



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 66336/01
by THE GYPSY COUNCIL and Others
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on
14 May 2002 as a Chamber composed of

Mr M. PELLONPÄÄ, *President*,

Sir Nicolas BRATZA,

Mr A. PASTOR RIDRUEJO,

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 29 September 2000
and registered on 22 February 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants are:

1. The Gypsy Council for Education, Culture, Welfare and Civil Rights, an organisation affiliated to the International Romany Union, has its main office in Romford, Essex;
2. Friends, Families and Travellers, an organisation based in Brighton, Sussex;
3. Thomas O’Doherty, an Irish citizen born in 1937 and resident in York;
4. Terence Green, a British citizen born in 1966 and resident in Sutton, Surrey.

The first and second applicants are organisations which represent the interests of the gypsy/romany community of which the third and fourth applicants are members.

They are represented before the Court by The Community Law Partnership Solicitors, practising in Birmingham.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The Horsmonden Horse Fair is a significant cultural and social event in the life of Romany Gypsy community in the United Kingdom. It has been held at the Horsmonden Village Green in Kent on the second Sunday in September annually for the last 50 years, at least. The applicants claim that there is good reason to think that the event has taken place for the last 300 years. The majority of those who attend the fair are gypsies.

On 25 April 2000, the Parish Council that occupies the Village Green decided that the fair was to be henceforth cancelled. In July, pursuant to the Public Order Act 1986, as amended by the Criminal Justice and Public Order Act 1994 (“the 1994 Act”), the Parish Council applied to the Chief Constable for the necessary steps to be taken. In a letter dated 7 August 2000, the Chief Constable applied to the Tunbridge Wells Borough Council (“the Borough Council”) under section 14A of the 1994 Act for a prohibition order to be made. He stated *inter alia* that he believed that a trespassory assembly of 20 or more people was likely to be held on the Village Green and:

“Based on previous years’ experience, concerns of residents and intelligence, I reasonably believe that serious disruption to the life of the community will result because of :

- i. Incidents related to feuding groups of ‘travellers’ in 1997, 1998 and 1999, with an escalating level of policing required to prevent serious crime (200 officers in 1999).
- ii. The racing of horses on the highway.

- iii. The illegal and indiscriminate parking of cars throughout the village...
- iv. Concerns over public health due to poor hygiene, litter, discarded nappies and clearing up;
- v. Anti-social behaviour by visitors.
- vi. Closure of local public houses and shops for fear of theft.
- vii. Necessary road closures contributing to a negative financial impact in the area.
- viii. The threat that 'travellers' will defy the cancellation.
- ix. Fear expressed by residents...
- x. A background level of increased crime which occurs over the event weekend.
- xi. The normal social interactions between villagers being suspended as a consequence of the sheer volume of visiting 'travellers'."

The Chief Constable concluded that this made it necessary to apply for the prohibition order so that effective policing could be carried out.

At a council meeting on 14 August 2000, the Borough Council accepted the recommendation of the director of operational services that the Borough Council should seek the approval of the Secretary of State in the making of an order. The main reason that the Borough Council gave for issuing the Prohibition Order was that the fair "may result in serious disruption to the life of the community in the vicinity of the prohibited area."

On behalf of the Secretary of State, the Home Office Minister, with the recommendation of the senior officer of the Home Office's public order section, gave consent to the application for the Prohibition Order. The Order was then issued on 4 September 2000 in accordance with section 14A of the Criminal Justice and Public Order Act 1994 prohibiting any "trespassory assembly" within a 5 mile radius of Horsmonden Village Green beginning at 18.00 hours on Thursday, 7 September 2000 and terminating at 06.00 hours on Monday, 11 September 2000.

Notwithstanding the prohibition order, on 31 August 2000, the Kent police gave consent to the conduct of a limited parade on Sunday, 10 September 2000, in Horsmonden.

In response to the prohibition order, the first applicant in this case, the Gypsy Council, issued proceedings in the High Court applying for judicial review on 5 September 2000. The applicant sought to quash the prohibition order, claiming that the Secretary of State and the Borough Council had made their decision to issue the order by considering both irrelevant factors and failing to consider factors that were in fact relevant. They alleged that there had been no evidence to support claims of risk to safety or disruption to the local community and no consideration given to alternative ways in

which the fair might have been staged on the site. Among the relevant factors that the first applicant claimed the respondents failed to take into account were the applicants' rights under Articles 8, 11, and 14 of the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities.

The case was heard on an expedited basis before Deputy Judge Pannick QC, who granted permission to apply for judicial review and heard the application on 7 September 2000. Having heard the parties, the Deputy Judge dismissed the application seeking to quash the prohibition order. He found that sufficient relevant information was before both the Borough Council and the Home Secretary to enable them to properly exercise their discretion in deciding whether to issue the order. The letter of the Chief Constable set out the concerns that serious disruption to the community would result. He stated that Borough Council were entitled to think that the need to avoid disruption to the local settled community should take priority. He considered that the fact that the Romany Gypsy Community could go to an alternative site some 20 miles away at Dartford, which was approved by the local authority and the police, served to limit the impact upon the Romany Gypsy community. He also found that there was no basis for the argument that the European Convention on Human Rights was not taken into account. He noted that Articles 8 and 11 of the Convention recognised that a balance had to be struck between the interests of the individual, in this case, the interests of the gypsy community and the interests of society generally, but found no reason on that basis to interfere on public law grounds with the assessment reached by the Council and Secretary of State in light of the advice from the Chief Constable. He rejected the first applicant's request for leave to appeal. The first applicant was advised by counsel that no further remedies were available.

Subsequently, on Sunday, 10 September 2000, a parade took place at Horsmonden, which was limited by the police to only 60 persons while measures taken by the police controlling entry to the village severely restricted the numbers of persons from the gypsy community wishing to watch the parade. An alternative fair apparently took place peacefully the same day at Dartford attended by an estimated 1000 gypsies.

B. Relevant domestic law and practice

Section 14A of the Public Order Act 1986 as amended by the Criminal Justice and Public Order Act 1994

“(1) If at any time the chief officer of police reasonably believes that an assembly is intended to be held in any district at a place on land to which the public has no right of access or only limited right of access and that the assembly--

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's rights of access, and

(b) may result—

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building on monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may apply to the council for the district for an order prohibiting for a specified period the holding of all trespassory assemblies in the district or part of it, as specified.

(2) On receiving such an application, a council may--

(a) in England and Wales, with the consent of the Secretary of State, make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State...

...

9. In this section and sections 14B and 14C – ‘assembly’ means an assembly of 20 or more persons;

...

‘limited’, in relation to a right of access by the public to land, means that their use of it is restricted to use for a particular purpose (as in the case if a highway or road) or is subject to other restrictions;

‘occupier’ means—

(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; ...”

COMPLAINTS

1. The applicants complain that the issuance of the prohibition order, which prevented the traditional Horsmonden Horse Fair from taking place, breached their rights under Articles 8, 11, and 14 of the Convention. In particular, they allege that the order had a disproportionate effect on the gypsy Romany community and that the authorities could have accommodated the fair by imposing reasonable conditions on its conduct e.g. by regulating car parking, limiting the number of stall holders, ensuring sufficient policing, ensuring that there were sufficient stewards provided by

the organisers and ensuring that the village was cleaned afterwards by liaising with the gypsy representatives.

2. The applicants also claim that the judicial proceedings violated their right to fair trial under Article 6. They claim that the Deputy Judge who heard their case could not be considered independent and impartial, since he has served as counsel for the United Kingdom Government in numerous cases brought before the European Court of Human Rights involving gypsies, in which he had argued that public authorities had not infringed the rights of gypsies. Further, the allocation of a Deputy Judge to the case was wholly inappropriate.

3. The applicants also claim that the police's intervention in the Horsmonden parade on 10 September 2000 parade, to which the police consented on 31 August 2000, amounted to violations of Articles 11 and 14.

THE LAW

I. CONCERNING THE STANDING OF THE APPLICANT ORGANISATIONS

The Court notes that the two organisations, The Gypsy Council for Education, Culture, Welfare and Civil Rights and Friends, Families and Travellers, purport to introduce the application on behalf of their members who are gypsies. It is not alleged that the rights of the organisations have been infringed by the measures impugned in this case. No details of the members on whose behalf complaint was made have been provided, nor any letters of authority.

The Court does not find it necessary however to determine whether the two applicant organisations can claim to be victims of the measures complained of in this application. It rejects the complaints raised by the applicants for the reasons set out below.

II. CONCERNING THE APPLICANTS' COMPLAINTS

A. The prohibition order and judicial review proceedings

1. Article 11 of the Convention

The applicants complain of the prohibition order issued to prevent the traditional fair and procession at Horsmonden, invoking Article 11 of the Convention which provides:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

The Court finds, first of all, that the prohibition order interfered with the right of freedom of assembly of the applicants within the meaning of Article 11 § 1 of the Convention.

It has therefore examined whether this restriction was in conformity with the second paragraph of that provision, namely it was prescribed by law and “necessary in a democratic society” for one or more of the purposes set therein.

In that regard, the Court observes that the prohibition order was issued under statutory authority, section 14A of the Criminal Justice and Public Order Act 1994 and that the High Court rejected the challenge to the lawfulness of the order which was found to be based on public order considerations. The restriction was accordingly prescribed by law and pursued the legitimate aim of preventing disorder and protecting the rights of others.

The question remains whether the measure was “necessary in a democratic society”, in particular whether it was proportionate to the aims. The Court notes that the Horsmonden fair was a traditional gathering of longstanding and as such of considerable cultural and social importance to the gypsy community. However, the exercise of the right to freedom of assembly is not absolute and where large gatherings are concerned the impact of the event on the community as a whole may legitimately be taken into consideration (see, *mutatis mutandis*, *Iskcon v. the United Kingdom*, no. 20490/92, Commission decision of 8 March 1994, DR 76, p. 90, and *Pendragon v. the United Kingdom*, no. 31416/96, Commission decision of 10 October 1998). The horse fair had been growing in size over the years and in 2000 the police had identified concerns about the disruption to the local community caused *inter alia* by the “sheer volume” of visitors, indiscriminate parking, littering, a background level of increased crime and road closures. The Court observes that the authorities made available a site some 20 miles from Horsmonden, where large numbers of persons could assemble without causing disruption. It also appears that the police permitted a limited procession to take place in Horsmonden on the day in question. While the applicants argue that it would have been possible to allow the fair to take place as usual subject to reasonable conditions

regulating car parking, ensuring sufficient stewards, policing and litter collection, the Court is not persuaded that this would have necessarily prevented the disorder and disruption which was anticipated. In the circumstances, the response of the authorities was proportionate, striking a fair balance between the rights of the applicants and those of the community generally.

Any restriction may accordingly be regarded as “necessary in a democratic society” for the prevention of disorder and the protection of the rights of others. The applicants’ complaints must be rejected as manifestly ill-founded within the meaning of Article 34 §§ 3 and 4 of the Convention.

2. Article 14 of the Convention

The applicants complained that the prohibition order had a disproportionate effect on the gypsy community, invoking Article 14 of the Convention which provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Court has found above that the measure pursued the legitimate aim of preventing disorder and protecting the rights of other. It prevented any persons attending the horse fair irrespective of their origin. It is not persuaded that the prohibition order pursuant to the Criminal Justice and Public Order Act 1994 was imposed with any discriminatory intent or effect. This part of the application must also be rejected as manifestly ill-founded within the meaning of Article 34 §§ 3 and 4 of the Convention.

3. Article 6 of the Convention

The applicants complain of the judge who heard the judicial review proceedings, invoking Article 6 § 1 of the Convention which provides as relevant in its first sentence:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

Even assuming that the judicial review application which was brought to challenge the imposition of a prohibition on a public assembly concerned any civil right under domestic law, the Court notes that the applicants’ objection to the judge relates to the fact that he had, as a lawyer, represented the Government in other cases introduced by gypsies before the courts and the Convention organs and that he was only a deputy judge. This, it is argued, shows a lack of independence and impartiality.

As regards lack of independence, the Court finds no basis on which to impugn the independence of a deputy judge, who is appointed by the Lord

Chancellor as are other judges and subject to judicial guarantees. Whether junior or not, he was competent to hear the case under domestic law. As regards allegations of lack of impartiality, the personal impartiality of the judge must be presumed unless there is proof to the contrary, which there is none in the present case (*Hauschildt v. Denmark* judgment of 24 May 1989, § 47). Nor does the fact that the judge in this case had appeared as counsel for the Government in previous domestic cases or in proceedings before this Court which concerned gypsy applicants cast any objective doubts as to his impartiality. These cases concerned different facts, legal issues and parties and the fact that persons of gypsy origin were involved cannot be regarded as *per se* raising any appearance of doubt or legitimate fear as to a lack of impartiality on the part of the judge in fulfilling his judicial role in this case.

This complaint must therefore be rejected as manifestly ill-founded within the meaning of Article 34 §§ 3 and 4 of the Convention.

B. The police intervention in the parade

The applicants invoke Articles 11 and 14 of the Convention, alleging that police actions in intervening in the parade when it took place on 10 September 2000 infringed these provisions. No details are given of this intervention and it is not apparent that either of the individual applicants were present during the parade or could claim to be victims of any police measures taken at that time.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President