Seminář mezinárodněprávní argumentace
Vystěhování ze Stone Heads

Manželé Crossovi žili tradičním způsobem života britských Cikánů[1] a kočovali po anglickém Lancashire až do doby, kdy je vzrůstající obtížnost takového způsobu života donutila usadit se na obecním cikánském stanovišti ve Stone Heads. Tady žili trvale asi třináct let, až do června 1996, kdy se odstěhovali do pronajatého domu kvůli poměrům na stanovišti, kde docházelo k rušení nočního klidu a k násilí. Nebyli však schopni si na bydlení v domě zvyknout, takže když se dozvěděli o uvolnění dvou stání ve Stone Heads, v listopadu 1997 se tam vrátili.

Britská cikánská stanoviště jsou pozemky rozdělené na parkovací stání takové velikosti, aby tu bylo možno parkovat obytné přívěsy, maringotky a další „domy na kolečkách". Jedna rodina často vlastní více než jeden takový karavan, propojuje je a buduje na nich různé přístavby, jako například pevné schody nebo stříšky, takže jsou často pojízdné jen teoreticky. Nejde o to, že by si Cikáni usedlý způsob života oblíbili, jsou k této změně života nuceni. Řádných cikánských stanovišť, kde je v každém stání k dispozici zděný blok s elektrickou přípojkou a zdrojem vody, je málo. Frekvence kočování kolísá případ od případu od celoročních kočovníků bez jakékoliv stálé základny k rodinám, které žijí na jednom místě po většinu roku, ale stále kočují s obytnými přívěsy o dovolené nebo v rámci rodinných událostí. Kočování je součástí kulturního dědictví tradičních Cikánů a Travellerů, které je stále důležitou kulturní daností, a to i pro ty, kdo již aktivně nekočují.

V Anglii byl právně upraven odlišný režim pro cikánská stanoviště spravovaná obcí a pro obdobná zařízení tohoto druhu, provozovaná soukromými osobami. Obyvatelé obecních cikánských stanovišť požívají podle zákona z roku 1968 jen omezenou jistotu držby. Smluvní právo obyvatele lze ukončit výpovědí s čtyřtýdenní lhůtou k vyklizení stání; vystěhovat jej lze na příkaz soudu, v řízení svou povahou vykonávacím, kde soudu nepřísluší zkoumat, zda důvody výpovědi nejsou jen smyšlené. Obec tedy nemá v daném případě ohledně výpovědních důvodů žádnou důkazní povinnost, a to ani v případě tvrzeného porušení smlouvy druhou stranou. Tato omezující pravidla neplatí pro soukromá stanoviště, ani pro ostatní stanoviště zřizovaná obcemi (tedy taková, která nejsou zřízena jako obecní *cikánská* stanoviště). Tady si obyvatelé pronajímají stání v rámci řádné nájemní smlouvy, kde v případě sporu o porušení podmínek smlouvy rozhodne na základě žaloby jedné ze stran soud, před nímž také probíhá řádné dokazování. Potíž je v tom, že někde, jako například v Lancashire, jsou k dispozici jen obecní cikánská stanoviště. Anglické státní orgány před vnitrostátními soudy obvykle obhajovaly rozdílnou legislativní úpravu zdůvodněním, že na obecních cikánských stanovištích je dána objektivní potřeba vyšší flexibility, aby Cikáni mohli podle volby zůstávat na stanovištích krátkodobě a kočovat v době sezónních prací. Také místní samospráva by měla problémy, pokud by vystěhování bylo omezeno soudními pravomocemi odložit nebo podmínit nějak vystěhování.

Článek 18 smlouvy o pronájmu stání č. 55 na Stone Heads panu a paní Crossovým stanovil:

„Obyvatel ani jeho hosté či rodinní příslušníci nesmí působit nepříjemnosti třetím osobám včetně obecních zaměstnanců, obyvatel ostatních stání nebo obyvatel pozemků a budov v blízkosti stání.„

Manželé Crossovi žili v roce 2001 na stání č. 55 spolu s dětmi Paulem (14 let), Georgem (12 let), Edmundem (8 let) a Lucy (4 měsíce). Vedlejší stání č. 56 pronajala obec dospělé dceři Crossových Catherine, která zde žila se svým druhem, za něhož se nakonec provdala. Oba dospělí synové Crossových bydleli jinde, často ale navštěvovali sestru i rodiče. V následujícím roce došlo k několika sporům mezi Crossovými a obcí, které se týkaly potřeby různých oprav, které údajně obec včas nezajistila. Správce stanoviště několikrát Crossovy upozornil na asociální chování jejich dospělých dětí a varoval je, že další incidenty mohou ohrozit jejich další pobyt na stanovišti. Přesto dospělé děti Crossových spolu s druhem jejich dcery Catherine nadále na stanovišti působily různé nepříjemnosti.

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[1] Definice „Cikána" v anglickém pojetí („Osoba kočovného způsobu života, bez ohledu na rasový nebo etnický původ") vyjadřuje spíše způsob života než etnický původ, a zahrnuje jak etnické Cikány nebo Irské Travellery, tak Travellery „z vlastní volby", jako jsou například tzv. New Age Travelleři, a to jakmile si zavedou dostatečně „kočovný" způsob života.

15. ledna 2001 dostala rodina výpověď s požadavkem na vyklizení obou stání. Písemné podrobnější odůvodnění obec neuvedla.
20. března 2001 obec podala návrh na vyklizení obou stání s tím, že jsou obývána bez právního důvodu a proti vůli vlastníka. Správce stanoviště jako svědek vypověděl, že Crossovi porušili článek 18 smlouvy. Crossovi naproti tomu tvrdili, že článek 18 smlouvy neporušili a ani obec nepopírá, že stížnosti se vztahují převážně ke Catherine a jejímu druhovi na stání 56.
17. července 2001 příslušný soud hrabství vydal příkaz k vyklizení.
15 srpna 2001 se na stanoviště dostavili obecní úředníci s výzvou k vyklizení, ale Crossovi se zabarikádovali na stání a odmítli odejít.
1. září 2001 brzy ráno obec zahájila násilné vyklizení stání za účasti policie a úředníků obce. Policie zatkla pana Crosse a jeho syna Georgie, údajně proto, že kladli odpor. Pan Cross naproti tomu tvrdil, že se pokoušel vynášet jednotlivé věci do přívěsu a byl přitom zatčen. Policisté jej spoutali a drželi v policejním voze asi hodinu a později dále na policejní stanici, ačkoliv si stěžoval na bolesti hrudníku. Policie rovněž zadržela syna Paula, takže paní Crossové nezbylo než si poradit sama, přičemž nejmladší Lucy byla nemocná. Oba přívěsy a spoustu dalších věcí rodině odvezli, včetně léků pro Lucy. Přívěsy vrátili později odpoledne, ale další věci včetně pračky, sušičky, mikrovlnné trouby, plynových bomb, konvice a oblečení až dva dny poté. Crossovi pak dále kočovali po okolí se zastávkami vždy na pár dní. Částečně z důvodu vysokého citového vypětí způsobeného nejistotou se paní Crossová rozhodla nastěhovat se s mladšími dětmi do řadového domu a tak byli v březnu 2002 odloučeni. George zůstal nějakou dobu s panem Crossem. Po vystěhování se již do školy nevrátil. Pan Cross pokračoval v kočování se svým karavanem, někdy se synem Paulem a příležitostně s Edmundem, ale obvykle neměli možnost zůstat na jednom místě déle než dva týdny. Protože neměl trvalou adresu, užíval pro poštovní účely včetně objednání zdravotní péče adresu své ženy.

Otázky:

1. Do kterých práv podle Evropské úmluvy zasáhla státní moc v daném případě?
2. Mohl by být rozdílný právní režim pro obecní cikánská stanoviště a ostatní stanoviště hodnocen jako diskriminační? Jestliže ano, o který diskriminační důvod by se jednalo?
3. Jaký cíl sleduje státní moc v uvedeném případě:
   - zásahem do práv rodiny Crossovy
   - vytvořením rozdílného právního režimu pro cikánská a ostatní stanoviště?
4. Jsou tyto cíle oprávněné?
5. Byly prostředky zvolené k jejich dosažení nezbytné?
6. Byly prostředky zvolené pro jejich dosažení přiměřené?

Případy:

Connors v. The United Kingdom, 27. května 2004, Stížnost č. 66746/01
http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=1132746FF1FE2A468ACCBCD1763D4D8149&key=16332&sessionId=6205893&skin=hudoc-en&attachment=true

Chapman v. The United Kingdom, 18. ledna 2001, stížnost č. 27238/95
http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=27238/95&sessionid=6205893&skin=hudoc-en

Buckley v. The United Kingdom, 25. září 1996, 1996 – IV
http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Buckley&sessionid=6205893&skin=hudoc-en

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Překlady citací vyňatých z odůvodnění rozsudku Evropského soudu pro lidská práva v případu Connors proti Velké Británii:

Zpráva o poskytování stanovišť a podmínkách na obecních cikánských a travellerských stanovištích v Anglii **(říjen 2002)**

Je zřízeno okolo 320 obecních stanovišť, nabízejících asi 5 000 přípojek… .. Odhadujeme, že je ale stále potřeba zřídit dalších 1 000 až 2 000 rezidenčních přípojek v horizontu pěti let. Kromě toho je třeba rovněž něco mezi 2 000 a 2 500 dalších přípojek na tranzitních stanovištích nebo pro tranzitní stání pro ty, kdo stále kočují. …. Existují objektivní překážky poskytování stanovišť, zejména v důsledku odporu usazených komunit. Mnozí soudí, že věc by vyřešila jen úprava zákonné povinnosti, která by „povzbudila“ obce k poskytování stanovišť. Rovněž by pomohlo, pokud by byla pro účely územního plánování stanoviště postavena na roveň pozemkům určeným k bydlení.
……………
Existují určité náznaky, že stále méně Cikánů a Travellerů v současné době celoročně kočuje, a někteří se „usazují“ z celé řady kombinujících se důvodů, které jsou přičitatelné jak osobním okolnostem v konkrétním případě, tak vzrůstajícím obtížím spojeným s kočováním a hledáním bezpečných stanovišť k zastavení, tak touhu po pohodlnějším způsobu života a lepším vzdělání pro děti.
………………
Většina rezidenčních cikánských a travellerských stanovišť vykazuje velmi nízké procento fluktuace svých obyvatel, jsou obvykle stabilní. Většina rodin žije na stanovišti alespoň tři roky, což platí pro 86% procent stanovišť...Ačkoliv se najdou výjimky, poskytují rezidenční cikánská a travellerská stanoviště obecně obrázek stabilizovaných sídlišť obydlených dlouhodobě obyvateli, kteří v průběhu roku jen málo kočují. Může tomu být tak proto, že pro mnoho obyvatel spočívá přitažlivost stanoviště v možnosti bydlet v obytném přívěsu (atraktivní z kulturních důvodů, a zároveň ponechávající otevřenou možnost budoucího kočování) a života v kulturně výlučném společenství mezi přáteli a rodinou. To neznamená nezbytně totéž jako uspokojit potřeby kočovného nebo polokočovného obyvatelstva. Pro mnoho obyvatel rezidenčních stanovišť je kočování duchovní a kulturní stav mysli spíše než každodenní realita.“

Případ **Somerset County Council v. Frederick Isaacs** [2002] EWHC 1014
(překlad výňatků ze soudního rozsudku, kde soud cituje stanovisko ministerstva ve sporu o přípustnost dvojího režimu na stanovištích)

„….základním rozdílem mezi stanovišti je potřeba vyšší míry flexibility na obecních cikánských stanovištích, které je třeba přizpůsobit kočovnému způsobu života jejich obyvatel. Tak mohou Cikáni zůstávat na stanovištích krátkodobě, nebo si stání na 12 měsíců

pronajmout a v době sezónních prací přitom kočovat. Ostatní obecní a soukromá stanoviště naproti tomu jsou určena pro dlouhodobé rezidenční obyvatele, kde není potřeba takové flexibility vzhledem k tomu, že tito obyvatelé nežijí kočovným způsobem života….Přesto je zde samozřejmě celá řada Cikánů kteří obývají stanoviště dlouhodobě, a celá řada jiných obyvatel domů na kolečkách kteří se za Cikány nepovažují ale raději krátkodobě obývají soukromá stanoviště. Cílem rozdílné právní úpravy je zajistit variabilitu pravidel aby bylo možno uspokojit rozdílné potřeby nejrůznějších jednotlivců a rodin; nejde o třídění nebo kategorizaci jednotlivců nebo rodin. …Zkušenost ukazuje, že místní samospráva by měla problémy při spravování stanovišť, pokud by zde vystěhování bylo předmětem široké soudní pravomoci odložit nebo podmínit vyklizení. Je třeba podtrhnout, že existuje rovnováha mezi touto skutečností a přínosem flexibility (která již byla zmíněna), že tato stanoviště poskytují nabídku odpovídající různým potřebám Cikánů….“

The Human Rights Act 1998

and its impact on Travellers

Historical Background

Following the horrors of the Second World War, The European Convention on Human Rights was launched on the 3th of September 1953. The Convention was signed up to by many European nations, including the United Kingdom and only a handful of member states are not yet parties to it. However, many countries, the UK being one of them, decided not to incorporate it into their own legal systems at the time. What this meant was that, in those countries that had not incorporated the Convention, individuals who believed their rights to have been violated, had to go through their own country’s court system (i.e., exhaust all domestic legal avenues) before they could take the matter to the European courts. In effect, this meant that any legal challenge brought on the grounds of a human rights abuse could take up to 5 years or more to be heard.

Despite being one of the first to sign up to the European Convention on Human Rights, the UK has been one of the last to incorporate it. Incorporation means turning the Convention and the rights enshrined in it, into an Act of law enforceable within the country itself. In October 2000, the British government finally incorporated the European Convention on Human Rights into UK law in the form of The Human Rights Act 1998.

The Human Rights Act v the European Convention

The Human Rights Act 98 is not an exact duplicate of the European Convention, but a somewhat trimmed down version. Most notably, Article 13, which allows for effective remedy when convention rights have been breached, has been cut out.
This means that when the English courts find that a Convention right has been breached, they cannot change legislation so as to avoid it happening again. They must instead issue a ‘declaration of incompatibility. It will then be up to Parliament to do something about it and reform the law. This is clearly a very serious omission and it was done so as not to give ‘undue’ power to the courts. It leaves the power to change unjust laws very firmly in the hands of the politicians.

There are also restrictions on ‘standing’. This means that only persons directly affected by a violation of human rights can take actions. This means that ‘third party actions’ (i.e., representative organisations taking a case on behalf of an individual or group) will be restricted.

How the Human Rights Act works

To claim a breach of your human rights you must firstly show that you are a ‘victim’. "A person who cannot show that he or she is personally affected by the law to a greater extent than any other person may not claim to be a victim."

The relevant Articles, Protocols and Clauses of the Act with regards to Travellers are as follows:

Article 6 - Everyone in entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 8 - Everyone has the right to respect for private and family life, his home and correspondence.

Article 11 - Everyone has the right to freedom of peaceful assembly and to freedom of associate with others.

Article 14* - 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.

Protocol 1 Part 1 - Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

Clause 6 - It is unlawful for a public authority to act in a way which in incompatible with a Convention right.

Clause 7 - A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6 (1) may - (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or - (b) rely on the Convention right or rights concerned in any legal proceedings.

Clause 8 - In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

*It should be noted that Article 14 is not a ‘substantive’ right. In other words, it cannot be raised on its own, but must be in conjunction with another breach. So whenever you see Article 14 raised, you will always find it partnered with another rights such as Article 6 or 8, for example.

Perhaps one of the most important factors to understand with regard to both the European Convention and the Human Rights Act is the concept of ‘proportionality.’ This is the central peg on which the Act and the Convention hinge and it refers to a number of fundamental restrictions or conditions regarding the rights enshrined in the Act.

What this means is that although you may establish that your rights under the Act have been violated, the court must then decide whether or not this violation was proportionate in the individual circumstances of the case. The Act states that no restrictions shall be placed upon these rights other than:

"such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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."

Gypsies and Travellers

The most relevant Articles of the European Convention on Human Rights for the purposes of unauthorised encampments are 6, 8, 14 and Article 1 of the First Protocol.

In the case of ***Chapman v UK the European Court of Human Rights*** ((2001) 33 EHRR 18.) held that a home set up without lawful authority could still be a 'home' within the terms of Article 8. This is further confirmed in the Guidance. When a public authority is considering whether an interference with the right to respect for home and family life is 'necessary in a democratic society', they will have to ask themselves whether:
i) there is a pressing social need for it; and
ii) it is proportionate to the aim pursued.

'Proportionality' brings into play other matters with regard to unauthorised encampments beyond the (sometimes formulaic) duty to carry out of welfare enquiries. Public authorities will need to ask themselves a number of questions before deciding whether to take eviction action. For instance: is the land that the Gypsies or Travellers are residing on 'inappropriate'? If they are moved on, where will they go and are there any alternative temporary/transit sites available? What provision of sites has the relevant local authority made for Gypsies and Travellers in its area? Thus it can be seen that the HRA has had the effect of broadening the scope of those matters that a public body ought to take into account before taking the step of using eviction powers.

http://www.gypsy-traveller.org/law/hra.htm

Výňatky z případu Connors:

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

1. Article 8 of the Convention provides as relevant:

> "1. Everyone has the right to respect for his private and family life, his home...
>
> 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."

2. The parties were agreed that Article 8 was applicable in the circumstances of this case and that the eviction of the applicant from the site on which he had lived with his family in his caravans disclosed an interference with his right to respect for his private life, family life and home.

3. The parties were also agreed, in the context of the second paragraph of Article 8, that the interference was "in accordance with the law" and pursued a legitimate aim, namely, the protection of the rights of other occupiers of the site and the Council as owner and manager of the site.

4. The question remaining for examination by the Court is whether the interference was "necessary in a democratic society" in pursuit of that aim.

A. Whether the interference was "necessary in a democratic society"

1. The parties' submissions

(a) The applicant

5. The applicant contended that his eviction from the site interfered unjustifiably with his rights under Article 8 of the Convention, as being unnecessary and disproportionate, in particular as he was not given the opportunity to challenge in a court the allegations made against him and his family. He denied that he or members of his family living on the plot had breached any term of the licence as alleged by Council officers and stated that he had no control over the conduct of visitors to the site, such as his adult sons or Michael Maloney. There was significant support for his family from other occupiers of the site which contradicted the situation as described by the Council. He disputed that it was reasonable or proportionate to evict him and his family for reasons relating to other adults. The Council failed to use other methods to control the alleged misbehaviour, such as injunctions or committal proceedings against those adults who were committing the damage or nuisance and appeared to make no distinction concerning the occupation of the two plots, 35 and 36. Nor when the applicant gave undertakings in court on 14 April 2000 did the Council apply for enforcement measures in respect of alleged breaches.

6. Contrary to the Government's assertions, the applicant submitted that he had no means of requiring the Council to substantiate its allegations against him and thereby resisting the revocation of his licence or preventing the eviction. There was extensive dispute as to the facts and allegations which could not be tested in the summary proceedings or in the judicial review proceedings, which preceded the coming into force of the Human Rights Act 1998. No opportunity was given for the submission of evidence, hearing or cross-examination of witnesses on these matters. As a result, there was no meaningful assessment as to whether the measures were proportionate or justified in pursuit of any legitimate aim. Following the Human Rights Act 1998, the cases before the domestic courts showed that they would not apply the Convention in such a manner as to overturn the system of security of tenure provided for in the legislation.

7. The applicant submitted that, notwithstanding the Government's explanations about alternative provision, there was no evidence in West Yorkshire of any encouragement for gypsies to purchase and occupy their own private sites. Gypsies in that area who wished security of tenure could not move to privately run sites as there were none. On the contrary there were many examples of enforcement action being taken against gypsies' occupation of their own land. Nor were there any temporary stopping places with basic facilities as envisaged in Government circulars such as 18/94. Since the repeal of the 1968 Act, there had been a reduction of 27% in local authority site provision for gypsies in Leeds, *e.g.* from 56 plots to 41. The applicant denied that he was advocating a single statutory framework for all sites, arguing that a particular need for flexibility in gypsy provision could be reflected in grounds available for possession (for example, unmaintained caravans, absence exceeding a particular period), but not by ignoring the need to prove disputed facts. Different regimes should not necessitate that gypsies on local authority sites lose the benefit of court protection to test, for example, an alleged breach of licence. As a Council tenant faced with an allegation of anti-social behaviour could argue his/her case in court, he saw no reason why a gypsy facing such allegations should not be able to do so.

8. As regarded the Government's policy arguments, he referred to the October 2002 report (paragraphs 55-63 above), which noted that there was in fact no clear national policy on accommodation for gypsies and that the majority of occupants of local authority gypsy sites lived a largely sedentary life, with a very low turnover of vacancies on such sites. In those circumstances, it was not the case that these sites were needed, or used, for the minority of gypsies who followed a substantially nomadic lifestyle and it was appropriate to bring site provision more closely within mainstream housing as a form of specially adapted housing for gypsies. It would be possible to safeguard the interests of the persons of nomadic habit by designating certain pitches for "transit" while at the same time conferring security of tenure on the majority of the residents of local authority gypsy sites. Similar exceptions for special purposes occurred in the Housing Act 1985.

9. The applicant argued that difficulties of proving anti-social behaviour existed equally on other mobile home sites, including privately run gypsy sites, and on housing estates, to which security of tenure did apply. He saw no reason why, if it was reasonable and workable for owners of privately run sites and housing associations and local authority landlords of housing tenants to prove allegations, local authorities who ran gypsy sites could not be required to the do the same. He noted that ample powers were available to a court to deal as a matter of urgency with troublemakers, including the power to grant interim injunctions and the powers under the Anti-social Behaviour Act 2003 which did not require the attendance of witnesses in court. He also disputed that the regime as it existed brought any financial benefit to gypsies through low costs as the cost of a pitch was variable, the average being much the same as rent for a Council house and in his case being almost double.

10. Furthermore, the applicant submitted that in his case, which concerned interference with an important right rendering his family homeless with loss of effective access to education and health services, the margin of appreciation should be narrow rather than wide. He considered that his case could be distinguished from *Chapman v. the United Kingdom,* ([GC] no. 27138/95, ECHR 2001-I, § 92), relied on by the Government, as that concerned a local planning decision grounded in local knowledge and understanding of local conditions whereas his case concerned assessment of a general policy at national level.

(b) The Government

11. The Government submitted the interference was justified as necessary in a democratic society and was proportionate to its objectives. The applicant had agreed to occupy the plot on the terms that neither he, his family nor guests would cause a nuisance and he had been warned by the Council that he was in breach. In the circumstances, the Council was entitled to revoke the licence. Similar terms would have applied to a secure housing tenant. Though the licence did not require the Council to give the applicant the opportunity to challenge the allegations of nuisance made against him, it was a public authority obliged to act lawfully, reasonably, fairly and for the proper purposes for which its powers were conferred. Its decisions were therefore amenable to judicial review and the applicant, who was legally represented, was able to challenge the decision in judicial review proceedings where the High Court found no evidence to doubt the reasonableness and procedural fairness of the Council's decision. The Council had also taken into account the needs of the applicant and his family in the decision-making process. If there had been no proper basis for the eviction or the applicant had mounted a substantial factual challenge to the asserted justification, the domestic courts would have been able, through their scrutiny, to provide a remedy against arbitrary action. There was however no substantial dispute as to the primary facts as the applicant did not appear to deny that his sons and guests were causing a nuisance. This procedure therefore provided the applicant with a series of important safeguards. In addition to the remedy of judicial review, occupiers had, since 2000, a right of action under the Human

Rights Act 1998, pursuant to which the courts can consider directly claims of violation of the Convention (see, for example, *Somerset County Council v. Isaacs*, paragraphs 47-50 above).

12. While they accepted that the statutory protection from eviction which the applicant enjoyed in respect of the plot was more limited than if his caravan had been on a site other than one provided by a local authority for gypsy accommodation, the Government emphasised that statutory regulation of housing was a matter of some complexity and within the area in which courts should defer to the decision of the democratically elected legislature. A wide margin of appreciation applied equally to this situation as it did in the planning context (see *Chapman v. the United Kingdom*, cited above, § 92). They argued that the limited degree of protection was justified with regard to the differing aims of the statutory schemes concerned. Regarding the provision for gypsies, it had to be recalled that the 1968 Act had sought to remedy the grave shortage of sites for gypsies who led a nomadic lifestyle by placing a duty on local authorities to provide such sites. By 1994, the Act was found to have served its purpose as far as it could reasonably be expected to, with local authority sites providing the largest contribution to the overall accommodation needs of gypsies. Policy then changed its emphasis to encouraging gypsies to promote their own sites via the planning process. The authorities were keeping the situation under review, as seen in the independent reports issued in October 2002 and July 2003, which did not reveal that the exemption posed any problems in practice in the operation of local authority gypsy sites. It was apparent in the latter report that local authorities used their powers of eviction sparingly and as a sanction of last resort. It remained however an important management tool.

13. Notwithstanding shifts in gypsy habits, the existing local authority supply of sites remained an essential component of the Government's strategy of ensuring an adequate level of provision for gypsies and the policy of the legislation was to maintain and safeguard that distinct supply. Thus the special regime of tenure applicable to local authority gypsy sites reflected the need to ensure that local authorities were able to operate their gypsy sites in a flexible way that met the special accommodation needs of gypsies consistent with their nomadic lifestyle. To require local authorities to justify in court their management decisions in relation to individual occupiers would add significantly to their administrative burden, increasing costs and licence fees and would reduce the flexibility intended by the framework. The domestic courts examining the cases of *Isaacs* and *Smith* concluded, in light of the evidence submitted, that there remained objective justification for current legislative arrangements on local authority gypsy sites (see paragraphs 47-53 above). The issues raised in the recent reports were now the subject of a thorough Government review of policy, which would include the existing regime of tenure on local authority gypsy sites and examine all the competing interests. It was not the case that the reports established that this regime was currently unjustifiable or that there was a readily identifiable and workable alternative regime of greater security of tenure that would overcome the applicant's complaints in this case.

14. The Government further explained that the policy and object of the mobile homes legislation was to remedy a different problem, namely, the inequality of bargaining power between the mobile home owner and the site owner, in which area there was a deficiency of supply over demand which the private sites, run as businesses, were in a position to exploit, by for example compelling a resident to buy his mobile home from the site owner and then evicting him and forcing him to sell the home back at a significant undervalue. The 1983 Act was designed specifically to remedy such abuses by giving residents of such sites stronger security of tenure. On the other hand, the regime applicable to local authority gypsy sites enabled disruptive occupiers to be dealt with quickly, preventing damage to the site and forestalling the tendency of the other occupiers to leave to avoid the problem. There was the practical advantage that this avoided the need to produce witnesses, there being a reported reluctance for other occupiers to get involved or "inform" on rule-breakers.

2. *The Court's assessment*

(a) General principles

15. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, among other authorities, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, 27 September 1999, §§ 88, ECHR 1999-VI).

16. In this regard, a margin of appreciation must, inevitably, be left to the national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions. The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (see, for example, *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, p. 21, § 52; *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A, no. 104, § 55). On the other hand, in spheres involving the application of social or economic policies, there is authority that the margin of appreciation is wide, as in the planning context where the Court has found that "[i]n so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation (*Buckley v. the United Kingdom,* judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1292, § 75 *in fine*). The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 45, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 49). It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, *mutatis mutandis*, *Gillow v. the United Kingdom*, cited above, § 55; *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III; *Christine Goodwin v. the United Kingdom*, no. 28957/95, § 90, ECHR 2002-VI). Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (*Hatton and others v. the United Kingdom*, [GC] no. 36022/97, ECHR 2003-..., §§ 103 and 123).

17. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Buckley*, cited above, pp. 1292-93, § 76, *Chapman v. the United Kingdom* [GC], no. 27138/95, ECHR 2001-I, § 92).

18. The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant

regulatory framework and in reaching decisions in particular cases (*Buckley* judgment cited above, pp. 1292-95, §§ 76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see *Chapman*, cited above, § 96 and the authorities cited, *mutatis mutandis*, therein).

(b) Application in the present case

19. The seriousness of what was at stake for the applicant is not in doubt. The applicant and his family were evicted from the site where they had lived, with a short absence, for some fourteen to fifteen years, with consequent difficulties in finding a lawful alternative location for their caravans, in coping with health problems and young children and in ensuring continuation in the children's education. The family was, in effect, rendered homeless, with the adverse consequences on security and well-being which that entails. The Council, and the Government in these proceedings, took the view that the eviction was justified by a breach of the licence conditions, the applicant being responsible for causing nuisance on the site. The applicant contested that he was at fault. It is not for the Court however to assess in retrospect whose version of events was correct as the Council in evicting the applicant relied instead on the power to give 28 days notice to obtain summary possession without proving any breach of licence. While it was variously alleged by Council officers that the applicant's licence conditions had been breached due to the unruly conduct of persons on his pitch and contended by the applicant that any problems arose from adult visitors from off the site over whom he had no control, the respective merits of the arguments were not examined in the County Court proceedings, which were only concerned with the fulfilment of the formal conditions for the eviction. The central issue in this case is therefore whether, in the circumstances, the legal framework applicable to the occupation of pitches on local authority gypsy sites provided the applicant with sufficient procedural protection of his rights.

20. The serious interference with the applicant's rights under Article 8 requires, in the Court's opinion, particularly weighty reasons of public interest by way of justification and the margin of appreciation to be afforded to the national authorities must be regarded as correspondingly narrowed. The Court would also observe that this case is not concerned with matters of general planning or economic policy but with the much narrower issue of the policy of procedural protection for a particular category of persons. The present case may also be distinguished from the *Chapman* case (cited above), in which there was a wide margin of appreciation, as in that case, it was undisputed that the applicant had breached planning law in taking up occupation of land within the Green Belt in her caravans and claimed, in effect, special exemption from the rules applying to everyone else. In the present case, the applicant was lawfully on the site and claims that the procedural guarantees available to other mobile home sites, including privately run gypsy sites, and to local authority housing, should equally apply to the occupation of that site by himself and his family.

21. The Government have argued, firstly, that there is a need to exempt local authority gypsy sites from security of tenure provisions that apply in other areas of accommodation. Government policy sought to cater for the special needs of gypsies who live a nomadic lifestyle and this, they emphasised, required flexibility in the management of local authority sites. They argued, secondly, that the power to evict summarily was a vital management tool in coping with anti-social behaviour as without speedily removing troublemakers the other gypsy families would tend to abandon the site rather than assisting the local authority by "informing" on others and giving evidence in formal court procedures. As a subsidiary argument, they submitted that the additional costs of court procedures could increase the fees applicable to gypsy sites and thus act to the overall detriment of the gypsy population as a whole.

22. As regards the nomadism argument, the Court notes that it no longer appears to be the case that local authority gypsy sites cater for a transient population. The October 2002 report (see paragraphs 55-63 above) indicates, as has been apparent from the series of cases brought to Strasbourg over the last two decades, that a substantial majority of gypsies no longer travel for any material period. Most local authority sites are residential in character. On 86% the residents have been in occupation for three years or more and there is a very low turnover of vacancies. Of an estimated 5,000 pitches, only 300 are allocated as transit pitches. It is not apparent that it can be realistically claimed that the majority of local authority sites have to provide, or aim to provide, a regular turnover of vacancies to accommodate gypsies who are travelling round or through the area. The Court is not persuaded therefore that the claimed flexibility is related in any substantial way to catering for an unspecified minority of gypsies who remain 'nomadic' and for whom a minimum of transit pitches have to be made available. It appears that there are in fact specific sites designated as "transit" sites and that these are distinguished from the vast majority of other local authority gypsy sites. The material before the Court certainly does not indicate that eviction by summary procedure is used as a means of maintaining a turnover of vacant pitches or of preventing families from becoming long-term occupants.

23. As regards the use of summary eviction as a tool in controlling anti-social behaviour, the Court would note that the 2003 report indicates that it is in fact only rarely used – on 5% of sites – and that some local authorities considered that the licence status of gypsies made them second-class citizens and would prefer to regularise their position to bring them into line with other forms of social housing (see paragraphs 64-66). The mere fact that anti-social behaviour occurs on local authority gypsy sites cannot, in itself, justify a summary power of eviction, since such problems also occur on local authority housing estates and other mobile home sites and in those cases the authorities make use of a different range of powers and may only proceed to evict subject to independent court review of the justification for the measure. Notwithstanding the assertion that gypsy attitudes to authority would make court proceedings impractical, it may be noted that security of tenure protection covers privately run gypsy sites to which the same considerations would appear also to apply. Consequently the Court is not persuaded there is any particular feature about local authority gypsy sites which would render their management unworkable if they were required to establish reasons for evicting long-standing occupants. Nor does it find any indication that the gypsies would lose the advantage of low financial costs attaching to local authority sites. According to the submissions of the applicant, which were not contested by the Government, local authority gypsy sites do not benefit from particularly low licence fees and in his case he had to pay double the rate of a local authority housing tenancy.

24. Nor does the gypsy population gain any benefit from the special regime through any corresponding duty on the local authority to ensure that there is a sufficient provision for them (see *P. v. the United Kingdom,* no. 14751/89, decision on admissibility of 12 December 1990, Decisions and Reports 67, p. 264, concerning the regime applicable before the repeal of section 6 of the Caravan Sites Act 1968 and paragraphs 35-36 above). The October 2002 report noted that 70% of local authorities did not have any written gypsy/traveller accommodation policy and commented that this reflected the lack of a specific duty on local authorities to consider their needs (paragraph 58 above). Since the 1994 Act came into force, there has been only a small net increase in the number of local authority pitches. The case of *Chapman*, together with the four other applications by gypsies decided by the Grand Chamber (*Beard v. the United Kingdom*, no. 24882/94, *Coster v. the United Kingdom* no. 24876/94, *Jane Smith v. the United Kingdom*, no. 25154/94, and *Lee v. the United Kingdom*, no. 25289/94, judgments of 18 January 2001), also demonstrate that there are no special

allowances made for gypsies in the planning criteria applied by local authorities to applications for permission to station of caravans on private sites.

25. The Government have pointed out that the domestic courts, since the entry into force of the Human Rights Act 1998, have examined the Convention issues in similar cases and found no violations of Articles 14 or 8. The Court notes that the High Court has reviewed the lack of security of tenure of gypsies on local authority sites in a number of cases. There is force in the Government's argument that some weight should be attached to the views of national judges who are in principle better placed than an international one to assess the requirements of the society because of their direct and continuous links with that society. However, in *Isaacs*, the judge commented that he was not over-impressed by the vagueness of 'experience' relied on by the Government in justifying the necessity of the regime (see paragraph 50 above), while in *Smith*, the judge implied that he would have no difficulty in concluding that there were a substantial majority of gypsies who were no longer nomadic whose position could immediately be safeguarded by some new legislation (paragraph 53 above). The Court would observe that the domestic courts stopped short of finding any breach of the provisions of the Convention, having regard *inter alia* to the perceived existence of safeguards that diminished the impact on the individual gypsy's rights and to a judicial reluctance to trespass on the legislative function in seeking to resolve the complex issues to which no straightforward answer was possible. The domestic courts' position cannot therefore be analysed as providing strong support for the justification of continuing the current regime.

26. The existence of other procedural safeguards is however a crucial consideration in this Court's assessment of the proportionality of the interference. The Government have relied on the possibility for the applicant to apply for judicial review and to obtain a scrutiny by the courts of the lawfulness and reasonableness of the Council's decisions. It would also be possible to challenge the Council for any failure to take into account in its decision-making relevant matters such as duties towards children (see paragraph 42 above). The Court would recall that the applicant sought permission to apply for judicial review and that permission was refused. In the applicant's case, his principal objection was based not on any lack of compliance by the Council with its duties or on any failure to act lawfully but on the fact that he and the members of the family living with him on the plot were not responsible for any nuisance and could not be held responsible for the nuisance caused by others who visited the site. Whether or not he would have succeeded in that argument, a factual dispute clearly existed between the parties. Nonetheless, the local authority was not required to establish any substantive justification for evicting him and on this point judicial review could not provide any opportunity for an examination of the facts in dispute between the parties. Indeed, the Government drew the Court's attention to the Court of Appeal's decision in *Smart*, where it was held that to entitle persons housed under homelessness provisions, without security of tenure, to have a court decide on the facts of their cases as to the proportionality of their evictions would convert their occupation into a form of secure tenure and in effect undermine the statutory scheme (paragraph 54 above). While therefore the existence of judicial review may provide a valuable safeguard against abuse or oppressive conduct by local authorities in some areas, the Court does not consider that it can be regarded as assisting the applicant, or other gypsies, in circumstances where the local authority terminates licences in accordance with the applicable law.

27. The Court would not under-estimate the difficulties of the task facing the authorities in finding workable accommodation solutions for the gypsy and traveller population and accepts that this is an area in which national authorities enjoy a margin of appreciation in adopting and pursuing their social and housing policies. The complexity of the situation has, if anything, been enhanced by the apparent shift in habit in the gypsy population which remains nomadic in spirit if not in actual or constant practice. The authorities are being required to

give special consideration to a sector of the population which is no longer easy to define in terms of the nomadism which is the *raison d'être* of that special treatment.

28. However, even allowing for the margin of appreciation which is to be afforded to the State in such circumstances, the Court is not persuaded that the necessity for a statutory scheme which permitted the summary eviction of the applicant and his family has been sufficiently demonstrated by the Government. The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community. The references to "flexibility" or "administrative burden" have not been supported by any concrete indications of the difficulties that the regime is thereby intended to avoid (see, *mutatis mutandis*, *Larkos v. Cyprus*, [GC], no. 29515/95, ECHR 1999-I, where in finding a violation of Article 14 in conjunction with Article 8 concerning the difference in security of tenure provisions applying between tenants of public and private housing, the Court did not find that the difference in treatment could be justified by the argument that giving the applicant the right to remain indefinitely in a State-owned dwelling would fetter the authorities' duty to administer State-owned property in accordance with constitutional and legal requirements). It would rather appear that the situation in England as it has developed, for which the authorities must take some responsibility, places considerable obstacles in the way of gypsies pursuing an actively nomadic lifestyle while at the same time excluding from procedural protection those who decide to take up a more settled lifestyle.

29. In conclusion, the Court finds that the eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a "pressing social need" or proportionate to the legitimate aim being pursued. There has, accordingly, been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

30. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] 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."

31. The Court has found above a violation of Article 8 of the Convention. No separate issue arising under Article 14 of the Convention, the Court finds it unnecessary to consider this complaint further.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

32. Article 1 of Protocol No. 1 provides as relevant:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

33. The applicant complained that during the eviction the Council interfered with his personal property by removing essential possessions from the pitch and retaining various items. They failed to return the property promptly and, when they did, dumped it on the roadside.

34. The Court notes that the applicant does not allege that possessions were damaged or lost or that the actions of the Council were unlawful, in which latter case it would have been possible to take action in the courts. To the extent therefore that the removal of the property was a consequential element of the eviction of the applicant and his family from the local authority site, the Court does not find that it raises any separate issues from those considered under Article 8 above and thus finds it unnecessary to examine the complaint further.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

35. Article 6 § 1 of the Convention provides as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

36. The applicant complained under Article 6 that he was unable in the summary possession proceedings to challenge the Council's allegations of nuisance whether by giving evidence himself or calling witnesses. The applicant was at a substantial disadvantage given the terms of the licence, in respect of which he had not been in a free bargaining position. There was no equality of arms and he was denied any effective access to court against the very serious interference with his home and family.

37. The Court considers that the essence of this complaint, that his eviction was not attended by sufficient procedural safeguards, has been examined under Article 8 above and may be regarded, in the present case, as absorbed by the latter provision. No separate issue therefore arises for determination.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

38. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

39. The applicant submitted that he had no possibility of obtaining a determination in court of the disputed facts and allegations relied on by the Council in determining his licence. Judicial review did not provide an effective method of challenging the Council's actions as it did not involve testing of the evidence, while in the summary proceedings the judge had no discretion to investigate the matters but was required to order possession under the terms of Order 24.

40. The Government did not consider that any issue arose, in particular as no arguable claim of a violation was disclosed for the purposes of Article 13 of the Convention. In any event, the applicant could challenge the reasonableness of the Council's actions in judicial review proceedings and require the Council to show in the County Court that they had lawfully determined the licence. The applicant could also have taken action against any

individual officer who had acted unlawfully and the law of tort was available to remedy any unlawful interference with his property.

B. The Court's assessment

41. According to the Court's case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

42. The Court has found above that there has been a violation of Article 8. An "arguable claim" therefore arises for the purposes of Article 13.

43. However, the Court recalls that Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's primary legislation to be challenged before a national authority on grounds that it is contrary to the Convention (see *James and others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 85; *A. v. the United Kingdom*, no. 35373/97, ECHR 2002-X, §§ 112-113). The applicant's complaints related in essence to the exemption conferred on local authority gypsy sites by the Mobile Homes Act 1983.

44. The Court thus concludes that the facts of the present case disclose no violation of Article 13 of the Convention.