Application No. 25938/94
by Edward Witney
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 3 December 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION

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 August 1994 by Edward Witney against the United Kingdom and registered on 14 September 1994 under file No. 25938/94;

Having regard to:

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

- the Commission's decision of 29 November 1995 to communicate the application without requesting observations;

- the letter dated 7 October 1996 from the applicant's legal representatives;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1931 and resident in Hemel Hempstead. He is represented before the Commission by Messrs. Lance Kent & Co. solicitors practising at Berkhamstead. The facts as submitted by the applicant may be summarised as follows.

The applicant is a gypsy by birth. His family travelled in search of work and he had no education. When he married, the applicant and his wife continued travelling together. They have eight children. The applicant was a scrap metal dealer, roof repairer and tree lopper.

The applicant and his wife obtained a pitch on an official gypsy site at Stockwell, Luton. They experienced harassment from other travellers and decided that such behaviour was a bad influence on their children. As a result, they reverted to travelling on the roadside from place to place.

Due to continuous harassment by the police while on the roadside, the applicant decided to purchase some land where he could settle down permanently. He had developed arthritis and had been forced to give up his work and to seek lighter work. He was unable to find any land and accepted a pitch on an official gypsy site at Hemel Hempstead. The applicant and his wife lived there for seven years. As a result of harassment from other gypsies on the site, the applicant looked for suitable land to purchase.

Eventually, the applicant found a piece of land at 50 Sheepcote Dell Road, Holmer Green, Buckinghamshire which was no longer required for farming purposes. He was advised by his solicitors that he had a real chance of obtaining planning permission to reside there and so he purchased the land on 26 March 1990. The applicant's wife had developed asthmatic and bronchial problems and the applicant was glad to have found such a healthy, country location.

Initially, the applicant erected a barn and used the land for grazing horses. When he had sufficient money, he put down hardcore and in 1992 he moved his caravan onto the land and began living there with his wife. In January 1993 he applied for planning permission to site a mobile home on the land as their residence. Chiltern District Council refused the application on 25 March 1993 on the grounds that the development was inappropriate in the Metropolitan Green Belt, the appearance of the development would not be in keeping with the rural character of the locality, which is designated as part of the Chilterns Area of Outstanding Natural Beauty, and that the development would create a precedent for other similar proposals.

The applicant appealed against the refusal of planning permission. On 22 March 1994 a Public Inquiry was held by an Inspector appointed by the Secretary of State for the Environment. In a decision letter dated 20 May 1994, he dismissed the appeal and upheld the Council's decision. He concluded that the needs of the applicant and his wife did not represent very special circumstances sufficient to overcome the strong policy objection to, and the general presumption against, inappropriate development in the Green Belt. Appeals to the High Court against a decision of the Secretary of State are competent on a point of law only. The applicant sought Counsel's opinion on this question and Counsel confirmed that no error on a point of law had been made by the Inspector.

In March 1994, the applicant and his wife moved onto their daughter's pitch at Hemel Hempstead. They moved there temporarily because Mrs. Witney has advanced stomach cancer and requires intensive nursing. Her daughter helps provide the care she needs.

The local planning authority are requiring removal of the applicant's mobile home from his land. The applicant and his wife are living with their daughter as visitors and could be required to leave the site at any time. Although the area was designated under the Caravan Sites Act 1968, it appears that there are insufficient official gypsy pitches in the area to satisfy demand. Since the applicant has nowhere he can legally place his caravan, he faces the threat of criminal prosecution. The applicant is anxious to return to his own land, as soon as his wife is well enough to do so, as she finds the noise, lack of privacy and overcrowding at her daughter's site difficult to cope with. He would also be able to provide a home for his other daughter who is unmarried.

COMPLAINTS

The applicant claimed that his rights under Article 8 of the Convention are being interfered with. He complained of being prevented from firstly, living with his family in a mobile home on his own land and secondly, from pursuing the traditional gypsy lifestyle and culture. He submitted that due to planning regulations and the shortage

of sites built for gypsies, he had no option but to buy his own land. However, he has been denied the right to live on his own land in a mobile home by both the local planning authority and the Secretary of State for the Environment.

The applicant alleged that his rights under Article 6 para. 1 of the Convention have been violated. The decision to uphold the refusal of planning permission was made by an Inspector appointed by the Secretary of State for the Environment. No appeal to a court of law against the Inspector's decision was possible because the issues were of fact and not of law. It was claimed that in these circumstances, since the Inspector is a salaried employee of the Secretary of State, the Inquiry cannot be considered to be an independent and impartial tribunal.

The applicant invoked Article 14, claiming that he was being discriminated against on the grounds of race, national or social origin, association with a national minority and birth or other status. It was alleged that such discrimination is caused by popular prejudice against gypsies and a failure by local and national Government to act despite that prejudice.

The applicant also invoked Article 1 of Protocol No. 1 in respect of being denied the right to live peacefully with his wife on his own land.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 1 August 1994 and registered on 14 September 1994.

On 29 November 1995, the Commission decided to communicate the application to the Government, without asking for written observations on the admissibility and merits of the application, pending the outcome of the proceedings before the Court in the case of Buckley v. the United Kingdom (No. 20348/92, Comm. Rep. 11.1.95) and in the case of Bryan v. the United Kingdom (No. 19178/92, Comm. Rep. 28.6.94).

The Court delivered its judgment in the Bryan case on 22 November 1995 (Eur. Court HR, Series A no. 335-A) and in the Buckley case on 25 September 1996 (Eur. Court HR, to be published in Reports 1996).

On 7 October 1996, the applicant's representatives wrote to the Commission stating that in light of the Court's judgment in Buckley, they wished to withdraw the application.

REASONS FOR THE DECISION

The Commission recalls that the applicant's representatives wish to withdraw the application in light of the Court's judgment in the Buckley case, where it found no violation of Article 8 of the Convention in relation to the refusal of planning permission to the applicant, a gypsy, to reside in caravans on her own land.

In these circumstances, the Commission finds that the applicant does not intend to pursue his application before the Commission. The Commission further considers that respect for Human Rights as defined in the Convention does not require it to continue the examination of the application.

It follows that the application may be struck out of the list of cases pursuant to Article 30 para. 1 of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO STRIKE THE APPLICATION OUT OF ITS LIST OF CASES.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber