

Press release issued by the Registrar

**JUDGMENT IN THE CASES OF:
CHAPMAN v. THE UNITED KINGDOM
COSTER v. THE UNITED KINGDOM
BEARD v. THE UNITED KINGDOM
LEE v. THE UNITED KINGDOM and
JANE SMITH v. THE UNITED KINGDOM**

The European Court of Human Rights has today delivered judgment in the following five cases: *Chapman v. United Kingdom* (application number 27238/95), *Beard v. United Kingdom* (24882/94), *Coster v. United Kingdom* (24876/94), *Lee v. United Kingdom* (25289/94) and *Jane Smith v. United Kingdom* (25154/94).

The Court held:

- By ten votes to seven, that there had been **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights, **in all five cases**;
- Unanimously, that there had been **no violation of Article 14** (prohibition of discrimination), **in all cases**;
- Unanimously, that there had been **no violation of Article 1 of Protocol No. 1** (right to peaceful enjoyment of possessions), **in the cases of Chapman, Coster, Jane Smith and Lee**;
- Unanimously, that there had been **no violation of Article 6** (access to court), **(Chapman and Jane Smith)**;
- Unanimously, that there had been **no violation of Article 2 of Protocol No. 1** (right to education), **(Coster, Lee and Jane Smith)**.

1. Principal facts

The cases concern applications brought by applicants from five British gypsy families: Sally Chapman, born in 1954 and resident in Hertfordshire; Thomas and Jessica Coster, born in 1962 and 1964 and resident in Kent; John and Catherine Beard, born in 1935 and 1937 and currently with no fixed address for their caravans; Jane Smith, born in 1955 and resident in Surrey; and, Thomas Lee, born in 1943 and resident in Kent.

Sally **Chapman** bought land in 1985 in the Three Rivers District in Hertfordshire on which to station her caravan, without obtaining prior planning permission. She was refused planning permission for her caravan, and also permission to build a bungalow. Her land was in a Green Belt area. It was acknowledged in the planning proceedings that there was no official site for gypsies in the area and the time for compliance with the enforcement order was for that reason extended. She was fined for failure to comply and left her land for eight months, returning due to an alleged lack of other alternatives and having spent the time being moved on from one illegal encampment to another. She still lives on her land with her husband and father, who is over 90 years' old and suffering from senile dementia.

Thomas and Jessica **Coster**, husband and wife, allege that they were forced, through lack of alternatives, to live in conventional housing from 1983 to 1987. In 1988, having bought some land near Maidstone in Kent, they moved on to it in caravans. Their applications for planning permission were dismissed twice on grounds that the development was a significant intrusion into an attractive rural area. They were prosecuted and fined in 1989, 1990 and 1992. Following injunction proceedings in 1992, they left their land but returned after a short while. They were fined again in 1994 and faced injunction proceedings in 1996 which were substituted by enforcement proceedings for removal under s. 178 of the Town and Country Planning Act 1990, following which they allege that they had no alternative but to accept council housing accommodation in 1997.

John and Catherine **Beard**, husband and wife, stationed caravans on land bought by them in Lancashire. They were twice refused planning permission on grounds of impact on visual amenity and highway safety considerations. They were prosecuted four times between 1991 and 1995 and faced injunction proceedings in 1996, which led to John Beard receiving a suspended committal to prison for three months for failure to remove the caravans. They left their land as a result and have since been without a fixed address for their caravans.

Thomas **Lee** and his family stationed caravans on land bought by them in a Special Landscape Area in Kent. Planning permission was refused as the planning inspector found his site was highly visible and detrimental to the landscape. While there are official sites in the area, he complains that these are not fit for human habitation as they are located on rubbish sites or on old sewage beds. Permission was however given for use of a caravan for agricultural purposes on land near to his and permission has been given for a large residential development 600 yards from his land.

Jane Smith and her family bought land for their caravans in a Green Belt area in Surrey and were refused planning permission on the grounds that their occupation harmed a sensitive area of the countryside. Her application for a bungalow was refused, to prevent diminishing the rural character of the countryside. Injunction proceedings were taken against her in 1994, following which the family applied to be housed as “homeless”. She complains that the accommodation offered so far has either been in flats or in urban areas or has concerned land unsuitable for habitation due to pollution. She remains on her land under threat of removal and committal to prison for contempt.

2. Procedure and composition of the Court

The applications were lodged with the European Commission of Human Rights on 31 May, 19 May, 14 May, 4 May and 4 May 1994 respectively. Having declared the applications admissible, the Commission adopted its reports on 25 October 1999 in which it expressed the following opinions:

- **Chapman** - no violation of Article 8 (18 votes to nine); no violation of Article 1 of Protocol No. 1 (19 votes to eight), no violation of Article 6 (25 to two); and, no violation of Article 14 (18 votes to nine);
- **Coster** - no violation of Article 8 (18 votes to eight); no violation of Article 1 of Protocol No. 1 (19 votes to seven); no violation of Article 2 of Protocol No. 1 (21 votes to 5); and, no violation of Article 14 (18 votes to eight);
- **Beard** - no violation of Articles 8 or 14 (18 votes to eight);

- **Lee** - no violation of Article 8 (18 votes to eight), no violation of Articles 1 or 2 of Protocol No. 1 (20 votes to six), no violation of Article 10 (freedom of expression) (unanimously); and, no violation of Article 14 (18 votes to eight);
- **Jane Smith** - no violation of Article 8 (18 votes to eight); no violations of Articles 1 or 2 of Protocol No. 1 (21 votes to five); no violation of Article 6 (24 votes to two); and, no violation of Article 14 (18 votes to eight).

The Commission referred the cases to the Court on 30 October 1999.

Judgment in each case was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), **President**,
Jean-Paul **Costa** (French),
Antonio **Pastor Ridruejo** (Spanish),
Giovanni **Bonello** (Maltese),
Pranas **Kūris** (Lithuanian),
Riza **Türmen** (Turkish),
Françoise **Tulkens** (Belgian),
Viera **Strážnická** (Slovakian),
Peer **Lorenzen** (Danish),
Marc **Fischbach** (Luxemburger),
Volodymyr **Butkevych** (Ukrainian),
Josep **Casadevall** (Andorran),
Hanne Sophie **Greve** (Norwegian),
András **Baka** (Hungarian),
Snejana **Botoucharova** (Bulgarian),
Mindia **Ugrekhelidze** (Georgian), **judges**,
Lord Justice **Schiemann** (United Kingdom) **ad hoc judge**.

and also Michele **de Salvia**, **Registrar**

3. Summary of the judgment¹

Complaints

The applicants complain that measures taken against them to enforce planning measures concerning the occupation of their own land in their caravans violated Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention.

All the applicants, save the Beard family, argue that these measures also interfered with their peaceful enjoyment of their land, contrary to Article 1 of Protocol No. 1.

Sally Chapman and Jane Smith further complain under Article 6 of the lack of effective access to court to appeal against the planning and enforcement decisions of the authorities and the Coster family, Jane Smith and Thomas Lee also invoke Article 2 of Protocol No. 1, alleging that the enforcement measures deprived their children or grandchildren of an education.

1. This summary by the Registry does not bind the Court.

Decision of the Court

Article 8

In all five cases, the Court considered that the applicants' occupation of their caravans was an integral part of their ethnic identity as gypsies and that the enforcement measures and planning decisions in each case interfered with the applicants' rights to respect for their private and family life.

However, the Court found that the measures were "in accordance with the law" and pursued the legitimate aim of protecting the "rights of others" through preservation of the environment.

As regards the necessity of the measures taken in pursuit of that legitimate aim, the Court considered that a wide margin of appreciation had to be accorded to the domestic authorities who were far better placed to reach decisions concerning the planning considerations attaching to a particular site. In these cases, the Court found that the planning inspectors had identified strong environmental objections to the applicants' use of their land which outweighed the applicants' individual interests.

The Court also noted that gypsies were at liberty to camp on any caravan site with planning permission. Although there were insufficient sites which gypsies found acceptable and affordable and on which they could lawfully place their caravans, the Court was not persuaded that there were no alternatives available to the applicants besides occupying land without planning permission, in some cases on a Green Belt or Special Landscape area.

The Court did not accept that, because statistically the number of gypsies was greater than the number of places available in authorised gypsy sites, decisions not to allow the applicants to occupy land where they wished to install their caravans constituted a violation of Article 8. Neither was the Court convinced that Article 8 could be interpreted to impose on the United Kingdom, as on all the other Contracting States to the European Convention on Human Rights, an obligation to make available to the gypsy community an adequate number of suitably equipped sites. Article 8 did not give a right to be provided with a home, nor did any of the Court's jurisprudence acknowledge such a right. Whether the State provided funds to enable everyone to have a home was a matter for political not judicial decision.

Finding: no violation

Article 14

In all five cases, the Court had regard to its findings above under Article 8 that any interference with the applicant's rights was proportionate to the legitimate aim of preservation of the environment.

Finding: no violation

Article 1 of Protocol No. 1

For the same reasons given under Article 8, in **Chapman, Coster, Lee and Jane Smith**, the Court found that any interference with the applicants' peaceful enjoyment of their property was proportionate and struck a fair balance in compliance with the requirements of Article 1 of Protocol No. 1.

Finding: no violation

Article 6

In **Chapman** and **Jane Smith** the Court found that the scope of review of the High Court, which was available to the applicants after a public procedure before an inspector, was sufficient to comply with the requirement under Article 6 § 1 of access to an independent tribunal. It enabled a decision to be challenged on the basis that it was perverse, irrational, had no basis on the evidence or had been made with reference to irrelevant factors or without regard to relevant factors, which provided adequate judicial control of the administrative decisions in issue.

Finding: no violation

Article 2 of Protocol No. 1

In **Coster, Lee and Jane Smith**, the Court found that the applicants had failed to substantiate their complaints that their children or grandchildren were effectively denied the right to education as a result of the planning measures complained of.

In **Coster**, the Court noted that their eldest children, now over 16 years of age, had left school and gone out to work and their youngest children were attending the school near their home. In **Lee**, the applicant's grandchildren have been attending school near their home on the applicant's land and, in **Jane Smith**, the applicant had remained on her land since 1993.

Finding: no violation

Judges Pastor Ridruejo, Bonello, Tulkens, Strážnická, Lorenzen, Fischbach and Casadevall expressed a joint dissenting opinion in each case, which are annexed to the judgments. Judge Bonello added a further separate opinion.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.