

The Human Rights Act and Gypsies and Travellers

The Gypsy and Traveller Law Reform Coalition

Winners of the Liberty Human Rights Award

Introduction

Over the past year the Human Right Act has been the focus of a bitter debate in which some sections of the media and political figures have claimed that Gypsies and Travellers are taking advantage of this legislation to subvert planning law and that the HRA should be repealed or amended.

The following paper seeks to evaluate the truth of these claims.

What is the Human Rights Act?

The **European Convention on Human Rights (1950)** was adopted under the auspices of the [Council of Europe](#) to protect [human rights](#) and fundamental [freedoms](#).

The Convention establishes the [European Court of Human Rights](#). Any person who feels their rights have been violated under the Convention by a state party can take a case to the Court.

The **Human Rights Act 1998** is a [United Kingdom Act of Parliament](#) which received [Royal Assent on November 9, 1998](#), and came into force on [October 1, 2000](#). Its aim is to "give further effect" in UK law to the rights contained in the [European Convention on Human Rights](#). The Act makes available in UK courts a remedy for breach of a Convention right, without the need to go to the [European Court of Human Rights in Strasbourg](#).

The HRA has been cited in some planning cases involving Gypsies and Travellers. This is because there is a national shortage of Traveller sites.

Why is there a shortage of sites?

Post war Development

In the post war period of unprecedented urban development many traditional stopping places were developed and turned into housing estates etc. Furthermore, the Caravan Sites and Control of Development Act 1960 closed the commons to Gypsies and Travellers. These factors created a shortage of sites, which caused community tensions as Gypsies and Travellers were forced by the loss of traditional stopping places to stay on pieces of land deemed by some to be inappropriate places to stop on.

The 1968 Caravan Sites Act

In part to ease community tensions and address the shortage of sites the 1968 Caravan Sites' Act created a duty on local authorities to create sites for Travellers.

1994 Repeal of the 1968 Caravan Sites Act

In 1994 through the Criminal Justice and Public Order Act the then Conservative Government scrapped the duty on councils to provide sites and replaced it with planning circular 1/94. This circular asked councils to assist Travellers in identifying land they could buy to develop as sites. The circular called for the identification of locations and, only if not possible, criteria based policies. However, only one or two local authorities complied with this. Most local authorities adopted a policy that had a criteria base. Namely Gypsies and Travellers themselves had to find land and if it conformed to certain criteria it could be passed. The policy has been a spectacular failure. Local authorities have used the criteria policy to frustrate perfectly good sites, which have in some cases been passed on appeal.

Retrospective Planning Applications - 'Land Grab?'

The Office of the Deputy Prime Minister, in a Report on Gypsy and Traveller Sites in 2004 estimated that over 3,500 Gypsies and Travellers, 20% of the Travelling community, have no legal place where they can stop their caravans. These caravans are therefore on unauthorised encampments and their occupants are defined as homeless under the Housing Act 1996.

The repeal of the duty created a shortage of sites and some families in order to avoid homelessness bought land and moved on to it and submitted retrospective planning applications.

The media has portrayed such applications as a 'land grab'.

However, there is a 90 % failure rate in retrospective planning applications.

The Conservative's Commission on the HRA

In the summer of 2004 the Conservative Party announced that it would be establishing a commission to assess the Human Rights Act and determine whether groups like Gypsies and Travellers were taking unfair advantage of it. It was announced that the resulting report would be due April 2005

From this point there were increased references in the media to the HRA and Gypsies and Travellers.

Legal Opinion

There was only one case in Britain where a council approved a site because it believed it was obliged to under human rights law (Stroud Council).

Chichester v Doe & ors. Widely reported in the press as a HRA case that would mean that local authorities could not deal with unauthorised developments. The case involved Gypsies on land with no special designation and the Inspector concluded that there was minimal visual impact. The Court of appeal upheld the inspector's reasoning on breach of Article 8 based on Chichester's longstanding failure to allow any Gypsy sites in the area despite the proven need. This is important in this respect but certainly does not mean that such an argument will be successful in every case.

The Connor's Case

The European Court of Human Rights found that the summary eviction of the applicants from a Gypsy site, without reasoned justification or sufficient procedural safeguards, breached the right to respect for private life and the home under Article 8 ECHR.

This is the only case where Travellers won a case in the ECHR and it involved a local authority site, where the Travellers paid rent. It was not a planning case.

Proportionality

The Human Rights Act needs to form part of a local authority's decision making with regards to Gypsies and Travellers.

Draft Planning Circular (54) " The provisions of the European Convention on Human Rights should be considered as an integral part of local authorities 'decision making'Local planning authorities should consider the consequences the consequences of refusing or granting planning permission, or taking enforcement action, on the rights of the individuals concerned both Gypsies and Travellers and local residents, and whether it is necessary and proportionate in the circumstances".

Proportionality could mean that a local authority decides to suspend an eviction or find an alternative site because of the human cost re trauma, homelessness and poor access to services and financial (one hundred and fifty thousand pounds to initiate an eviction off private land).

Article 8 of the HRA

Article 8 of the HRA is sometimes cited in planning cases for Gypsies and Travellers.

- '1. Everyone has the right to respect for his private and family life [and] his home...
2. There should be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 therefore has to be balanced out with the needs of the wider community as well as the interests of Gypsies and Travellers. It is certainly not a carte blanche for Gypsies and Travellers to establish unauthorised encampments without any fear of legal punishment.

In the case of Sally Chapman, which went to the European Court of Human Rights because a local authority refused her application to live on land she owned the court decided that the council had interfered with the rights of her family (article 8) but these actions were justified because of the need to protect the rights of the wider community and preserve the environment.

Reality - legal disadvantage

Contrary to the perception that Gypsies and Travellers are 'milking the legal system' for as much as they can get, they are in fact at a considerable disadvantage.

The Race Relations Act 2000 created a duty on councils to positively promote equality. The low educational participation and attainment, poor health and low life expectancy and generally poor access to services as well as the high rate of homelessness in the Gypsy and Traveller community strongly suggests that many councils are failing

The Parliamentary Joint Human Rights Committee fourteenth report in 2005

". The anti-discrimination duties on public authorities under the Race Relations Act and the Race Relations (Amendment) Act 2000 encompass Gypsies and Irish Travellers, recognised as ethnic minorities in 1989 and 2000 respectively. JUSTICE suggested that insufficient attention had been given to meeting the needs of Travellers under the 2000 Act".

March 2005 'Stamp on the Camps'

In March the Sun newspaper and other tabloid newspapers launched a sustained campaign on Gypsy and Traveller sites. In one notable article, in the immediate wake of an announcement on the Government's new planning circular which calls for councils to identify land Travellers can buy, the Sun printed a picture of Travellers with the caption 'meet the neighbours'. Another caption proclaimed 'Stamp on the Camps'.

Shortly after this Michael Howard visited Dale Farm a Traveller site in Essex where Travellers are facing eviction. Howard met members of the settled community but did not speak to Travellers. He launched the Conservatives' 7 point plan, which was formulated without any formal consultation with the Gypsy and Traveller community.

The 7 point plan called for:

The criminalisation of Trespass

The repeal of the Human Rights Act

Michael Howard said:

"If you want to build a new home you have to get planning permission first. But if you are a traveller you can bend the planning law - building where you like thanks to the Human Rights Act". The HRA was described by Howard as "a chancers' charter".

Since the tabloid and Conservative campaign on Travellers started there has been an increase in racist incidents towards Travellers, according to the Commission for Racial Equality this includes an arson attack against a Gypsy camp in Lanarkshire and evidence of Traveller children staying away from school because of the stress and fear of the current atmosphere (Times 12/4/05)

Sections of the media lent their support to the Conservatives' campaign

Daily Telegraph Editorial, March 22

"Mr Howard has come up against a familiar obstacle to his eminently sensible plan to deal with an illegal Gypsy camp... That obstacle is the European convention on human rights, which was incorporated into British law under the Human Rights Act of 1998. The Conservative leader has been warned that his plan to give the police power to close these illegal camps may contravene the law, since Gypsies belong to an identifiable ethnic group whose traditional ways are protected by the convention and the act...

"Mr Howard must steel himself to say that he will definitely repeal the act, and withdraw from the convention from which it sprang... Human rights legislation is not merely an obstacle to framing sensible solutions to Britain's most pressing problems. It is the very cause of many of those problems. Mr Howard should be brave enough to say so."

Conclusions

The above summary demonstrates that Gypsies and Travellers are not at some unfair point of advantage because of the HRA.

Part of the problem is that the public does not recognise that the HRA is there to protect fundamental rights and freedoms, which are of benefit to the public as a whole. There is not a widespread appreciation or understanding of this legislation unlike the Bill of Rights in America, which is almost universally accepted and understood. There is a need to sell the HRA to the public and capture their imagination.

The present lack of clarity has allowed sections of the media and some politicians to play 'fast and loose' with the HRA and create dangerous misconceptions.

The Conservative Party never issued a report from its commission into the HRA. We hope that this signifies a change of heart and that the Conservative Party might come to fully endorse the HRA and follow the example of Dominic Grieve MP the Shadow Attorney General who has been an enthusiastic supporter of the HRA.

In July 2005 representatives of the Gypsy and Traveller community met Caroline Spellman MP Shadow Conservative spokesperson on Local Government, who indicated that she wished to see the start of a policy dialogue between the Conservatives and Gypsies and Travellers. We hope this will be the start of a process, which sees the creation of a political consensus behind the need for more sites. The creation of a fair set of accommodation policies and creation of more sites for Gypsies and Travellers is the way ahead as this could bring to an end families pursuing retrospective planning applications and the resulting legal challenges and references to the HRA.