

Not in Our Back Yard:

The Right to Housing and Freedom of Forced Eviction of Gypsies and Travellers in the United Kingdom

Journal 'The Holocaust in History and Memory', Vol 3 (2010), University of Essex, UK

LETICIA MARQUES OSORIO

Introduction

Access to land is a determining factor for the realization of the right to housing of Gypsies and Travellers and for the survival of their nomadic culture¹. Despite the fact that international human rights law protects the rights of Gypsies and Travellers to enjoy their particular culture – this culture reflecting a way of life which is closely associated with land and the use of its resources –, a lack of access to housing for these groups remains widespread.² The shortage of adequate permanent and transient sites and pitches is blatant, and forced evictions occur in a systematic way in various European States.³ In addition to the insufficient public provision of sites, regulations in some countries create specific obstacles for Gypsies and Travellers to access and use those sites which are available. As a result, a high number of such persons either live in unregulated encampments with no access to basic services, on unofficial/illegal sites, or in settlements built on land not owned by them or built without planning permission.⁴ Discrimination is one of the causes of the bad housing conditions and the lack of access to adequate sites facing Gypsies and Travellers.⁵ The complete or partial spatial segregation of these peoples in settlements separated from the majority of the population can be seen as a result of racial discrimination, created either by governmental policies or as a by-product of the actions of private persons.⁶ Segregation can also be a result of social conflicts between the settled and the nomadic communities.

In the United Kingdom, the results of an inquiry by the Commission of Racial Equality carried out in 2004 showed that most of the tensions between Gypsies or Irish Travellers

¹ Gilbert (2007), p. 681. A nomadic way of life refers to a life organized around cyclical or seasonal patterns.

² European Union Agency for Fundamental Rights (2009)

³ The Centre on Housing Rights and Evictions (COHRE) reported the eviction of about 1700 Roma, Gypsies and Travellers in the period of 2003-2006 in Albania, Bulgaria, Czech Republic, Greece, Italy, Ireland, Montenegro, Russia, Slovakia, Spain and the UK. COHRE (2006).

⁴ European Union Agency for Fundamental Rights (2009), p. 58.

⁵ Gilbert (2007), p. 681.

⁶ European Union Agency for Fundamental Rights (2009), p. 76.

and other members of the public refer to unauthorized camps, planning applications and enforcement, and general public hostility.⁷ The most significant consequence of these tensions is public resistance to providing any more public or private sites, and increasing segregation.

This article analyses certain policy implications arising from the application of international human rights norms in the context of a forced eviction carried out by a local authority against the Gypsy and Traveller communities of Dale Farm and Hovefields, in the United Kingdom. The analysis is structured to cover the most relevant legal and policy aspects of the eviction process, from prior measures to the enforcement of the decision to evict. It discusses whether international human rights can ultimately make a positive difference to inhibit discrimination in housing and protect Gypsies and Travellers against forced evictions.

*The Dale Farm and Hovefields Forced Evictions*⁸

Dale Farm is the largest Romani and Irish Traveller community in the United Kingdom, comprising of approximately 1000 residents. The settlement extends onto land owned by the community but which does not have planning permission. Part of this land was previously a licensed scrap yard,⁹ located within what is classified as Green Belt land. Basildon District Council (BDC) and the Secretary of State for Communities and Local Government have refused to grant planning permission for this portion of the settlement on the basis of the harm that may be caused to the Green Belt, the negative impact of any development upon the Green Belt outweighing the case for permitting the Dale Farm community to continue. This is in spite of the fact that the community has been occupying the site for more than eight years. The Council has served a number of enforcement notices ordering the removal of the chalets, mobile-homes and caravans from the land they occupy. These concern some 40 families, including many children and elderly and infirm people. As the enforcement notices have not been complied with, BDC pursued direct action to evict the community in 2005 pursuant to Section 178 of the Town and Country Planning Act of 1990. The decision by the Council to take direct action was challenged resulting in the High Court quashing the respective order by Basildon District Council on 5 May 2008. However, the judgement was subsequently overturned with the decision to evict, conditional upon fulfilment of certain undertakings by the Council, being upheld by the Court of Appeal on 22 January 2009. An application for permission to appeal to the House of Lords was refused on 14 May 2009. On 11 December 2009, BDC selected a private bailiff company, Constant and Co. (Bedford) Ltd, to undertake planning

⁷ Commission for Racial Equality (2006)

⁸ The information contained in this section was taken from the petition submitted by the Essex Human Rights Clinic to the UN CERD in February 2010. Petition to be made available soon at www.essex.ac.uk/human_rights_centre/hrc

⁹ From 1978-2001

enforcement action and evict the residents.¹⁰

The Hovefields site, located near Dale Farm, is also an unauthorised development where members of the extended families of those at Dale Farm reside. Two forced eviction operations were carried out by Constant and Co. (Bedford) Ltd. against 13 families, on 29 June and 7 August.¹¹ BDC only issued 28 day eviction notices to those affected by the second eviction and, during its implementation, occupants of caravans and mobile-homes were given one hour to pack up and leave. Permanent alternative accommodation was not offered to all persons forcibly evicted, and where it was offered, the tender of the Council was considered inadequate by the Travellers. The offers consisting of brick and mortar accommodation, usually in the form of unsuitable council apartments. Temporary accommodation for those families who did not have a place to lawfully move to after the eviction was also not offered. As a result, four families were rendered homeless and had to resort to trespassing on private and public land located in the surrounding area, from where they were systematically directed to leave by the police and to remove all vehicles.¹²

Provision of Sites

For centuries, the common land in England provided lawful stopping places for people whose way of life was, or had become, nomadic. Through the Caravan Sites and Control of Development Act (CSCDA) of 1960, local authorities were given the power to close the commons to Travellers and to open new caravan sites to compensate for such closures. Under the Caravan Sites Act (CSA) of 1968, such power became a duty and placed an obligation on county councils to determine what sites were to be provided and to acquire the requisite land (subject to consultations and consideration of any objection through the planning process).¹³ The district or county councils were responsible for the management of the sites.

In the subsequent decades there followed a history of non-compliance with the duties imposed by the 1968 Act. Then, in 1994, the duty on local authorities to provide sites was abolished by the Criminal Justice and Public Order Act (CJPOA). The present duty is to make provision for sites in development plans and to perform duties under the Housing Act of 1996. The current guidance for local authorities is in the Office of the Deputy Prime Minister (ODPM) Circular 01/2006 on “Planning for Gypsy and Traveller Caravan Sites”. With no duty in place, public site provision ground to a halt and the number of pitches available declined.¹⁴ According to Niner, ‘the Gypsy and Traveller Accommodation

¹⁰ The conduct of this firm during evictions was criticised by Justice Collins in the High Court judgement, who asked BDC to reconsider the use of the firm and ensure that any eviction is carried out in as humane a fashion as possible. High Court [2008] EWHC 987 (item 15).

¹¹ These evictions were widely covered and broadcasted by the local media. For instance, see <http://news.bbc.co.uk/local/essex/hi/> and <http://www.indymedia.org.uk/en/2010/09/458405.html>

¹² For instance, two Direction to Leave notices were served by the Essex Police against an extended family with three children, one pregnant women and two elderly persons in the immediate days following the eviction, at 9:30pm and 6am.

¹³ CSA 1968 ss7 and 8.

¹⁴ For instance, between 1994 and 2002 139 residential pitches were lost due to site closures. See Niner (2002), p. 17.

Assessments (GTAAAs) have demonstrated a significant shortage of site accommodation in most parts of England and suggested the need to add at least half as many authorised pitches as currently exist over a five year period.¹⁵

The cumulative effect of poverty and the diminution of stopping places have impacted on Britain's nomadic populations in serious ways. The loss of traditional sites was accompanied by a concomitant decline in the health of Gypsies and Travellers due to the extremely poor environmental conditions that often exists on unauthorised sites.¹⁶ A count of Gypsy caravans conducted by the Department of Communities and Local Government (CLG), which is responsible for all issues relating to Gypsy and Traveller accommodation, established that out of a total of 16,611 caravans, 3,538 caravans were on unauthorised sites.¹⁷ An unauthorised site can consist of either an unauthorised encampment, which is an area where Gypsies or Travellers reside without the permission of the land owner, or of an unauthorised development, which takes place on land owned by Gypsies or Travellers without the benefit of planning permission.¹⁸

International Standards on Evictions

Although the United Kingdom has ratified the main international and European human rights instruments that guarantee the right to housing, such as the International Covenant on Economic, Social and Cultural Rights,¹⁹ the Convention on the Elimination of All forms of Racial Discrimination (ICERD),²⁰ the International Covenant on Civil and Political Rights (ICCPR),²¹ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),²² economic, social and cultural rights were not included in the UK Human Rights Act of 1998. However, once international instruments are ratified, states have to adequate internal legislation and policies to fulfil the rights enshrined therein, and to comply with the obligations arising from such rights.

One of the principal aspects of the obligation to respect the right to housing is the duty of the State not to allow forced evictions to occur. General Comment No. 7 of the Committee on Economic, Social and Cultural Rights (CESCR) establishes that all people shall have a degree of tenure security that guarantees legal protection against forced

¹⁵ Centre for Urban and Regional Studies (2008), p. 10.

¹⁶ Johnson and Willers (2007), p. 14.

¹⁷ Although the majority of the caravans that are homes to Gypsies and Travellers in England are located on authorised sites, 26% are situated next to, or under, motorways, 13% next to airfield runways, 12% are next to rubbish tips, and 4% adjacent to sewage farms. See Barton and Willers (2007), p.280.

¹⁸ See Commission for Racial Equality (2004), p. 278

¹⁹ Ratified on 20 May 1976.

²⁰ Ratified on 7 March 1969

²¹ Ratified on 20 May 1976.

²² Ratified on 8 March 1951, entry in force on 3 Sep 1953. Besides these instruments, the right to housing is also recognised by the Convention on the Elimination of all forms of Discrimination against Women; the International Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Convention Relating to the Status of Refugees, all ratified by the UK.

evictions and other threats. The term ‘forced eviction’ is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.²³

General Comment No. 4 of the CESCR asserts that ‘instances of forced evictions are prima facie incompatible with the requirements of the ICESCR and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law’.²⁴ Exceptional circumstances are, for instance, the lack of rent payment by those who have the financial ability to pay, or the violent occupation of an estate that had been previously occupied. Even under such exceptional circumstances, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights²⁵

In cases where an eviction is considered to be justified, it should be carried out in strict compliance with international human rights law and in accordance with general principles of reasonableness and proportionality²⁶. Appropriate procedural protection and due process that should be applied in relation to forced evictions must include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.²⁷

Two recommendations of the Council of Europe refer to international human rights standards in addressing instances of forced evictions of Gypsies and Travellers. The 2004 Recommendation on the Movement and Encampment of Travellers in Europe points out that

in the case of lawful evictions, Roma must be provided with appropriate alternative accommodation if needed, except in cases of force majeure. Legislation should also strictly define the procedures for legal eviction, and such legislation should comply with international human rights standards and principles, including those articulated in General Comment No 7 on forced evictions...²⁸

²³ General Comment No 7, para. 3.

²⁴ General Comment No. 4, para. 18.

²⁵ General Comment No. 7, para. 16.

²⁶ Ibid., para. 14.

²⁷ Ibid., para. 15.

²⁸ Recommendation No 14 (2004), para. 30.

The 2005 Recommendation on Improving the Housing Conditions of Roma and Travellers in Europe states that ‘bearing in mind that the right to housing is a basic human right, [State Members] should ensure that Roma are protected against unlawful eviction, harassment and other threats regardless of where they are residing.’²⁹

Before the Eviction

A. Proportionality, Margin of Appreciation and Positive Actions

One of the main arguments of BDC not to grant planning permission for Dale Farm is the fact that they were technically situated within the Green Belt zone. The extreme difficulty involved in obtaining planning permission for caravan and trailer sites in the Green Belt is widely acknowledged. Both decisions of the High Court and of the Court of Appeal have accepted that the Dale Farm residents are on the land unlawfully and that the Council could lawfully evict them³⁰ – the difference being that the former found that the Council had not considered its housing rights duties, reliance placed on the Circular 18/94 of the Gypsy Sites and Unauthorised Camping, whilst the latter considered the decision of the Council to take action to enforce planning notices lawful.

The relevant decision of the Council was taken by its Development Control and Traffic Management Committee in December 2007, when earlier decisions were considered. The key issue for the Committee to weigh in the balancing exercise was whether the impact of taking action to secure compliance with the enforcement notices on the occupiers of the sites was such that the public interest in enforcing planning control and restore the Green Belt should be set aside in favour of allowing the unauthorised development to remain. The decision reached by the Committee, which was later appealed to the Secretary of State, was that the likely homelessness of the evictees does not outweigh the unlawful development of the land³¹ or, putting it in the language of rights, that compliance with administrative planning law cannot be overridden by the human right to housing or to respect for home of a minority ethnic group.

According to paragraph 51 of Circular 01/2006,

alterations to the Green Belt boundary can be used in exceptional circumstances for housing and other types of development inappropriate for the Green Belt [...] Such a proposal should be brought forward through the plan making process.

When analysing such ‘very special circumstances’ the Council concluded that they did not exist (as the residents have not demonstrated their need to stay in Basildon district), despite admitting they hold Gypsy status. Should the Council recognise the relevance the land has for the preservation and reproduction of genuine culture and traditions of Gypsies and Travellers, as well as the need to avoid disruption to the families and to children’s education, they might conclude there to be strong exceptional circumstances which could outweigh the general interest of preserving the planning decisions that refused permission

²⁹ Recommendation No 4(2005), para. 23.

³⁰ Court of Appeal [2009], para 3-8.

³¹ Ibid. para 33.

for them to live in the area. Although BDC has taken into account some of the residents' personal circumstances in the balancing exercise – such as individual health issues and attendance at school – it has been unaware of others. It has clearly failed to give due attention to the special needs and rights attaching to a minority ethnic groups, or the importance of living in a community and in the company of an extended family for this particular group.

Differences in treatment of such groups, or individuals belonging to them, are justified if they are exercised to promote effective equality and the welfare of the community as a whole. 'This form of affirmative action may have to be sustained over a prolonged period in order to enable minority groups to benefit from society on an equal footing with the majority.'³² The goal to be achieved is substantive equality rather than mere *de jure* equality as envisaged by planning law.

Even though the Court of Appeal had agreed that a claimant does not necessarily have to prove either family ties with Basildon or a necessity to live on Green Belt land to establish need, the decision of the Council not to give further consideration to alternative sites at the time of the decision to evict was not considered unlawful, the reason being that sites are to be provided through the development of Regional Spatial Strategies (RSS).³³ This supported the view of the Secretary of State that at the present stage of regional and local planning, the absence of alternative sites does not render action under Section 178 of the Town and County Planning Act of 1990 unlawful.

Other considerations could have been alluded to by BDC in order to alter the Green Belt boundary and grant planning permission to the Dale Farm and Hovefields communities. Special consideration could have been accorded to the planning history of the area which shows that the site had been used without planning permission since early 1990s for a variety of industrial uses.³⁴ Part of the land at the east side of the site was previously the subject of two temporary consents for the breaking of motor vehicles, sale of vehicle parts and dealing in scrap metals. This usage ceased following the vacation of the land by the business proprietors in 2001.³⁵ If an exception was allowed for the scrap metal yard, surely an exception could have been made for a vulnerable minority group to continue to live there.

The court of Appeal adopted a submissive approach to the decisions made by the local planning authority. Before the duty to provide caravan sites was repealed by the CJPOA of 1994 it was possible to challenge a local authority's decision to take eviction action against an unauthorised encampment by arguing that it had failed to provide sufficient sites. But now the authorities are armed with more draconian eviction powers.³⁶ The Court of Appeal could have taken due regard to the Human Right Act of 1998 which requires public authorities to consider carefully the proportionality of their actions when making decisions

³² OHCHR (1998), p. 5.

³³ Court of Appeal [2009], para 71.

³⁴ Basildon District Council Report (2007), p. 7.

³⁵ Ibid.

³⁶ Johnson and Watkinson (2007), p. 153.

which interfere with the right to respect for the home (Article 8 ECHR). From such a perspective, a measure imposing criminal sanctions in a case where the Gypsies or Travellers continue to use their land for the stationing of caravans homes without planning permission, in circumstances where there are no alternative sites available and where there is no other way in which they can continue to lead their traditional lifestyle within the law, could have been considered as a serious interference with Article 8.³⁷

The European Court of Human Rights (ECtHR) has recognised that the vulnerable position of Gypsies and Travellers as a minority requires that special consideration be given to their needs and different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases.³⁸ In *Connors v United Kingdom* the Court considered that policies of positive discrimination in favour of minority groups that suffer structural and widespread discrimination shall be adopted.³⁹ The *Connors* case refers to a Gypsy family living in a local authority-run site which, by virtue of the Mobile Homes Act 1983, did not provide the same level and protection of security of tenure enjoyed by those living on mobile home sites. After some time on the site, the local authority gave them notice to quit alleging a breach of their licence to stay in the site, and sought a court order for summary possession. The order was obtained and executed by local authority officials and bailiffs in the presence of several police officers, resulting in the arrest of the father and the 10-year old son, and in the family being rendered homeless⁴⁰.

It was in the *Connor* that the ECtHR moved into the direction of a policy of positive discrimination in favour of minority groups that suffer structural and widespread discrimination⁴¹. Some years before, in *Thlimmenos v Greece*,⁴² the Court reached an important decision on the road to Connor:

[...] The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.⁴³

Differences in treatment of minority groups, or individuals belonging to them, are justified if they are exercised to promote effective equality and the welfare of the community as a role.⁴⁴ In the same vein, the UN CERD in 2003 urged the United Kingdom to continue taking affirmative measures in accordance with article 2, paragraph 2, of the Convention [on the Elimination of all forms of Discrimination] to ensure 'equal

³⁷ Ibid. p. 28.

³⁸ *Buckley v UK*, paras 76, 80, 84 and *Chapman v UK*, para. 96 cited in Sandland (2008), p. 495.

³⁹ Sandland (2008), pp. 495-6.

⁴⁰ Ibid, p. 493.

⁴¹ Ibid. pp. 495-6.

⁴² *Thlimmenos v. Greece*, ECtHR (Application no. 34369/97), 6 April 2000.

⁴³ Cited in Cahn (2005), p. 25.

⁴⁴ UN doc. E/CN.4/52, section V.

opportunities for Roma/Traveller/Gipsy populations for the full enjoyment of economic, social and cultural rights.⁴⁵

With regards to the margin of appreciation left to national authorities when making judgements as to defining particular land uses where there are planning objections, the ECtHR noted that 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’,⁴⁶ and that the margin is appreciably narrower in cases under Article 8 when they involve ‘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.’⁴⁷ Although in *Chapman v United Kingdom* the ECtHR refused to grant protection to those who established a home on an environmentally protected site,⁴⁸ in *Öneryıldız v Turkey* it expressed a different view by considering the concept of ‘possessions’ in Article 1 of Protocol No 1 not limited to ownership of physical goods or to ‘existing possessions’, but also covering assets and claims, in respect of which the applicant argued that he had at least a reasonable and ‘legitimate expectation’ of obtaining effective enjoyment of a property right. Thus,

‘[...]when faced with an issue such as that raised in the instant case, the authorities cannot legitimately rely on their margin of appreciation, which in no way dispenses them from their duty to act in good time, in an appropriate and, above all, consistent manner’.⁴⁹

B. Meaningful Participation

Participation of those affected by decisions is considered to be a clear international obligation under international human rights law. General Comment No 4 can provide guidance on how to effectively engage in consultations with those affected by a forced eviction. According to this General Comment, States parties to the International Covenant on Economic and Social Rights should, in their implementation of the right to housing, proceed in genuine consultation with affected persons and groups (para.8). The right to participate in public decision-making is considered indispensable if the right to adequate housing is to be realised and maintained by all groups in society (para.9). Thus, in determining housing priorities and formulating national housing strategies the States are required to carry out ‘extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives’⁵⁰

General Comment No 7 specifies that States parties must ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least

⁴⁵ CERD/C/63/CO/11, 10 December 2003, para. 24.

⁴⁶ *Connors v UK*, para. 82 cited in Sandland (2008), p. 495.

⁴⁷ Ibid.

⁴⁸ *Chapman v UK*, para. 102 cited in Sandland (2008), p. 496.

⁴⁹ *Öneryıldız v Turkey*, para. 124.

⁵⁰ General Comment No 4, para. 12.

minimizing, the need to use force (para.13). In addition, the UN Commission on Human Rights encourages governments to take all necessary measures giving full protection against forced evictions, ‘based upon effective participation, consultation and negotiation with affected persons or groups’.⁵¹ The UN Declaration on Minorities also provides that ‘persons belonging to minorities have the right to participate effectively in public life’ and ‘the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live.’⁵²

The Council of Europe Framework Convention for the Protection of National Minorities⁵³ equally states that the Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. In analysing the implementation of this Framework by the United Kingdom, the Advisory Committee invited it to ‘take the necessary steps to address the accommodation needs of Gypsies and Travellers, in consultation with the persons concerned; [and] provide Gypsies and Travellers with adequate access to support in securing the legal protection of their rights.’⁵⁴ The BDC has failed to undertake its obligation to actively solicit the engagement and cooperation of the gypsy/traveller community affected by the action and their representatives, although it has declared before the High Court that it would do so.⁵⁵

During the Eviction

The UN Commission of Human Rights has urged governments to immediately undertake measures at all levels aimed at eliminating the practice of forced evictions.⁵⁶ Guidelines on development-based displacement were also adopted.⁵⁷ When forced evictions are carried out as a last resort and in full accordance with international human rights law, affected persons must be afforded certain procedural protections prior to and during any eviction, including legal recourses and remedies.⁵⁸

A. Protection of Property Rights

The Gypsy and Traveller families have purchased the land at Dale Farm. As such, their homes were lawfully established and thus they have the legal right to their properties, which is self-evidently something which can weigh against the legitimacy of requiring the

⁵¹ Resolution 1993/77, adopted 10 March 1993.

⁵² United Nations Declaration on Minorities of 1992, Article 2, para. 2 and 3.

⁵³ Ratified by the UK on 15/01/1998, entered into force 01/05/1998, see Article 15.

⁵⁴ Resolution CM/ResCMN(2008)7

⁵⁵ Statement presented by Basildon District Council to the High Court on 9 May 2008 regarding how it would undertake the proposed eviction, item 1.

⁵⁶ UN Res. 2004/28, chap. X, para 1, and Res. 1993/77, para 1.

⁵⁷ UN Comprehensive Guidelines on Development-Based Displacement (1997)

⁵⁸ General Comment No7, para. 11 and 16.

families to move. The unlawfulness of the sitting of their mobile homes which results from the refusal to grant planning permission for the location cannot undermine their right to peacefully enjoy such homes and possessions. The right to property is a human right protected by the ECHR, Article 1 of Protocol 1. It consists of an obligation to ensure the peaceful enjoyment of one's possessions, and the meaning of "possessions" has been extensively interpreted by the ECtHR as including "existing possessions" or assets. Dale Farm and Hovefields residents can argue that they at least have a 'legitimate expectation' of obtaining effective enjoyment of a property right.⁵⁹ As the United Kingdom is under an obligation to respect the right to property, in its decision as to whether or not to go forward with the eviction, BDC should have balanced such a decision against the full extent of the property rights of the residents.

During the Hovefields evictions, destruction of resident's properties was reported to be carried out by BDC.⁶⁰ Property and possessions that might be left behind during an eviction operation must be protected against 'destruction, and arbitrary or illegal appropriation, occupation or use'.⁶¹ Adequate compensation must be given for any loss of property incurred by the individuals subject to eviction, which is a fundamental component of the right to access to an effective remedy.⁶² Adequate compensation means compensation which is fair and just and includes 'any losses of personal, real or other property or goods, including rights or interests in property.'⁶³ Moreover, those subject to eviction should also be compensated for the loss of

any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical and mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.⁶⁴

Compensation should be assessed in each individual case so as to include all related losses, and must be paid immediately upon eviction.

B. Procedural Protections

Procedural protections shall include, inter alia, adequate and reasonable notice prior to the scheduled date of eviction; the presence of government officials during an eviction; not being carried out in bad weather or at night; provision of legal remedies; provision of alternative adequate accommodation, and provision of legal aid. The UN Special

⁵⁹ *Kopecky v. Slovakia* (2003).

⁶⁰ Ms Coyle, who was evicted on 24 July, filled a complaint with BDC claiming compensation for the demolition of her utility unit by the bailiffs Constant and Co. (copy of the email with the complaint).

⁶¹ UN Comprehensive Guidelines on Development-Based Displacement (1997), para. 50

⁶² See Article 13 of the ECHR.

⁶³ UN Comprehensive Guidelines on Development-Based Displacement (1997), para. 60

⁶⁴ *Ibid.*

Rapporteur on Adequate Housing⁶⁵ reaffirmed the requirement of procedural protection and specified that neutral observers should be allowed access upon request, to ensure transparency and compliance with international human rights during the carrying out of any eviction. Also, States must take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected. Whether forced evictions are not carried out according to the law, they can constitute inhumane or degrading treatment in violation of Article 3 of the ECHR, as embodied in the Human Rights Act, which states that ‘no one shall be subjected to torture or to inhuman or degrading treatment or punishment’.⁶⁶

From the evidence collected during the Hovefields evictions, it appears that BDC failed to provide most of the procedural protections described herein.⁶⁷ The decision of the Court of Appeal did not make any reference to such procedural protections, only to those duties that might arise from the Housing Act of 1996 regarding the provision of alternative accommodation.

After the Eviction

A. Homelessness and the Provision of Alternative Accommodation

According to Waldron, one way of describing homelessness might be to say that there is no place governed by a property rule where a homeless person is allowed to be, and that another more accurate description of this plight is that there is no place governed by a private property norm where the homeless person will not be excluded at any time or where he is allowed to be whenever he chooses.⁶⁸ In case of Hovefields, the Gypsy families who were rendered homeless following forced eviction discovered that there was literally nowhere they were allowed to be, as they were systematically and repeatedly moved on by the police from both privately and public owned land. Consequently they found they were legally excluded from all places where they tried to park their caravans. Taking Waldron’s words, this situation raises the question that since in order to exist a person has to be *somewhere*, in having nowhere to be in the society, such a person would not be permitted to exist.⁶⁹ It thus follows that ‘a person who is not free to be in any place is not free to do anything; such a person is comprehensively unfree.’⁷⁰ Freedom, in this sense, is intimately

⁶⁵ Ibid.

⁶⁶ In the *Hijirizi et al v Yugoslavia* case the UN Committee against Torture found that the failure of the authorities to protect residents from violent eviction from their houses constituted cruel, inhuman or degrading treatment or punishment. Communication No. 161/2000, UN Doc CAT/C/29/D/161/2000, para 9.2 See also *Selçuk and Asker v. Turkey*, App. no. 00023184/94; 00023185/94, Judgment 24 April 1998, par.73-78

⁶⁷ See the petition submitted to the UN Special Rapporteur on Adequate Housing, MS. Raquel Rolnik, concerning the forced eviction of Gypsies and Travellers of Hovefields, submitted on 26 July 2010. To be made available at http://www.essex.ac.uk/human_rights_centre/hrc

⁶⁸ Waldron (1993), p. 313.

⁶⁹ Ibid. p. 314.

⁷⁰ Ibid. p. 316.

linked with shelter and the satisfaction of basic needs, and in the instant case it can then be said that the homeless families are, in a relevant sense, not free to perform the same activities as the rest of us. Thus, 'their homelessness *consists* in unfreedom.'⁷¹

Bearing this in mind, a reasonable understanding of how the Council has to deal with the state of homelessness resulting from its decision to evict the Gypsies and Travellers of Dale Farm is that it should comply with its housing duties *prior to* taking direct action to enforce planning decisions. At the Court of Appeal, BDC committed itself to complying with its homeless duties under Part VI Housing Act *before* taking direct action.⁷² However, a recent decision taken by the Administrative Court dismissed the application for judicial review of the decision of the BDC to evict a Traveller family of Hovefields in the course of an outstanding homeless application. The decision in this case is a disappointing one, particularly bearing in mind that the judgment of the Court of Appeal expressly envisaged a *further* stage in the decision-making process, following-on from the decision to take direct action to secure compliance with enforcement of planning notices. The *further* stage referred to by the Court encompassed decisions as to 'how', 'when' and 'what' action should be taken *if and when* action under s178 is approved by the Council, and to the *process of deciding* how and when to carry out its delegation functions under the council's decision. The decision of the Court of Appeal "was that officers should be authorised to take such action [eviction] as was deemed necessary to allow the council to secure compliance with the enforcement notices under s 178. *It was not a decision as to what action should be taken, or when*"⁷³.

Although the Administrative Court found no legal hindrance to the decision of BDC to evict the Traveller family without having first complied with its homeless duties, its obligation to comply with the housing legislation was not discharged.⁷⁴ In this regard it is important to recall the decision of the ECtHR in *Chapman* which acknowledged that enforcement of planning measures taken in respect of a person in a caravan on land constituted an interference with the rights enshrined in Article 8, not only in the case of the right to respect for home, but also in the case of the right to respect for private and family life.⁷⁵ Although the Court has held that Article 8 does not entail a right to be provided with a home, it expressly recognised that a positive obligation is imposed on States to 'facilitate the Gypsy way of life'.⁷⁶ Moreover, in the *Connors* case, the Court recognised that special consideration should be given to the needs of Travellers and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases. Finally, although not referring to a case in the United Kingdom, the ECtHR found a breach of Article 14 in conjunction of Article 8 in the case of *Moldovan and Others v Romania* due to the failure to re-house Roma left homeless by the pogrom.⁷⁷

⁷¹ Ibid. p. 320.

⁷² Court of Appeal, para 15.

⁷³ Ibid para. 79 and 82.

⁷⁴ Ibid. para. 72 and 73.

⁷⁵ *Chapman v UK*, para.78.

⁷⁶ Ibid. para. 96.

⁷⁷ Cited in Sandland (2008), p. 506.

The Secretary of State, in considering an appeal against planning decisions, failed to give attention to individual families of Dale Farm within the context in which further consideration had not been given to finding alternative sites.⁷⁸ Justice Collins also noted that ‘a real risk that the Council will have to find somewhere for a disposed family to pitch their caravan will be a material consideration in deciding whether enforcement should take place and, if so, against which families. This issue was not raised in the reports to the Committee in December 2007.’⁷⁹ However, the final judgement of the Court of Appeal did take into consideration the issue of homelessness. Lord Justice Pill acknowledged that possibilities for alternative accommodation had to be offered by the Council in case it decided to take further action to enforce planning control. He had ‘no doubt that the Council is aware of its duties under the 1996 Housing Act and will give effect to them. Evidence has been provided as to how that will be done.’⁸⁰

The Homelessness Act of 1996 places an obligation on local housing authorities to secure that suitable accommodation is available for a person who is homeless provided that he/she has not become homeless intentionally, is eligible for assistance, and is in priority need for accommodation. As far as Gypsies and Travellers are concerned, Section 175 2(a) of this Act sets out that a person is homeless

[...] if he has accommodation which consists of a moveable structure, vehicle or vessel designated or adapted for human habitation and there is no place where he is entitled or permitted both to place it and reside in it.

Section 189 defines who has a priority need for accommodation: pregnant women, persons with dependent children, vulnerable persons as a result of old age, mental illness, handicap, physical disabilities or other special reasons, and persons who are homeless or threatened with homelessness as a result of an emergency.

The Homelessness Act of 2002 at Section 2(2) imposed a duty on local authorities to carry out a homelessness review and to formulate a strategy aimed at ‘preventing homelessness in the district, securing that accommodation is or will be available for people in the district who are or may become homeless, and providing support for people in the district.’

Evictions should not result in rendering individuals homeless or vulnerable to violation of other human rights. General Comment No 7 makes it incumbent on governments to guarantee that people who are evicted – whether illegally or in accordance with the law – are to be ensured of some form of alternative housing and a measure of security of tenure.⁸¹ Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing/accommodation, resettlement or access to productive land, as the case

⁷⁸ Court of Appeal, para. 72.

⁷⁹ High Court of Justice [2008] para. 39.

⁸⁰ The evidence refers to a statement presented by BDC to the High Court on 9 May 2008 regarding how it would undertake the proposed eviction. Court of Appeal, para. 73-75.

⁸¹ General Comment No 7 para 17.

may be, is available.⁸² There is a duty incumbent upon those exercising powers of governance to give due priority to those social groups living in unfavourable conditions by giving them particular consideration.⁸³ This duty has been systematically underlined by the Committee in its examinations of States' reports relating to similar situations to that of Dale Farm.⁸⁴

B. Provision of Culturally Adequate Alternative Accommodation

The rights of Gypsies and Travellers to enjoy a particular culture consist in a way of life associated to a nomadic or semi-nomadic traditional use of a territory. The cultural component attached to the lands and resources used by nomadic peoples has been recognised by the UN Human Rights Committee (HRC) through its interpretation of the application of Article 27 of the ICCPR on the protection of the cultural rights of minorities. General Comment No 23 on Article 27 states that the '[right] to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources'⁸⁵. The reference to 'a particular way of life associated with the use of land resources' makes Article 27 relevant for Gypsies and Travellers, as it can be understood as protecting the right for nomadic peoples to maintain their traditional lifestyle in the context of land use⁸⁶.

The ECtHR in *Chapman* recognised that Gypsies and Travellers have a right to respect for their traditional way of life, which is reflected in the occupation of a caravan as part of their ethnic identity.⁸⁷ In *Codona v United Kingdom* the ECtHR dismissed an application of a Gypsy extended family not to be accommodated in a bed and breakfast by deciding that where 'suitable' accommodation for the cultural needs of a Gypsy are not at the disposal of the authorities, it cannot be said that the authorities are under a positive obligation to create such a site for an applicant.⁸⁸

In the case of Dale Farm, no alternative site is being provided by the Council, and the families that face eviction will, in the event of a direct enforcement, be rendered homeless. In response to homelessness applications currently in course, Basildon District Council has only offered a limited number of council apartments and brick and mortar housing that are culturally inappropriate for the residents of Dale Farm. Such a decision can be considered contrary to Article 8 of the ECHR if it is taken without due regard to its obligations under Section 71 of the Race Relations Act of 1976. For instance, the Equality and Human Rights Commission has submitted that the duty is to *have due regard to the need* to eliminate racial

⁸² Ibid. para 16.

⁸³ General Comment No 4, para 11

⁸⁴ Ireland has for instance been urged to 'enhance efforts to provide, as early as possible, alternative accommodation for 1,200 traveller families who are living in roadside encampments without adequate facilities' ([E/C.12/1/ADD.77, CESCR, 2002](#)), para. 32).

⁸⁵ General Comment No 23 (1994), para. 3.2 HRI/GEN/1/Rev.7, p. 158.

⁸⁶ Gilbert (2007), pp. 697-698.

⁸⁷ *Codona v UK* (2001), para. 73.

⁸⁸ Application No 485/05, 7 February 2006; September 2006 *Legal Action* 21.

discrimination or promote equality, and that *due regard* is the regard that is appropriate in all the circumstances.⁸⁹

The High Court, in a decision upheld by the Court of Appeal, has endorsed the point that an aversion to conventional housing may be grounded in an understanding which is an integral part of a cultural identity as a Gypsy and Traveller. The Court stated that “in certain appropriate circumstances it can amount to a breach of Articles 8 and 14 to weigh in the balance and hold against a Gypsy applying for planning permission, or indeed resisting eviction from Council or private land, that he or she has refused conventional housing accommodation as being contrary to his or her culture.”⁹⁰ The Homelessness Code of Guidance of 2006 notes that in cases where Gypsies and Travellers may have a cultural aversion to the prospect of “bricks and mortar” accommodation, ‘the authorities should seek to provide an alternative solution and give consideration to the needs and lifestyle of Gypsies and Travellers when considering their application [of homelessness] ...’⁹¹

Finally, in a recent letter sent by the UN CERD to the United Kingdom regarding the imminent eviction of Dale Farm, it stated that “might your Government decide to nevertheless proceed with the intended eviction, the Committee recommends that the same should be carried out in a humane manner, in accordance with international human rights law, and to designate alternative sites that are adequate, suitable for relocation, and compatible with the culture and traditions of the people affected.”⁹²

Concluding Comments

This article has attempted to show the many ways that international human rights law and European law and jurisprudence protect the rights to housing and freedom from forced eviction of Gypsies and Travellers in the United Kingdom. Such protections have been strengthened by the decision of the ECtHR to make freedom of discrimination and respect for difference and identity part of the substance of the positive obligations under Article 8 ECHR. Similarly, UN human rights monitoring bodies have developed interpretations and recommendations addressing the special protection that vulnerable groups and minorities are entitled to be accorded in the context of the right to housing and to protection against forced evictions.

However, the treatment of the Gypsies and Travellers in the Dale Farm and Hovefields cases seems a long way from the recognition of difference and identity, as several barriers are imposed, both through legislation and policies, that prevent the identification of locations for permanent residential sites for Gypsies and Travellers that would accord with their particular traditional way of life. Since the introduction of the Criminal Justice and Public Order Act of 1994, Gypsies and Travellers have been facing major difficulties in trying to obtain planning authorisation to develop their sites due to discrimination in the granting of planning permission. It seems clearly easier for someone prepared to live in

⁸⁹ Court of Appeal, para. 54-55.

⁹⁰ (2001) EWHC 800 Adm at para 30, cited in Murray Hunt and Marc Willers, p. 56.

⁹¹ Para. 16.38

⁹² See the letter at http://www2.ohchr.org/english/bodies/cerd/docs/UK_12.03.2010.pdf

bricks and mortar to find accommodation in Basildon than someone whose particular and legally recognised lifestyle necessitates the siting of a caravan. This leaves Gypsies and Travellers at a disadvantage.⁹³

The Dale Farm and Hovefields cases explicitly expose the conflict between the use of local authorities' enforcement powers and the provisions of the Race Relations Act, where the former is given precedence over the latter and over other human rights legislation. There is something anomalous about a situation in which the purposes of the Green Belt and highway safety are better protected than the housing rights of minorities, in a context where there are insufficient available legal sites. Moreover, one need question why the Council accepted a scrap yard on the Dale Farm area for many years and yet now, after that economic activity has ceased, it weighs the balance of proportionality in favour of the restoration of the land to Green Belt rather than favouring the residents' right to housing. The Court of Appeal was afforded the opportunity to review the grounds for the decision to evict through which it could have acknowledged the limited relevance of the exhaustion of the planning process for taking a decision under Section 178 of the Town and Country Planning Act 1990.

Although the Dale Farm and Hovefields residents have reached the end of the road in their battle against BDC for planning permission, this does not mean that they have reached the end of the road with regard to human rights. Whether the Council will comply with its statutory duties under United Kingdom law as regards human rights, discrimination and equality remains to be seen. The decision to exercise the powers under s 178 requires due consideration of the rights enshrined in the relevant international and European human rights law to which the United Kingdom is a State Party. Since an eviction inevitably constitutes an interference with the individuals' rights to housing and to property, both the end and the means must be proportionate.

The importance of the availability of alternative adequate accommodation arises not just from the human right to adequate housing but also from the perspective of the equal recognition of human dignity at the very heart of the human rights doctrine, as the State has an obligation to ensure that evictions are executed humanely. The CESCR has been at pains in its considerations of eviction cases to emphasise the provision of alternative accommodation or resettlement for vulnerable groups.⁹⁴

Residents at Hovefields are being evicted without the provision or recommendation of alternative sites. As a consequence, they will have to resort to camping on the roadside, on public car parks or private land, thus again finding themselves in an unauthorised and unlawful situation likely to provoke further harassment of their families, as well as a futile use of public expenditure moving them from place to place. The lack of public provision of permanent sites, associated with underlying racial discrimination, negative interpretation of planning policies and intolerance of cultural differences, have prevented Gypsies and

⁹³ Justice Collins found the decision to evict the Dale Farm and Hovefields residents to be discrimination, and the Court of Appeal did not overturn that decision or make a separate finding on the point. [2008] EWHC 987 (item 48).

⁹⁴ The Committee has issued a comprehensive set of recommendations to the government of Angola concerning forced evictions, which can be extended to other State parties in the similar contexts. E/C.12/AGO/CO/3, 1 December 2008, para. 32.

Travellers from obtaining adequate places to live in the United Kingdom. There is no effective mechanism to challenge the local authorities' failure to provide sites through the planning system, and the lack of effective participation of minorities in public affairs impairs the capacity of Gypsies and Travellers to overturn this shortage of available accommodation adequate to their way of life.

Although it seems clear that international and European human rights law and jurisprudence have developed significantly with respect to the protection of the human rights of Gypsies and Travellers, the cases discussed in this article demonstrate that the United Kingdom local authorities and Courts have still to abandon a policy and a jurisprudence of sameness in favour of elaborating an approach of difference.

Further Reading

Barton, S and Willers, Marc (2007). *Race Discrimination*, in Chris Johnson and Marc Willers (Eds), *Gypsy and Traveller Law*, Legal Action Group, London.

Basildon District Council Report (2007). Development Control and Traffic Management Committee on 'Planning Application No. 06/01548/FULL – Retention of Seven Gypsy Caravan Pitches and Associated Development for a Temporary Period of Three Years – Land at Oak Lane, Dale Farm, Crays Hill, Billericay'.

Cahn, C (2005). 'Towards Realising a Right to Positive Action for Roma in Europe: *Connors v. UK*', *Roma Rights Quarterly* 13. Available at <http://www.errc.org/cikk.php?cikk=2160>

Centre on Housing Rights and Evictions (COHRE) (2006). *Forced Evictions: Violations of Human Rights 2003-2006*. Geneva.

Centre for Urban and Regional Studies (2008). *Gypsies and Travellers Accommodation Assessments: perceptions of progress, finding from workshops*, Pat Niner (facilitator).

Commission for Racial Equality (2006). *Common Ground: Equality, Good Race Relations and Sites for Gypsies and Irish Travellers*, London.

Committee on Economic, Social and Cultural Rights (CESCR). General Comment No 4 (1991) UN Doc. E/1992/23.

Committee on Economic, Social and Cultural Rights (CESCR). General Comment No 7 (1997) UN doc. E/C.12/1997/4.

Court of Appeal [2009] EWCA Civ 13 between Basildon Council and McCarthy & Ors.

Diacon, Diane / Kriteaman, Hannah / Vine, Jim and Yafai, Silvia (2007). *Out in the Open: Providing Accommodation, Promoting Understanding and Recognising Rights of Gypsies and Travellers*. Coalville, Leicestershire: Building and Social Housing Foundation.

European Agency for Fundamental Rights (FRA) (2009). *Housing Conditions of Roma and Travellers in the European Union – A Comparative Report*, Vienna.

European Court of Human Rights, Buckley v UK (1996) 23 EHRR 101.

European Court of Human Rights, Chapman v. UK, 2001-I 41; (2001) 33 EHRR 18.

European Court of Human Rights, Codona v UK (2001) 33 EHRR 399.

European Court of Human Rights, Öneriyildiz v. Turkey [2004] ECHR 657, (2005) 41 EHRR 20.

High Court of Justice [2008] EWHC 987 (Admin) between McCarthy, Culligan, Coyle, Taylor & Ors.

Johnson, Chris and Willers, Marc (2007). *Gypsy and Traveller Law*, Legal Action Group, London.

Johnson, Chris and Watkinson, David (2007), 'Evictions from unauthorised encampments', in Johnson, Chris and Willers, Marc (Eds), *Gypsy and Traveller Law*, Legal Action Group, London.

King, Jeff (2008). 'United Kingdom: Asserting Social Rights in a Multi-Layered System'. In Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International Comparative Law*. Cambridge: Cambridge University Press (pp. 276-94).

Murdoch, Angus and Johnson, Chris (2007), 'Introduction' in Chris Johnson and Marc Willers (eds), *Gypsy and Traveller Law*, Legal Action Group, London.

Niner, Pat (2004), 'Accommodating Nomadism? An examination of accommodation options for Gypsies and Travellers in England'. *Housing Studies*, vol.19:2, pp. 141-159.

Niner, Pat (2002), *The provision and condition of local authority Gypsy/Traveller site in England*, ODPM.

Office of the High Commissioner on Human Rights (OHCHR) (1998). UN Fact-Sheet n. 18, Minority Rights, Geneva.

Office of the High Commissioner (OHCHR) (2001). Forced Evictions and Human Rights. Fact-Sheet n. 25. Geneva.

Recommendation No 14 adopted by the Council of Europe, Committee of Ministers on 1 December 2004.

Recommendation No 4 adopted by the Council of Europe, Committee of Ministers on 23 February 2005.

Sandland, Ralph (2008). 'Developing a jurisprudence of difference: the protection of the human rights of travelling peoples by the European Court of Human Rights. *Human Rights Law Review*, vol. 8:3, pp. 475-516.

UN Commission of Human Rights Res. 2004/28, Prohibition of Forced Evictions, 16 April 2004, E/2004/23-E/CN.4/2004/127 and Res. 1993/77, Forced Evictions, 10 March 1003.

UN Commission of Human Rights Comprehensive Human Rights Guidelines on Development-Based Displacement, adopted on June 1997, E/CN.4/Sub.2/1997/7.

UN Human Rights Council (HRC), Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, 5 February 2007, A/HRC/4/18.

UN United Nations for Human Settlements (UNCHS) (1999). *Implementing the Habitat Agenda: Adequate Shelter for All, Global Campaign for Secure Tenure*. Nairobi.

Waldron, Jeremy (1993). *Liberal Rights*, Cambridge University Press, 1993.

Websites

<http://83.137.212.42/sitearchive/cre/downloads/commongroundreport.pdf>

<http://www.minorityrights.org>

http://www.curs.bham.ac.uk/research_consultancy/pdfs/Niner_Report_Final.pdf