European Convention of Human Rights.

Convention articles

Article 1 - respecting rights

Article 2 - life

Article 3 - torture

Article 4 - servitude

Article 5 - liberty and security

Article 6 - fair trial

Article 7 - retroactivity

Article 8 - privacy

Article 9 - conscience and religion

Article 10 - expression

Article 11 - association

Article 12 - marriage

Article 13 - effective remedy

Article 14 – discrimination------the UK have not signed up to this Article but it is still used.

Article 15 - derogations

Article 16 - aliens

Article 17 - abuse of rights

Article 18 - permitted restrictions

The most relevant Articles of the European Convention on Human Rights for the purposes of unauthorised encampments are 6, 8, 14 and Article 1 of the First Protocol.

It should be noted that Article 14 is not a ‘substantive’ right. In other words, it cannot be raised on its own, but must be in conjunction with another breach. So, whenever you see Article 14 raised, you will always find it partnered with another right such as Article 6 or 8, for example.

Extracts above taken from:

[www.gypsy-traveller.org/resources/challenging-racism-promoting-inclusion/human-rights-act/](http://www.gypsy-traveller.org/resources/challenging-racism-promoting-inclusion/human-rights-act/)

Homelessness: A Gypsy or Traveller will be homeless for the purposes of the homelessness legislation if s/he lives in a caravan but there is no place that s/he is entitled or permitted to place it and reside in it: see s.175(2)(b) of the Housing Act 1996.

As a homeless person, a Gypsy or Traveller living in a caravan, but without a lawful stopping place, is entitled to apply for the provision of homeless person's accommodation. Any such accommodation should be "suitable" and a Gypsy or Traveller that has a "cultural aversion to bricks and mortar" ought to be provided with a pitch rather than some form of conventional housing, if it is possible to do so. Failure to make such provision in circumstances where it is possible to do so may breach arts 8 (the right to respect for home and family life) and 14 of the ECHR 8: That said, in circumstances where no pitch is available, the offer of conventional housing made to a Gypsy or Traveller applicant with a cultural aversion to bricks and mortar will not be considered unsuitable unless there is, for example, a very real risk that the applicant would suffer psychiatric harm if s/he accepted the offer and moved in to the premises: see Sheridan v Basildon BC (formerly Basildon DC) [2012] EWCA Civ

335.

Rented Caravan Site Accommodation: Many Gypsies and Travellers live on authorised caravan sites which are rented from public and private landlords (Their rights are governed by the Mobile Homes Act 1983 (as amended) and secondary legislation).

Article 8 of the ECHR, which protects the right to respect for an individual’s home and family life, is relevant when considering accommodation of Gypsies and Travellers. There are several points worth making about art. 8. Firstly, although the text of the art. 8(1) itself does not impose an obligation on public authorities to provide homes for anybody, or to provide sites for Gypsies and Travellers, the case law obliges authorities to respect the home. This is significant in the context of evictions by local authorities which arise largely because of a lack of authorised sites. In brief, art. 8(2) prohibits interference with the right to respect for the home except where it is in accordance with the law, fulfils one of the legitimate aims 9, and is proportionate 10. It follows that it is possible to rely upon an alleged breach of art. 8 as a defence to a claim for possession action brought by a public body against Gypsies and Travellers or as a ground for seeking judicial review of a decision to evict, though there will be very few cases in which such an argument will succeed 11.

Secondly, the word ‘home’ has been construed broadly by the European Court to include a house or other traditional residence. The case law specifically extends this to caravans and sites of Gypsies and Travellers, as defined ethnic groups. 12 In Chapman v United Kingdom (27238/95) (2001) 33 E.H.R.R. 18, the European Court of Human Rights (the "ECtHR") concerned a complaint made by a Romani Gypsy woman that her article 8 rights were violated when she stationed her residential caravans on her land in the Green Belt without planning permission (and thereby created an unauthorised development) and had been prosecuted for breach of a planning enforcement notice which had required her to cease its use for such purposes.

The ECtHR rejected the complaint but in doing so accepted that planning enforcement measures taken against the applicant interfered with her right to respect for her "home", even though it was established without planning permission. Significantly, the ECtHR also accepted that the applicant's occupation of her caravan was an integral part of her ethnic identity as a Gypsy. Although the judgement (at paragraph 96) indicated that there was a “positive obligation imposed on the contracting states by virtue of art.8 to facilitate the Gypsy way of life,” this has not been translated by national courts into an obligation on states to supply caravan sites for the Gypsies. Some Gypsy and Traveller groups and their legal representatives have argued that evictions from unauthorised sites are not lawful as the provision of authorised sites is inadequate 13. The lack of suitable alternatives often leaves Gypsies and Travellers with little choice but to live on unauthorised sites. These arguments have been backed by international human rights bodies including the United Nations Special Rapporteur on the Right to Housing 14 and the United Nations Committee on the Elimination of Racial Discrimination. Thus, far, these claims have not been upheld in court (see the discussion of the Dale Farm case). However, legal opinion suggests that there may be grounds to challenge that decision. In addition, the European Court has recognised that there needs to be special consideration given to the needs and different lifestyle of Gypsies and Travellers in the context of planning decisions, and we expect to see further consideration of this issue over the coming years.

Summary: To date, the courts have not found a breach of Article 8 in relation to an eviction from an unauthorised Gypsy and Traveller site, although there may be grounds to challenge that decision. Nevertheless, art.8 has been successfully relied upon in defences against evictions from local authority sites, and has prompted legislative change. 15

THE EFFECTS OF REPEAL

At present, the uncertainty surrounding the proposed repeal and replacement of the HRA precludes a rigorous, fact-driven analysis of the effects of repeal. However, there are some points of general importance.

Firstly, the erosion of substantive protections, particularly if the long-time controversial article 8 is scrapped, could threaten the safety of Gypsies and Travellers. Although the case law in this area has been slow in protecting their cultural identity, it has introduced important procedural safeguards, forcing local authorities to consider the impact of eviction on residents.

Secondly, the legal rights of the Gypsy and Traveller communities may be put at risk by legislative alterations which restrict the volume or type of cases which can be heard in the domestic courts. Legal rights are only valuable if they are accessible. For precisely this reason, the HRA was designed to ‘bring rights home’, such that they could be invoked in domestic proceedings. A serious concern regarding the current proposals is that, by restricting individuals’ Convention rights, they would be forced to petition the ECtHR directly. This would be highly undesirable: the ECtHR is tragically ill-equipped to deal with the current volume of cases, let alone the additional wave of litigation 16. These proceedings take longer, cost more, and make less favourable awards of damages than the domestic courts 17. For disadvantaged groups, already pushed to the legal periphery, this additional set of hurdles could well divorce them from effective legal redress of their human rights violations.

Thirdly, minorities such as Gypsies and Travellers stand to lose out amid a cultural shift away from concern for human rights. Scrapping the HRA in the face of populist anger represents a significant concession, and is likely to further weaken the cause of protecting the most vulnerable. Part of the value of the HRA has been its institution of a ‘culture of human rights’, a notion that cannot be measured solely according to the number of court cases which successfully invoke articles from the

Convention. The HRA has made people more conscious and more caring about human rights in general, even as they are frustrated by some of its effects; public bodies are obligated to measure the impact of policies on the most vulnerable. This attitudinal shift is particularly important for Gypsies and Travellers who, because of their societal exclusion, are less likely to reach for the self-help mechanisms. Instead, they rely on beneficent treatment from societal institutions, something which is threatened by weakening the focus on and potency of human rights.

CONCLUSIONS

This report has shown the importance of a tiny segment of human rights legislation to Gypsies and Travellers. Removing these legal protections would compound the disadvantage of these groups, principally because they would be made more vulnerable to the cycle of evictions and associated harms, which ensure that they are locked into poverty.

The above report has been researched and copied from:

www.renecassin.org/wp-content/uploads/2015/09/The-Effect-of-Human-Rights-Legislation-on-Gypsy-and-Traveller-Communities.pdf