

An overview of discriminatory treatment of Gypsies, Travellers and Roma

A René Cassin Policy Paper



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Introduction

Gypsies and Travellers hail from historically nomadic cultures and although it is difficult to state with certainty the size of the Gypsy and Traveller population in the UK,¹ studies suggest that between 90,000 and 300,000 Gypsies and Travellers reside here. In modern society many Gypsies and Travellers have ceased their characteristically itinerant ways for a variety of reasons.² Whether stationary or nomadic, however, Gypsies and Travellers often find themselves maligned by the broader community as an inferior class of people. This policy paper will examine four significant areas in which Gypsies and Travellers face discrimination and racism, those being: property rights, education, access to healthcare, and prejudice within the criminal justice system. It will then establish key international law and European case law, take an in-depth look at the instances of discrimination in the UK and determine where, as an organisation René Cassin can intervene to end such discrimination.

WHO ARE GYPSIES AND TRAVELLERS?

The expression “Gypsies and Travellers” serves as an umbrella term that comprises a number of sub-groups. Encompassed in that phrase are several smaller communities, including Romani Gypsies (“Roma”), Irish Travellers, Occupational Travellers, and New Travellers. Across Europe and within the UK, the Roma and Irish Travellers make up a significant part of the population. Following the Race Relations Act of 1976 (“RRA”) the Roma Gypsies and Irish Travellers received official recognition as ethnic groups.³ As a result, these communities merit legal protection from discrimination based on their ethnicity.

Roma and Irish Travellers are separate groups of people with distinct histories. Scholars believe that the Roma originated in northern India, where persecution caused them to move west, reaching England in the 16th century.⁴ Many Roma continue to speak Romani, their traditional language hailing from Hindi.⁵ Irish Travellers, on the other hand, migrated to England from Ireland during the 19th century and speak the traditional language of Cant.⁶ Although the various subgroups in the Gypsy and Traveller communities have different cultures, one unifying thread is the ongoing discrimination that they encounter.⁷ Since arriving in England, Gypsies and Travellers have faced many problems stemming from bigotry and prejudice. In 1554, the Egyptians Act closed England’s boundaries to the Gypsies.⁸ In 1597, the Vagrancy Act

¹ The UK census excludes Gypsies and Travellers, thereby precluding anything but a rough estimate of their population.

² Bowers, J., Gypsies and Travellers: Their lifestyle, history and culture, Accessed on 19th December, 2011 at <http://www.travellerstimes.org.uk/downloads/lifestyle_history_and_culture_24052010111520.pdf>

³ English case law recognized the Roma as an ethnic group in 1989 in *Commission for Racial Equality v. Dutton*. Irish Travellers received case law recognition in 2000 in *O’Leary v. Allied Domecq*.

⁴ History of Gypsies and Irish Travellers, Accessed on 19th December, 2011 at

<http://www.kent.gov.uk/community_and_living/gypsies_and_travellers/history_of_gypsies.aspx>

⁵ Ibid.

⁶ Ibid.

⁷ Bowers, J., Gypsies and Travellers: Their lifestyle, history and culture, Accessed on 19th December, 2011 at <http://www.travellerstimes.org.uk/downloads/lifestyle_history_and_culture_24052010111520.pdf>

⁸ Ibid.

permitted the deportation of anyone living a nomadic lifestyle.⁹ Such government-enacted legislation has largely forced Gypsies and Travellers to abandon their nomadic lifestyle.

RACISM AND DISCRIMINATION

Despite societal denunciation of overt racism against other groups, Gypsies and Travellers continue to endure racist treatment.¹⁰ They frequently face racist attacks from all corners of society, including the media, political arena, and the general population. Racism in the media is problematic not only because of its immediate results, but also because it perpetuates racism throughout different sectors of society. Racist acts against Gypsies and Travellers have a negative impact on their ability to obtain an education, employment, healthcare, and accommodation.

Notwithstanding international legislation and case law aimed at eliminating discrimination, Gypsies and Travellers continue to endure both direct and indirect discrimination, both in Britain and throughout Europe. Despite the fact that British case law has legally recognized Gypsies and Travellers as ethnic minorities, they continue to face discrimination on the basis of that status. The biggest ailment that haunts Gypsies and Travellers is their state of chronic exclusion. Legislation enacted by the UK Parliament has resulted in a shortage of authorized campsites in which Gypsies and Travellers can live. The allocation of the equivalent of one mile of land in the UK is all that is required to sufficiently accommodate all Gypsies and Travellers, however, the UK Government has failed to provide the necessary land.

PROPERTY

The discrimination that Gypsies and Travellers face in accessing their property rights and obtaining accommodation forms part of the foundation for discrimination arising in other facets of life. The transient lifestyle imposed by housing deficiencies negatively impacts these communities' ability to access healthcare, education, and employment. To date, approximately one fourth of the UK's Gypsies and Travellers live on unauthorized campsites, effectively rendering them homeless.¹¹ In 2010 the EHRC released a report on the level of progress local authorities were making in taking steps to resolve the recognised shortfall of appropriate accommodation. The report determined that, taking in all pitch changes – social and private, temporary and permanent permissions it will take 16 years to meet the 5 year requirement plan

⁹ Ibid.

¹⁰ Cemlyn S., Greenfields, M., Burnett, S., Whitewell, C., Matthews, Z., 'Inequalities experiences by Gypsy and Traveller Communities: A Review,' Equality and Human Rights Commission Accessed on 19 December, 2011 at <<http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/gypsies-and-travellers-research-reports/>>

¹¹ The term "homeless," as used here, includes those who live on illegal campsites because they have nowhere to park legally and face frequent evictions. Gypsies and Travellers: Frequently Asked Questions, Myths and the Facts, Beacon Council, Accessed on 19th December, 2011 at <<http://www.bristol.gov.uk/sites/default/files/assets/documents/Myth%20busting%20booklet%20on%20Gypsies%20and%20Travellers.pdf>>

at the rate of progress thus far indicating the lack of commitment and leadership amongst councils in solving this widespread problem.¹²

EDUCATION

Gypsies and Travellers have experienced widespread discrimination in the educational arena. At the outset, many Gypsy children are precluded from attending pre-school due to the inaccessibility and unavailability of schooling that is appropriately tailored to suit their background, lifestyle and linguistic abilities. Once at school, students face virtually insurmountable challenges in trying to make up for the inadequate education they have received. While national trends indicate a rise in children's academic competencies, the academic performance of children hailing from Gypsy and Traveller communities continues to decline.¹³ This inequity has caused a host of related problems for them, ranging from unemployment to low self-esteem.

POOR HEALTHCARE

Gypsies and Travellers do not benefit from healthcare services to the same extent as their mainstream counterparts, largely as a result of inaccessibility. Authorized campsites are often found in secluded and outlying areas, far away from adequate healthcare providers. In other situations, healthcare becomes inaccessible when general practitioners impose a requirement that their patients provide a permanent address.¹⁴ When they do visit hospitals, Gypsies and Travellers experience a lower standard of care than the rest of the population which is demonstrated in the statistics; recent studies indicate that the life expectancy of Gypsies and Travellers is 10 years lower than the national average.¹⁵ In addition to having the lowest life expectancy, Gypsies and Travellers experience the highest rates of child mortality.¹⁶ These prejudicial effects are severe and troubling.

¹² Brown, P., & Henning, S., 'Assessing local authorities progress in meeting the accommodation needs of Gypsy and Traveller communities in England and Wales: 2010 update', Equality and Human Rights Commission 2011 Accessed on 16th December, 2011 at <<http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/gypsies-and-travellers-research-reports/>>

¹³ "Education," Gypsies, Irish Travellers and Roma Community, Accessed on 6 January, 2012 at <http://www.praxis.org.uk/roma_gypsies.htm>

¹⁴ For obvious reasons, this proves problematic for Gypsies and Travellers who continue to live a nomadic lifestyle. Cemlyn S., Greenfields, M., Burnett, S., Whitewell, C., Matthews, Z., 'Inequalities experienced by Gypsy and Traveller Communities: A Review', Equality and Human Rights Commission, p. 52, Accessed on 19 December, 2011 at <<http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/gypsies-and-travellers-research-reports/>><http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf>

¹⁵ 'Gypsies and Travellers: simple solutions for living together', Equality and Human Rights Commission accessed on 16th December, 2011 at <<http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/>>.

¹⁶ Ibid.

PREJUDICE IN THE CRIMINAL JUSTICE SYSTEM

Gypsies and Travellers face especially exacting mistreatment within the criminal justice system. Research on the experiences of Gypsies and Travellers within the criminal justice system points to low levels of trust in the police, high levels of racism in the system, inequality in sentencing including custodial favoured over community sentences for minor offences, biased and prejudicial pre sentence reports, difficulty in obtaining bail and high numbers of stops and searches.¹⁷ Tracing the path of a Gypsy or Traveller through the criminal justice system demonstrates that the problem stems from an institutionalized racism that pervades the justice system at every level. Such treatment has left Gypsies and Travellers reluctant to utilise the legal system to seek justice. In general, they find the court system inaccessible and unavailable and almost always visit courts in the context of being a defendant in legal proceedings.

¹⁷ 'Criminal Justice System,' Gypsies, Irish Travellers and Roma Community, Accessed on 6 January, 2012 at <http://www.praxis.org.uk/roma_gypsies.htm>

The International and European Perspective

INTERNATIONAL LAW

The Universal Declaration of Human Rights, enacted by the UN and drafted, in part, by Nobel laureate René Cassin, proclaimed in the preamble that the rights enumerated therein apply to everyone. Additionally, Article 7 stipulates that all are equal before the law and entitled to protection from discrimination.¹⁸ By broadly defining human rights and the applicability of human rights, the Declaration sought to ensure inclusivity. Although the Declaration does not legally bind national governments, many nation states have signed, ratified and adopted it in their domestic legislation.

The themes established by the Declaration have had an enormous impact on subsequent UN treaties whose bylaws impact the welfare of Gypsies and Travellers in the UK. The first of these was the International Convention on the Elimination of All Forms of Racism (“ICERD”) which became effective in 1969. The ICERD gave the term discrimination a broad definition, allowing it to cover distinctions based on a variety of grounds, including, among others, race, ethnicity, and nationality.¹⁹ Of particular significance is Article 4(a), which establishes specific areas in which member states have an affirmative duty to prohibit discrimination. Unfortunately, the international community has yet to reach a consensus on the appropriateness of Article 4(a), resulting in a varied and inconsistent application of the law from state to state.²⁰

Following this development, in 1976 two additional UN covenants came into effect. The International Covenant on Civil and Political Rights contains Article 20 which forbids the encouragement of any hatred, stemming from racial, national, or ethnic beliefs, that provokes discrimination; and Article 26 emphasizes that the law entitles all people to equal protection, irrespective of their race, ethnicity, or other distinguishing characteristics.²¹ That same year the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) came into effect with important ramifications for Gypsy and Traveller communities living in the UK. Article 2 of ICESCR requires all member states to employ any means available to effectuate the rights enumerated therein.²² In assuring the realization of those rights, states are prohibited from discriminating on the basis of race, ethnicity, and a host of other possible distinctions.

In 1993, the UN adopted the Vienna Declaration and Programme of Action (“VDPA”). The VDPA reaffirmed the contents of the Universal Declaration of Human Rights and the ideas set forth in ICERD and ICESCR. Part II(B) of the VDPA relates specifically to minority groups, including Gypsies and Travellers, and encourages state governments to stop racism and discrimination.

¹⁸ ‘Article 7’, The Universal Declaration of Human Rights

¹⁹ Callamard, Dr.A, ‘Expert meeting on the Links between Articles 19 and 20 of the ICCPR: Freedom of Expression and Advocacy of Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence’, UN HCHR, October, 2008 at <<http://www.article19.org/pdfs/conferences/iccpr-links-between-articles-19-and-20.pdf>>

²⁰ Ibid.

²¹ Ibid.

²² The drafters of ICESCR provide examples of activities of which member states, if necessary, must partake to satisfy the requirement of utilizing all “available resources.” Included on that list are the enactment of appropriate legislation and seeking technological or economic assistance from the international community.

While the VDPA did not insist that states take affirmative steps to improve it expressed a desire for states to seek assistance from the UN in cases where ethnic minorities are mistreated.

EUROPEAN LAW

The UN is not alone in taking steps to prevent discrimination and racism. The European Convention on Human Rights (“ECHR”) became effective in 1953 and sought to safeguard the fundamental human rights of people in Europe.²³ Of particular significance is Article 14, which reads, in full:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds 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.²⁴

In Article 19 of Section II, the Treaty established the European Court of Human Rights (“Court”), the purpose of which is to uphold the rights established by the ECHR.²⁵ In providing a platform for those alleging a violation of their human rights, the Court has proven itself to be a critical channel for Gypsies and Travellers to air their grievances.²⁶

In addition to this the European Union Charter of Fundamental Rights (“Charter”) came into effect in 2009 after the creation of the Lisbon Treaty²⁷ and parallels the ECHR. In broader terms the Charter enumerates the fundamental rights and freedoms that EU citizens ought to have.²⁸ Article 21 prohibits the same types of discrimination as defined in Article 14 of the ECHR.²⁹ Article 22 requires EU governments to respect the cultural, linguistic, and religious differences of their people.³⁰

Many member states have incorporated these declarations and charters into domestic legislation. Nevertheless, the international community struggles to ensure domestic enforcement of those ideals. The UK is itself not compliant with certain Court decisions affecting Gypsies and Travellers, and the international community has few avenues through which to demand application of the law. One of these avenues allows the Court to invoke the Committee of Ministers, a body of the Council of Europe charged with monitoring the implementation of Court decisions. Nevertheless, it remains of great significance that domestic NGOs pressure state governments, as well as the Committee of Ministers, to enforce international legislation and case law.

²³ ‘Preamble’, European Convention on Human Rights Accessed on 19th December, 2011 at <http://www.hrcr.org/docs/Eur_Convention/euroconv2.html>

²⁴ Article 14’, Convention for the Protection of Human Rights and Fundamental Freedoms

²⁵ ‘Article 19’, European Convention on Human Rights

²⁶ For example see D.H. et al. v. Czech Republic II, Connors v. U.K.

²⁷ EU Charter of Fundamental Rights

²⁸ Ibid.

²⁹ ‘Article 21,’ Charter of Fundamental Rights of the European Union

³⁰ ‘Article 22,’ Ibid.

DISCRIMINATION IN MODERN SOCIETY

One very recent example of the discrimination and racism that Gypsies and Travellers face in modern society can be found in the troubling events in France in 2010. Nicolas Sarkozy endorsed a French decree demanding the deportation of France's Roma to Romania.³¹ France is home to hundreds of thousands of Roma Gypsies, many of whom have lived there for years. To facilitate the exile, the French government paid the Roma to leave and announced the imminent dissolution of more than 300 Roma camps throughout France.³² The French Government began deportation proceedings, despite appeals from the EU to abrogate such plans. On 9th of September, 2010, the European Parliament enacted a resolution pertaining to the situation of the Roma people in Europe, in which it asserted that:

Mass expulsions are prohibited by the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and that such measures are in violation of the EU Treaties and EU law, since they amount to discrimination on the basis of race and ethnicity.³³

The resolution went on to request that member states intervene to remedy the situation and review their own laws to ensure compliance with EU directives.³⁴ This is one example of a widespread issue which is not contained to France alone. In fact, many Gypsies in Eastern European countries are subject to discrimination in the areas of education, healthcare, and in accessing justice as will be shown in the following sections.

CASE LAW: EDUCATION

The most prominent and significant case regarding the issue of education is *DH et al. v. the Czech Republic II* (2007). The case began in 1999, when the European Roma Rights Centre together with local lawyers filed unsuccessful complaints in the Czech courts on behalf of eighteen Roma children. In 2000, the applicants turned to the European Court of Human Rights, alleging that their assignment to "special schools" for children with learning disabilities contravened Article 14 together with Article 2 of Protocol 1 of the European Convention. The Court held by a majority of 13 to 4 that segregating Roma children into special schools was indeed a form of discrimination.³⁵ The decision brought with it more progressive judicial reasoning as it enumerated specific solutions and a means of implementation for member states and insisted upon the realization of concrete and material change to the plight of Roma Gypsies. Theoretical solutions, the Court opined, would not suffice.

³¹ France sends Roma Gypsies back to Romania, BBC News, Accessed on 19th December, 2011 at <<http://www.bbc.co.uk/news/world-europe-11020429>>

³² Ibid

³³ European Parliament resolution of 9 September 2010 on the situation of Roma and on freedom of movement in the European Union, European Parliament, Accessed on 19th December 2011 at <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0312+0+DOC+XML+V0//EN&language=EN>>

³⁴ Ibid.

³⁵ Goodwin, M., 'D.H. and Others v. Czech Republic: a major set-back for the development of non-discrimination norms in Europe', Minority Rights Group International, pp. 421, 422, 424 Accessed on 6 January, 2012 at <www.minorityrights.org/download.php?id=232>

Much to the disappointment of Gypsy rights' advocates, *DH II*, like its predecessors, has resulted in very little action. The title of a 2010 article published by the European Roma Rights Centre, *What Happened to the Promise of DH?*, offers a startlingly concise explanation of how limited the changes were that came about in the aftermath of the decision.³⁶ An interview of the eighteen applicants of the case found that none of them had augmented their situation, at least from an educational standpoint, following the Court's decision.³⁷

The eighteen applicants are not alone. Researchers for the European Roma Rights Centre found that Roma children are still 12 times more likely to be channelled into special schools by Czech educational authorities, with some areas reaching as high as 27 times more likely; a figure that has not changed since 1999.³⁸ Once seen as a harbinger of hope, *DH II* has not successfully translated into action as member states continue to refuse to comply with the decision and accept the affirmative duty of affecting concrete change.

CASE LAW: HEALTHCARE

The case of *Nadka Slavcheva* involves the segregation of Romani patients from non-Romani patients in the Tina Kirkova hospital in Bulgaria.³⁹ In 2001, after Slavcheva gave birth in the hospital, the staff placed her in a segregated corridor, informing her that no other rooms were available.⁴⁰ In reality, the hospital staff were relegating all Romani patients to the segregated corridor, whilst providing regular rooms for non-Romani patients.⁴¹ Slavcheva filed a civil action which was rejected. The case is currently pending on appeal.

Many Roma have found that, in addition to being segregated, healthcare is wholly inaccessible to them. In 2002, a Roma family in Hungary experienced fatal discrimination in the healthcare system. The family called the hospital and requested an ambulance to help a severely ill woman. The ambulance took two hours to arrive at which point the Romani woman had died.⁴² The case is still pending.

CASE LAW: CRIMINAL JUSTICE SYSTEM

Gypsies and Travellers living throughout Europe have found the criminal justice system to be hostile. The European Court of Human Rights has heard numerous cases involving police brutality against Roma.⁴³ When Gypsies have such encounters with police officers, they develop

³⁶ Gall, L., & Kushen, R., 'What Happened to the Promise of DH?', European Roma Rights Centre, Accessed on 23rd January, 2012 at <<http://www.errc.org/article/roma-rights-1-2012-implementation-of-judgments/3613/5>>

³⁷ Ibid.

³⁸ 'Czech Government flouts Court ruling on Roma Education', European Roma Rights Centre, (November, 2010), Accessed on 6 January, 2012 at <<http://www.errc.org/article/czech-government-flouts-court-ruling-on-roma-education/3789/0>>

³⁹ Anstead, A., 'Litigating Discrimination in Access to Healthcare', European Roma Rights Centre, Accessed on 19 December 2011 at <<http://www.errc.org/cikk.php?cikk=1989>>

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² János Horváth (husband), Ibid.

⁴³ *Velikova v. Bulgaria* (Application No. 41488/98) Accessed on 19th December, 2011 at <<http://www.equalrightstrust.org/ertdocumentbank/Velikova%20v%20Bulgaria.pdf>>, *Anguelova v. Bulgaria*

a tainted view of the justice system. As such, Gypsies and Travellers are frequently distrusting of the legal system and perceive the courts as an inaccessible channel to seek justice.

Valentin Câmpeanu v. Romania (2011) illustrates the difficulty in accessing justice for the Romani population. Câmpeanu, a Romani Gypsy who was abandoned at birth, suffered from a severe intellectual disability and HIV. He was raised in social care institutions. At age 18, local authorities struggled to find him a new home and so omitted his intellectual disability from the records. He was then sent to a social home without his antiretroviral medication which resulted in the rapid deterioration of his health. Lacking the facilities to treat someone with mental health problems, the social home sent Câmpeanu to the Poiana Mare Psychiatric Hospital where through complete neglect he died within a week. The official investigation into the death in 2004 resulted in a non-indictment.⁴⁴

It was not until 2009 that a full-scale application was filed with the Court by a number of NGOs and in 2011 the Court asked the Romanian Government to account for its treatment of Valentin Câmpeanu.⁴⁵

(Application No. 38361/97) Accessed on 19th December, 2011 at <
<http://www.equalrightstrust.org/ertdocumentbank/Anguelova%20v.%20Bulgaria.pdf>>

⁴⁴ 'Campeanu Press Release (July, 2011),' INTERIGHTS: the international centre for legal protection of human rights, Accessed on 6 January, 2012 at <<http://www.interights.org/document/161/index.html>>

⁴⁵ Ibid.

The British Perspective

BRITISH LAW

The British Government is known to openly finance the expulsion and displacement of many Gypsy and Traveller communities. Perhaps the most recent example can be found in the eviction of 85 Gypsy and Traveller families from the Essex campsite Dale Farm in October, 2011 after a 10-year legal battle.⁴⁶ Prior to this outcome, parliamentary regulations have stretched in both directions, at times augmenting the rights of campsite residents and at other times increasing the power of local authorities to the detriment of the campsite residents.

Parliament passed the Caravan Sites Act (“CSA”) in 1968, the effect of which was to ensure the establishment of more campsites in constituencies with accommodation shortages and to make provisions for the benefit of the legal occupiers of those campsites.⁴⁷ However as it stands today, Gypsies and Travellers living on authorized campsites lack security of tenure in Britain. This means that a local authority is only required to give a resident four weeks notice in written form, following which the local authority must obtain a possession order from the court before eviction takes place. There is no requirement imposed on a local authority to prove any grounds for seeking possession.⁴⁸ Notwithstanding the Court’s decision in *Connors v. UK*, Gypsies and Travellers continue to face eviction and expulsion from campsites on which they lawfully reside.

Following this came the Mobile Homes Act (“MHA”) of 1983 which created limitations on some of the rights that Gypsies and Travellers had obtained under the CSA. The MHA distinguished the rights and responsibilities of Gypsies and Travellers residing in mobile homes from those of the mainstream population living in mobile homes⁴⁹ and effectively increased the rights of the local authorities and councils to the detriment of the Gypsy and Traveller residents. In 1994 came the Criminal Justice and Public Order Act which further diminished the rights of Gypsies and Travellers.⁵⁰ The Act imposed harsh penalties on campsite residents convicted of anti-social behaviour and repealed the duty imposed on councils by the CSA to provide sites or grant aid for the provision of sites.⁵¹ In 2003, the Anti-Social Behaviour Act expanded upon the Public Order Act, by further enhancing the rights of regional officers to evict residents on unauthorized campsites.⁵²

It was not until 2004 that the British Government began taking real steps to stop discrimination and racism towards Gypsies and Travellers. Parliament passed the Housing Act 2004, which standardized the procedures by which Gypsies and Travellers rent and buy campsite

⁴⁶ ‘Dale Farm Supporters reject Police Cautions for obstruction’, Dale Farm Solidarity, Accessed on 9 January, 2012 at <<http://dalefarm.wordpress.com/>>

⁴⁷ Caravan Sites Act 1968,

⁴⁸ See Caravan Sites Act 1968, ss 2 and 3

⁴⁹ Mobile Homes Act 1983

⁵⁰ ‘Gypsy and Traveller Law,’ Friends Families and Travellers, Accessed on 19 December, 2011 at <<http://www.gypsy-traveller.org/your-rights/law>>

⁵¹ Ibid.

⁵² Anti-Social Behaviour Act 2003, House of Commons: Background – Legislation and Policy, Accessed on 9th January, 2012 at <<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmopdm/633/63305.htm>>

residences.⁵³ By regulating those dealings, the Housing Act ensured consistency with the housing procedures employed by the rest of the community. Section 225 of the Housing Act charged local authorities with assessing the needs of Gypsies and Travellers living on campsites in their constituencies and, thereafter, fulfilling those needs.⁵⁴ The Housing Act suggested that the officers employ a strategic method of assessment, evaluating the premises for potential health and safety hazards.

In addition to this the Housing and Regeneration Act 2008 (“HRA”) restricted the grounds that government officials could use to justify the eviction of campsite residents, which effectively diminished the power of local authorities.⁵⁵ Section 318 of the HRA amended the definition of a protected site in the MHA and removed the exclusion of land occupied by a local authority as a caravan site providing accommodation for Gypsies and Travellers. This change is said to have been in response to the Court’s ruling in *Connors v UK* (2004).⁵⁶ Unfortunately, the protected sites were often located in places that made schools, employment opportunities, and healthcare inaccessible.

PROPERTY

A proponent of decentralization, the coalition government has encouraged local authorities to adopt a more influential role with regard to provincial planning regulations. Those authorities have used their newfound power to effectuate large-scale and high-profile evictions of Gypsy and Traveller communities. The eviction of 85 families from the Gypsy and Traveller site Dale Farm at Essex in Basildon County is one such example. For months, the hundreds of Travellers living at Dale Farm lived in constant fear of being evicted. Their fears were realized on 4 July, 2011, when local authorities distributed eviction notices to the campsite’s residents. On the 19th of October, 2011 police officers moved into Dale Farm to secure the area and evict the residents amidst scenes of violence. The Essex Police Authority, Basildon Council, and the Home Office pledged millions of pounds to finance the eviction. The cost has been estimated at £18 million.⁵⁷

The Gypsy and Traveller community at Dale Farm relied heavily on international legislation to support their case. The European Commission issued a directive requiring all member states to implement programmes aimed at improving the plight of Gypsies and Travellers. Yet a Government backed eviction of the UK’s largest Gypsy and Traveller campsite does not advance the EU’s mission. Dale Farm’s Gypsies and Travellers had hoped that the UK would comply with the EU’s directive and provide campsite residents with reprieve, however that was not the case.

⁵³ Chapter 1, Housing Act 2004.

⁵⁴ s225, Chapter 5, *Ibid*.

⁵⁵ Housing and Regeneration Act 2008.

⁵⁶ Consultation on Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller Sites, Communities and Local Government, p.2, Accessed on 9th January, 2012 at <<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1736663.pdf>>

⁵⁷ ‘Dale Farm Evictions: The complete timeline’, The Guardian, Accessed on 19th December, 2011 at <<http://www.guardian.co.uk/uk/2011/oct/19/dale-farm-evictions-complete-timeline>>

In addition to the legislation that paved the way for the eviction of Dale Farm, there is also a significant amount of case law surrounding the property rights of Gypsies and Travellers in the UK. The Court decided *Chapman v. UK* in 2001. A Gypsy landowner, Chapman, had sought permission to use caravans on her land. When the local authorities denied her request, Chapman filed suit in the Court, alleging a violation of Articles 8 and 14. The Court acknowledged that the UK had hindered Chapman's ability to live on her land and recognized the growing consensus that states had an affirmative duty to respect minority lifestyles. Nonetheless, the Court determined that the UK had not violated the ECHR, accepting the UK's goal of protecting the environment as a legitimate justification for the hindrance.

Three years later, the Court heard *Connors v. the United Kingdom*, where it examined the issue of security of tenure on Gypsy and Traveller campsites. Connors, the applicant and an Irish Traveller, had lived on an authorized campsite for many years. Local authorities terminated his license and evicted him from the campsite, alleging that he was a nuisance to the community. Thereafter, Connors filed suit with the Court, alleging a violation of his rights under Article 8 of the ECHR.⁵⁸

The Court ultimately held that depriving Gypsies and Travellers of security of tenure violated Article 8 of the ECHR. Accordingly, the UK had a legal obligation to facilitate the Gypsy and Traveller way of life. Indeed, the UK actually had a duty to take affirmative steps to ameliorate the problem. To justify a breach of that Article 8, the Court opined, the UK would have to show considerable countervailing public interest. In other words, the UK cannot retain its powers of eviction without showing that such power serves a legitimate public purpose.⁵⁹ Here, the UK could not provide evidence of such a purpose. Consequently, Connors' eviction lacked justification.

On its face, *Connors* seemed a victory for the Gypsy and Traveller communities in the UK. In reality, however, the UK has refused to implement the Court's decision and consequently stands in violation of the Court. *Doherty v. Birmingham City Council*, a UK case decided by the House of Lords in 2008, marks the continued non-compliance with *Connors*. In that case, the respondent evicted an Irish Traveller from a UK campsite, citing the Caravan Sites Act as his justification. The House of Lords upheld the eviction, causing great doubt as to whether the UK had any intention of complying with the *Connors* decision.

EDUCATION

To this day there remains an extremely low level of engagement by Gypsies and Travellers in mainstream education, as such there remain very high levels of poor literacy. In the past 25 years primary school attendance has improved significantly, however the level of secondary school

⁵⁸ Article 8 provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

It protects the sanctity of the home, demanding respect for the privacy of home life. Significantly, the designation "home" includes dwellings on Gypsy and Traveller campsites.

⁵⁹ Even if the UK could demonstrate a legitimate public interest in the eviction, it would then have to show that the harm caused by the eviction was proportionate to the benefits that the public would reap.

attendance in the UK amongst Gypsies and Traveller is troubling. School exclusions and lack of appropriate educational or training provisions is a major problem for young Gypsies and Travellers.⁶⁰

In 2003 OFSTED reported that Gypsies and Travellers continued to fare very badly in mainstream education provision. The report estimated that 12,000 Gypsy and Traveller pupils of secondary school age were not even registered in schools. The main issue the report highlighted was that Traveller Education Services (TES) (which is connected with local education authorities and which takes specific responsibility for Gypsy and Traveller education) was underfunded.⁶¹ In relation to the issue of social exclusion, nomadic Gypsies and Travellers were the ones to experience the most barriers to accessing education.⁶²

In addition to this many Gypsies and Travellers are wary about sending their children to schools, even though they welcome education for their children. The level of understanding regarding the education system varies according to the community in question, economic circumstances, accommodation status, previous experiences and the experiences of parents at school. There is also the very real fear of bullying, both physical and verbal, which undermines the sanctity of the Gypsy and Traveller culture.⁶³

HEALTHCARE

The British Government has had little success in curbing discrimination in accessing healthcare for Gypsies and Travellers even though UK legislation generally promotes adequate access to healthcare. For instance, the NHS Constitution, adopted in 2010, maintains that “No one can deny you the right to access [healthcare] services because of your race.”⁶⁴ The RRA officially recognised Romani Gypsies and Irish Travellers as distinct ethnic groups. As such when Gypsies and Travellers are denied healthcare because they do not have a permanent address⁶⁵, such discrimination becomes a violation of the RRA and yet it remains a reality for many members of the Gypsy and Traveller community.

In an attempt to limit the instances of such discrimination the RRA gives victims a channel through which to file suit.⁶⁶ Consequently, physicians who violate the Act’s anti-discrimination

⁶⁰ ‘Education,’ Gypsies, Irish Travellers and Roma Community, Accessed on 19th December, 2011 at <http://www.praxis.org.uk/roma_gypsies.htm>

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ NHS Constitution, p.19, Accessed on 9th January, 2011 at <<http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Documents/nhs-constitution-interactive-version-march-2010.pdf>>

⁶⁵ A consequences of their nomadic lifestyle

⁶⁶ The Race Relations Act 1976 has since been assembled as part of the Equality Act of 2010. Accessed on 19th December, 2011 at <<http://www.equalityhumanrights.com/advice-and-guidance/information-for-advisers/key-legislation/>>

provisions might find themselves subject to Questionnaire RR65.⁶⁷ The form, which involves a compilation of relevant information from both parties, helps to determine whether an applicant has grounds for a complaint and, if so, what facts are at issue. The existence of the RR65 Questionnaire does not signify an end to discrimination in access to healthcare. Nevertheless, it undoubtedly assists Gypsies and Travellers who choose to file suit.

CRIMINAL JUSTICE SYSTEM

Gypsies and Travellers have a difficult time accessing their right to justice within the criminal justice system and as a result are subject to unfair and unequal treatment. The Public Order Act 1986 banned the use of racial epithets, slurs, or performances under sections 18 to 22,⁶⁸ however to date there is no record of prosecutions in relation to Gypsy and Traveller victims.⁶⁹ Even in instances of more serious offences, such as the murder of 15 year old Irish Traveller Johnny Delaney the courts failed to find any racial motivation behind the attack despite witness evidence to the contrary.⁷⁰

Whilst Gypsies and Travellers are often subject to negative stereotypes and portrayed as thieves and criminals, recent studies indicate that the crime rate among Gypsies and Travellers resembles that among the non-Travelling communities.⁷¹ This prevalence of negative stereotyping also results in Gypsies and Travellers being met with greater suspicion and treated unfairly when confronted by police officers.⁷²

The introduction of the Anti-Social Behavioural Orders (“ASBO”) in 1998 had a particularly detrimental effect on the Gypsy and Traveller community as a whole.⁷³ The nature of the civil order relies on neighbour surveillance which in effect generates discrimination. It allows for the public and local authorities to draw on prejudice towards Gypsies and Travellers and to target their naturally exuberant behaviour.⁷⁴ The order itself is applied under civil law, however a breach of the civil order will result in a criminal offence and sentences can include fines or imprisonment.⁷⁵

It has been noted that Irish Travellers and Gypsies are continuously penalised for their nomadic way of life. They are less likely to receive bail and more likely to receive custodial sentences

⁶⁷ Gypsies, Travellers and Discrimination Law, p.11 Accessed on 9 January, 2012 at <<http://www.law.cf.ac.uk/tlru/DLAbriefing.pdf>>

⁶⁸ Burnett, S., Cemlyn, S., Greenfields, M., Matthews, Z, Whitwell, C., ‘Inequalities experiences by Gypsy and Traveller Communities: A review’, Equality and Human Rights Commission, p.149, Accessed on 10th January, 2012 at <http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf>

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid. at 151.

⁷² Ibid.

⁷³ Ibid. at 154.

⁷⁴ Ibid.

⁷⁵ Ibid.

even for minor offences. This can lead to ‘accelerated criminalisation over a short period of time as repeated custodial sentences reinforce the presumed criminality of Travellers.’⁷⁶ Within the confines of jails and prisons, Gypsies and Travellers often find it harder to adjust than members of the broader community. Their low level of literacy skills make it difficult for Gypsies and Travellers to join basic skills classes and adapt to life in prison. They are often excluded from such activities, owing to their disruptive behaviour.⁷⁷ Upon their release, members of the Travelling community often struggle to reintegrate into society as after-care systems are designed for the sedentary population. The lack of assistance affects their ability to find accommodation, training or employment, and support to avoid reoffending.⁷⁸

⁷⁶ ‘Criminal Justice System’, Gypsies, Irish Travellers and Roma Community, Accessed on 10th January, 2012 at <http://www.praxis.org.uk/roma_gypsies.htm>

⁷⁷ Burnett, S., Cemlyn, S., Greenfields, M., Matthews, Z, Whitwell, C., ‘Inequalities experiences by Gypsy and Traveller Communities: A review’, Equality and Human Rights Commission, p.158, Accessed on 10th January, 2012 at <http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf>

⁷⁸ Ibid at p.159.

Why does René Cassin care about Gypsies and Travellers?

Throughout history Jewish people have experienced discrimination in its various manifestations. The lack of tolerance and inclusion by mainstream society culminated in the unprecedented Holocaust; yet this genocide extended far beyond just Jews. Another long-suffering ethnic minority was subject to the concentration camps – Gypsies. Historians differ on the exact number, but it is estimated that up to 1.5 million Gypsies were killed during World War II.

In 1939, the Nazis had ordered the removal of Roma living in the Reich. The first deportation of the Gypsies occurred in May, 1940 where more than five hundred Gypsies were arrested and sent to concentration camps in Poland.⁷⁹ Between 1940 and 1943, Nazi officials extradited thousands of Gypsies from Holland, Germany, and Austria, sending them to Poland's notorious death camps. Those who survived lived in constant fear of subsequent deportation.

Ian Hancock's *Kristallnacht* evaluates the victimization incurred by both the Jewish people and the Roma during the Holocaust. Hancock discusses the racial motivation underlying the Nazis' selection of the Jews and the Romani Gypsies for persecution. The Nazis believed that Jews and Roma shared the immutable trait of race that rendered both groups a pollutant to the Aryan race.⁸⁰ Being born into the racial group classified as Romani or Jewish rendered a person predisposed to hatred by the Nazis. Of the intended destruction of the Romani community, one high-ranking Nazi official stated, "In the same way as the National Socialist state has solved the Jewish question, it will also have to settle the Gypsy question once and for all."⁸¹ Yet even today Gypsies and Travellers do not enjoy the same acceptance that Jews do. For this reason, René Cassin, an organisation committed to using Jewish experiences and values to promote Human Rights recognizes the importance of equality and non-discrimination for other minority communities. Accordingly, we are currently campaigning for Gypsy and Traveller communities' rights in the UK.

In addition to Jewish people being able to keenly identify with the plight of Gypsies and Travellers, there exists a wealth of wisdom within the canon of Jewish literature which expressly negates any basis for discrimination of any kind.

"When a stranger lives with you in your land, do not ill treat them. The stranger who lives with you shall be treated like the native-born. Love them as yourself, for you were strangers in the Land of Egypt."

Vayikra 19:33-34

"If there will be among you a needy person, from one of your fellows in one of your cities, in your land the Lord, your God, is giving you, you shall not harden your heart, and you shall not close your hand from your needy fellow. Rather, you shall open

⁷⁹ Hancock, I. Applying the Lessons of the Holocaust: 1938-2008, Kristallnacht Seventy Years Later, International Seminar Organized by l'Association Verbe et Lumière -Vigilance, The Simon Wiesenthal Centre and UNESCO, Paris: November, 2008, p. 6.

⁸⁰ Ibid, p. 4.

⁸¹ Ibid, p. 5.

your hand to them, and you shall lend them sufficient for their needs, which they are lacking.”

Devarim 15:7 – 8

“If a community lacked a synagogue and a shelter for the poor, it was first obligated to build a shelter for the poor.”

Sefer Chassidim

What's next for René Cassin?

Our organisation can make the most significant impact possible with respect to this campaign provided we enter into coalitions with other organisations. In collaboration with other NGOs, René Cassin is seeking to raise public awareness of the plight of Gypsies and Travellers and educate the general community about ongoing human rights violations affecting this community through public speaking presentations, social media and by drafting articles. René Cassin also works with voluntary lawyers who can assist in our work with local communities to ensure that they obtain pro bono legal representation.

René Cassin is also particularly active in lobbying for the implementation of the *Connors v UK* judgment and relevant European case law which buttresses the rights of the Gypsy and Traveller communities; and for the return of a duty on local authorities to provide legal sites for Gypsies and Travellers.

To learn more about René Cassin's activities and objectives in this campaign area, please visit our website to read our current campaign objectives.

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