AS TO THE ADMISSIBILITY OF

Application No. 14751/89
by P.
against the United Kingdom

The European Commission of Human Rights sitting in private on 12 December 1990, the following members being present:

MM. S. TRECHSEL, Acting President
J.A. FROWEIN
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Sir Basil HALL
Mr. F. MARTINEZ RUIZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

Mr. J. RAYMOND, Deputy Secretary to the Commission

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

Having regard to the application introduced on 9 January 1989 by P. against the United Kingdom and registered on 8 March 1989 under file No. 14751/90;

Having regard to

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 20 February 1990 and the observations in reply submitted by the applicant on 30 April 1990;

- the submissions made by the parties at the oral hearing on 12 December 1990.

Having deliberated;

Decides as follows:

THE FACTS

The applicants, husband and wife, are British citizens, born in 1933 and 1936. They are represented by Thomas Boyd Whyte, a firm of solicitors practising in Bexleyheath, Kent. The facts as submitted by the parties may be summarised as follows.

The applicants are gipsies by blood, though they abandoned their former nomadic way of life many years previously. They own two caravans, which since 1972 have been placed at a municipal caravan site known as Thistlebrook in Greenwich. The applicants had periodic tenancy agreements with the London Borough of Greenwich (hereafter the "Council") which had acquired the site by compulsory purchase in 1967.

This area had a history of occupation by gipsy families. In 1967, in pursuance of the powers granted by section 24 of the Caravan Sites and Control of Development Act 1960, the London Borough of Greenwich sought a Compulsory Purchase Order in respect of a parcel of land within their area (occupied by a number of gipsies) as land on which to provide a site for the accommodation of gipsies. The Council's case was that although there had been caravans on this piece of land for some 30 years the conditions were unsatisfactory, and they intended to create a site with proper facilities. The Compulsory Purchase Order was confirmed by the Minister on 20 February 1968.

The Council refurbished this piece of land for use as a local authority gipsy site. This site was opened in three stages between October 1972 and December 1973 as a site to provide accommodation for gipsies, in discharge of the Council's duty under section 6 of the Caravan Sites Act 1968 ("the 1968 Act"). Although the applicants were not on the site before its acquisition by the Council, they were among the first to come onto the site after it was opened. The site had 54 pitches, of which some, like that occupied by the applicants, accommodated more than one caravan.

The Council then applied to the Secretary of State for designation of their area under section 12 of the 1968 Act. The site was and is the only official site in the Borough providing accommodation for gipsies. In May 1974 the Secretary of State for the Enviroment designated the area by order, on the grounds that adequate provision had been made in Greenwich for the accommodation of gipsies residing in or resorting there. The effect of designating the area was to give the local authority additional powers of removal of any gipsies camping on unauthorised sites.

The applicants, like the other gipsies on the site, were seasonal workers who went travelling in their caravans for periods of the year to find work. They were sometimes away for 4 to 5 months of the year during which time one caravan was usually left on the site. The site rules for Thistlebrook, which were incorporated in the gipsies' agreements with the Council, allowed them to be absent from the site for up to 20 weeks in one year (or for longer if agreed in writing with the Council) but still to retain their right to return to their pitch by paying, for the weeks they were absent, half the fixed weekly amounts provided for in their agreements. The last agreement under which the applicants rented a pitch for their caravans was in writing and dated 16 January 1978.

On 10 October 1986, the Council gave the applicants notice to quit and in November 1986 commenced proceedings to evict the applicants from the municipal site. On 3 November 1987, the County Court granted the Council an order for possession of the site on which the applicants' caravan stood. The applicants had been given no reasons in writing by the Council for the decision to evict them. During the proceedings in the County Court, the applicants' counsel asked for the reasons for the eviction , but the Council refused to answer on the ground that this was irrelevant.

The applicants appealed to the Court of Appeal which on 23 February 1988, allowed their appeal and set aside the possession order. The Council appealed to the House of Lords, which on 8 December 1988 found in its favour.

The main issue before the Courts was whether the caravan site at Thistlebrook was "a protected site" within the meaning of section 5(1) of the Mobile Homes Act 1983, in which case the applicants' tenancy would attract statutory protection and could not be terminated except for the specific reasons set out in the Act. A "protected site" however is defined by the Act as excluding any land occupied by a local authority as a caravan site providing accommodation for gipsies.

0n 8 December 1988, the House of Lords found that the municipal site had been opened in 1972 as a site to provide accommodation for gipsies in discharge of the Council's duty under the Caravan Sites Act 1968. It found that the site did not become a "protected site" for the purposes of the 1983 Act even though many of the residents had given up their nomadic way of life and established their permanent residence there.

Following the House of Lords' judgment, the applicants applied to the Council for alternative accommodation as homeless persons. The Borough replied by letter dated 31 January 1989 that by their unsatisfactory conduct on the Thistlebrook site in contravention of the site rules the applicants had made themselves voluntarily homeless and that the Borough were as a result relieved of their statutory duty to provide accommodation.

RELEVANT DOMESTIC LAW AND PRACTICE

Caravan Sites Act 1968

Part I of the 1968 Act introduced for the first time a limited form of statutory security of tenure for the occupier of a residential caravan on a "protected site" as defined by section 1 (2), either as licensee of a pitch on which to station his own caravan or as occupier of a caravan belonging to the site owner. In each case his contractual right could only be terminated by four weeks' notice and he could only be evicted by court order. The court was given power to suspend enforcement of an eviction order "for such period not exceeding 12 months from the date of the order as the court thinks reasonable" and from time to time to extend the period of suspension for not more that 12 months at a time. This limited protection is referred to as "the 1968 security of tenure".

The effect of these provisions is that the 1968 security of tenure is available to all occupiers of residential caravans on local authority sites as well as on privately owned sites, but not to those on holiday sites or sites otherwise used for only part of the year.

Part II of the 1968 Act, which came into force on 1 April 1970, attempted to resolve the problem of providing caravan sites to accommodate the gipsy community and and of controlling unauthorised gipsy encampments. The expression "gipsies" in section 16 of the 1968 Act means:

> "persons of nomadic habit of life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or of persons engaged in travelling circuses, travelling together as such."

Section 6 (1) of the 1968 Act (as amended) provides that:

> "...it shall be the duty of every local authority being the council of a county, metropolitan district or London borough to exercise their powers under section 24 of the Caravan Sites and Control of Development Act 1960 (provision of caravan sites) so far as may be necessary to provide adequate accommodation for gipsies residing in or resorting to their area."

Once sites have been provided under that section, it is the duty of the relevant district council to operate them.

Section 9 of the 1968 Act enables the Secretary of State, if he considers it necessary, to give directions to those local authorities under a duty to provide gipsy caravan sites requiring them to provide sites for a specified number of caravans. Any directions

so given are enforceable by an Order of the Court, on the application of the Secretary of State.

Sections 10, 11 and 12 concern "designated areas". The Secretary of State may, under section 12, designate the area of a county, metropolitan district or London Borough, or a district or group of districts, as an area to which sections 10 and 11 apply. He may not do that unless it appears to him that adequate accommodation has been provided for gipsies residing in or resorting to that area, or that it is not necessary or expedient to make any such provision. Once the Secretary of State has designated an area under section 12, it is an offence under section 10 for a gipsy to station his caravan on any highway, or on any unoccupied land, or on any occupied land without the consent of the occupier (except in case of illness, mechanical breakdown or other immediate emergency). Under section 11, unlawfully stationed caravans may be removed by order of a magistrates' court.

The Mobile Homes Act 1983

The Mobile Homes Act 1983 ("the 1983 Act") does not apply to gipsy caravan sites provided by local authorities. Section 5 (1) provides that "protected site" does not include any land occupied by a local authority as a caravan site providing accommodation for gipsies. The Act in respect of protected sites gives certain rights to the occupiers of mobile homes situated on those sites. These include rights to security of tenure, to transfer the tenancy, and to a written record of the terms of the agreement. However, the owner is entitled to terminate the agreement forthwith if he satisfies the court that the occupier is not occupying the mobile home as his only or main residence.

The House of Lords held in its judgment on the appeal by the Council in the applicants' case that sites provided for gipsies under the 1968 Act were not protected sites within the 1983 Act, notwithstanding that the gipsies on those sites might have stayed for long periods. Lord Bridge said:

> "Any other construction of 'protected site' in section 5 (1) of the 1983 Act would, it seems to me, cause great difficulties both for local authorities and for most of the gipsy 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 1968 Act... For the future, local authorities establishing new sites providing accommodation for gipsies 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 gipsy community." /1989/ 1 All ER 65, 71.

COMPLAINTS

The applicants complain of a lack of respect for their family life and home contrary to Article 8 of the Convention. They complain that they have been denied protection from arbitrary eviction. They submit that they have been discriminated against contrary to Article 14 of the Convention, since other persons engaged in seasonal work or work requiring long absences (seamen, salesmen, agricultural workers) who are not classified as "gipsies" will be protected from arbitrary eviction and enjoy statutory protection in the occupation of their homes.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 9 January 1989 and registered on 8 March 1989.

On 5 September 1989, the Commission decided to bring the application to the notice of the respondent Government and invite them to submit observations on its admissibility and merits.

The respondent Government's observations were received on 20 February 1990 after three extensions in the time limit. The applicants' observations in reply were received on 30 April 1990.

On 16 March 1990, the Commission granted legal aid to the applicants.

On 7 September 1990, the Commission decided to hold an oral hearing on the admissibility and merits of the application.

At the hearing, which was held on 12 December 1990, the parties were represented as follows:

- for the respondent Government: Mrs. A. Glover, Agent
  Mr. J. Harper, Counsel
  Mrs. S. J. Weinberg, Adviser
  Mr. C. Harkness, Adviser

- for the applicants: Mr. David Wade, Counsel

THE LAW

The applicants complain of interference with their right to respect for their family life and their home contrary to Article 8 (Art. 8) of the Convention as a result of their eviction from the municipal site by the Council. They also complain of discrimination contrary to Article 14 (Art. 14) of the Convention and of having no effective access to court contrary to Article 6 (Art. 6) of the Convention.

Article 26 (Art. 26) of the Convention

The Government have submitted that the applicants have failed to exhaust domestic remedies in respect of their complaints since they have not challenged the reasonableness of their eviction by way of judicial review or by raising the same points in defence in the possession proceedings.

The Commission recalls that Article 26 (Art. 26) of the Convention only requires the exhaustion of such remedies which relate to the breaches of the Convention alleged and at the same time can provide effective and sufficient redress. An applicant does not need to exercise remedies which, although theoretically of a nature to constitute a remedy, do not in reality offer any chance of redressing the alleged breach (cf. No. 9248/82, Dec. 10.10.83, D.R. 34 p. 78).

It is furthermore established that the burden of proving the existence of the available and sufficient domestic remedies lies upon the State invoking the rule (cf. Eur. Court H.R., Deweer judgment of 27 February 1980, Series A no. 35, p. 15, para. 26, Commission decision No. 9013/80, Dec. 11.12.82, D.R. 30 p. 96, p. 102).

The Commission recalls that the applicants' complaints are directed against the difference between the regime applying to the municipal gipsy site where they lived and that applying to other residential mobile home sites. The Commission also recalls that during the proceedings in the County Court the applicants' counsel

asked for the reasons for their eviction and the Council refused to provide the information on the ground that it was irrelevant. In these circumstances, the Commission is not satisfied that the applicants would have been able to challenge the Council's decision to evict on the merits or that the proceedings would have constituted an effective remedy for their complaints. The Commission is accordingly unable to accept that the application should be declared inadmissible for non-exhaustion of domestic remedies.

Article 8 (Art. 8) of the Convention

Article 8 (Art. 8) of the Convention provides:

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 recalls that the applicants complain of their eviction from the site on which they had lived for 16 years. Under the terms of their tenancy agreement, the agreement could be terminated by either side at one month's notice. They complain that the Council did not give reasons for the eviction until after the event and that their occupation was not protected under the Mobile Homes Act 1983 (the 1983 Act). While the Government admit that the eviction constituted an interference with the applicants' right to respect for their home, they submit that the interference was in accordance with law and, in view of the conduct of the applicants, pursued the aim inter alia of protecting the rights of others on the site.

The Commission has considered whether the termination of the applicants' occupation of the site in accordance with the tenancy agreement can be considered as an interference with their rights under Article 8 para. 1 (Art. 8-1) of the Convention. Even assuming that it could constitute an interference, however, the Commission finds that it would be justified under Article 8 para. 2 (Art. 8-2) of the Convention for the reasons set out below.

Pursuant to Article 8 para. 2 (Art. 8-2), an interference is justified if it is "in accordance with the law", pursues one or more of the legitimate aims enumerated in Article 8 para. 2 (Art. 8-2) and is "necessary in a democratic society" for one or more of those aims.

The Commission notes that the applicants challenged their eviction in the United Kingdom courts. The House of Lords found that the Council were entitled to obtain an order for possession. The applicants do not allege that the eviction was unlawful and in the circumstances of this case, the Commission finds that the alleged interference was "in accordance with the law". While the Commission notes that the Council considered the eviction of the applicants necessary in light of problems arising out of the applicants' conduct in infringement of the site rules, it finds it unnecessary to deal with this aspect of the case, since in any event the interference pursued the legitimate aim of the protection of the rights and freedoms of others in that it enforced the Council's rights under the tenancy agreement.

The question remains whether the decision was "necessary" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The case-law of the Commission and the Court establishes that the notion of necessity implies that the interference corresponds to a pressing social need and that it is proportionate to the aim pursued. Further, in determining whether an interference is necessary the Commission and the Court will take into account that a margin of appreciation is left to the Contracting States, which are in principle in a better position to make an initial assessment of the necessity of a given interference (c.g. Eur. Court H.R., Leander judgment of 26 March 1987, Series A no. 116, p. 25, paras. 55-59).

The applicants submit that their eviction was arbitrary since the Council were not obliged to give reasons and that their occupation was unreasonably excluded from the protection of the 1983 Act, which requires, inter alia, the owner of a site to establish that the tenant has failed to observe the terms of the tenancy agreement and has not complied with a notice to remedy the breach in question. The Commission recalls, however, that the applicants occupied the site under a tenancy agreement and that their occupation was terminated in accordance with this agreement. Under this agreement the Council were not under a duty to give reasons for terminating the agreement. As regards the applicants' complaints that different rules apply to other sites, the Commission has had regard to the fact that under the 1968 Act local authorities are under a duty to provide sites for gipsies and that these sites are run on the basis that the tenants may leave for long periods during the year. However, these sites are excluded from the protection of the 1983 Act. The Commission further notes the Government's submission that local authorities are under no duty to provide sites for mobile home dwellers who do not fall within the scope of section 16 of the 1968 Act and that gipsies who wish to enjoy the protection of the 1983 Act are at liberty to live on other sites.

The Commission considers that the applicants cannot derive from Article 8 (Art. 8) of the Convention an unconditional right to remain on the Thistlebrook site. In view of the above and having regard to the margin of appreciation enjoyed by the Contracting States in regulating housing problems of the kind at issue here, the Commission considers that the principle of proportionality has not been offended.

The Commission concludes that the alleged interference is justified as necessary in a democratic society for the protection of the rights and freedoms of others. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Article 14 (Art. 14) of the Convention

The applicants complain that they are subject to discrimination as gipsies since they were excluded from the protection of the 1983 Act.

Article 14 (Art. 14) of the Convention provides that:

"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 applicants submit that other persons pursuing a nomadic way of life e.g. seasonal workers are not excluded from the protection of the 1983 Act and they contend there is no reasonable or objective justification for this difference in treatment.

The Commission recalls, however, that the different rules applying with regard to occupation of caravan sites depends on the classification of the site and not on the status of the individual

caravan-dweller. Sites occupied by local authorities for the purpose of providing accommodation for gipsies - "protected sites" - are excluded from the operation of the 1983 Act, which applies to other residential sites. Gipsies, however, who were to reside on such residential sites equally enjoy the protection of that Act. The Commission therefore finds no indication that the applicants have suffered a difference in treatment on the ground of association with a national minority or other status personal to them.

The Commission consequently finds no appearance of a violation of Article 14 (Art. 14) of the Convention in the circumstances of this case. It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Article 6 (Art. 6) of the Convention

The applicants also complain that they have had no effective access to court as required by Article 6 (Art. 6) of the Convention in respect of their complaints since the courts found that they fell outside the scope of the protection offered by the 1983 Act.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the decision of the House of Lords which was the final decision regarding the subject of this particular complaint, was given on 8 December 1988, whereas this complaint was first raised before the Commission in the observations of the applicants submitted on 30 April 1990, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THIS APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission Acting President of the Commission

(J. RAYMOND) (S. TRECHSEL)