AS TO THE ADMISSIBILITY OF

Application No. 20348/92
by June BUCKLEY
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 3 March 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

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 7 February 1992 by June Buckley against the United Kingdom and registered on 22 July 1992 under file No. 20348/92;

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 8 April 1993 and the observations in reply submitted by the applicant on 1 June 1993 and 8 October 1993;

- the further material submitted by the parties on 14 February 1994

- the observations submitted by the parties at the oral hearing on 3 March 1994;

THE FACTS

a. The particular circumstances of the case

The applicant is a British citizen born in 1964 and resident in Willingham. She is represented before the Commission by Mr. Luke Clements, a solicitor practising in Hereford.

The facts as submitted by the parties may be summarised as follows.

The applicant is a gypsy by birth. Her family has for many generations been based in the area of South Cambridgeshire near Willingham. Until 1988, the applicant had no fixed abode but travelled in caravans throughout the Willingham area.

In 1988 Mr. and Mrs. Buckley (who is the applicant's sister) acquired a one acre site in the Willingham area from a Mr. and Mrs. S., who had applied for and been refused, retrospective planning permission

for a single caravan. In May 1988, Mr. and Mrs. Buckley applied retrospectively for planning permission to have one residential caravan on the frontage of their one acre site. Permission was given on a personal temporary basis. In November 1988, a further retrospective application was made for three caravans. These were occupied by the applicant and her three children. Permission was given in January 1989 on a personal temporary basis.

On an unspecified date in 1988, the applicant acquired part of the land belonging to Mr. and Mrs. Buckley. In October 1989 on the part of the land acquired by the applicant, there were three caravans occupied by the applicant, her children and her mother. A retrospective planning application in respect of the three caravans was submitted on 4 December 1989. While it was under consideration the fourth caravan occupied by the applicant's brother moved on to the site. The application was refused by the District Council on 8 March 1990 on the basis that adequate provision had been made for gypsy caravans elsewhere, that the planned use of the land would detract from the rural and open quality of the landscape and that the access to the site was too narrow to allow two vehicles to pass.

An enforcement notice was issued by the District Council for the caravans to be removed to take effect on 15 May 1990.

The applicant appealed against the enforcement notice to the Secretary of State for the Environment.

In a decision dated 16 April 1991 based on an inspector's report, the Secretary of State dismissed the appeal, finding that the objections to the continued use of the site for caravans were so strong on planning and highway safety grounds that the grant of permission could not be justified. He found also that the concentration of gypsy sites in the area had reached the desirable maximum and the need for additional sites for gypsies should not outweigh the planning and highway objections. The inspector also referred to the fact that the applicant had planning permission to station a caravan on an adjoining approved site.

The applicant did not appeal to the High Court since this appeal lies only on points of law and she was advised that no grounds arose in her case.

The applicant was served with a summons for failure to comply with the enforcement notice on 9 September 1991. At the hearing in the Magistrates' Court on 7 January 1992, the applicant pleaded guilty on the advice of her solicitor and was fined £50 with £10 costs. The applicant has not moved and another enforcement notice is imminent.

By letter dated 20 May 1993, the Department of the Environment informed the District Council that the Secretary of State had decided to designate the area of South Cambridgeshire under section 12 of the Caravan Sites Act 1968. Designation was granted on the basis of the Council's assurance that they will apply their powers humanely and give sympathetic consideration to applications for gypsy sites. It was noted that a small number of gypsies still remained on unauthorised sites but that, in light of the provision made for sites which is greater than in any other district, it was considered "not expedient for adequate accommodation to be provided for gypsies residing in or resorting to South Cambridgeshire District".

The Order designating the district of South Cambridgeshire came into force on 13 August 1993.

The applicant was prosecuted for breach of an enforcement notice on 12 January 1994. The magistrates' court granted her an absolute discharge but ordered her to pay the prosecuting expenses.

b. Relevant domestic law and practice

Provision for gypsy sites

Section 16 of the Caravan Sites Act 1968 (the 1968 Act) defines "gipsies" as:

> "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 on travelling circuses, travelling together as such."

Section 6 of the 1968 Act provides that it shall be the duty of local authorities:

> "... to exercise their powers...so far as may be necessary to provide adequate accommodation for gipsies residing in or resorting to their area."

Pursuant to section 9 of the 1968 Act, the Secretary of State may direct local authorities to provide sites:

> "The Secretary of State may, if at any time it appears to him to be necessary so to do, give directions to any local authority to which subsection 1 of section 6 of this Act applies requiring them to provide pursuant to that section, such sites or additional sites, for the accommodation of such numbers of caravans, as may be specified in the directions; and any such directions shall be enforceable, on the application of the Secretary of State, by mandamus."

The Secretary of State has made directions to a local authority under section 9 on five occasions. No application has ever been made to the courts to enforce any such directions.

The designation system

Pursuant to Section 12 of the 1968 Act, where the Secretary of State is satisfied that the duty imposed by Section 6 has been carried out, he may designate the area of that local authority as one to which Section 10 applies.

Section 10 of the 1968 Act provides :

> "Prohibition of unauthorised camping in designated areas
>
> (1) In any area designated under the following provisions of this Act as an area to which this section applies it shall be an offence for any person being a gipsy to station a caravan for the purpose of residing for any period -
>
> (a) on any land situated within the boundaries of a highway; or
> (b) on any other unoccupied land; or
> (c) on any occupied land without the consent of the occupier.
>
> (2) In proceedings against any person for an offence under this section it shall be a defence to prove that the caravan was stationed on the land in consequence of illness, mechanical breakdown or other immediate emergency and that he removed it (or intended to remove it) as soon as reasonably practicable.
>
> (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding [level 1 on the standard scale]; and if the offence of which he is convicted is continued after the conviction he shall be guilty of a further

offence and shall be liable in respect thereof to a fine not exceeding £5 for every day on which the offence is so continued."

Section 11 of the Act provides:

"Orders for removal of unlawfully parked caravans and their occupants

(1) In any area to which section 10 of this Act applies, a magistrates' court may, on a complaint made by a local authority, and if satisfied that a caravan is stationed on land within the authority's area in contravention of that section, make an order requiring any caravan (whether or not identified in the order) which is so stationed on the land to be removed together with any person residing in it.

(2) An order under this section may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and in particular, may authorise the authority, by its officers and servants -

(a) to enter upon the land specified in the order; and
(b) to take, in relation to any caravan to be removed pursuant to the order, such steps for securing entry and rendering it suitable for removal as may be so specified ..."

COMPLAINTS

The applicant complains that she and her family are being prevented from living in her caravans on her own land and from following the traditional lifestyle of a gypsy. She refers to the designation system which penalises gypsies and to the lack of official sites for gypsies to resort to. She complains of a violation of her rights under Article 8 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 7 February 1992 and registered on 22 July 1992.

On 8 January 1993, the Commission decided to communicate the application to the Government and to ask for written observations on the admissibility and merits of the application.

The Government's observations were submitted on 8 April 1993 and the applicant's observations in reply were submitted on 1 June 1993 after one extension in the time-limit.

On 5 July 1993, the Commission decided to grant legal aid to the applicant.

The applicant obtained legal representation and further observations were submitted on her behalf on 8 October 1993.

On 1 December 1993, the Commission decided to hold an oral hearing.

On 14 February 1994, the applicant made further written submissions. The Government submitted further material on the same date.

At the oral hearing which took place before the First Chamber on 3 March 1994, the parties were represented as follows:

For the Government

Mr. Iain Christie Agent
Mr. David Pannick, Q.C. Counsel

Ms. Virginia Harrison, Miss Pauline Prosser and Ms. Jan Bird as Advisers from the Department of the Environment.

For the applicant

Mr. Timothy Jones Counsel
Ms. Perdita Cargill-Thompson Counsel
Mr. Luke Clements Solicitor

THE LAW

The applicant complains that she is prevented from living with her family in caravans on her land and from pursuing her traditional way of life as a gypsy. She invokes Article 8 (Art. 8) of the Convention which 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."

Insofar as the applicant complains of the alleged shortfall of official sites for gypsies in the Willingham area, the Government submit that the applicant has not exhausted domestic remedies as required by Article 26 (Art. 26) of the Convention since she has not applied to the Secretary of State to exercise his power under section 9 of the Caravan Sites Act 1968 to direct a local authority to comply with its statutory duty to provide such sites and if necessary, to enforce such directions in the courts.

The applicant submits there are no effective remedies which she is obliged to exhaust. The Secretary of State's power under section 9 is, she contends, discretionary and rarely exercised.

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 remedies, do not in reality offer any chance of redressing the alleged breach (cf. No. 9248/81, Dec. 10.10.83, D.R. 34 p. 78).

It is furthermore established that the burden of proving the existence of 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, and No. 9013/80, Dec. 11.12.82, D.R. 30 p. 96, at p. 102).

The Commission notes that in the context of the section 9 powers the Secretary of State has a very wide discretion. It appears that he has only exercised his discretion under section 9 in five cases and that there is no example of any enforcement of those directions being pursued in the courts. The Commission recalls that in the case of Temple v. the United Kingdom (No. 10530/83, Dec. 16.5.85, D.R. 42 p. 171) the Commission held that recourse to a purely discretionary power on the part of the Secretary of State did not constitute an effective domestic remedy. The Commission finds that the suggested application for discretionary relief in the instant case cannot do so either. In

these circumstances, the Commission finds that the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

The Government contend that the applicant cannot be considered a victim of any violation of her rights under Article 8 paragraph 1 (Art. 8-1) since as a matter of fact she was and is able to live either on the neighbouring land lawfully occupied by her sister or to apply for a place on one of the many other local authority and private gipsy caravan sites throughout Cambridgeshire. She also has not been subject to any of the criminal sanctions which may applied under the designation system. Further, they point out that applicant took up residence on her land without prior planning permission. They consider that the applicant cannot claim as a member of a minority group to be immune from general planning control.

To the extent that there might have been any interference with her rights under Article 8 para. 1 (Art. 8-1), the Government consider that the refusal of planning permission and issue of the enforcement notices are justified by the interests of public safety on the road, the economic well-being of the country and the protection of the environment. As for the framework of regulation, including the designation system, this is stated to represent a proportionate response to the need to protect public safety on the roads as well as the rights of others.

The applicant complains of a violation of her right to respect for her family life, private life and home under Article 8 (Art. 8) of the Convention. She complains that she is prohibited from living on her own land where her children can grow up in a stable environment and receive a continuous education and that she is also prevented from pursuing the traditional lifestyle of a gypsy. She submits that there is an acknowledged shortfall of sites for gypsies in South Cambridgeshire and that local authorities are failing to fulfil their statutory duty to provide sites.

The applicant also contends that it is a practical impossibility for her to station her caravans on her sister's site and that even if there were vacant pitches on the nearby official site, it is overcrowded and has a reputation for violence which renders it an unsafe location for a single woman living alone with her children. Further, the designation system which discriminates against gypsies prevents her moving onto unoccupied land or stationing her caravans near the highway. As a result, the applicant contends that she has nowhere she can legally or safely go.

The Commission has taken cognizance of the submissions of the parties. It considers that the applicant's complaints raise serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. It follows that the application cannot be dismissed as manifestly ill-founded. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits.

Secretary to the First Chamber President of the First Chamber

(M.F. BUQUICCHIO) (A. WEITZEL)