



Newsletter of the Travellers Advice Team at Community Law Partnership

No. 21 - December 2014

Travellers Advice Team national telephone helpline for Gypsies and Travellers

0121 685 8677 Monday - Friday 9am - 5pm

No operator service. Get straight through to an expert.

**Happy Christmas &
Happy New Year to all our readers!!**

The Dignity of the Poor



By Chris Johnson and Simon Ruston

Every year the Travellers Times' law bloggers visit a different jurisdiction to examine a major case which has some relevance for Gypsies and Travellers. This year we are visiting South Africa and the case of *Port Elizabeth Municipality -v- Various Occupiers* [2004] ZACC 7.

The Respondents were some 68 people, including 22 children, occupying 29 shacks they had erected on privately owned land within the area of Port Elizabeth Municipality. Responding to a petition signed by 1600 local people, the Municipality sought eviction of the encampment. The Respondents were on the land without permission (there was a dispute as to whether they were originally given permission by an owner but it was accepted that, at the time of the Court action, they did not have permission to be where they were). At the time that the proceedings were started the Respondents had been living for periods ranging from 2 to 8 years on the land. Most had come there after being evicted from other land. At the time of the Court action, there was no specific use designated for the land in question and no specific proposals for use of the land. The High Court initially granted an eviction order. However the Supreme Court of Appeal allowed an appeal against that order. The Municipality appealed beyond that Court to the Constitutional Court of South Africa.

The Municipality relied on the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 1998 (the PIE). Reference was also made to Section 26 of the South African Constitution which reads:-

Housing

- (1) Everyone has the right to have access to adequate housing.*
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.*
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.*

The leading judgment of the Constitutional Court was given by the famous Sachs J and here are some useful quotes from that judgment:-

18. It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their head. Our society as a whole is demeaned when state action intensifies rather than mitigates their marginalisation. The integrity of the rights-based vision of the Constitution is punctured when governmental action augments rather than reduces denial of the claims of the desperately poor to the basic elements of a decent existence. Hence the need for special judicial control of a process that is both socially stressful and potentially conflictual...

25....Simply put, the ordinary prerequisites for the Municipality to be in a position to apply for an eviction order are that the occupation is unlawful and the structures are either unauthorised, or unhealthy or unsafe. Contrary to the pre-constitutional position, however, the mere establishment of these facts does not require the court to make an eviction order. In terms of section 6 [of PIE], they merely trigger the court's discretion. If they are proved, the court then may (not must) grant an eviction order if it is just and equitable to do so. In making its decision it must take account of all relevant circumstances, including the manner in which occupation was effected, its duration and the availability of suitable alternative accommodation or land...

28....In general terms, however, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme...

29....In a society founded on human dignity, equality and freedom it cannot be presupposed that the greatest good for the many can be achieved at the cost of intolerable hardship for the few, particularly if by a reasonable application of judicial and administrative statecraft such human distress could be avoided...

32....Both the language of the section and the purpose of the statute require the court to ensure that it is fully informed before undertaking the onerous and delicate task entrusted to it. In securing the necessary information, the court would therefore be entitled to go beyond the facts established in the papers before it. Indeed when the evidence submitted by the parties leaves important questions of fact obscure, contested or uncertain, the court might be obliged to procure ways of establishing the true state of affairs, so as to enable it properly to 'have regard' to relevant circumstances...

37....Thus, PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law. It is called upon to balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourliness and shared

concern. The Constitution and PIE confirm that we are not islands unto ourselves. The spirit of ubuntu [‘humaneness’], part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern...

Sachs J dismissed the appeal of the Municipality and summed up as follows:-

59....in the light of the lengthy period during which the occupiers have lived on the land in question, the fact that there is no evidence that either the Municipality or the owners of the land need to evict the occupiers in order to put the land to some other productive use, the absence of any significant attempts by the Municipality to listen to and consider the problems of this particular group of occupiers, and the fact that this a relatively small group of people who appear to be genuinely homeless and in need, I am not persuaded that it is just and equitable to order the eviction of the occupiers.

Lessons for those advising Gypsies and Travellers in the United Kingdom

Unfortunately this magnificent judgment does not, of course, have direct effect in the UK. Nevertheless, we have previously stressed the importance of the question of ‘alternative accommodation’ when a local or public authority are considering evicting an unauthorised encampment and reference should especially be made to the case of *Winterstein - v - France* - see the report in TAT News E-Bulletin May 2014:- <http://www.communitylawpartnership.co.uk/links/tat-news>

The availability of alternative sites is also considered in planning applications and appeals, and the case of *R (on the application of Doncaster Metropolitan Borough Council) v First Secretary of State and another*, [2007] EWHC 1034 (Admin) is particularly relevant. In this case the High Court approved of the approach of a planning inspector who found that: *"The absence of any alternative, available, affordable, acceptable, and suitable land to which the site occupants could move has to be afforded considerable weight in favour of the development."* Furthermore, *Planning Policy for Traveller sites* (in England) expressly requires decision makers to take alternative sites into account. This will be particularly relevant in enforcement cases where Gypsies and Travellers may otherwise be forced onto the roadside.

On a more general level, some encouragement can be taken that judges in other parts of the world interpret statute as having requirements of “grace and compassion”. It is worth recognising that South Africa was previously a nation living under the racist apartheid system where black people were denied equal treatment under the law. Even when it seems as if the odds are severely stacked against Gypsies and Travellers in this country, it is important to remember not to give up, because this South African example shows that real change and improved equality are possible.

The other law blogger, Marc Willers of Garden Court Chambers was not available, due to pressure of work, to participate in this blog.

The blog can be found on the excellent new Travellers Times website at: <http://travellerstimes.org.uk/Blog--Comment/The-Dignity-of-the-Poor.aspx>

Green Belt Cases

On 4th and 5th December 2014 the Judicial Reviews against the Green Belt planning appeal recovery process of the Secretary of State for Communities and Local Government (SSCLG) on behalf of

two of our clients (which the Equality and Human Rights Commission had intervened in) were heard by Mr Justice Gilbert. He has reserved his judgment which will now be handed down some time in the New Year.

In another High Court case (not directly challenging the recovery process) a decision by the SSCLG which went against his Planning Inspector was overturned by the High Court - see *O'Connor - v - SSCLG and Epping Forest District Council* which will soon be on the CLP website under Gypsy and Traveller cases (see link below).

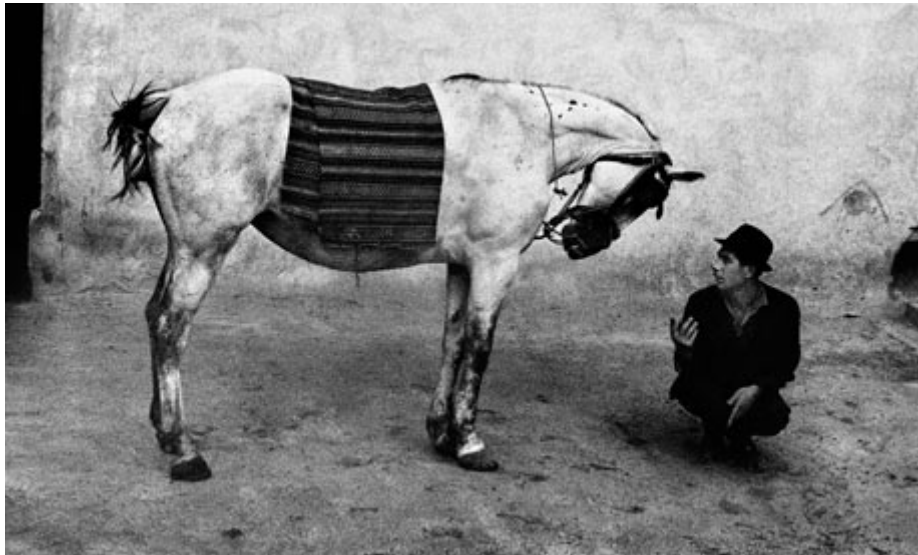


Photo by Josef Koudelka, famous photographer of Gypsies

Re-Defining Travellers out of Existence

The deadline for submissions to the disastrous proposals contained in the Department for Communities and Local Government consultation on *Planning and Travellers* was November 23rd 2014. Great efforts were made by lots of people in putting in submissions and there was a flurry of activity on the last day for submissions. Additionally some smaller groups only learnt of the consultation very late in the day and requests have been put in asking for an extension of time.

You will soon find a selection of submissions from various groups, including the submissions that CLP did in conjunction with Ruston Planning, on our website at:- <http://www.communitylawpartnership.co.uk/noticeboard/campaigns-and-consultations>.

No Mad Laws



The No Mad Laws campaign consists of Gypsies, Travellers, their supporters and representatives who have joined together to highlight the disastrous effect that the Coalition Government's Legal Aid and Judicial Review reforms will have upon Gypsies and Travellers who do not have authorised stopping places due to the continuing failure of central government to ensure that there is adequate site provision.

No Mad Laws campaign has a petition which you can access at:- <http://you.38degrees.org.uk/petitions/no-mad-laws>.

If you have not already done so, please sign the petition. Please forward the petition around.

The No Mad Laws campaign also has a website where you can get more information and news about the campaign at:- <http://www.nomadlaws.co.uk/>.

The Campaign will be formally submitting the petition to the Government and the main political parties early in the New Year. Please write to your MP asking them to support the campaign. At the time of sending around this edition of TAT News, the Petition has reached 1,406. Thank you to everyone who has signed the petition.

Gypsy and Traveller Law Book

Marc Willers and Chris Johnson (the co-editors of this Legal Action text book) and their co-authors are still working away on the third edition. It is going slower than expected but we are hoping that, as soon as possible in the New Year, the third edition will be published.

Scottish Police Guidance

TAT provide advice, assistance and representation throughout England and Wales. We do not cover Scotland or Northern Ireland. However, in his ongoing work on the above book, Chris Johnson had reference to the latest version of the Police Scotland Guidance *Gypsies/Travellers Management of Unauthorised Encampments : Standard Operating Procedure* (2014). This Guidance is extremely positive in the way it approaches the issue of unauthorised encampments and we hope that the Association of Chief Police Officers (ACPO), who are considering their own Guidance, which covers England and Wales, will have reference to the Scottish Guidance. To take just one example:-

6.4 *Although unauthorised encampment is a criminal offence, in accordance with the Scottish Government Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland, there is a general presumption against prosecution of Gypsies/Travellers for setting up unauthorised encampments. Prosecution will only be considered when:-*

- a) *A suitable alternative stopping place has been identified and the Gypsies/Travellers have refused to re-locate within a reasonable time (it is the responsibility of the local authority to identify the stopping place. The Police have no power to do this); or*
- b) *Where the use of a particular site by Gypsies/Travellers, or the excessive size of the encampment, causes a severe road safety or public health hazard; or*
- c) *Where the same Gypsies/Travellers have been repeatedly evicted from a site by the local authority and return after a short time.*

6.5 *Failure by a Local Authority to assess or make provision for the needs of Gypsies/Travellers will serve to reinforce the presumption against prosecution. However, the presumption may be overridden by other public interest considerations arguing in favour of prosecution. This may include serious disruption to businesses and/or members of the public as a result of offensive or criminal behaviour by Gypsies/Travellers.*

You can find the Guidance at:- <http://www.scotland.gov.uk/Publications/2004/12/20417/48832>.

Everyone Loves a Funfair Part 2

Our report of the first instance judgment in this matter is at:- <http://www.communitylawpartnership.co.uk/links/tat-news> (TAT News E Bulletin No. 5).

Worcestershire County Council appealed against this decision. We are pleased to report that the Court of Appeal dismissed this appeal. See *Worcestershire County Council - v - J (by His Litigation Friend W) and the EHRC* [2014] EWCA Civ 1518. You will soon be able to find a report on this case in the Gypsy and Traveller cases section of our website (see link below).

Redhill Aerodrome Case

Unfortunately the positive High Court Judgment in this case has been overturned by the Court of Appeal. Our original report on our website of this case can be found at:- <http://www.communitylawpartnership.co.uk/traveller-planning>.

Secretary of State for Communities and Local Government, Reigate and Banstead Borough Council and Tandridge District Council - v - Redhill Aerodrome Limited [2014] EWCA Civ 1386, Court of Appeal, 24 October 2014.

Mobile Homes Act 1983

The Supreme Court has handed down an important judgment on notices to remedy a breach, which does not involve a Gypsy or a Traveller but which will be very important for Gypsies and Travellers who live on rented sites, including local authority sites. This is the case of *Telchadder - v - Wickland Holdings Limited* [2014] UKSC 57. A report on this case will soon be available in the Gypsy and Traveller cases section of our website (see link below).

Traveller Site Funding

The Department for Communities and Local Government (DCLG) have put up details of the latest allocation of funds for Traveller site funding on their website at: <https://www.gov.uk/government/publications/traveller-pitch-funding-allocations>.

Obviously this does not necessarily mean that the sites will be built in the end but it means that these are the amounts of money that have been made available to local authorities.

Picklesgate

Well done to Friends, Families and Travellers (FFT) who pursued a complaint to the Information Commissioner and eventually got DCLG to provide the information that the Ministerial Working Group on Gypsies, Roma and Travellers has not met at all since they published a 'progress report' in April 2012. For full details, see the FFT website at:- <http://www.gypsy-traveller.org/picklesgate-government-covers-roma-neglect/>.

Lord Avebury, on the 11 November 2014, asked a question in Parliament about the Ministerial Working Group and received a response from Lord Ahmad. You can find the question and response at:- <http://www.theyworkforyou.com/wrans/?id=2014-11-11a.36.0&s=speaker%3A12876#g36.1>. We will be making the "summary of progress" document that was deposited in the Library of the Houses of Parliament by Lord Ahmad available on our website in the news section (see link below).

Most Gypsy and Traveller support groups and representatives would agree that, if accommodation problems are resolved for Gypsies and Travellers who live in caravans, then all the other issues such as problems with health and education would also begin to be resolved. However, there are only two of the 28 "commitments" that relate to accommodation. The summary of progress on those is as follows:-

Commitment 12 : We will help Gypsy and Traveller representative groups showcase small private sites that are well presented and maintained.

Progress so far : DCLG contacted local authorities - around 30 responded suggesting possible sites for inclusion. We suggested ideas for this project to the Liaison Group, including a template case study document to help them to take the lead on this.

Publication : Discussions about this at DCLG Gypsy and Traveller Liaison Group in November 2012.

Commitment 13: The Government will continue to promote improved health outcomes for Travellers through the planning system.

Progress so far : Wording on health is in the Planning Policy for Traveller sites (published in April 2012).

Publication: Planning policy published in April 2012.

We would suggest that these two commitments are so minimalistic as to be laughable.

TAT News Survey

Thanks to all those who responded to our survey. We are pleased to report that everyone felt that the E-Bulletins are informative and very useful. Some people also made individual suggestions which we will be considering further. The general opinion was that it was best if the E-Bulletins were kept fairly concise and we attempt to do this by putting in links to other reports, articles, cases etc so that, if a reader wants to read in more detail, they can go to that link and do so. Apologies that there may be a short delay in putting some of the links mentioned above in place (we're a bit busy at the coalface!!).

Travellers Times Law Blogs

Marc Willers QC of Garden Court Chambers, the planning consultant Dr Simon Ruston and Chris Johnson of TAT provide regular law blogs for Travellers Times website. Here is a recent blog:- <http://travellerstimes.org.uk/Blog--Comment/Redefining-Travellers-out-of-existence.aspx>.

The Travellers Advice Team

The members of TAT are Chris Johnson, Parminder Sanghera and Sharon Baxter. Thanks to our TAT Administrator, Emma Westwood, for organising this Bulletin.

CLP Website

On our website you can find:

- News items about Gypsy and Traveller issues:
<http://www.communitylawpartnership.co.uk/noticeboard/news>
- Updates on campaigns and consultations:
<http://www.communitylawpartnership.co.uk/noticeboard/campaigns-and-consultations>
- Recent Gypsy and Traveller legal cases:
<http://www.communitylawpartnership.co.uk/noticeboard/gypsy-and-traveller-cases>
- Judgments and reports on our leading cases:
<http://www.communitylawpartnership.co.uk/our-leading-cases>
- Links to Gypsy and Traveller groups:
<http://www.communitylawpartnership.co.uk/links/travellers>
- And , of course, previous TAT News E Bulletins:
<http://www.communitylawpartnership.co.uk/links/tat-news>
- Plus lots of information about the Housing and Public Law Teams who, amongst other things, represent Gypsies and Travellers in housing and homeless Gypsies and Travellers who are seeking housing in the Midlands and surrounding areas. For full details of the Housing Team see:
<http://www.communitylawpartnership.co.uk/our-services/housing-law>
and the Public Law Team see:
<http://www.communitylawpartnership.co.uk/our-services/public-law>

Until Next Time

We hope you find our E-Bulletin useful. All and any comments very welcome.

Don't forget our national self-funded advice line for Gypsies and Travellers:
0121 685 8677
Monday to Friday 9am to 5pm

Keep up the good fight! Best wishes to all our readers. Kushti bok!

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