AS TO THE ADMISSIBILITY OF

Application No. 22902/93
by Carol and Steven SMITH
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 12 October 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
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

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 1 March 1993 by Carol and Steven SMITH against the United Kingdom and registered on 10 November 1993 under file No. 22902/93;

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 12 May 1994 and the observations in reply submitted by the applicant on 5 August 1994;

Having deliberated;

Decides as follows:

THE FACTS

1. Particular circumstances of the case

The applicants are British citizens born in 1961 and resident in Willingham. They are 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 applicants, who are gypsies by birth, married in 1981. Upon marriage, they had to leave their parents' site at Wisbech since they became a separate unit and there were no spare plots. For the next ten years, the applicants travelled throughout Cambridgeshire stopping in their caravan on roadsides and in laybys. They were subject to repeated threats of prosecution and eviction. In order to avoid disruption to their childrens' education (they have four children aged 10, 9, 7 and under 1) from constant removals, the applicants endeavoured to find a permanent stopping place.

In or about 1990, the applicants bought a plot of land in

Willingham, Cambridgeshire next to other plots of land occupied by gypsies. They moved on to the land in a caravan. On 29 May 1991, they applied retrospectively for planning permission for siting a caravan for residential purposes. This application was refused on 26 June 1991 by the District Council.

On 19 December 1991, two enforcement notices were issued by the District Council against the applicants' use of the land in breach of planning controls, requiring them to remove all caravans from the site.

The first applicant appealed against the orders. Following a local inquiry on 10 March 1992, the planning inspector in a decision dated 5 June 1992 found that while there was a continuing statistical shortfall of gypsy accommodation in Cambridgeshire the provision in Willingham itself had reached its desirable maximum. Considering that the demonstrable harm to the landscape by the unauthorised development and its conflict with planning policy outweighed the personal circumstances of the first applicant and her family, he rejected the applicant's appeal. He referred to the fact that the applicants had no wish to return to life on a council site, "where based on their sad experiences, living conditions are much less good and the surroundings much less safe and satisfactory." He went on to say:

> "In this regard one matter that appears to be of some relevance to the <applicants'>personal circumstances is the point that if they wish it <they> would appear to have a very good chance of renting a pitch on the Meadow Drove Council site when that opens. Although they would lose some of the privacy security and freedom they have on their own land it appears to me that that site would provide a reasonable standard of accommodation and a safe environment for their children. The site will only be just down the road from their present home. Living there they would be able to have a telephone for <the second applicant's> business. The children who are clearly a great credit to their parents would continue at their present school and <the first applicant> could continue with her present doctor. While I appreciate that <the applicants> do not want to live on a council site and again would no longer be able to choose their neighbours, a spell of living there might also allow them to build up their finances with a view to the purchase of a private site later on."

The inspector also referred to plots being available for purchase on approved gypsy sites in Cottenham nearby. He extended the time for compliance with the notice to nine months to allow the applicants a reasonable opportunity to seek another private site or to apply for a place on the official Meadow Drove site.

The applicants applied for planning permission to occupy the land with their caravan. Planning permission was refused on 5 June 1993.

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 (see below). 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.

Criminal proceedings were instituted against the applicants for non-compliance with the enforcement notice. The proceedings before the magistrates' court were adjourned on 15 September 1993 then on 29 September 1993, the case against the first applicant was withdrawn. The second applicant was convicted, and received a conditional discharge and was ordered to pay £ 75 costs. The District Council undertook not to prosecute again for three months.

2. Relevant domestic law and practice

Caravan Sites Act 1968

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."

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 applicants complain of a violation of their rights under Article 8 of the Convention. They submit that there is an acknowledged shortfall of sites for gypsies in South Cambridgeshire and that despite the alleged site to be built nearby no work has been done for the two and a half years since the initial plan. They submit that local authorities are failing to fulfil their statutory duty to provide sites. South Cambridgeshire and the surrounding districts are designated areas which empowers local authorities to evict gypsies on unauthorised sites in criminal proceedings. As a result, the applicants contend that they have nowhere they can legally or safely go and that they wish to stay on their land where their children can live in a stable environment and receive a continuous education.

The applicants also invoke Article 14 of the Convention in conjunction with Article 8.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 1 March 1993 and registered on 10 November 1993.

On 8 March 1994, 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 12 May 1994 and the applicants' observations in reply were submitted on 5 August 1994 after one extension in the time-limit.

On 5 July 1994, the Commission decided to grant legal aid to the applicants.

THE LAW

The applicants complain that they are prevented from living with their family in caravans on their own land and from pursuing their traditional way of life as a gypsies. They invoke Article 8 (Art. 8) of the Convention and Article 14 (Art. 14) of the Convention which provide:

Article 8 (Art. 8) of the Convention

"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."

Article 14 (Art. 14) of the Convention

"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 Government have submitted that the applicants' complaints have been introduced outside the six month time-limit imposed by Article 26 (Art. 26) of the Convention since the final decision taken in respect of the applicants' planning position was that of the inspector dated 5 June 1992 whereas the application was introduced before the Commission on 28 October 1993.

The applicants contend that they are not complaining merely of the inspector's decision but of the statutory and administrative regime to which they are subjected as gypsies.

The Commission notes that the applicants' complaints extend beyond the planning decision of 5 June 1992 and challenge the legal framework which applies to them in their current position. It finds that these complaints may be construed as relating to a continuing situation to which the six month rule is not applicable (see eg. No. 9303/81, Dec. 13.10.86, D.R. 49 p. 44). Consequently, the application cannot be rejected as having been introduced out of time.

The Government contend, inter alia, that the applicants cannot be considered victims of any violation of their rights under Article 8 (Art. 8) since as a matter of fact they were and are able to apply for a place on one of the many other local authority sites or pursue the option of seeking private land with planning permission. They point out that since the applicants are currently on their own land they have not been subject to any of the criminal sanctions which may apply under the designation system. Further, they emphasise that the applicants took up residence on their land without prior planning permission and argue that the applicants 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 their rights under Article 8 (Art. 8), the Government consider that the continued effect of planning restrictions is justified by the interests of the protection of the environment and rural amenity. As regards Article 14 (Art. 14) of the Convention, it is submitted that the case discloses no discrimination in a right guaranteed under the Convention. Further, even assuming that there was, the difference in treatment would be justified as being in the interests of balancing the interests of the settled population and those of the gypsy minority.

The applicants complain of a violation of their rights under Articles 8 and 14 (Art. 8, 14) of the Convention. They are subject to pressure to leave their own land but will face criminal sanctions if they move on to public or unoccupied land. There are no suitable available places on public sites, there being an acknowledged shortfall of sites for gypsies in the area. The measures to which they are subjected are, it is submitted, draconian, severely discriminatory and disproportionate. These factors operate cumulatively to put pressure on gypsies to abandon their traditional lifestyle of a gypsy and render such lifestyle practically impossible.

The Commission has taken cognizance of the submissions of the

parties. It considers that the applicants' 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, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)