

COUNCIL OF EUROPE

EUROPEAN COMMISSION
OF HUMAN RIGHTS

APPLICATION No. 2991 / 66

LODGED BY

ALAM and KHAN

AGAINST

THE UNITED KINGDOM

REPORT
OF THE SUB-COMMISSION
(Adopted on 17th December, 1968)

STRASBOURG

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INTRODUCTION

This report relates to the application (No. 2991/66) lodged against the United Kingdom, by Mr. Mohamed ALAM and his son, Mohamed KHAN, on 20th December, 1966, under Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The applicants were represented by Messrs. Theodore Goddard and Co., Solicitors of London and Mr. R. Warren-Evans and Mr. A. Lester, Counsel of the English Bar. The respondent Government was represented by Mr. J. R. Freeland, Legal Counsellor at the Foreign Office, Agent.

By its decision of 15th July, 1967, the European Commission of Human Rights declared the application admissible(1). A Sub-Commission was accordingly set up in accordance with Article 29 of the Convention to perform the functions of the Commission as described in Article 28 of the Convention. Article 28 provides that:

"In the event of the Commission accepting a petition referred to it:

(a) it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after the exchange of views with the Commission:

(b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

The Sub-Commission, whose composition is given in the Appendix, received written observations on the merits of the case from the applicants and the United Kingdom Government in September 1967 and June, 1968 respectively.

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(1) The decision will be published in the Yearbook of the European Convention on Human Rights. It has already been reproduced in the Collection of Decisions of the European Commission of Human Rights, Vol. 24, page 116.

On 17th December, 1968, the Sub-Commission found that a friendly settlement of the case had been secured and adopted its report which, in accordance with Article 30 of the Convention, is confined to a brief statement of the facts and of the solution reached.

The following members attended the meeting:

MM. A. SUSTERHENN, Presiding
F. CASTBERG
J. E. S. FAWCETT
W. F. DE GAAY FORTMAN
P. P. O'DONOGHUE
P. O. DELAHAYE
T. B. LINDAL

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PART I

STATEMENT OF THE FACTS

The first applicant, Mohamed Alam, is a citizen of Pakistan, born in West Pakistan in 1917. He is an illiterate mill-worker and resides in Yorkshire in England. The second applicant, Mohamed Khan, is a child born on 30th October, 1953, whom the first applicant alleges to be his son.

The first applicant stated that he had been twice married according to Muslim law. He further stated that he has two sons and a daughter by his first wife and that, by his second wife, who was his deceased brother's wife, he has a daughter and two sons, the sons being the second applicant, Mohamed Khan, and Munshi, born in 1953 and 1956 respectively.

The first applicant stated that he first arrived in the United Kingdom in 1957, apparently leaving his wives and children in Pakistan. In 1961 he was joined in the United Kingdom by the eldest son of his first marriage but returned to Pakistan in November, 1963.

The first applicant came back to England by air on 24th June, 1965 accompanied by the two sons of his second marriage, namely the second applicant and Munshi. The names, particulars and photographs of these two sons appeared in the applicant's passport. At London Airport the first applicant and his sons were separately questioned by immigration officials. The first applicant was permitted to enter the country but his two sons were refused entry and were repatriated to Pakistan on the same day. The first applicant stated that the immigration officials declared that Mohamed Khan and Munshi were not his sons. He further submitted that, when he was questioned about his family, he had only disclosed the names of one of his two wives because he "was afraid that if he revealed the fact that he was twice married he might be exposed to criminal prosecution."

The first applicant then made renewed efforts to secure the admission of the second applicant through an Immigration Consultant and through the Pakistan High Commission in London. As a result, the second applicant again travelled to England by air, arriving at London Airport at 6.0 a.m. on 10th July, 1966. The first applicant was there to meet him.

The first applicant stated that, at intervals throughout that day, he was again questioned through an interpreter about his family history. He alleged that he did not fully understand the interpreter and that he was not "allowed any representation" although his eldest son by his first marriage was present and could have interpreted for him.

The first applicant, having been informed by officials that his son would be sent back to Pakistan, then asked the officials to delay repatriation while he tried to have the decision changed. On the following day he consulted a solicitor and tried, through the Pakistan High Commission, to obtain telegraphic confirmation that the second applicant was in fact his son. It appears that the first applicant was allowed 24 hours by the immigration authorities to establish this relationship. However, on 13th July, 1966 at noon, the second applicant was repatriated.

It appears that the first applicant was only permitted to see his son on two occasions at London Airport.

The applicants complained:

1. that the Convention had been violated as regards Article 8 on the ground of the refusal by the Immigration Officer to allow the second applicant to enter the United Kingdom in order to join his father and of the consequent interference with the applicants' family life;
2. that the Convention had been violated as regards Article 6, para. (1) on the grounds that the right of the second applicant to an unimpeded entry into the United Kingdom in order to join his father, the first applicant, was a "civil right" within the meaning of Article 6, para. (1) and, further, that they were denied a fair and public hearing before an independent and impartial tribunal for the determination of such civil right;

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3. that there had been a violation of Article 13 of the Convention. This complaint was based on the ground that the United Kingdom Government had failed to provide an effective remedy before a national authority for the alleged breach of the right to respect for family life under Article 8.

The parties then submitted written observations to the Commission as to the admissibility of the application and, in its decision of 13th July, 1967, the Commission:

- (a) declared admissible the applicants' complaint under Article 8 of the Convention on the ground that it was not manifestly ill-founded;
- (b) declared admissible the applicants' complaints under Article 6, para. (1), of the Convention on the same ground;
- (c) considered it unnecessary at that stage of the proceedings to enter into an examination of the applicants' complaint under Article 13 of the Convention;
- (d) joined to the merits of the case the determination of the question whether, having regard to Article 26 of the Convention, there was in English law an effective remedy against the refusal of the immigration authorities to allow the entry of the second applicant into the United Kingdom. In particular, the Commission found that this issue was closely linked with the question arising under Article 6, para. (1) of the Convention.

PART II

SOLUTION REACHED

In the course of the proceedings and in accordance with Articles 28, paragraph (b) and 29, paragraph (1) of the Convention, the Sub-Commission placed itself at the disposal of the parties with a view to securing a friendly settlement of the matter.

Consequently, discussions took place in London between Mr. A. B. McNulty, Secretary to the Commission, and Mr. Freeland and other representatives of the Foreign Office and the Home Office and also between Mr. McNulty and Mr. Warren-Evans, Mr. Lester and Mr. Ellman representing the applicants. Following these discussions the parties' representatives made the following declarations:

In a letter dated 28th October, 1968, Mr. Freeland stated:

"I now confirm that, as I indicated at the meeting, the United Kingdom Government are in the circumstances of this case prepared, in order that Mohamed Khan should be financially assisted in availing himself of his entry certificate, to pay the cost of an economy class air fare for travel by him from Karachi to London. This payment would be made ex gratia, since the United Kingdom Government continue to maintain the position which they have already stated in relation to the issues raised in the proceedings."

On 5th November, 1968, Messrs. Theodore Goddard & Co. stated in a letter on behalf of the applicants:

"Our client would be prepared to accept, in full and final settlement of his claim against the United Kingdom Government:

- (a) the issue of an entry certificate to Mohamed Khan, with an assurance that no further challenge to Mohamed Khan's right of entry on grounds of paternity would be made upon his arrival in the United Kingdom; and
- (b) the payment of Mohamed Khan's fare, by air, from his home village of Pind Kalan in Pakistan to London.

The proposed settlement would extend both to Mohamed Alam's claim in his own right and the claim made by him on behalf of Mohamed Khan. We would accept that it should be part of such a settlement that Mohamed Alam should withdraw the application both on his own behalf and on behalf of Mohamed Khan and undertake not to make any further claims against the United Kingdom Government or the Secretary of State or otherwise in respect of the matters to which the application relates, whether by way of legal proceedings before any municipal or international court or tribunal or otherwise.

We would ask you to place this offer before the Sub-Commission for its consideration."

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In a further letter of 20th November 1968, Mr. Freeland stated:

"I have consulted the Home Office on the two matters referred to in the second paragraph of the solicitors' letter and am now in a position to state the following:

- (a) As the solicitors have already been informed (see paragraph 7 of the letter of 15 March from the Home Office to them, a copy of which was sent to Mr. McNulty with my letter of 20 March), the issue of an entry certificate to Mohamed Khan to facilitate his admission to this country was authorised in March, 1968. Mohamed Khan made the necessary application to the High Commission in Karachi in July. Instructions were given for the entry certificate to be endorsed so as to permit him to join Mohamed Alam in the United Kingdom. I therefore confirm that, upon his arrival in the United Kingdom with the entry certificate, no impediment will be raised on grounds of paternity to his entry into the country.
- (b) The United Kingdom Government are prepared to regard their offer to pay the cost of economy class air travel by Mohamed Khan from Karachi to London (see my letter of 28 October to Mr. McNulty) as extending also to the reasonable cost of travel by him from Pind Kalan to Karachi."

In a further letter of 11th December, 1968, Messrs. Theodore Goddard & Co. stated on behalf of the applicants:

"We refer to your letter of 2nd December confirming the U.K. Government offer to settle this case amicably. We confirm our client's acceptance of this offer."

At the same time the United Kingdom Government's representative informed the Sub-Commission that it was intended to introduce legislation "to confer rights of appeal against the exercise by the Secretary of State and officers acting under his instructions of their powers in respect of the admission into and removal from the United Kingdom of persons to whom sections 1 or 6 of the Commonwealth Immigrants Act 1962 apply, and to enable provision to be made by Order in Council for conferring corresponding rights of appeal on aliens."

Copies of this proposed legislation, namely the "Immigration Appeals Bill, 1968" and the Draft of an Order in Council conferring rights of appeal on Aliens (Aliens (Appeals) Order, 1968) as well as Draft Instructions to Immigration Officers relating thereto were also put before the Sub-Commission by the United Kingdom Government for information. The Government's representative informed the Sub-Commission that the Bill concerned was introduced into Parliament on 18th November, 1968 and that the draft of the Order in Council was presented to Parliament at the same time.

The Sub-Commission, in a meeting on 17th December, 1968, found that the above-mentioned declarations showed an agreement between the parties as to the terms of a settlement of the case. The Sub-Commission further found that, having regard to Article 28, para. (b) of the Convention, a friendly settlement of the matter had been secured on the basis of respect for Human Rights as defined in the Convention. In particular, the Sub-Commission took note of the information received from the United Kingdom Government, in connection with the present case, as to the draft legislation recently introduced into Parliament.

A. B. McNULTY
(Secretary to the Commission)

S. PETREN
(President of the Sub-Commission)

A P P E N D I X

COMPOSITION OF THE SUB-COMMISSION

Noting that MM. J.E.S. FAWCETT and E. BUSUTTIL had been appointed by the parties by virtue of Article 29, para. (2) of the Convention, the President proceeded on 6th October, 1967, to choose the remaining members by lot as provided for in Article 29, para. (3) of the Convention.

As a result the Sub-Commission was composed as follows:

Members:

MM. S. PETREN, Presiding
A. SUSTERHENN
J. E. S. FAWCETT
M. TRIANTAFYLIDIS
F. WELTER
P. O. DELAHAYE
E. BUSUTTIL

Substitutes:

MM. M. SØRENSEN
C. Th. EUSTATHIADES
F. ERMACORA
F. CASTBERG
G. SPERDUTI
T. BALTA
W. F. DE GAAY FORTMAN
P. P. O'DONOGHUE
T. B. LINDAL