authority gypsy caravan site, invoking Articles 6, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court).

5. By a decision of 14 November 2002, the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 22 January 2004 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr D. WALTON, *Agent*,
Mr T. MOULD, *Counsel,*
Ms V. GOULBURN,
Mr D. GLEAVE *Advisers*;

(b) *for the applicant*
Mr A. OFFER, *Counsel*,
Mr K. LOMAX, *Solicitor.*

The Court heard addresses by Mr Mould and Mr Offer.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1955 and lives in or about Lancashire.

9. The applicant and his family are gypsies. They led a traditional travelling lifestyle until they suffered so much from being moved on with ever increasing frequency and harassment that they settled on the gypsy site run by the local authority at Cottingley Springs. They lived there permanently for about thirteen years, until February 1997 when they moved off. They stated that they moved off the site at that time due to the anti-social behaviour of others living on the site and others who came onto the site, *e.g.* vehicles being driven round the site at night, violence and disturbances such that they could not sleep at night or the children play safely during the day. They moved into a rented house but were unable to adapt to these conditions. They gave up their tenancy when offered two plots for the family at Cottingley Springs.

10. The applicant returned to the site with his family in October 1998.

11. By a licence agreement dated 22 October 1998, Leeds City Council ("the Council") granted the applicant and his wife a contractual licence to occupy plot no. 35 at Cottingley Springs caravan site in Leeds. The licence in Clause 12 required the applicant as occupier to comply with the Site Regulations, while Clause 18 stated:

> "No nuisance is to be caused by the occupier, his guests, nor any member of his family to any other person, including employees of the Council, the occupiers of any other plots on the Site, or occupiers of any land or buildings in the vicinity of the Site."

12. On 29 March 1999, the applicant's adult daughter Margaret Connors was granted a licence to occupy the adjacent plot, Plot 36, where she lived with Michael Maloney who later became her husband. She also cared for the applicant's mother-in-law, Margaret Kelby, until she went into a residential nursing home in the area. The applicant's adult sons, James Junior and Joseph, did not reside with the applicant but were frequent visitors both to his plot and their sister next door.

13. During 1999, the applicant and his family were in dispute with the Council due to its alleged failure to undertake repairs on Plot 36 (there was no electricity supply or other facilities for some time), their objection to paying electricity charges which they considered to be overcharging and concerning the Council's refusal to accept payment by instalment for the site deposit. Their complaints were referred to the Local Authority Ombudsman to investigate.

14. The Government stated that the applicant's children (including his adult sons James Junior and Joseph) and Michael Maloney misbehaved and caused considerable nuisance at the site. The Council's Travellers Services Manager, based at the site, was aware of many incidents of nuisance caused by the applicant's children and visitors. The Manager visited the applicant and Margaret Connors on a number of occasions to report the misbehaviour and nuisance. On 16 December 1998, the Council gave the applicant written warning that further incidents of anti-social behaviour by his children could jeopardise his occupation of the plot. Nevertheless, both the applicant's children and his visitor Michael Maloney continued to cause nuisance at the caravan site.

15. In January 2000, when it became known that Margaret Connors was going to marry Michael Maloney, the applicant alleged that the Council manager of the site stated, "The minute you marry Michael Maloney you'll be out that gate". Michael Maloney was a member of a family against whom proceedings had previously been brought for eviction from the site on allegations that they were "a magnet for trouble". In February 1997, the Maloney family had moved from the site. They remained in the Leeds area until the summer of 1999 when they went to Nottingham.

16. On 31 January 2000, notice to quit was served on the family requiring them to vacate both plots. No written or detailed reasons were given by the Council, though the issue of "magnet for troublemakers" had been raised.

17. On 12 February 2000, Margaret Connors married Michael Maloney and they continued to live on Plot 36.

18. On 20 March 2000, the Council issued two sets of proceedings for summary possession pursuant to Order 24 of the County Court Rules, one concerning the applicant and his wife and family on Plot 35 and the other against Margaret Connors and "persons unknown" on Plot 36. On 24 March 2000, the applicant was served with various documents. The grounds for

possession stated that the defendants were in occupation without licence or consent. In the witness statement dated 17 March 2000, the site manager referred to Clause 18 of the licence agreement and asserted that the defendants had breached the licence agreement and that he had given them notice to quit. No particulars of breach were given. He also asserted that the necessary investigation into the needs of the defendants had been made in accordance with the guidelines set out in the Department of the Environment Circular 18/94.

19. The applicant disputed that they were in breach of Clause 18, that any possible alternative approaches had been taken to any problems and also that any appropriate enquiries had been made into their welfare.

20. At this stage, the applicant's family consisted of his children Charles aged 14, Michael aged 13, Daniel aged 10 and Thomas aged 4 months. Thomas had been suffering from serious illness, with kidney problems and rashes of unknown origin, while the applicant's wife, who was asthmatic, had suffered several attacks requiring visits to hospital. The applicant himself had been having chest pains and was awaiting a hospital appointment. Daniel had settled well into full-time education at the nearby primary school, and the others were receiving assistance, including teaching at home.

21. The Council served further witness statements containing particulars of the allegations of nuisance. These were disputed by the applicant. They related largely to Margaret and Michael Maloney on Plot 36.

22. On 14 April 2000, the summary possession proceedings were adjourned pending the determination of the applicant's application for permission to apply for judicial review of the Council's decision to determine the licence of his plot which had been lodged on 10 April 2000. During the hearing, Margaret and Michael Maloney indicated an intention to leave the site. As the bulk of the complaints were against them, the applicant stated that the Council were requested to review its decision to terminate the licence of the applicant and his family.

23. On 12 May 2000, the High Court refused permission to apply for judicial review. The judge noted that the applicant's counsel accepted that the necessary investigations had been carried out by the Council and rejected as unarguable the contention, as regarded procedural fairness, that the applicant had not been given prior warning of the threat of eviction.

24. On 16 May 2000, the applicant applied to the Director General of Fair Trading for a ruling that the terms of the licence agreement were unfair, in particular that Clause 18 was unfair in holding him responsible for the actions of visitors whom he could not reasonably be expected to control.

25. The Council took the decision to proceed with the eviction. It dropped the allegations of breach of licence and asserted a right to summary possession on the basis that the family were trespassers as permission to occupy the land had been withdrawn. On 19 June 2000, the County Court

granted a possession order. The Council undertook not to execute a warrant for possession until 14 July 2000 on condition that the applicant and his family were of good behaviour and kept the peace.

26. Further representations were made by the applicant to the Council without success.

27. On 13 July 2000, as the applicant had not given up possession, the Council obtained a warrant for possession of the plot. The Government stated that the applicant and his family barricaded themselves in the plot and refused to leave when the County Court bailiffs attended to execute the warrant. The Council applied to the High Court for enforcement of the order for possession. On 24 July 2000, the High Court ordered the Sheriff to execute the warrant for possession. The Sheriff's officer, the bailiffs and the West Yorkshire police carried out a planning and risk assessment. The Sheriff's officer attended the site and requested the applicant to vacate the plot. He refused.

28. On 1 August 2000, early in the morning, the Council commenced enforcement of the eviction, in an operation involving Council officers, the Sheriff's officers and numerous police officers. The applicant stated that also police helicopter, police dogs, control centre, numerous police vehicles and detention vans were employed. The operation lasted five hours.

29. The Government stated that the police arrested the applicant and his son Daniel for obstruction under section 10 of the Criminal Law Act 1977. The applicant stated that he was attempting to carry out items of property to a trailer when he was stopped by bailiffs and arrested. He was handcuffed and held in a police van for an hour and subsequently at the police station, though he was complaining of chest pains. At about midday, he was taken to hospital for emergency admission.

30. According to the applicant, his thirteen-year-old son Michael was also seized and held in a van by the police for five hours during the eviction. The applicant's wife was left to cope alone, the baby Thomas being ill.

31. The family's two caravans were removed (they owned one and the other was rented). The applicant stated that it was not until late afternoon that their own caravan was returned to them. However many of their possessions were still held by the Council, including medicine needed for Thomas. During 3 August 2000, the Council returned their possessions, including a washing machine, drier, microwave, gas bottles, kettle and clothing. This was dumped on the roadside some distance away from the applicant's caravan. The Government stated that on 1 August 2000 the Council removed from the plot to safe storage goods and personal property that the applicant and his family had failed to take with them. At the request of the applicant, the Council returned these goods and personal property to the family who had meanwhile taken up occupation on land nearby at Cottingley Drive owned by the Council, where the presence of gypsies was sometimes tolerated for short periods. As they claimed it was not possible to

get into the field to deliver the goods directly, the Council unloaded the goods at the edge of the field, informed the applicant and kept watch until they were collected.

32. A group of gypsies was at that time on the land at Cottingley Drive for the purpose of attending a wedding. This group did not however leave by 1 August as previously agreed, staying on to attend the funeral of a baby who had died on 31 July 2000. The Council prepared eviction proceedings and included the applicants as "persons unknown". The applicant alleges that no assistance or advice was given to them as to where they could go, save for an offer of accommodation at Bridlington (on the east coast) which failed to take into account the local community ties of the family who had lived on Cottingley Springs site for most of 13 years and in the Leeds area for some 20 to 30 years.

33. An application for adjournment of the possession proceedings was rejected by the County Court on 14 August 2000. The applicant and his family moved from the land and travelled around the Leeds area stopping for a few days at a time.

34. The Government stated that the applicant and his family had returned to the caravan site three times since as trespassers. The Council applied for an injunction to ban the applicant and his family from entering the site. The outcome of these proceedings is not known.

35. The applicant stated that following the eviction he and his family were required to move on repeatedly. Partly at least due to the stress and uncertainty, the applicant's wife chose to move into a house with the younger children and they were separated in May 2001. Daniel lived for a while with the applicant. Following the eviction, he did not return to school. The applicant stated that he continued to travel in his caravan, with his son Michael and occasionally Daniel, but that they were unable generally to remain in any place for more that two weeks. He continued to have chest pains for which he received medication and tests. As he had no permanent address, he used his wife's address for postal purposes, including medical appointments.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Provision for gypsy sites

36. Prior to 1994, the Caravan Sites Act 1968 provided in section 6 that it should be the duty of local authorities "to exercise their powers ... so far as may be necessary to provide adequate accommodation for gypsies 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). In addition, approximately 100 million pounds sterling (GBP) 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.

37. Section 80 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"), which came into force on 3 November 1994, repealed sections 6-12 of the 1968 Act and the grant scheme referred to above. The change in policy underlying the repeal was explained by the Parliamentary Under-Secretary of State:

> "In the past 13 years the number of gypsy caravans stationed on unauthorised sites has remained broadly the same... The shortfall in provision has been largely due to natural growth in the gypsy population. Plainly site provision is barely keeping pace with the growth in demand and is not reducing the shortfall...
>
> We recognise that council site provision has contributed to alleviating the difficulties experienced by the gypsy community. Indeed the predicament of gypsies in England and Wales is now far different from in 1968. At that time, probably fewer than 10 per cent of gypsy caravans in England and Wales were stationed on authorised sites, whereas the figure is now about 46 per cent. A further 24 per cent are on authorised private sites, and many more are stationed on tolerated sites where they are allowed to stay with reasonable security from eviction. ...
>
> We believe that public provision of sites has now reached an acceptable level. Public accommodation has been provided for 46 per cent of the total number of gypsy caravans in England and Wales. We do not believe that it is in the public interest to continue to maintain what has become an open-ended commitment to provide sites for all gypsies seeking accommodation at the public's expense. It is our view that the right approach now is to encourage more gypsies to establish their own sites through the planning system. We know that many gypsy families would prefer to establish their own sites rather than reside on council sites. The National Gypsy Council has for a long time supported the case for private provision. Private site provision has increased by more than 135 per cent since 1981. Our intention is to encourage that trend."

38. Local authorities remain empowered to provide gypsy sites under section 24 of the 1960 Act and such sites remain the largest single component of the overall supply. Under current policy guidance, the Government have emphasised the importance that local authorities maintain their existing sites and consider if it is appropriate to provide further sites (Circular 18/94, paragraphs 21-22). In 2000, the Government announced that they were making available 17 million pounds sterling over the period 2001-2004 to help local authorities to maintain their sites.

2. Unauthorised stationing of caravans

39. 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".

40. 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).

41. Guidance issued by the Secretary of State dated 23 November 1994 (Circular 18/94) concerned the unauthorised camping by gypsies and the power to give a direction to leave the land (CJPOA above). Paragraphs 6-9 required local authorities to adopt "a policy of toleration towards unauthorised gypsy encampments":

> "6. ... Where gypsies are camped unlawfully on council land and are not causing a level of nuisance which cannot be effectively controlled, an immediate forced eviction might result in unauthorised camping on a site elsewhere in the area which could give rise to greater nuisance. Accordingly, authorities should consider tolerating gypsies' presence on the land for short periods and could examine the ways of minimising the level of nuisance on such tolerated sites, for example by providing basic services for gypsies e.g. toilets, a skip for refuse and a supply of drinking water. ...
>
> 8. Where gypsies are unlawfully camped on Government-owned land, it is for the local authority, with the agreement of the land-owning Department, to take any necessary steps to ensure that the encampment does not constitute a hazard to public health. It will continue to be the policy of the Secretaries of State that Government Departments should act in conformity with the advice that gypsies should not be moved unnecessarily from unauthorised encampments when they are causing no nuisance.
>
> 9. The Secretaries of State continue to consider that local authorities should not use their powers to evict gypsies needlessly. They should use their powers in a humane and compassionate fashion and primarily to reduce nuisance and to afford a higher level of protection to private owners of land."

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

3. Security of tenure on caravan sites

43. Occupiers of gypsy caravan sites run by a local authority receive limited security of tenure pursuant to Part 1 of the 1968 Act. An occupier's contractual right can be determined by four-week's notice and he may only be evicted by court order. Local authorities are in addition required to have

regard to the guidance on best practice in managing gypsy sites, e.g. such as set out Circular 18/94 concerning statutory duties to support children, to house the homeless and make appropriate educational provision for school-age children. A local authority failing to have regard to that guidance might be subject to challenge by way of judicial review.

44. The Mobile Homes Act 1983 (the 1983 Act) confers further protection upon a person who lives in a caravan or mobile home as his only or main residence. Such a person may not be evicted save by court order and on the site owner having established one of the stated grounds, *inter alia*, that the court is satisfied that the occupier is in breach of the licence agreement and has failed to remedy that breach within a reasonable time and that it is reasonable for the agreement to be terminated. This protection was conferred on occupiers of caravans on privately owned residential sites and also the occupiers of local authority sites. However, section 5(1) excluded land run by the local authority as a caravan site for gypsies. The effect of this exclusion was analysed by the House of Lords in *Greenwich London Borough Council v. Powell* (1989) 21 HLR 218:

> "... the intention of the legislature in the Act of 1983 was clearly to exclude from the definition of 'protected site' sites such as that at Thistlebrook provided by local authorities in discharge of their duty under section 6 of the Act of 1968 to accommodate those whom they bona fide believe to be gypsies because they are nomadic for part of the year, notwithstanding that they may establish a permanent residence on the site by returning from year to year; such a site will not become a 'protected site' even if some of the erstwhile nomads, as well they may, give up their nomadic way of life entirely. It would be different if the local authority adopted a policy of offering vacancies on the site to static residents with fixed full time employment..."

45. Secure tenants of conventional flats or houses provided or managed by local authorities under the Housing Act 1985 enjoy a similar regime of security of tenure to that conferred upon occupiers of a residential caravan site by the 1983 Act.

46. A number of cases have been brought in the domestic courts challenging the lack of security of tenure on local authority gypsy sites.

(a) Somerset County Council v. Frederick Isaacs [2002] EWHC 1014

47. In this case, a gypsy, whose licence to occupy a local authority site had been revoked for alleged misbehaviour, claimed in the proceedings brought for possession of the plot, that the eviction would be in breach of Articles 8 and 14 of the Convention and sought a declaration of incompatibility.

48. In rejecting the gypsy's claims and ordering possession, the High Court judge, Mr Justice Stanley Burnton, found that the eviction of the applicant would interfere with his rights under Article 8 § 1 but that the statutory framework, as a matter of general principle and policy, satisfied the requirements of Article 8 § 2. He noted two general points:

"33. ... First, statutory regulation of housing and the consequences of such regulation are matters of some complexity. For example, while security of tenure may be to the advantage of existing tenants or licensees, it may be to the disadvantage of tenants and licensees generally. In the 1960's, security of tenure for residential tenants and control of rents were reimposed under the Rent Acts. Doubtless those measures were in the short term interests of residential tenants. However, in the long term they led to a reduction in the supply of privately-rented accommodation, which, on one view, was disadvantageous to residential tenants and potential tenants generally. There is no simple equation between security of tenure and the public interest.

34. The second general consideration is related to the first. Housing is very much 'the area of policy where the court should defer to the decision of Parliament'... The need for, and the consequences of, legislation in this area are matters for Parliament, not the court...

'... We do not lose sight of the fact that courts are not primary decision-makers in areas such as housing policy. Strasbourg confers a wide margin of appreciation in such matters... our own courts will give a margin of discretion to elected decision-makers, all the more so if primary legislation is under scrutiny'. Sheffield City Council v. Smart [2002] EWCA Civ. 04 per Laws LJ

35. The policy behind the exempting provisions was clearly stated by Lord Bridge in his speech in the House of Lords in Powell at 1012 ...:

'Any other construction of 'protected site' in section 5(1) of the Act of 1983 would, it seems to me, cause great difficulties both for local authorities and for most of the gypsy community and would undo much of the good work which has been done in this difficult field. Those already established on sites like Thistlebrook would, of course, enjoy full 1983 security of tenure. But local authorities in the position of the council would need to start de novo to discharge their duty under section 6 of the Act of 1968. Many existing designations under section 12 would have to be revoked or would perhaps be automatically invalidated... For the future, local authorities establishing new sites providing accommodation for gypsies would have to be vigilant to prevent their residence acquiring any degree of permanency. This, I think, they could in practice only do by applying a short rule-of-thumb limit of stay, which would be quite contrary to the interests of the gypsy community.'

36. [Counsel for the defendant gypsy] submitted that this statement was no longer applicable as a result of the abolition of the duty of the local authority to provide sites for gypsies. I do not accept this submission. The statement of Lord Bridge is equally applicable to the sites which local authorities continue to provide, although they are under no duty to do so. Furthermore, as has been seen, central government guidance is that it is important for those sites to be maintained."

49. The judge quoted at length the evidence of the Secretary of State's department on the aims of the two statutory frameworks, one applying to all local authority gypsy caravan sites and the other to all other residential caravan sites run by local authorities and private owners:

" '*25. With Part I of the 1968 Act, and with the 1975 and 1983 Acts, Parliament sought to address specific problems of commercial exploitation experienced by occupiers of private sites. There has never been any evidence to suggest that such problems extend to local authority Gypsy sites, and accordingly those legislative*

provisions that are directed at those problems have not been extended to such sites. The problems faced by Gypsies were wholly different, relating primarily to the acute shortage of sites available to meet their particular accommodation needs. The said problems were addressed by Part II of the 1968 Act, and supplemented by the departmental guidance circulars issued to local authorities. By 1994, the scheme of part II of the 1968 Act was found to have served its purpose as far as it could reasonably be expected to do. There was now a substantial and valuable supply of Gypsy caravan sites provided and operated by local authorities. The emphasis of Government policy has now changed to one of encouraging Gypsies themselves to add to that existing supply. Nevertheless existing local authority supply remains an essential component of the Government's strategy of securing an adequate level of accommodation for Gypsies. The policy of the 1994 Act is to maintain and safeguard that distinct source of supply.

26. Thus, I draw particular attention to the fact that the statutory protection afforded by Part 1 of the 1968 Act and the 1975 and 1983 Acts has been and still is available to Gypsies if they choose to reside at sites other than those provided by local authorities specifically for Gypsies. In general, the key difference between such sites has been the greater flexibility, which is usually available on local authority Gypsy sites, in order to accommodate the nomadic lifestyle of occupiers. This may allow Gypsies to remain on a site on a short-term basis, or to retain a site for 12 months of the year, while paying a reduced rent as a retainer during the few months of the year while they may be travelling in search of seasonal work. Other local authority sites and private sites, in general, are aimed at longer-term residential occupiers, without the need for such flexibility because they are not pursuing a nomadic lifestyle.

27. Nevertheless, there are of course a number of Gypsies who occupy sites on a long-term basis, and other mobile home residents who do not consider themselves to be Gypsies, but who prefer to occupy private sites on a more short-term basis. The aim of the separate statutory frameworks is to ensure diversity of provision to meet the varying needs of different individuals and families; it is not to classify or categorise individuals or families. Accordingly, Gypsies seeking to settle on a more permanent site may occupy private or local authority (non-Gypsy) sites and benefit from the scheme put in place by Part I of the 1968 Act and the 1983 Act. This diversity of public and private site provision reflects that which is available in housing generally.

28. The separate statutory framework allows for flexibility in meeting the accommodation needs of Gypsies. It appears that the Defendant is effectively arguing in these proceedings in favour of a single statutory framework applicable to all caravan sites, including local authority Gypsy sites. In my view, such a single statutory framework would be detrimental to the interests of Gypsies throughout the country. If the security of tenure provisions of that framework applied equally to local authority Gypsy sites, it would undermine the flexibility that such sites provide in catering for the varied lifestyles of Gypsies. Some may move from site to site on a regular basis, while others may be more permanently based on a site, possibly travelling for a few months each year to take on seasonal work. If each Gypsy were able to rely on security of tenure then every site, whatever its designation, could potentially become a permanent site with no scope to accommodate short-term occupiers. Furthermore, if there were no longer a distinction in the statutory framework allowing flexibility for the provision of Gypsy sites, then there would be nothing to prevent any person residing in a mobile home seeking to occupy a Gypsy site, whether or not they pursue a nomadic lifestyle. Inevitably, fewer sites, if any, could be made available specifically for Gypsies pursing a nomadic lifestyle.

...

32. Experience suggests that local authorities would face difficulties in managing sites if eviction were subject to broad discretionary powers of the courts to suspend or attach conditions to orders. There is a balance to be struck between the latter and the merits of flexibility (already mentioned) that such sites offer in catering for the varying accommodation needs of Gypsies. To this (and in favour of the existing position) must be added the fact that in reaching decisions about evictions local authorities, as responsible bodies, need to take into account the range of obligations and considerations outlined in paragraph 29 above. These amount to significant safeguards against unscrupulous or unjustified evictions. Furthermore local authority decisions in relation to eviction are open to challenge by way of judicial review.' "

50. The judge concluded:

"38. While I am not over-impressed by the vagueness of the statement in paragraph 32 that 'experience suggests', applying the guidance given by Laws LJ in *Smart*, this evidence satisfies me that the exempting provisions are 'necessary in a democratic society', and a proportionate response to a social need, and do not amount to an infringement of Article 8. It is true that occupiers of exempted sites do not have the benefit of the safeguards applicable to introductory tenants. In practice, however, they are able to bring judicial review proceedings where the circumstances justify them, and I do not think that the absence of those safeguards substantially prejudices persons such as the Defendant. Moreover, any such safeguards would detract from the flexibility that Parliament has decided is appropriate for exempted sites. ...

39. I can deal with Article 14 quite shortly. The exemption in section 4(6) of the CSA is justified by the special position of local authorities and the policy considerations referred to above. The exemption is section 5 of the MHA depends on the status of the site owner as a local authority, and not on any personal quality of the licensee or tenant. It therefore raises no question of discrimination contrary to Article 14.

Conclusion

...

41. This conclusion is consistent with that of the Commission in P v. UK (App. No. 14751/89) which rejected as inadmissible the complaint by gypsies that their eviction from an exempted site infringed their rights under Articles 8 and 14. Mr Watkinson submitted that this decision was no longer applicable by reason of the abolition of the duty of local authorities to provide sites for gypsies. As I stated above, I do not regard this as a valid distinction between the present position and that before 1994. There are still sites provided by local authorities for gypsies, and indeed if there were none there would be no scope for section 5 of MHA."

(b) R. (Smith) v. Barking and Dagenham London Borough [2002] EWHC 2400

51. In this case, a Romany gypsy, threatened with eviction from a council site, sought a declaration that the provisions of the 1968 Act were in breach of Articles 8 and 14 of the Convention insofar as it failed to provide the protection given to secured tenants of local authority conventional

housing. In rejecting the application, Mr Justice Burton noted that the parties had agreed that there had, in the past, been objective justification for the lack of security of tenure of gypsy occupiers of council sites and that the claimant's case was that, in light of changes, that was no longer the case. He summarised the Secretary of State's case for justification for the absence of security of tenure as follows:

> "i. Nomadism. The whole raison d'être for gypsy culture and identity, and indeed its defining factor, given the absence of necessary ethnicity - not all gypsies are Romanies, not least the so-called New Travellers - is nomadism. Hence the definition in section 16 of the 1968 Act...
>
> ii. Site availability. There must be a substantial availability of sites for gypsies. Stanley Burnton J referred to the problem of 'balance' in general terms in Isaacs in paragraph 33: [cited above].
>
> The submission is thus that there is no good clogging up all the caravan sites with those who do not move, and effectively removing them from the stock of available sites, by giving security of tenure.
>
> iii. Flexibility. This is reflected in the decision in Isaacs. There is a stock of secure pitches on private sites, where there is security of tenure by virtue of the MHA. It is in respect of private sites that protection from commercial exploitation is necessary, and in any event the safeguard of administrative law remedies is not available. Thus the necessary 'mix' of private and council, secure or insecure, pitches, is maintained.
>
> Mr Gahagan [Director of Housing at the Department for Transport, Local Government and the Regions] most clearly sets out the effect of these justifications in combination at paragraph 15 of his reply witness statement:
>
> *'There are limited resources for providing publicly funded accommodation, whether it be for gypsies or members of the 'settled' community. The Government is trying to make sure that there is provision for gypsies who have a nomadic way of life. There are other alternative forms of occupation for those with a settled way of life, which are as equally available to gypsies as they are to any other person. However if accommodation which was intended for those with a nomadic way of life could become converted into accommodation for those with a settled way of life just by the life choices made by the occupants, then this would make planning for nomadic persons by local and central Government very difficult.'*
>
> Dr Kenrick [Chairman of the Romany Institute, expert witness instructed by the claimant], while not challenging the historic justification, submits that it no longer applies:
>
> *'44. Mr Gahagan states that the legislation regarding gypsy accommodation is tailored so as to facilitate a nomadic way of life... The fact is that the nomadic way of life is ending for most gypsies, and therefore the existing legislation is unsatisfactory...*
>
> *66. In conclusion, the situation today is very different from what was envisaged at the time of the 1968 ... Act and the [MHA]. The examples I have given of the low turnover and lack of vacancies show that council sites are becoming permanent residences for most of the families. They often have mobile homes and utility*

buildings. In this changed situation there seems no reason why residents should not have the same right as the tenants of council housing or non-Gypsy mobile home sites.' "

52. The judge summarised the statements of both Mr Gahagan and Dr Kenrick concerning the differing patterns of life chosen by gypsies: Mr Gahagan emphasised the flexibility necessary to cope with those who move on a regular basis or were permanently based on one site but possibly travelling several months a year while Dr Kenrick stated that position had substantially moved on from the time of the 1968 Act when it was anticipated that 20% of families travelled, that local authorities even encouraged families to become permanent residents by allowing them to leave for periods and pay half rent and that for the small minority that travelled all year round there were the existing small number of transit sites. The judge then summarised the conclusions of the October 2002 report (see below) which was found to be the most significant feature in the evidence before him.

53. The judge concluded:

"32. It is plain from the passages of the October 2002 Report that I have cited that it is now accepted that there is a substantial majority that no longer travels for any material period, albeit that there is a substantial minority that does travel. No figures have been produced, and, as Dr Kenrick himself has pointed out, no statistics as to turnover yet exist, but the varied passages from the Report which I have cited in paragraph 30(vi) show that it is accepted that some thinking must now be done. Nevertheless when asked by me whether the Secretary of State wanted an adjournment to consider the position further, Mr Mould clearly stated that no such adjournment was sought, and that his case remains that, rethink though there plainly is going to be, the Secretary of State still accepts the onus of showing that the present legislation can still be justified. This is not a case, as adumbrated in *Seymour-Smith* and *Hooper*, where the Government now accepts that the position can no longer be justified but asserts an entitlement to a period to correct discriminatory effects before a declaration is made... but rather a situation where the Government is still in the process of monitoring the position and, until it reaches a conclusion, asserts that the present position can be justified.

33. If this were simply a matter of concluding that there is now a substantial majority of gypsies who are no longer nomadic, whose position can be immediately safeguarded by some new legislation of the kind discussed in general terms in paragraph 31 above, I would not feel inhibited either by the well-established principles of allowing deference and/or a margin of appreciation to Government or Parliament... nor in particular by the principle enunciated by the Court in Mellacher ... whereby the 'possible existence of alternative solutions does not in itself render the contested legislation unjustified'. However I am satisfied that the position is not so straightforward. There is, in my judgment, quite apart from any simple question of giving security of tenure to those in council caravan sites, a necessary, indeed, crucial, concomitant question to be considered and resolved, before it can be concluded that the present position is unjustified. I conclude that there is a very difficult question of how to define gypsies, to whom security of tenure in such sites is to be given (if it is). If security of tenure is to be given to all long-term caravan occupiers on council sites, as they are on private sites, then how, if at all, is there to be any differentiation

between gypsy/traveller occupiers and any other occupiers who wish to place a mobile home on a local authority site, with security of tenure? And if there is to be no such differentiation, then the last state of gypsies whose *cultural heritage or spiritual and cultural state of mind* is nomadism or travelling may be worse than the first. At present that actual or potential nomadism ('a substantial nomadic habit of life') is the justification both for the lack of security of tenure and also for the special arrangements for local authority sites catering especially for them, i.e. within section 24 of the Caravan Sites and Control of Development Act 1960. Dr Kenrick himself refers obliquely to the problem, in paragraph 53 of his witness statement: "*The residents of council sites do not have to retain their Gypsy status (by travelling for an economic purpose...) in order to retain their pitches.*" ...

35. I am satisfied that ... the absence of security of tenure for all gypsy/travellers on all local authority sites, is still appropriate and justified. I have no doubt that the Government will give further thought to the position, as indicated in the October 2002 Report, will obtain the necessary further statistics and will, pursuant to its own declared intention to give protection to gypsies and their way of life, continue *monitoring* the present position. Meanwhile, the safeguard of judicial review remains, and, although there is some discussion in the Report (pp. 246-7) about the present lack of security of tenure, eviction of residential gypsy occupiers on local authority caravan sites is not flagged up as a present problem..."

(c) Sheffield City Council v. Smart [2002] EWCA Civ O4

54. In this case, which dealt with local authority housing for the homeless that fell outside security of tenure provisions, the Court of Appeal rejected the applicants' claims that their summary eviction breached Articles 6 or 8 of the Convention:

"If this court were to hold that a tenant in the circumstances of either of these appellants is by force of Article 8(2) entitled to have the county court judge (or the judicial review court it matters not) decide on the particular facts whether her eviction is disproportionate to the council's aim (in essence) of managing its housing stock properly, we would in effect thereby convert the non-secure tenancies enjoyed by homeless persons into a form of secure tenancy. We should be imposing a condition, not unlike the requirement of reasonableness presently applicable in relation to secure tenancies under the 1985 Act, which takes the judgment whether possession of the premises should be obtained from the landlord council and gives it to the court...[the appellants' argument] ... amounts in truth to a 'macro' assault on the mechanics of the statutory scheme for protection of homeless persons..."

4. Report on the Provision and Condition of Local Authority Gypsy/Traveller Sites in England (October 2002)

55. This report, issued by the Office of the Deputy Prime Minister, summarises the information and conclusions of research on the extent and quality of local authority gypsy sites carried out by the Centre for Urban and Regional Studies at the University of Birmingham.

56. In the Executive Summary, it is noted that:

"– There is no clear, widely understood national policy towards accommodation for Gypsies and other Travellers in England; there is a general feeling that such a policy is needed involving local authorities and others but with a strong lead from central government.

– There are around 320 local authority sites providing about 5,000 pitches. It is important that the existing network is retained and currently closed sites brought back into use. ...

– We estimate that between 1,000 and 2,000 additional residential pitches will be needed over the next five years. Between 2,000 and 2,500 additional pitches on transit sites or stopping places will also be needed to accommodate nomadism. The latter need to form a national network.

– There are obvious barriers to site provision, especially through resistance from the settled community. Many believe a statutory duty and central subsidy are needed to 'encourage' local authorities to make provision. Treating site provision in the same way as housing for planning purposes could help.

– Site management is more intensive than is usual for social housing management and requires higher staff/resident ratios. It should be 'firm but fair'. There are areas where greater formality might be introduced, including performance monitoring..."

57. Concerning the legal definition of a gypsy (page 7):

"The legal definition of a 'Gypsy' is 'persons of nomadic habit of life, whatever their race or origin', excluding members of an organised group of travelling showmen or those engaged in travelling circuses. This was clarified in the case of R v. South Hams ex parte Gibbs as 'persons who wander or travel for the purpose of making or seeking their livelihood not persons who move from place to place without any connection between their movement and their means of livelihood)'. Thus the legal definition is explicitly concerned with habitual lifestyle rather than ethnicity, and may include both 'born' Gypsies or Travellers and 'elective' Travellers such as the so-called New (Age) Travellers, once a sufficient nomadic habit of life has been established.

Alongside the legal definition, there is an ethnic definition of a Gypsy or Traveller... Romany Gypsies were accepted as an ethnic group for race relations legislation in 1989. Irish Travellers ... were accepted as an ethnic group for race relations legislation in August 2000."

58. Concerning travelling (page 8):

"Not all ethnic Gypsies and other Travellers travel regularly. A range of travelling patterns exists. Frequency of travel ranges from full-time Travellers with no fixed base, to families who live in one place most of the year, but still travel with living vehicles for holidays or family events. Some travel long distances across regions even countries, while some regular travellers never leave a single town. Travelling is part of the cultural heritage of traditional Gypsies and Travellers, and is still culturally important, even for those who no longer actively travel...

There are some indications that fewer Gypsy/Travellers now travel full-time, and some have 'settled' for a combination of reasons related to personal circumstances, greater difficulties in travelling and finding safe places to stop, and a desire for a more comfortable lifestyle and education for children. However it would be unwise to assume that any trend towards greater 'settlement' is universal, or unidirectional. Individuals can pass from one pattern of travelling to another in line with family cycle, health and personal circumstances."

59. Concerning overall Gypsy/Traveller Accommodation Issues (page 11):

"In most local authorities Gypsy/Traveller accommodation policies are not well-developed, if they exist at all. ... In part this reflects the lack of a specific duty to consider Gypsy/Traveller needs, and in part a tendency to equate Gypsy/Traveller accommodation with site provision - so an authority without a site has no policy.

Where policies exist, they are not always comprehensive and integrated...History and individual personalities seem to have an influence on the approach taken locally. Most policies have been developed without input from Gypsies and other Travellers..."

60. Concerning site dynamics and turnover (pages 28-29):

"Most residential Gypsy/Traveller sites appear to have a very low turnover, and are stable. Most residents have lived on site for three years or more on 86% of sites. ...While there are exceptions, the general picture built up of residential Gypsy/Traveller sites is that they are stable, with long-term residents who travel little during the course of a year. It may be that, for many residents, the attractions of the site lie in the possibilities of living in a trailer (attractive for cultural reasons and leaving the option of travel open) and of living within a culturally distinct community among friends and family. This is not necessarily the same as meeting the needs of a nomadic or semi-nomadic population. For many residential site residents, nomadism appears to be a spiritual and cultural state of mind, rather than a day-to-day reality."

(Page 31):

"Pitch vacancies on residential sites arise infrequently. Eight out of ten residential sites have a waiting list for places ..."

61. Concerning licence agreements, rules and enforcement (page 31):

"Enforcement of licence conditions is an important element in overall site management. The ultimate sanction – very rarely evoked in the case studies - is eviction, but most action occurs well before this stage. ..."

62. Concerning accommodation for nomadism (page 41):

"An unknown proportion of Gypsies and other Travellers still actively travel whether throughout the year, seasonally or on special or family occasions. Those who travel throughout the year may have no fixed base at all... There is little formal provision to accommodate Travellers and their trailers while on the road. There are just 300 transit pitches provided on local authority sites. Recent Gypsy counts have shown roughly ten times as many caravans on unauthorised encampments. Even taking into account the unknown number of private transit pitches, it is clear that 'nomadism' is currently mostly accommodated informally and often – from the viewpoint of both the settled community and Travellers – unsatisfactorily.

... The need for a range of transit accommodation has been recognised for at least forty years, yet supply is still small and, as this research has shown, actually shrinking..."

63. Concerning conclusions and recommendations:

"One of the clearest conclusions from the research is the lack of any clear, widely understood national policy towards accommodation for Gypsies and other Travellers in England, and a general feeling that such a policy is needed...." (page 50)

"Another very clear conclusion from the research is that Gypsies and other Travellers are often socially excluded and still suffer discrimination in many areas of life. There is a need for a clear central lead to affirm the legitimacy of a nomadic way of life and to challenge racism and discrimination against Gypsies and other Travellers. There is also a need to make Gypsies and other Travellers less 'invisible' in policies aimed to help socially and economically disadvantaged groups. ..." (page 51)

"Another approach worth considering it to bring site provision more closely within mainstream housing. Given the stability discovered on many residential sites, it seems entirely appropriate to see them as a form of specially adapted housing for Gypsies and other Travellers... Housing associations could become involved in site provision and management and the Housing Corporation could provide social housing grant as for other general and special needs housing. Issues around site licensing and model standards, and tenure (whether or not the Mobile Homes Act 1983 might apply) would need to be clarified." (page 52)

"Residents of residential Gypsy /Traveller sites are licensees with only basic protection against harassment and illegal eviction. Many Gypsy/Travellers and their supporters argue strongly that this is not appropriate and puts Gypsies and other Travellers at a serious disadvantage relative to social housing tenants and especially secure council tenants. Given the changes in tenancies currently being considered, it might be worth thinking further about the status of site residents..." (page 54)

5. Report on Local Authority Gypsy/Traveller Sites in England (July 2003)

64. This report, issued by the Office of the Deputy Prime Minister, provided further information and conclusions of research on the provision and management of local authority gypsy sites carried out by the Centre for Urban and Regional Studies at the University of Birmingham.

65. In the section "Licence Agreements, Rules and Enforcement" (pp. 118-123), it is stated *inter alia*:

"Gypsy/Traveller site pitches are let on a licence rather than a tenancy. This is in itself contentious with some Gypsies and other Travellers and their supporters. As licensees, site residents enjoy less security and fewer rights than council tenants. ...

The less security is argued to be justified on the grounds that local authority sites need greater flexibility in order to accommodate the nomadic lifestyle of occupiers. This envisages shorter stays, and the possibility of retaining a pitch for seasonal travelling (see *Somerset County Council v. Isaacs*, 2002). ...

> Opinion is mixed between case study respondents on whether site residents should continue as licensees or have some form of tenancy. Some feel that good site management requires the ability to – occasionally and in extreme situations – step in quickly and get a troublemaker off the site. This recognises that violence, crime or anti-social behaviour can have the effect of very quickly emptying a site of residents (who are mobile and take their homes with them) as well as potentially causing severe physical damage to the site and its facilities. The opportunity for prompt action is essential to safeguard the interests of respectable residents and staff who have to visit the site. They therefore do not want anything which gives greater security of tenure.
>
> Other local authority respondents argue that licensee status makes Gypsies and other Travellers into second class citizens, and that everything possible should be done to regularise their position alongside tenants in permanent housing. They recognise that most residential sites are now stable and provide long-term accommodation rather than specifically catering for nomadism. They see the advent of introductory tenancies for social housing as a protection against bad behaviour from new residents...
>
> Residents occasionally express the argument often made by site managers... against increasing security of tenure because of the need for a power to be able to get rid of bad or disruptive residents quickly in order to protect the interests of the other residents and the quality of the site as a whole.
>
> On the other hand, lack of security means that even long-standing residents are dependent on the continued goodwill of the operator, to an extent that few of them seem to realise. The more settled people become, the more important tenure seems likely to be to them as long-term residents begin to improve and develop their plots, build sheds of their own, and so on. Some may acquire mobile homes rather than caravans which would be difficult to move and re-site. It is generally thought hard to find space on an official site – particularly on a good one as there aren't many sites and a lot of them are thought to be full. It can seem unreasonable that people should still be on four weeks notice if they have lived 20 or 30 years in one place, behaved well over that time and have invested in developments of their plot or home."

66. According to statistics given, evictions in fact occurred on four out of 76 sites during 2000/1 (5%). On three sites there was a single eviction and on one there were three evictions. Reasons seem to have combined both arrears and anti-social behaviour.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

67. Article 8 of the Convention provides as relevant:

> "1. Everyone has the right to respect for his private and family life, his home...
>
> 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."

68. The parties were agreed that Article 8 was applicable in the circumstances of this case and that the eviction of the applicant from the site on which he had lived with his family in his caravans disclosed an interference with his right to respect for his private life, family life and home.

69. The parties were also agreed, in the context of the second paragraph of Article 8, that the interference was "in accordance with the law" and pursued a legitimate aim, namely, the protection of the rights of other occupiers of the site and the Council as owner and manager of the site.

70. The question remaining for examination by the Court is whether the interference was "necessary in a democratic society" in pursuit of that aim.

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

1. The parties' submissions

(a) The applicant

71. The applicant contended that his eviction from the site interfered unjustifiably with his rights under Article 8 of the Convention, as being unnecessary and disproportionate, in particular as he was not given the opportunity to challenge in a court the allegations made against him and his family. He denied that he or members of his family living on the plot had breached any term of the licence as alleged by Council officers and stated that he had no control over the conduct of visitors to the site, such as his adult sons or Michael Maloney. There was significant support for his family from other occupiers of the site which contradicted the situation as described by the Council. He disputed that it was reasonable or proportionate to evict him and his family for reasons relating to other adults. The Council failed to use other methods to control the alleged misbehaviour, such as injunctions or committal proceedings against those adults who were committing the damage or nuisance and appeared to make no distinction concerning the occupation of the two plots, 35 and 36. Nor when the applicant gave undertakings in court on 14 April 2000 did the Council apply for enforcement measures in respect of alleged breaches.

72. Contrary to the Government's assertions, the applicant submitted that he had no means of requiring the Council to substantiate its allegations against him and thereby resisting the revocation of his licence or preventing the eviction. There was extensive dispute as to the facts and allegations which could not be tested in the summary proceedings or in the judicial

review proceedings, which preceded the coming into force of the Human Rights Act 1998. No opportunity was given for the submission of evidence, hearing or cross-examination of witnesses on these matters. As a result, there was no meaningful assessment as to whether the measures were proportionate or justified in pursuit of any legitimate aim. Following the Human Rights Act 1998, the cases before the domestic courts showed that they would not apply the Convention in such a manner as to overturn the system of security of tenure provided for in the legislation.

73. The applicant submitted that, notwithstanding the Government's explanations about alternative provision, there was no evidence in West Yorkshire of any encouragement for gypsies to purchase and occupy their own private sites. Gypsies in that area who wished security of tenure could not move to privately run sites as there were none. On the contrary there were many examples of enforcement action being taken against gypsies' occupation of their own land. Nor were there any temporary stopping places with basic facilities as envisaged in Government circulars such as 18/94. Since the repeal of the 1968 Act, there had been a reduction of 27% in local authority site provision for gypsies in Leeds, *e.g.* from 56 plots to 41. The applicant denied that he was advocating a single statutory framework for all sites, arguing that a particular need for flexibility in gypsy provision could be reflected in grounds available for possession (for example, unmaintained caravans, absence exceeding a particular period), but not by ignoring the need to prove disputed facts. Different regimes should not necessitate that gypsies on local authority sites lose the benefit of court protection to test, for example, an alleged breach of licence. As a Council tenant faced with an allegation of anti-social behaviour could argue his/her case in court, he saw no reason why a gypsy facing such allegations should not be able to do so.

74. As regarded the Government's policy arguments, he referred to the October 2002 report (paragraphs 55-63 above), which noted that there was in fact no clear national policy on accommodation for gypsies and that the majority of occupants of local authority gypsy sites lived a largely sedentary life, with a very low turnover of vacancies on such sites. In those circumstances, it was not the case that these sites were needed, or used, for the minority of gypsies who followed a substantially nomadic lifestyle and it was appropriate to bring site provision more closely within mainstream housing as a form of specially adapted housing for gypsies. It would be possible to safeguard the interests of the persons of nomadic habit by designating certain pitches for "transit" while at the same time conferring security of tenure on the majority of the residents of local authority gypsy sites. Similar exceptions for special purposes occurred in the Housing Act 1985.

75. The applicant argued that difficulties of proving anti-social behaviour existed equally on other mobile home sites, including privately run gypsy sites, and on housing estates, to which security of tenure did

apply. He saw no reason why, if it was reasonable and workable for owners of privately run sites and housing associations and local authority landlords of housing tenants to prove allegations, local authorities who ran gypsy sites could not be required to the do the same. He noted that ample powers were available to a court to deal as a matter of urgency with troublemakers, including the power to grant interim injunctions and the powers under the Anti-social Behaviour Act 2003 which did not require the attendance of witnesses in court. He also disputed that the regime as it existed brought any financial benefit to gypsies through low costs as the cost of a pitch was variable, the average being much the same as rent for a Council house and in his case being almost double.

76. Furthermore, the applicant submitted that in his case, which concerned interference with an important right rendering his family homeless with loss of effective access to education and health services, the margin of appreciation should be narrow rather than wide. He considered that his case could be distinguished from *Chapman v. the United Kingdom,* ([GC] no. 27138/95, ECHR 2001-I, § 92), relied on by the Government, as that concerned a local planning decision grounded in local knowledge and understanding of local conditions whereas his case concerned assessment of a general policy at national level.

(b) The Government

77. The Government submitted the interference was justified as necessary in a democratic society and was proportionate to its objectives. The applicant had agreed to occupy the plot on the terms that neither he, his family nor guests would cause a nuisance and he had been warned by the Council that he was in breach. In the circumstances, the Council was entitled to revoke the licence. Similar terms would have applied to a secure housing tenant. Though the licence did not require the Council to give the applicant the opportunity to challenge the allegations of nuisance made against him, it was a public authority obliged to act lawfully, reasonably, fairly and for the proper purposes for which its powers were conferred. Its decisions were therefore amenable to judicial review and the applicant, who was legally represented, was able to challenge the decision in judicial review proceedings where the High Court found no evidence to doubt the reasonableness and procedural fairness of the Council's decision. The Council had also taken into account the needs of the applicant and his family in the decision-making process. If there had been no proper basis for the eviction or the applicant had mounted a substantial factual challenge to the asserted justification, the domestic courts would have been able, through their scrutiny, to provide a remedy against arbitrary action. There was however no substantial dispute as to the primary facts as the applicant did not appear to deny that his sons and guests were causing a nuisance. This procedure therefore provided the applicant with a series of important

safeguards. In addition to the remedy of judicial review, occupiers had, since 2000, a right of action under the Human Rights Act 1998, pursuant to which the courts can consider directly claims of violation of the Convention (see, for example, *Somerset County Council v. Isaacs*, paragraphs 47-50 above).

78. While they accepted that the statutory protection from eviction which the applicant enjoyed in respect of the plot was more limited than if his caravan had been on a site other than one provided by a local authority for gypsy accommodation, the Government emphasised that statutory regulation of housing was a matter of some complexity and within the area in which courts should defer to the decision of the democratically elected legislature. A wide margin of appreciation applied equally to this situation as it did in the planning context (see *Chapman v. the United Kingdom*, cited above, § 92). They argued that the limited degree of protection was justified with regard to the differing aims of the statutory schemes concerned. Regarding the provision for gypsies, it had to be recalled that the 1968 Act had sought to remedy the grave shortage of sites for gypsies who led a nomadic lifestyle by placing a duty on local authorities to provide such sites. By 1994, the Act was found to have served its purpose as far as it could reasonably be expected to, with local authority sites providing the largest contribution to the overall accommodation needs of gypsies. Policy then changed its emphasis to encouraging gypsies to promote their own sites via the planning process. The authorities were keeping the situation under review, as seen in the independent reports issued in October 2002 and July 2003, which did not reveal that the exemption posed any problems in practice in the operation of local authority gypsy sites. It was apparent in the latter report that local authorities used their powers of eviction sparingly and as a sanction of last resort. It remained however an important management tool.

79. Notwithstanding shifts in gypsy habits, the existing local authority supply of sites remained an essential component of the Government's strategy of ensuring an adequate level of provision for gypsies and the policy of the legislation was to maintain and safeguard that distinct supply. Thus the special regime of tenure applicable to local authority gypsy sites reflected the need to ensure that local authorities were able to operate their gypsy sites in a flexible way that met the special accommodation needs of gypsies consistent with their nomadic lifestyle. To require local authorities to justify in court their management decisions in relation to individual occupiers would add significantly to their administrative burden, increasing costs and licence fees and would reduce the flexibility intended by the framework. The domestic courts examining the cases of *Isaacs* and *Smith* concluded, in light of the evidence submitted, that there remained objective justification for current legislative arrangements on local authority gypsy sites (see paragraphs 47-53 above). The issues raised in the recent reports

were now the subject of a thorough Government review of policy, which would include the existing regime of tenure on local authority gypsy sites and examine all the competing interests. It was not the case that the reports established that this regime was currently unjustifiable or that there was a readily identifiable and workable alternative regime of greater security of tenure that would overcome the applicant's complaints in this case.

80. The Government further explained that the policy and object of the mobile homes legislation was to remedy a different problem, namely, the inequality of bargaining power between the mobile home owner and the site owner, in which area there was a deficiency of supply over demand which the private sites, run as businesses, were in a position to exploit, by for example compelling a resident to buy his mobile home from the site owner and then evicting him and forcing him to sell the home back at a significant undervalue. The 1983 Act was designed specifically to remedy such abuses by giving residents of such sites stronger security of tenure. On the other hand, the regime applicable to local authority gypsy sites enabled disruptive occupiers to be dealt with quickly, preventing damage to the site and forestalling the tendency of the other occupiers to leave to avoid the problem. There was the practical advantage that this avoided the need to produce witnesses, there being a reported reluctance for other occupiers to get involved or "inform" on rule-breakers.

2. The Court's assessment

(a) General principles

81. 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, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, 27 September 1999, §§ 88, ECHR 1999-VI).

82. 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. The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (see, for example, *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, p. 21,

§ 52; *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A, no. 104, § 55). On the other hand, in spheres involving the application of social or economic policies, there is authority that the margin of appreciation is wide, as in the planning context where the Court has found that "[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 (*Buckley v. the United Kingdom,* judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV*,* p. 1292, § 75 *in fine*). The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 45, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 49*)*. It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, *mutatis mutandis*, *Gillow v. the United Kingdom*, cited above, § 55; *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III; *Christine Goodwin v. the United Kingdom*, no. 28957/95, § 90, ECHR 2002-VI). Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (*Hatton and others v. the United Kingdom*, [GC] no. 36022/97, ECHR 2003-..., §§ 103 and 123).

83. 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, *Chapman v. the United Kingdom* [GC], no. 27138/95, ECHR 2001-I, § 92).

84. 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 framework and in reaching decisions in particular cases (*Buckley* 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 *Chapman*, cited above, § 96 and the authorities cited, *mutatis mutandis*, therein).

(b) Application in the present case

85. The seriousness of what was at stake for the applicant is not in doubt. The applicant and his family were evicted from the site where they had lived, with a short absence, for some fourteen to fifteen years, with consequent difficulties in finding a lawful alternative location for their caravans, in coping with health problems and young children and in ensuring continuation in the children's education. The family was, in effect, rendered homeless, with the adverse consequences on security and well-being which that entails. The Council, and the Government in these proceedings, took the view that the eviction was justified by a breach of the licence conditions, the applicant being responsible for causing nuisance on the site. The applicant contested that he was at fault. It is not for the Court however to assess in retrospect whose version of events was correct as the Council in evicting the applicant relied instead on the power to give 28 days notice to obtain summary possession without proving any breach of licence. While it was variously alleged by Council officers that the applicant's licence conditions had been breached due to the unruly conduct of persons on his pitch and contended by the applicant that any problems arose from adult visitors from off the site over whom he had no control, the respective merits of the arguments were not examined in the County Court proceedings, which were only concerned with the fulfilment of the formal conditions for the eviction. The central issue in this case is therefore whether, in the circumstances, the legal framework applicable to the occupation of pitches on local authority gypsy sites provided the applicant with sufficient procedural protection of his rights.

86. The serious interference with the applicant's rights under Article 8 requires, in the Court's opinion, particularly weighty reasons of public interest by way of justification and the margin of appreciation to be afforded to the national authorities must be regarded as correspondingly narrowed. The Court would also observe that this case is not concerned with matters of general planning or economic policy but with the much narrower issue of the policy of procedural protection for a particular category of persons. The present case may also be distinguished from the *Chapman* case (cited above), in which there was a wide margin of appreciation, as in that case, it was undisputed that the applicant had breached planning law in taking up occupation of land within the Green Belt in her caravans and claimed, in effect, special exemption from the rules applying to everyone else. In the present case, the applicant was lawfully on the site and claims that the procedural guarantees available to other mobile home sites, including privately run gypsy sites, and to local authority housing, should equally apply to the occupation of that site by himself and his family.

87. The Government have argued, firstly, that there is a need to exempt local authority gypsy sites from security of tenure provisions that apply in other areas of accommodation. Government policy sought to cater for the

special needs of gypsies who live a nomadic lifestyle and this, they emphasised, required flexibility in the management of local authority sites. They argued, secondly, that the power to evict summarily was a vital management tool in coping with anti-social behaviour as without speedily removing troublemakers the other gypsy families would tend to abandon the site rather than assisting the local authority by "informing" on others and giving evidence in formal court procedures. As a subsidiary argument, they submitted that the additional costs of court procedures could increase the fees applicable to gypsy sites and thus act to the overall detriment of the gypsy population as a whole.

88. As regards the nomadism argument, the Court notes that it no longer appears to be the case that local authority gypsy sites cater for a transient population. The October 2002 report (see paragraphs 55-63 above) indicates, as has been apparent from the series of cases brought to Strasbourg over the last two decades, that a substantial majority of gypsies no longer travel for any material period. Most local authority sites are residential in character. On 86% the residents have been in occupation for three years or more and there is a very low turnover of vacancies. Of an estimated 5,000 pitches, only 300 are allocated as transit pitches. It is not apparent that it can be realistically claimed that the majority of local authority sites have to provide, or aim to provide, a regular turnover of vacancies to accommodate gypsies who are travelling round or through the area. The Court is not persuaded therefore that the claimed flexibility is related in any substantial way to catering for an unspecified minority of gypsies who remain 'nomadic' and for whom a minimum of transit pitches have to be made available. It appears that there are in fact specific sites designated as "transit" sites and that these are distinguished from the vast majority of other local authority gypsy sites. The material before the Court certainly does not indicate that eviction by summary procedure is used as a means of maintaining a turnover of vacant pitches or of preventing families from becoming long-term occupants.

89. As regards the use of summary eviction as a tool in controlling anti-social behaviour, the Court would note that the 2003 report indicates that it is in fact only rarely used – on 5% of sites – and that some local authorities considered that the licence status of gypsies made them second-class citizens and would prefer to regularise their position to bring them into line with other forms of social housing (see paragraphs 64-66). The mere fact that anti-social behaviour occurs on local authority gypsy sites cannot, in itself, justify a summary power of eviction, since such problems also occur on local authority housing estates and other mobile home sites and in those cases the authorities make use of a different range of powers and may only proceed to evict subject to independent court review of the justification for the measure. Notwithstanding the assertion that gypsy attitudes to authority would make court proceedings impractical, it may be noted that security of

tenure protection covers privately run gypsy sites to which the same considerations would appear also to apply. Consequently the Court is not persuaded there is any particular feature about local authority gypsy sites which would render their management unworkable if they were required to establish reasons for evicting long-standing occupants. Nor does it find any indication that the gypsies would lose the advantage of low financial costs attaching to local authority sites. According to the submissions of the applicant, which were not contested by the Government, local authority gypsy sites do not benefit from particularly low licence fees and in his case he had to pay double the rate of a local authority housing tenancy.

90. Nor does the gypsy population gain any benefit from the special regime through any corresponding duty on the local authority to ensure that there is a sufficient provision for them (see *P. v. the United Kingdom,* no. 14751/89, decision on admissibility of 12 December 1990, Decisions and Reports 67, p. 264, concerning the regime applicable before the repeal of section 6 of the Caravan Sites Act 1968 and paragraphs 35-36 above). The October 2002 report noted that 70% of local authorities did not have any written gypsy/traveller accommodation policy and commented that this reflected the lack of a specific duty on local authorities to consider their needs (paragraph 58 above). Since the 1994 Act came into force, there has been only a small net increase in the number of local authority pitches. The case of *Chapman*, together with the four other applications by gypsies decided by the Grand Chamber (*Beard v. the United Kingdom*, no. 24882/94, *Coster v. the United Kingdom* no. 24876/94*, Jane Smith v. the United Kingdom*, no. 25154/94, and *Lee v. the United Kingdom*, no. 25289/94, judgments of 18 January 2001), also demonstrate that there are no special allowances made for gypsies in the planning criteria applied by local authorities to applications for permission to station of caravans on private sites.

91. The Government have pointed out that the domestic courts, since the entry into force of the Human Rights Act 1998, have examined the Convention issues in similar cases and found no violations of Articles 14 or 8. The Court notes that the High Court has reviewed the lack of security of tenure of gypsies on local authority sites in a number of cases. There is force in the Government's argument that some weight should be attached to the views of national judges who are in principle better placed than an international one to assess the requirements of the society because of their direct and continuous links with that society. However, in *Isaacs*, the judge commented that he was not over-impressed by the vagueness of 'experience' relied on by the Government in justifying the necessity of the regime (see paragraph 50 above), while in *Smith*, the judge implied that he would have no difficulty in concluding that there were a substantial majority of gypsies who were no longer nomadic whose position could immediately be safeguarded by some new legislation (paragraph 53 above). The Court

would observe that the domestic courts stopped short of finding any breach of the provisions of the Convention, having regard *inter alia* to the perceived existence of safeguards that diminished the impact on the individual gypsy's rights and to a judicial reluctance to trespass on the legislative function in seeking to resolve the complex issues to which no straightforward answer was possible. The domestic courts' position cannot therefore be analysed as providing strong support for the justification of continuing the current regime.

92. The existence of other procedural safeguards is however a crucial consideration in this Court's assessment of the proportionality of the interference. The Government have relied on the possibility for the applicant to apply for judicial review and to obtain a scrutiny by the courts of the lawfulness and reasonableness of the Council's decisions. It would also be possible to challenge the Council for any failure to take into account in its decision-making relevant matters such as duties towards children (see paragraph 42 above). The Court would recall that the applicant sought permission to apply for judicial review and that permission was refused. In the applicant's case, his principal objection was based not on any lack of compliance by the Council with its duties or on any failure to act lawfully but on the fact that he and the members of the family living with him on the plot were not responsible for any nuisance and could not be held responsible for the nuisance caused by others who visited the site. Whether or not he would have succeeded in that argument, a factual dispute clearly existed between the parties. Nonetheless, the local authority was not required to establish any substantive justification for evicting him and on this point judicial review could not provide any opportunity for an examination of the facts in dispute between the parties. Indeed, the Government drew the Court's attention to the Court of Appeal's decision in *Smart*, where it was held that to entitle persons housed under homelessness provisions, without security of tenure, to have a court decide on the facts of their cases as to the proportionality of their evictions would convert their occupation into a form of secure tenure and in effect undermine the statutory scheme (paragraph 54 above). While therefore the existence of judicial review may provide a valuable safeguard against abuse or oppressive conduct by local authorities in some areas, the Court does not consider that it can be regarded as assisting the applicant, or other gypsies, in circumstances where the local authority terminates licences in accordance with the applicable law.

93. The Court would not under-estimate the difficulties of the task facing the authorities in finding workable accommodation solutions for the gypsy and traveller population and accepts that this is an area in which national authorities enjoy a margin of appreciation in adopting and pursuing their social and housing policies. The complexity of the situation has, if anything, been enhanced by the apparent shift in habit in the gypsy population which remains nomadic in spirit if not in actual or constant

practice. The authorities are being required to give special consideration to a sector of the population which is no longer easy to define in terms of the nomadism which is the *raison d'être* of that special treatment.

94. However, even allowing for the margin of appreciation which is to be afforded to the State in such circumstances, the Court is not persuaded that the necessity for a statutory scheme which permitted the summary eviction of the applicant and his family has been sufficiently demonstrated by the Government. The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community. The references to "flexibility" or "administrative burden" have not been supported by any concrete indications of the difficulties that the regime is thereby intended to avoid (see, *mutatis mutandis*, *Larkos v. Cyprus*, [GC], no. 29515/95, ECHR 1999-I, where in finding a violation of Article 14 in conjunction with Article 8 concerning the difference in security of tenure provisions applying between tenants of public and private housing, the Court did not find that the difference in treatment could be justified by the argument that giving the applicant the right to remain indefinitely in a State-owned dwelling would fetter the authorities' duty to administer State-owned property in accordance with constitutional and legal requirements). It would rather appear that the situation in England as it has developed, for which the authorities must take some responsibility, places considerable obstacles in the way of gypsies pursuing an actively nomadic lifestyle while at the same time excluding from procedural protection those who decide to take up a more settled lifestyle.

95. In conclusion, the Court finds that the eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a "pressing social need" or proportionate to the legitimate aim being pursued. There has, accordingly, been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

96. Article 14 of the Convention 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."

97. The Court has found above a violation of Article 8 of the Convention. No separate issue arising under Article 14 of the Convention, the Court finds it unnecessary to consider this complaint further.

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

98. Article 1 of Protocol No. 1 provides as relevant:

> "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."

99. The applicant complained that during the eviction the Council interfered with his personal property by removing essential possessions from the pitch and retaining various items. They failed to return the property promptly and, when they did, dumped it on the roadside.

100. The Court notes that the applicant does not allege that possessions were damaged or lost or that the actions of the Council were unlawful, in which latter case it would have been possible to take action in the courts. To the extent therefore that the removal of the property was a consequential element of the eviction of the applicant and his family from the local authority site, the Court does not find that it raises any separate issues from those considered under Article 8 above and thus finds it unnecessary to examine the complaint further.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

101. Article 6 § 1 of the Convention provides as relevant:

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

102. The applicant complained under Article 6 that he was unable in the summary possession proceedings to challenge the Council's allegations of nuisance whether by giving evidence himself or calling witnesses. The applicant was at a substantial disadvantage given the terms of the licence, in respect of which he had not been in a free bargaining position. There was no equality of arms and he was denied any effective access to court against the very serious interference with his home and family.

103. The Court considers that the essence of this complaint, that his eviction was not attended by sufficient procedural safeguards, has been examined under Article 8 above and may be regarded, in the present case, as

absorbed by the latter provision. No separate issue therefore arises for determination.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

104. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

105. The applicant submitted that he had no possibility of obtaining a determination in court of the disputed facts and allegations relied on by the Council in determining his licence. Judicial review did not provide an effective method of challenging the Council's actions as it did not involve testing of the evidence, while in the summary proceedings the judge had no discretion to investigate the matters but was required to order possession under the terms of Order 24.

106. The Government did not consider that any issue arose, in particular as no arguable claim of a violation was disclosed for the purposes of Article 13 of the Convention. In any event, the applicant could challenge the reasonableness of the Council's actions in judicial review proceedings and require the Council to show in the County Court that they had lawfully determined the licence. The applicant could also have taken action against any individual officer who had acted unlawfully and the law of tort was available to remedy any unlawful interference with his property.

B. The Court's assessment

107. According to the Court's case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

108. The Court has found above that there has been a violation of Article 8. An "arguable claim" therefore arises for the purposes of Article 13.

109. However, the Court recalls that Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's primary legislation to be challenged before a national authority on grounds that it is contrary to the Convention (see *James and others v. the United Kingdom*, judgment of

21 February 1986, Series A no. 98, § 85; *A. v. the United Kingdom*, no. 35373/97, ECHR 2002-X, §§ 112-113). The applicant's complaints related in essence to the exemption conferred on local authority gypsy sites by the Mobile Homes Act 1983.

110. The Court thus concludes that the facts of the present case disclose no violation of Article 13 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. The parties' submissions

112. The applicant claimed damages in respect of distress and suffering experienced by himself and his family as a result of the eviction proceedings and for the ongoing loss of access to educational facilities, recreational facilities, medical and health services and basic sanitation and refuse disposal occasioned by the eviction. He pointed out that the Cottingley Springs site was the centre of their community and that he had known the people there all their lives. The way in which the eviction was enforced, involving several hours' detention, caused him significant pain and stress and the applicant and his family had serious difficulties in finding places to station their caravans afterwards, repeatedly being threatened with eviction and being moved on. The stress and uncertainty contributed to the applicant's wife's decision to move into a house, thereby causing their separation in May 2001 and a loss of daily contact with his children, who have also had their education disrupted. The applicant claimed that a sum in the range of GBP 100,000 would be appropriate.

113. The Government submitted that the applicant's central complaint was the lack of any power in the County Court to adjudicate on disputed facts and protect him from eviction save on reasonable grounds. If such adjudication had occurred, it was more than likely, in view of the acknowledged nuisance caused by the applicant's visitors, that the County Court would have ordered the eviction anyway and the consequences would have been the same. In their view a finding of violation would provide sufficient just satisfaction, though if the Court considered a monetary award

was merited, they considered such should be not more than 5,000 euros (EUR).

2. The Court's assessment

114. The Court notes that it is not possible to speculate as to what would have been the outcome if a form of security of tenure had applied to the applicant's occupation of a pitch at the Cottingley Springs site. Nonetheless, the applicant was denied the opportunity to obtain a ruling on the merits of his claims that the eviction was unreasonable or unjustified. In addition, he suffered non-pecuniary damage through feelings of frustration and injustice. The Court thus concludes that the applicant sustained some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention.

115. Deciding on an equitable basis, it awards the applicant the sum EUR 14,000.

B. Costs and expenses

116. The applicant claimed a total of GBP 18,781.96 for legal costs and expenses, including GBP 5,370 for solicitors' costs (at an hourly rate of GBP 150) and GBP 11,867.51 for counsel's fees, inclusive of value added tax (VAT).

117. The Government considered that the solicitor's hourly rate was excessive and that a rate of GBP 100 would be more appropriate. They did not challenge counsel's hourly rate of GBP 90 but considered that the number of hours charged (114.5) was excessive bearing in mind the time also spent by solicitors and relative lack of complexity of the legal issues. They proposed that 30 hours for counsel's time and attention, namely GBP 2,700, would be more reasonable.

118. The Court observes that counsel entered the application at a relatively late stage, after the case had been declared admissible and in these circumstances seeing some force in the Government's objection to the amount of hours claimed, has reduced the sum claimed by approximately one quarter. It does not find the sum claimed by the solicitor unreasonable as to hours claimed or quantum overall. In conclusion, taking into account the subject-matter and procedure adopted in this case, together with deduction of the amount of legal aid granted by the Council of Europe, the Court awards, for legal costs and expenses, the sum of EUR 21,643, inclusive of VAT.

C. Default interest

119. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds* that no separate issue arises under Article 14 of the Convention in conjunction with Article 8;

3. *Holds* that no separate issue arises under Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that no separate issue arises under Article 6 of the Convention;

5. *Holds* that there has been no violation of Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into pounds sterling at the rate applicable at the date of settlement, plus any tax that may be chargeable:
      (i) EUR 14,000 (fourteen thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 21,643 (twenty one thousand, six hundred and forty three euros) in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Soren NIELSEN
Registrar

Christos ROZAKIS
President