

## *Chapman v UK*

### **Note of judgment prepared by the Traveller Law Research Unit, Cardiff Law School<sup>1</sup>.**

On 18<sup>th</sup> January 2001 the European Court of Human Rights gave judgment in 5 cases against the UK in which the applicants were Gypsies. These being

*Chapman v. UK*  
*Coster v. UK*  
*Beard v. UK*  
*Lee v. UK and*  
*Smith v. UK*

The following analysis is based upon the lead case, *Chapman v UK*. All the cases can be found on the Council of Europe web site at:  
<http://hudoc.echr.coe.int/hudoc/default.asp><sup>2</sup>

## *Analysis*

### **1. Preliminary comments**

#### **1.1 *Varey v UK***

Originally the Court had 6 cases to consider. The UK Government appreciated that it was very likely to lose one of them (*Varey v UK*<sup>3</sup>) and accordingly effected a 'friendly settlement' of the case. This involved payment of all legal costs plus payment of £60,000 compensation.

#### **1.2 *The Majority***

The decision in *Chapman* was by a narrow 10:7 majority. This is closer than the *Buckley v UK* (1996) majority (which was 6:3) and shows that the UK is having an increasingly difficult task in succeeding in these cases. Indeed had it not settled *Varey* it would now have lost its first Roma rights case in Strasbourg.

#### **1.3 *The changing approach to minority rights***

A key issue in the case concerned the extent to which European 'norms' in respect of the treatment of minorities had become firmly established. The majority thought they had not reached a critical stage of maturity such as to dictate an adverse finding against the UK; the minority considered that they had. Implicit in this disagreement is that at some time in the future it is likely that these norms will be sufficiently firmly established to enable the Court to

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<sup>2</sup> When searching this site, type in the name of the case in the 'Text' box (eg 'Chapman UK') and ensure that the 'Sorted by' box is set at 'Date (new first)'. A summary of the case is also published in the Times on 30<sup>th</sup> January 2001 albeit that the cross-heading wrongly states 'Gypsies have no rights above planning law'.

<sup>3</sup> This case can be found by searching the Council of Europe web site as indicated above, although in addition the box labelled 'resolutions (execution)' should be checked. A summary of the case is also published in the Times on 30<sup>th</sup> January 2001

make such an adverse finding. In essence therefore the judgment is a stay of execution for the UK. Unless there is a significant improvement in the domestic treatment of Gypsies over the next few years the court is virtually certain to find against the UK—on the basis that such treatment is no longer tolerable.

- 1.4 Since the acceptability of the UK's actions as measured against general European standards was such an important issue, it is interesting to analyse the way the judges voted having regard to their origins. Of the 17 judges 10 could be described as coming from Western European countries and 7 from the Eastern and Central Europe (including Turkey). Of these 7, all but one<sup>4</sup> voted against a violation whereas the majority of the Western Europeans (6:4<sup>5</sup>) considered that Mrs Chapman's rights had been violated. The implication being that from a Western European perspective the UK had fallen below 'acceptable standards'.

## 2. Mrs Chapman's legal arguments

- 2.1 Mrs Chapman's lawyers advanced two basic submissions. Firstly they sought to convince the Court that the facts of this case were materially different to those in *Buckley v UK* (1996). Secondly they argued (with the support of the European Roma Rights Centre<sup>6</sup>, which intervened to support the complaint) that since 1996

there had emerged a growing consensus amongst international organisations about the need to take specific measures to address the position of Roma, *inter alia*, concerning accommodation and general living conditions. Articles 8 and 14 should be interpreted therefore in the light of the clear international consensus about the plight of the Roma and the need for urgent action (*see judgment at para 89*)

- 2.2 In addition the lawyers sought to clarify certain aspect of the Court's 1996 judgment in *Buckley*. Of most importance in this respect was the legal question of whether state action to force a Gypsy to move her caravan engaged Article 8<sup>7</sup> merely because it interfered with her enjoyment of her home— or whether it raised the wider and more personal issue of an interference with 'private and family life'.

## 3. The Court's approach

- 3.1 As noted above, the Court was divided in its decision, however it unanimously held that planning enforcement action to remove a caravan involved an interference under Article 8 not merely with the enjoyment of a home, but also of private and family life where what was at stake was a traditional way of life.

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<sup>4</sup> Mrs V. STRÁŽNICKÁ (SLOVAKIAN)

<sup>5</sup> The 4 included the 'ad hoc' UK Judge Lord Justice Schiemann.

<sup>6</sup> Based in Budapest, see <http://errc.org/>

<sup>7</sup> Which concerns the right to respect for private and family life, home and correspondence

### 3.2 *The majority view*

The Majority of the Court considered that the Mrs Chapman's circumstances were not materially different to those in the Buckley case. Whilst the European Court of Human Rights is not bound by the custom of 'precedent' to follow its previous decisions, it does try to be consistent<sup>8</sup>. The sub-text for the judgment in this regard, is that Gypsy issues are controversial and the Court is reluctant to get involved unless the actions of the state are manifestly 'out of order'. In the parlance of the Court, this is expressed as giving the member state a 'wide margin of appreciation'.

### 3.3 The Court agreed that if a generally accepted standard for the treatment of minorities did exist throughout Europe, then it could require the UK to conform to this. In this regard it stated (at para 93 – 94):

there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle ... not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community. ... However, the Court is not persuaded that the consensus is sufficiently concrete for it to derive any guidance as to the conduct or standards which Contracting States consider desirable in any particular situation.

### 3.4 Whilst this assessment is depressing, it is clear that the Court would be prepared to reach a different decision in this case, when these standards have become 'sufficiently concrete'—as inevitably they will over time (and with the enlargement of the EU—perhaps relatively soon).

### 3.5 Whilst the 7 judges in the minority rejected this view, even the majority accepted that the failure of the UK to live up to its domestic and international obligations could reasonably be described as 'deplorable' (at para 100):

the issue for determination before the Court in the present case is not the acceptability or not of a general situation, however deplorable, in the United Kingdom in the light of the United Kingdom's undertakings in international law, but the narrower one whether the particular circumstances of the case disclose a violation of the applicant's, Mrs Chapman's, right to respect for her home under Article 8 of the Convention.

### 3.6 Of great potential importance, however, the court upheld its recent decision in *Thlimmenos v Greece* (2000)<sup>9</sup> that unlawful discrimination can occur where a state applies the same sanctions against people in materially different situations. Classically discrimination has tended to concentrate on governments' failure to treat similar people in the same way. *Thlimmenos* concerned a person who had served a term of imprisonment for refusing military service on religious grounds. He was subsequently barred from becoming a chartered accountant because of this criminal conviction. The Court held that this action failed to distinguish people who had convictions due to dishonesty from those who had convictions for religious or other

<sup>8</sup> Whilst, however, emphasising that the Convention is a living instrument—in effect, that as social attitudes change, the Court is prepared to review its decisions to ensure that they reflect these new standards of acceptable behaviour.

<sup>9</sup> 6<sup>th</sup> April 2000; No. 34369/97.

conscientious reasons. The same principle obviously applies to Gypsies who find themselves breaching planning control, due to their cultural way of life, as opposed to other people whose breach arises for quite different reasons.

### 3.7 *The Dissenting Minority*

The fact that 7 judges were prepared to vote for a violation is significant since it means that the UK was closer to failing in this case, than in the earlier *Buckley* decision.

### 3.8 In the *Buckley* judgment a particularly powerful dissenting opinion was given by the French Judge Judge Pettiti<sup>10</sup> who stated (amongst other things):

The Strasbourg institutions' difficulty in identifying this type of problem is that the deliberate superimposition and accumulation of administrative rules (each of which would be acceptable taken singly) result, firstly, in its being totally impossible for a Gypsy family to make suitable arrangements for its accommodation, social life and the integration of its children at school, and secondly, in different government departments combining measures relating to town planning, nature conservation, the viability of access roads, planning permission requirements, road safety and public health that, in the instant case, mean the Buckley family are caught in a "vicious circle".

### 3.9 The minority in the *Chapman* also delivered a powerful dissenting opinion, particularly the Maltese Judge, Giovanni Bonello. The minority rejected the assertion that there was no firm European approach to the treatment of minorities, stating (at para 3 of their Opinion):

There is an emerging consensus amongst the member States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle ... This consensus includes a recognition that the protection of the rights of minorities, such as gypsies, requires not only that Contracting States refrain from policies or practices which discriminate against them but that also, where necessary, they should take positive steps to improve their situation through, for example, legislation or specific programmes. We cannot therefore agree with the majority's assertion that the consensus is not sufficiently concrete or with their conclusion that the complexity of the competing interests renders the Court's role a strictly supervisory one

### 3.10 The minority concluded (at para 5 of their Opinion) that:

- The long-term failures of local authorities to make effective provision for gypsies in their planning policies is evident from the history of implementation of measures concerning gypsy sites, both public and private (para 5)
- the Government is already well aware that the legislative and policy framework does not provide in practice for the needs of the gypsy minority and that their policy of leaving it to local authorities to make provision for gypsies has been of limited effectiveness

and on this basis they considered that

it is disproportionate to take steps to evict a gypsy family from their home on their own land in circumstances where there has not been shown to be any other lawful, alternative site reasonably open to them

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<sup>10</sup> Who has sadly since died).

that local authorities should accordingly

adopt such measures as they consider appropriate to ensure that the planning system affords effective respect for the home, private life and family life of gypsies such as the applicant.

- 3.11 As noted above a separate dissenting Opinion was delivered by the Maltese Judge, Giovanni Bonello. In this he sought to expose the inappropriateness of focussing on Mrs Chapman's failure to comply with UK planning law, when the Government itself was in breach of its international commitments towards minorities, and the local authority had itself failed to comply with its duties under the Caravan Sites Act 1968. He stated:

6. A public authority owes as great an obligation to comply with the law as any individual. Its responsibility is eminently more than that of individuals belonging to vulnerable classes who are virtually forced to disregard the law in order to be able to exercise their fundamental right to a private and family life – individuals who have to contravene the law due to the operation of the prior failures of the public authorities.

7. In the present case, both the public authorities and the individual had undoubtedly trespassed the boundaries of legality. But it was the public authority's default in observing the law that precipitated and induced the subsequent default by the individual. That failure of the authorities has brought about a situation which almost justifies the defence of necessity. Why a human rights court should look with more sympathy at the far reaching breach of law committed by the powerful, than at that forced on the weak, has not yet been properly explained.

8. Here we are confronted with a situation in which an individual was 'entrapped' into breaking the law because a public authority was protected in its own breach. A court's finding in favour of the latter, to the prejudice of the former, is, I believe, a disquieting event. A human rights court, in finding that an authority, manifestly on the wrong side of the rule of law, has acted "in accordance with the law" creates an even graver disturbance to recognised ethical scales of value.

#### **4. Practical Action**

*In individual cases:*

- 4.1 By stating the UK has 'a wide margin of appreciation' in deciding where a fair balance lies between the rights of Gypsies and the interests of the wider community, the European Court is stating that this decision should therefore be one made by our domestic courts, not one based in Strasbourg. This means therefore that the argument about whether or not Article 8 has been violated is one that must now be decided by our courts; they cannot for instance say that because Strasbourg has not found a violation, that they must reach the same decision.
- 4.2 **Non-Green Belt development**  
The Chapman case concerned development in a Green Belt area. Thus the majority decision would not be of such relevance in non-designated areas.
- 4.3 **Different Fact cases**  
The Majority of the Court emphasised that the court's role was to scrutinise the implementation of the planning policy in practice, stating:

the fact of being a member of a minority with a traditional lifestyle different from that of the majority of a society does not confer an immunity from general laws intended to safeguard assets common to the whole society such as the environment, it may have an incidence on the manner in which such laws are to be implemented. As intimated in the Buckley judgment, 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 planning framework and in arriving at the decisions in particular cases. 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

- 4.4 Three important principals stem from this approach.
- Firstly the enforcement process adopted against Gypsies may need to be materially different to that against non-Gypsies; ie what will be subjected to particular scrutiny is ‘the implementation’ of policies rather than the policies themselves.
  - Secondly, the Court will view seriously any material irregularity or unfairness that occurs in the implementation (as for instance occurred in *Varey v UK* where the Secretary of State overruled an Inspectors’ advice that permission be granted).
  - Thirdly, that the Court may well intervene in a case where the implementation process is materially different to that in *Chapman* or *Buckley* (ie prosecuted with greater severity).

*Wider political action*

- 4.5 Gypsy organisations need to press for European Governments to take positive action to comply with their international commitments towards minorities, so that these can then be considered to be accepted in practice by most member states.
- 4.6 It needs to be emphasised that whilst the UK succeeded by the narrowest of margins in fending off the 5 complaints, it conceded a violation in the 6<sup>th</sup>; *Varey v UK*; the first Western European Gypsy complaint to succeed.
- 4.7 It is only a matter of time before the Court itself finds a violation in such cases. The timescale may be 4 or 5 years, although if a strong fact case emerges (which the UK is unable to settle, like *Varey*) the timescale may be appreciably shorter. There is therefore a need for the Government to take action to improve the accessibility of suitable accommodation for Gypsies. A first step in this direction could be the implementation of some or all of the proposals in the Traveller Law Reform Bill published by the Traveller Law Research Unit on 31<sup>st</sup> January 2002.