

AS TO THE ADMISSIBILITY OF

Application No. 31600/96
by Caroline Margaret BURTON
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 10 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÍRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 21 May 1996 by Caroline Margaret BURTON against the United Kingdom and registered on 28 May 1996 under file No. 31600/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1966 and resident in Carmarthen, Wales. She is represented before the Commission by Jean Gould, a solicitor at the Public Law Project in London. The facts as submitted by the applicant may be summarised as follows.

The applicant is a Romany gypsy by birth and was brought up until 1975 in the traditional gypsy lifestyle. In 1975 her parents accepted an offer of rented accommodation from Ceredigion District Council in what is now the County of Carmarthenshire in Wales. The applicant's parents took the decision to move into settled accommodation having suffered repeated evictions from sites where they had stationed their caravan and in the absence of any provision of permanent caravan sites by the local authority. In 1982 the family moved to rented accommodation owned by Carmarthen District Council, now subsumed within the unitary Carmarthenshire County Council, where they still live.

Since 1988, the applicant's father has been seeking alternative accommodation from the local authority, the family having suffered racial attacks, including anti-gypsy graffiti on their property.

In 1989 the applicant was diagnosed as suffering from a cancerous tumour of her liver. Notwithstanding major surgery, the tumour recurred in 1992 and 1994 when it was found to have spread to her

pancreas and to be incurable. The applicant's knowledge that she is going to die in the near future has intensified her desire to live out her last days and die in a caravan, according to her Romany gypsy traditions.

The applicant's father has tried to find secure accommodation for their family's travelling caravan that is presently locked up in a caravan pound in a nearby village but in which they may not live. The Council has attempted but has been unable to provide a location on which the applicant's family can station their caravan. A request to live in a mobile home owned by the council in an area known as "Whitemill" was refused, the Council considering the mobile home unsuitable for habitation. Minutes of a Special Meeting of the Housing Services Committee of 4 January 1996 recorded that two tenancies in an outlying area had been offered to the applicant's family in light of their expressed wish to live in a rural area.

COMPLAINTS

The applicant complains that the Council is causing her anguish by preventing her from living out her last days in the traditional manner of a gypsy. She claims that this leads her to feel inferior and that the treatment is therefore debasing, humiliating and an interference with her dignity such as to constitute inhuman and degrading treatment within the meaning of Article 3 of the Convention.

The applicant complains under Article 8 of the Convention that because of the combined effect of legislation (principally the Criminal Justice and Public Order Act 1994) and Government planning policy (principally Welsh Office circular 2/94), the applicant is unable to pursue her traditional way of life in the family home (the caravan) that belongs to her family, without the family being in breach of the law. She claims that this is a disproportionate interference in her traditional way of life.

The applicant further claims that the violation of her rights under Articles 3 and 8 was discriminatory contrary to Article 14 of the Convention.

The applicant finally complains under Article 13 that there is no mechanism under English or Welsh Law by which she can have her claim that she has been denied her right to end her days in accordance with the tradition of the minority to which she belongs determined.

THE LAW

1. The applicant complains that the failure of Carmarthenshire County Council to find the applicant accommodation for her family's caravan or to enable her to live out her last days in a caravan in accordance with Romany gypsy tradition, constitutes inhuman and degrading treatment within the meaning of Article 3 (Art.) of the Convention. Article 3 (Art. 3) provides as follows.

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The case-law of the Convention organs establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see e.g. Eur. Court H.R., Ireland v. The United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65, para. 162).

The Commission considers that the applicant's complaints do not disclose treatment that falls within the scope of Article 3 (Art. 3).

Whereas it is not excluded that a failure to take steps by a public authority may engage responsibility under this provision, the Commission finds that the local authority cannot be said in the circumstances of this case to have subjected the applicant to ill-treatment contrary to Article 3 (Art. 3) of the Convention.

It follows that this part of the complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant invokes Article 8 (Art. 8) of the Convention, in respect of her wish to live her final days in a caravan, as part of an intrinsic and important part of the traditional lifestyle of a Romany gypsy. Article 8 (Art. 8) provides as follows:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission observes that the applicant has been living with her parents in settled accommodation provided by the Council since 1975. No interference in the applicant's present living arrangements has been alleged or has occurred. In these circumstances the Commission does not consider there to have been any interference within the meaning of Article 8 (Art. 8) of the Convention.

Insofar as the applicant complains that she has not been able to return to living in a caravan due to a failure of the local authority to provide a site or an alternative mobile home, the Commission recalls that although the essential object of Article 8 (Art. 8) is to protect against arbitrary interference by public authorities, there may in addition be positive obligations inherent in an effective "respect" for family life (see eg. Eur. Court H.R., Marckx judgment of 13 June 1979 Series A no. 31 p. 15, para. 31). However, the Commission does not consider that Article 8 (Art. 8) can be interpreted in such a way as to extend a positive obligation to provide alternative accommodation of an applicant's choosing. It recalls that the Council has made efforts to investigate the availability of alternative possibilities for the applicant's accommodation and that it offered tenancies in another area in accordance with applicant's family's expressed wish to live in a rural area. Notwithstanding the tragic situation in which the applicant finds herself, the Commission does not consider that the Council's inability to find a suitable official site for a caravan constitutes a failure to respect the applicant's private and family life or her home.

The Commission notes that the applicant also refers to the combined effect of legislation and government planning policy as preventing her from pursuing her traditional way of life. Insofar as this may refer to an inability to return to a nomadic existence by travelling throughout the country due to lack of lawful stopping places, the Commission does not consider that the applicant can claim to be a victim of any interference since it is not apparent that it is her intention to return to such a lifestyle. To the extent that it is claimed that the state of law and planning policy is such as to prevent her taking up residence in her caravan in any unoccupied or roadside land in the area or as to result in there being insufficient provision of lawful official sites, the Commission considers that Article 8 (Art. 8) of the Convention cannot be construed as conferring a right to take up residence on land belonging to others nor as imposing a

positive obligation to ensure vacancies on official sites for persons wishing to return after a number of years to the traditional way of life of a gypsy.

Consequently, the Commission finds on the facts submitted by the applicant that there has been no lack of respect for her private and family life and home. It follows that this part of the application must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant further complains that she has suffered discrimination contrary to Article 14 (Art. 14) of the Convention. That provision provides as follows.

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 14 (Art. 14) protects individuals placed in analogous situations from any discrimination in the enjoyment of the substantive rights set out in the Convention and Protocols (see eg. Eur. Court H.R. Van der Musselle judgment of 21 November 1982, Series A no. 70). It is not however substantiated from the applicant's submissions that she has been treated differently than any other person in a relevantly similar position.

It follows that the applicant's complaints fail to disclose any discrimination contrary to Article 14 (Art. 14) of the Convention. Accordingly, this part of the complaint must be dismissed as manifestly ill-founded under Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further claims that she has no remedy for the alleged violations of her Convention rights contrary to Article 13 (Art. 13) of the Convention. That provision provides as follows.

"Everyone whose rights and freedoms as set forth in this 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."

The Commission recalls that Article 13 (Art. 13) of the Convention requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, p.14, para. 31). In view of the findings above, the Commission does not consider the applicant to have established an arguable claim under the Convention.

It follows that this part of the complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber