CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

Case of Varey v. the United Kingdom

(*Application no. 26662/95*)

Judgment
(Strike out)

Strasbourg, 21 December 2000

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JUDGMENT
(Strike out)

STRASBOURG

21 December 2000

In the case of Varey v. the United Kingdom,

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

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

and Mr M. DE SALVIA, *Registrar*,

Delivers the following judgment, which was adopted on 13 December 2000:

PROCEDURE

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

2. The case originated in an application (no. 26662/95) against the United Kingdom lodged with the Commission under former Article 25 of the Convention by two British citizens, Mr Joseph Varey and Mrs Mary Varey ("the first applicant" and "the second applicant" respectively), on 2 December 1994.

Notes by the Registry

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

3. The applicants alleged that planning and enforcement measures taken against them in respect of their occupation of their land in their caravans violated their right to respect for home, family and private life contrary to Article 8 of the Convention. They complained that they had no effective access to court to challenge the decisions taken by the planning authorities contrary to Article 6 of the Convention and that they had been subject to discrimination as gypsies contrary to Article 14 of the Convention.

4. The Commission declared the application admissible on 4 March 1998. In its report of 25 October 1999 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 8 of the Convention (26 votes to 1), that there had been no violation of Article 6 of the Convention (25 votes to 2) and that there had been no violation of Article 14 of the Convention (20 votes to 7).[1]

5. Before the Court the applicants, who had been granted legal aid, were represented by Messrs Hutsby Mees, solicitors practising in Stafford. The United Kingdom Government were represented by their Agent, Mr Llewellyn of the Foreign and Commonwealth Office.

6. On 4 February 2000, the panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court). The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court. Sir Nicolas Bratza, the judge elected in respect of the United Kingdom, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Lord Justice Schiemann as an *ad hoc* judge, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

7. By letter dated 13 April 2000, the Government informed the Court that they wished to settle the case and were negotiating with the applicants. By letter dated 27 April 2000, the applicants' representatives also informed the Court of the negotiations. On 5 May 2000, the Government informed the Court that the parties had agreed to settle the case on the terms that the Government pay the applicants the sum of GBP 60,000 in full and final settlement of their complaints under the Convention, that the Government pay the applicants' legal costs of GBP 15,500 and that the applicants withdraw their application. The applicants have not communicated further with the Court.

1. A copy of the Commission's report is obtainable from the Registry.

THE FACTS

8. The applicants are gypsies by birth. Throughout their lives, they moved from place to place, mainly in the Stafford area where they were born. The area carried a very large population of gypsies and other travellers. As it became increasingly difficult for the applicants to find somewhere to stay, they bought a piece of land of 1.6 hectares. This land had been used for some years as a stopping place for gypsies and, for a time, this had been permitted by licence from the local authority. The applicants therefore thought that they would have a good chance of obtaining planning permission to set up a residential caravan site there.

9. The applicants submitted an application to South Stafford District Council ("the Council") for planning permission to use the land for a gypsy caravan site. The Council refused the application on 16 August 1988. It had already issued an Enforcement Notice on 27 May 1988. Following the applicants' appeals, a Public Inquiry was held on 7 February 1989. By letter dated 2 June 1989, the Secretary of State for the Environment dismissed the appeals, finding that the applicants' needs did not override the stringent policies of development control applicable within the Green Belt. As, however, there were no authorised gypsy sites available to the applicants, the period for compliance was increased from one month to nine months.

10. On 26 April 1990, the first applicant was convicted by the Magistrates' Court for failing to comply with the Notice. He was fined 500 pounds sterling (GBP) and required to pay costs. On 9 August 1990, he was convicted again and fined 500 GBP, with costs. This was reduced to 250 GBP on appeal.

11. A fresh application had been submitted on 22 January 1990. The Council refused the application on 6 March 1990. On the applicants' appeal, an Inspector held a local inquiry on 15 November 1990. The Inspector recommended that the appeal be allowed subject to conditions. He considered that a material change of circumstances had taken place since the 1989 inquiry, identifying an increase in the number of gypsies and a significant decline in site provision in the area. Noting that the site was extremely well-maintained and the applicants' long associations with the area, he concluded that the visual impact of the site would be less significant due to improvements made in screening the caravans from public view, and the construction of a prison and proposed orbital route nearby. He found that granting the application would neither prejudice the character of the Green Belt nor weaken the Council's stance in resisting future development.

12. However, by letter dated 13 February 1992, the Secretary of State dismissed the appeal, finding that the need for gypsy accommodation did not disclose the very special circumstances necessary to override the strong policy presumption against prejudicial development in the Green Belt. He also decided that any change in circumstances since the previous appeal was

not sufficiently material to warrant allowing the appeal. In his view, granting the appeal would result in demand for further sites within the Belt and weaken the Council's stance in resisting future development.

13. On 2 July 1992, the first applicant was convicted for failing to comply with said Notice and was fined 1000 GBP and ordered to pay 50 GBP costs.

14. In April 1992, the applicants had submitted a third application. Following the Council's refusal, an Inspector held an inquiry on 13 October 1992. He recommended that the appeal be allowed, subject to conditions. He noted that the impact of the proposed development was by now so reduced when viewed in the context of its surroundings that any harm to the visual amenities of the area would be relatively slight. He also found that there was no alternative site available to satisfy the applicants' acknowledged local need, foreseeing a future worsening in site provision.

15. By letter dated 10 June 1993, the Secretary of State dismissed the appeal, finding that the family's needs were not so compelling as to outweigh the national and local policy objections against siting the development in the Green Belt and that there had not been a material change of circumstances since the previous inquiry. He considered that there was a crucial danger that the development would harm the Green Belt as, whether or not there was a visual impact, it would prejudice the Belt's main purpose. He also considered that allowing the appeal would make it difficult for the Council to protect the Green Belt, through pressure to allow other sites nearby.

16. Meanwhile, the Council issued injunction proceedings in March 1993. On 26 May 1993, the County Court made no order on the first applicant's undertaking to vacate the site by 27 September 1993.

17. Since the applicants had no place to which they could lawfully go, they remained on their land. In mid-1995, the Council applied to the court for a Committal Order against the first applicant. He was sentenced to 14 days' imprisonment for non-compliance with his undertaking of 26 May 1993, which sentence was suspended provided that he vacated the site by 1 July 1995. He was forced to live elsewhere from that point.

18. In 1995, a further application was made by the second applicant for planning permission which was refused by the Council. Her appeal was heard at a local enquiry before an Inspector on 11 September 1996. By letter of 9 December 1997, the Secretary of State refused the second applicant's appeal. The second applicant appealed this refusal to the High Court.

19. An injunction was obtained against the second applicant on 12 January 1998, which was suspended pending the High Court appeal proceedings. It appears however that on an unspecified date the second applicant left her land, which was sold to a Mr Smith.

THE LAW

20. The Court takes note of the agreement reached between the parties as set out in paragraph 7 above (Article 39 of the Convention). In these circumstances, it finds that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention. It is satisfied that respect for human rights does not require the continued examination of the application (Article 37 § 1 *in fine* of the Convention).

21. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and French, and notified in writing on 21 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Luzius WILDHABER
President

Michele DE SALVIA
Registrar