APPLICATIONS N° 4403/70-4419/70, 4422/70, 4423/70, 4434/70, 4443/70 4476/70-4478/70, 4486/70, 4501/70 and 4526/70-4530/70 (joined)

EAST AFRICAN ASIANS v/the UNITED KINGDOM

REPORT adopted by the Commission on 14 December 1973 pursuant to Article 31 of the Convention [1]

Article 3 of the Convention :

a) A measure which does not involve physical ill-treatment but which lowers a person in rank, position, reputation or character can constitute "degrading treatment" provided it attains a minimum level of severity.

b) Neither the Convention nor Protocol No. 1 guarantees the right to enter the territory of the State of which one is a national. However, refusal of such a right may, in certain circumstances, amount to degrading treatment notwithstanding that the State has not ratified Protocol No. 4. Discrimination on the ground of race or colour may amount to such circumstances.

c) Publicly to single out a group of persons for differential treatment on the basis of race may amount to degrading treatment when differential treatment on other grounds would not.

d) Legislation imposing restrictions on admission to the United Kingdom of citizens of the United Kingdom and Commonwealth resident in East Africa discriminated against persons of Asian origin on the ground of race or colour because:

i) it had racial, not merely geographical motives and covered a racial group;

ii) associated legislation permitting unrestricted entry of persons having a grandpaternal connection with the United Kingdom operated in favour of white people.

---

[1] Made public by Resolution of 21 March 1994 (cf. below, p. 70).

In the circumstances - in particular, the increasing difficulties faced by United Kingdom citizens of Asian origin in consequence of the policy of "Africanisation" pursued by the East African States, the expectation of those persons that their rights of entry would be preserved and their effective reduction to the status of "second-class citizens" of the United Kingdom - such discrimination amounted to degrading treatment in respect of those persons.

e) *Restrictions on admission to the United Kingdom of persons from British protectorates, which do not distinguish between different groups of such persons on grounds of race or colour, do not constitute degrading treatment.*

Articles 3 and 25 of the Convention : *Where Article 3 is violated by a State's exclusion from its territory of a citizen on the ground of race, the violation is substantially terminated, but not redressed, by that person's admission. Such a person can claim to be a victim of a violation notwithstanding admission.*

Article 5, paragraph 1 of the Convention :

a) *The expression "liberty and security of person" must be read as a whole and refers to personal liberty and security. The word "security" means protection against arbitrary interference with individual liberty.*

b) *The right to security of person is not violated by uncertainty in a person's immigration status resulting from restrictions imposed on admission to the United Kingdom of certain of its citizens.*

Article 8, paragraph 1 of the Convention : *Refusal by a State to admit a husband to its territory to join his wife constitutes an interference with the right to respect for family life.*

Article 14 of the Convention in conjunction with Article 3 of the Convention : *Where discrimination is examined as potentially constituting degrading treatment under Article 3 of the Convention, no separate examination is required under Article 14.*

Article 14 of the Convention in coniunction with Article 5 of the Convention : *Article 14 may be violated in coniunction with another provision of the Convention where there is no violation of that provision taken alone. However, such cases are confined to discriminatory qualification of the rights guaranteed by the other provision. Since Article 5 of the Convention guarantees the right to security of person in absolute terms, there can be no violation of Article 14 in the absence of a violation of that right [1].*

---

[1] Note by the Secretariat: the reasoning expressed in the last two sentences should be read in the light of the Commission's subsequent jurisprudence as to the scope and application of Article 14 in the context of "absolute" Convention rights (e.g. No. 11850/85, G. v. Netherlands, Dec. 2.3.87, D.R. 51 p. 180; No. 13580/88, Schmidt v. Germany, Comm. Report 14.1.93, to be published in Eur. Court H.R., Series A no. 291-B; No. 16595/90, Mangov v. Greece, Dec. 18.2.93, unpublished).

Article 14 of the Convention in conjunction with Article 8 of the Convention : *Refusal by a State to admit a husband to its territory to join his wife, where a wife in identical circumstances would have been admitted to join her husband, constitutes discrimination against male immigrants on the ground of sex.*

INTRODUCTION

1. The following is an outline of the cases as they have been submitted by the parties to the European Commission of Human Rights.

All thirty-one applicants are citizens of the United Kingdom and Colonies or, in six cases [1], British protected persons; they all hold United Kingdom passports. The applicants were resident in Kenya or Uganda but, being of Asian origin and not being citizens of those States - both previously British dependencies -, their continued residence there became increasingly difficult and, in some cases, illegal.

In 1970 they therefore sought to settle in Britain but, under the Commonwealth Immigrants Act 1968, they were not granted admission or were refused permission to remain there permanently. Twenty-four of the applicants [2] were detained in the United Kingdom; of these, eighteen [3] were detained after their arrival; two [4] were detained after their arrival, subsequently returned to France, sent back to the United Kingdom and again detained there; one [5] was detained after he had first been sent back to Belgium and subsequently re-entered the United Kingdom; two [6] were detained after their arrival in the United Kingdom, then sent back to France, detained a second time after they had re-entered Britain, subsequently returned to Uganda, sent back from there to the United Kingdom and detained there a third time. Six of the applicants [7] tried to enter the United Kingdom indirectly and were stranded in Belgrade.

During the proceedings before the Commission [8], all applicants were given permission to stay permanently in the United Kingdom.

---

[1] Applications Nos. 4410/70, 4411/70, 4414/70, 4476/70, 4477/70 and 4526/70.
[2] Applications Nos. 4403/70-4419/70, 4422/70, 4434/70, 4443/70, 4476/70, 4477/70, 4486/70 and 4501/70.
[3] Applications Nos. 4403/70, 4405/70, 4406/70, 4408/70-4419/70, 4422/70, 4443/70, 4476/70 and 4477/70.
[4] Applications Nos. 4404/70 and 4407/70.
[5] Application No. 4434/70.
[6] Applications Nos. 4486/70 and 4501/70.
[7] Applications Nos. 4478/70 and 4526/70-4530/70.
[8] In 1970 (Application No. 4423/70) and 1971 (all other cases) respectively.

The applicants originally alleged violations of Articles 1, 3, 5, 8, 12, 13 and 14 of the Convention. Subsequently, during the proceedings on the merits, they relied on Articles 3, 5 and 14 and, in three cases [1], also on Article 8 of the Convention. They further claimed damages.

2. The applications were lodged with the Commission on various dates between 10 February and 9 June 1970 and registered on various dates between 10 March and 23 June 1970. They were joined under Rule 39 of the Commission's Rules of Procedure. Following written and oral pleadings, the Commission declared the applications admissible on 10 October (Group I) [2] and 18 December 1970 (Group II) [3] in so far as they raise issues under Articles 3, 5 and 14 of the Convention; it also admitted the complaints of three applicants [4] in regard to Articles 8 and 14 and declared inadmissible all other complaints made under Articles 8, 12 and 14.

.....

PART I

POINTS AT ISSUE

4. Under the Commission's decisions of 10 October and 18 December 1970 on the admissibility of the present applications, the following points are at issue:

(1) whether or not the applicants' rights under Articles 3, 5 and/or 14 of the Convention were violated, in that they were initially refused admission to the United Kingdom or permission to remain there permanently; and

(2) whether or not the rights, under Articles 8 and 14, of the applicants in Nos. 4478/70, 4486/70 and 4501/70 were violated in that the United Kingdom authorities interfered with their family life.

5. In its decision of 10 October 1970 the Commission further stated that it "does not find it necessary to consider, at the present stage of the applications, any issue which may arise under Article 1 or under Article 13 of the Convention".

---

[1] Applications Nos. 4478/70, 4486/70 and 4501/70.

[2] Applications Nos. 4403/70-4419/70, 4422/70, 4423/70, 4434/70, 4443/70, 4476/70-4478/70 and 4486/70; see Appendix II to this Report [not reproduced in this volume], Collection 36 p. 92, Yearbook 13 p. 938.

[3] Applications Nos. 4501/70 and 4526/70-4530/70; see Appendix III to this Report [not reproduced in this volume], Collection 36 p. 127, Yearbook 13 p. 1014.

[4] Applications Nos. 4478/70, 4486/70 and 4501/70.

PART II

ESTABLISHMENT OF THE FACTS

1. General

(a) Introduction

6. The decisions of the United Kingdom authorities which form the subject of the present applications were all taken under the Commonwealth Immigrants Act 1962, as amended by the Commonwealth Immigrants Act 1968 and the Immigration Appeals Act 1969. Before dealing with this legislation and its application, it may be useful briefly to recall the historical background as regards:

- the settlement of Asians in East Africa;

- the relevant definitions of citizenship of, and the freedom of entry of citizens into, the United Kingdom

and, further, to give some statistical data.

(aa) The settlement of Asians in East Africa

7. A long history of trade, which is said to have begun over 2,000 years ago, links the coastal areas of East Africa with the Indian subcontinent. Over the centuries small colonies of Indian tradesmen were gradually formed. During the period of British colonisation of East Africa from the latter half of the 19th century, a deliberate policy of emigration of Indian workers from what was then British India to East Africa was pursued *inter alia* for the building of the railway from the coast into the interior. In the wake of the railway the traders followed. They consisted mainly of Indians who gradually built up an extended commercial network. Until the countries in East Africa gained independence, this flow of people from the Indian subcontinent continued, so that the community of Asian descent at the beginning of the decolonisation period in the 1960s numbered several hundred thousand. Although most of them were engaged in trade and shop-keeping, they were also represented in other walks of life such as civil servants, teachers, doctors, dentists, etc.

8. When independence came in the beginning of the 1960s, only those who were born in East Africa and had one parent also born there automatically became citizens of the country concerned. Others had a right during two years to opt for citizenship. When the so-called "Africanisation" policy was later introduced by the Governments concerned, those who had not become citizens of the country experienced increasing difficulties by way of restrictions on trade licences and on the areas where they might trade. The present applicants belong to this last-mentioned category of Asians who had not become citizens of the country where they resided.

(bb) Citizenship of, and freedom of entry into, the United Kingdom

(i) The situation before 1949

9. Before 1949 there was one common British citizenship throughout the British Empire and Commonwealth: under the British Nationality and Status of Aliens Act 1914, any person born in the United Kingdom, in one of the Dominions, or in the British Colonies, was a "British subject". Any British subject was entitled to enter, and permanently reside in, the United Kingdom whether he was born there or in another part of the Empire or Commonwealth.

British protected persons - i.e. persons born in or otherwise connected with British protectorates - were not British subjects in the above sense but, like these, free to enter the United Kingdom.

(ii) The British Nationality Act 1948

10. The gradual disengagement from empire, particularly after the Second World War, led to corresponding changes in the citizenship provisions. The British Nationality Act 1948, which entered into force on 1 January 1949, gave form to a system under which all British subjects were to have two citizenships:

- Under Part I, section 1 of this statute, they were to be "British subjects" as before; alternatively, they could be called "Commonwealth citizens", this concept being identical with that of "British subject".

- In addition, they were "citizens of the United Kingdom and Colonies", or citizens of Australia or Canada or India and so on according to the law of the independent Commonwealth country concerned. The composite citizenship of "the United Kingdom and Colonies" was established by Part II, section 4 of the 1948 Act: no distinction was drawn between the United Kingdom and its remaining dependencies, i.e. there was not created one citizenship for the United Kingdom itself and one citizenship for the particular colony or dependent territory concerned until it had obtained independence; instead, the two were merged into one single citizenship for the United Kingdom and Colonies.

11. As far as immigration to the United Kingdom was concerned, there was still, after the entry into force of the 1948 Act, complete freedom for any British subject to enter, whether he came from a dependency of the United Kingdom or from an independent Commonwealth country.

British protected persons continued to be a separate category of persons with, however, the same freedom of entry: they were neither British subjects nor aliens [1], but, like British subjects, free to enter the United Kingdom.

(iii) The introduction of immigration control for Commonwealth citizens in 1962

12. The above situation was substantially changed in 1962 when the United Kingdom, by the Commonwealth Immigrants Act 1962, imposed immigration control on the great majority of British subjects and British protected persons. The relevant provisions of this Act and of subsequent United Kingdom legislation are set out below in chronological order. In this context account has also been taken of the White Paper "Immigration from the Commonwealth" which was published by the United Kingdom Government in 1965 and, further, of the independence constitutions and immigration legislation of Kenya and Uganda.

As far as United Kingdom legislation is concerned, the following Acts are quoted below:

- Commonwealth Immigrants Act 1962;
- British Nationality Act 1964;
- Commonwealth Immigrants Act 1968 (amending the 1962 Act);
- Immigration Appeals Act 1969 (in so far as it amended the 1962 Act); and
- Immigration Act 1971.

Under the Commonwealth Immigrants Acts, Instructions to Immigration Officers were issued by the Home Secretary. The Instructions of February 1970 and the Immigration Rules issued in 1973 under the Immigration Act 1971 have been submitted to the Commission.

(cc) Some statistical data

13. It was estimated that, in 1968, there were about fifty eight and a half million people who were citizens of the United Kingdom and Colonies: fifty four million inhabitants of the United Kingdom and four and a half million living in other parts of the world (some three million of whom were in Hong Kong) [2].

---

[1] The 1948 Act declared that they were not "aliens" and that British protectorates, protected states and trust territories were not "foreign countries" for the purposes of the Act.

[2] Figures given by the Government at the hearing before the Commission on 28 September 1971 (Verbatim Record, Vol. II, page 3 [not reproduced in this volume]). In 1971 the estimate for Hong Kong was 2,410,000 people (House of Commons, Written Answers, Hansard of 22 July 1971, col. 339).

It was further estimated that at that time there were about 200,000 United Kingdom passport holders in East Africa [1] - the so-called "East African Asians" - who were of Asian origin and either citizens of the United Kingdom and Colonies or British protected persons [2]. By September 1972 their estimated number had decreased to 132,000 [3], by February 1973 to 74,000 [4].

14. The rate of admission for settlement of immigrants to the United Kingdom, between 1963 and 1970, is shown by the following table:

	Aliens			Commonwealth citizens		
	Workers [5]	Others [5]	Total	Workers	Others	Total
1963	5,897	9,452	15,349	30,125	29,681	59,806
1964	9,195	10,016	19,211	14,705	41,195	55,900
1965	10,375	10,240	20,615	12,880	44,182	57,062
1966	8,976	9,972	18,948	5,461	45,004	50,465
1967	7,437	10,909	18,346	4,978	56,399	61,377
1968	8,964	11,129	20,093	4,691	54,421[6]	59,112[6]
1969	9,598	12,264	21,862	4,021	38,785[6]	42,806[6]
1970	8,457	12,460	20,917	4,098	32,627[6]	36,725[6]

15. As regards, on the other hand, emigration of United Kingdom and Commonwealth citizens from the United Kingdom, the following estimates have been made for the years 1964, 1967 and 1970 and for the period from 1964 to 1970 [7]:

[1] Cf. the statement made by Lord Stonham, Minister of State at the Home Office, in the House of Lords on 29 February 1968 (Hansard, col. 1114-1115); see also paragraph 21 of the Government's Counter-Memorial of 9 April 1971 [Appendix III, not reproduced in this volume] ("up to 200,000").

[2] The Lord Chancellor, Lord Gardiner, referring to estimates received from the High Commissioners, spoke on 29 February 1968 before the House of Lords of 30,000 people in Uganda, 20,000 in Tanzania, 6,000 in Malawi and "something like 167,000 in Kenya (although, obviously, fewer this week than a month ago)": see Hansard col. 923-924.

[3] 50,000 in Uganda, 50,000 in Kenya, 20,000 in Tanzania, 6,000 in Zambia and 6,000 in Malawi (House of Lords, Written Answers, Hansard of 15 September 1972, col. 708).

[4] 35,000 in Kenya, 20,000 in Tanzania, 6,000 in Zambia and 13,000 in Malawi (House of Commons, Written Answers, Hansard of 22 February 1973, col. 141).

[5] Figures of workers and others (including dependants) taken off conditions after four years in United Kingdom.

[6] Includes United Kingdom passport holders from East Africa: see figures in paragraph 48, below.

[7] Overseas Migration Board; General Register Office.

To	1964	1967	1970	Total 1964-1970 inclusive
Australia, Canada, New Zealand and Southern Rhodesia	128,300	160,600	126,600	996,500
Other Commonwealth countries	38,800	37,700	43,300	279,100
Foreign countries	65,100	70,300	78,200	479,400
	232,200	268,600	248,100	1,755,000

The Commission notes that statistics for emigration from the United Kingdom are compiled on a sample basis and that they are, therefore, not so exact or detailed as the immigration figures. In particular, the above table includes returning students and thus overstates by some thousands the number of actual emigrants from Britain.

16. The Registrar General also publishes statistics, based on International Passenger Survey figures, which show the balance of migration in and out of Britain. The following table, which indicates this balance for the years 1964 to 1970, excludes movement between the United Kingdom and the Irish Republic.

United Kingdom net balance of migration with the rest of the world (net outward movement) 1964 to 1970 [1];

1964 - 60,000	1965 - 78,000	1966 - 83,000
1967 - 84,000	1968 - 56,000	1969 - 87,000
1970 - 65,000		

It is clear from these statistics that in recent years more people have left the United Kingdom than have entered it to stay: between 1964 and 1970 the net loss for Britain is estimated to have been about half a million people.

(b) The legislation concerned

(aa) The Commonwealth Immigrants Act 1962

17. The entry into the United Kingdom of Commonwealth citizens and British protected persons was first regulated by Part I of the Commonwealth Immigrants Act 1962 [2], which stated as follows in sections 1 and 2:

[1] General Register Office.
[2] "The 1962 Act". The 1962 Act entered into force on 1 July 1962.

"Control of Immigration

1. (1) The provisions of this Part of this Act shall have effect for controlling the immigration into the United Kingdom of Commonwealth citizens to whom this section applies.

(2) This section applies to any Commonwealth citizen not being -

(a) a person born in the United Kingdom;

(b) a person who holds a United Kingdom passport and is a citizen of the United Kingdom and Colonies, or who holds such a passport issued in the United Kingdom or the Republic of Ireland; or

(c) a person included in the passport of another person who is excepted under paragraph (a) or paragraph (b) of this subsection.

(3) In this section 'passport' means a current passport; and 'United Kingdom passport' means a passport issued to the holder by the Government of the United Kingdom, not being a passport so issued on behalf of the Government of any part of the Commonwealth outside the United Kingdom.

(4) This Part of this Act applies to British protected persons and citizens of the Republic of Ireland as it applies to Commonwealth citizens, and references therein to Commonwealth citizens, and to Commonwealth citizens to whom this section applies, shall be construed accordingly.

2. (1) Subject to the following provisions of this section, an immigration officer may, on the examination under this Part of this Act of any Commonwealth citizen to whom section one of this Act applies who enters or seeks to enter the United Kingdom, -

(a) refuse him admission into the United Kingdom; or

(b) admit him into the United Kingdom subject to a condition restricting the period for which he may remain there, with or without conditions for restricting his employment or occupation there.

(2) The power to refuse admission or admit subject to conditions under this section shall not be exercised, except as provided by subsection (5), in the case of any person who satisfies an immigration officer that he or she -

(a) is ordinarily resident in the United Kingdom or was so resident atany time within the past two years; or

(b) is the wife, or a child under sixteen years of age, of a Commonwealth citizen who is resident in the United Kingdom or of a Commonwealth citizen (not being a person who is on that occasion refused admission into the United Kingdom) with whom she or he enters or seeks to enter the United Kingdom.

(3) Without prejudice to subsection (2) of this section, the power to refuse admission under this section shall not be exercised, except as provided by subsections (4) and (5), in the case of a Commonwealth citizen who satisfies an immigration officer either -

(a) that he wishes to enter the United Kingdom for the purposes of employment there, and is the person described in a current voucher issued for the purposes of this section by or on behalf of the Minister of Labour or the Ministry of Labour and National Insurance for Northern Ireland; or

(b) that he wishes to enter the United Kingdom for the purpose of attending a course of study at any university, college, school or other institution in the United Kingdom, being a course which will occupy the whole or a substantial part of his time; or

(c) that he is in a position to support himself and his dependants, if any, in the United Kingdom otherwise than by taking employment or engaging for reward in any business, profession or other occupation;

and the power to admit subject to conditions under this section shall not be exercised in the case of any person who satisfies such an officer of the matters described in paragraph (a) of this subsection.

....."

18. It follows from sections 1 and 2 of the above Act that it imposed immigration control on all Commonwealth citizens and British protected persons except those who were:

(a) either born in the United Kingdom; or

(b) holders of United Kingdom passports, i.e. passports issued "by the Government of the United Kingdom", not being passports issued "on behalf of the Government of any part of the Commonwealth outside the United Kingdom", and who were either

(aa) citizens of the United Kingdom and Colonies; or

(bb) not being citizens of the United Kingdom and Colonies [1], were holders of United Kingdom passports issued "in the United Kingdom or the Republic of Ireland";

or

(c) included in passports of persons excepted under (a) or (b) above.

This meant that all Commonwealth citizens and British protected persons

- who were not born in the United Kingdom,

- whose passport had been issued by the colonial authorities of Kenya or Uganda and was therefore not a "United Kingdom passport", and

- who were not included in the passports of persons excepted under (a) or (b) above,

became under the 1962 Act subject to immigration control.

The Act thus covered the great majority of citizens of the United Kingdom and Colonies and British. protected persons - including the members of the Asian communities - who were then living in Kenya or Uganda.

(bb) Provisions made at the time of the independence of Kenya and Uganda

19. When the immigration control provisions of the 1962 Act came into force - on 1 July 1962 - Kenya and Uganda were dependencies of the United Kingdom. Subsequently Uganda became independent on 9 October 1962 and Kenya on 12 December 1963.

20. In both States citizenship was conferred automatically, under the independence constitutions, only on those who were born there and had at least one parent who was also born there.

Thus Article 7, clause (1), of the Constitution of *Uganda* provided:

"Every person who, having been born in Uganda, is on 8th October 1962 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Uganda on 9th October 1962:

Provided that a person shall not become a citizen of Uganda by virtue of this clause if neither of his parents was born in Uganda."

---

[1] But e.g. British protected persons.

Similarly, section 1, subsection (1), of the Constitution of *Kenya* stated:

"Every person who, having been born in Kenya, is on 11th December 1963 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Kenya on 12th December 1963:

Provided that a person shall not become a citizen of Kenya by virtue of this subsection if neither of his parents was born in Kenya."

A substantial body of Asians who were born and resident in Kenya or Uganda were, prior to independence, citizens of the United Kingdom and Colonies by virtue of their connection with those dependencies, but their parents had been born in what is now India, Pakistan or Bangladesh. At independence, such persons did not therefore automatically acquire local citizenship under the above constitutional provisions.

21. Provision was, however, made in the constitutions for certain classes of persons who did not qualify automatically for citizenship to be entitled to it upon making application (within, as a general rule, two years from independence) and upon renunciation of any other citizenship held.

Thus Article 8 of the *Uganda* Constitution provided:

"(1) Any person who, but for the proviso to clause (1) of Article 7 of this Constitution would be a citizen of Uganda by virtue of that clause may, upon making application before the specified date in such a manner as may be prescribed by Parliament, be registered as a citizen of Uganda:

.....

(5) Any person who, on 8th October 1962, is a citizen of the United Kingdom and Colonies, having become such a citizen by virtue of his having been naturalised or registered in Uganda under the British Nationality Act 1948, shall be entitled, upon making application before the specified date in such a manner as may be prescribed by Parliament, to be registered as a citizen of Uganda:

.....

(6) For the purposes of this Article, the expression 'specified date' means

(a) in relation to a person to whom clause (1) of this Article refers, 9th October 1964;

.....

(d) in relation to a person to whom clause (5) of this Article refers, 9th October 1964;

or such later date as may in any particular case be prescribed by or under an Act of Parliament."

Article 12, clause (1), of the Uganda Constitution stated:

"Any person who ... is a citizen of Uganda and also a citizen of some country other than Uganda shall ... cease to be a citizen of Uganda upon the specified date unless he has renounced his citizenship of that other country ..."

Analogous provisions were contained in sections 2 and 12 of the Constitution of *Kenya*.

22. The majority of the Asians who were born and resident in Kenya and Uganda, and who had not automatically become citizens of those States under the independence constitutions, chose not to exercise their right to obtain local citizenship by registration in accordance with the above provisions. Under the United Kingdom legislation [1] they thus retained their status as citizens of the United Kingdom and Colonies or, as the case may be, British protected persons.

23. As stated above [2], the Commonwealth Immigrants Act 1962 had imposed immigration control on the great majority of citizens of the United Kingdom and Colonies and British protected persons in Kenya and Uganda, since they were neither born in the United Kingdom nor holders of "United Kingdom passports".

However, after the independence of Kenya and Uganda, those who retained their citizenship of the United Kingdom and Colonies ceased to be subject to immigration control under the 1962 Act simply by obtaining a new United Kingdom passport. They could not obtain such a passport from the Government of their country of residence since that Government was no longer the Government of a British dependency; they could only obtain one from the United Kingdom High Commission in Kenya or Uganda. The effect of the issue of the new passport was to exempt the holder from immigration control because:

- the new passport, being issued by a diplomatic representative of the Government of the United Kingdom, constituted a "United Kingdom Passport", as defined in subsection (3), and

- the person concerned was now "a person who holds a United Kingdom passport and is a citizen of the United Kingdom and Colonies" in the sense of subsection (2) of section 1 of the 1962 Act.

---

[1] See the Uganda Independence Act 1962, section 2, and the Kenya Independence Act 1963, sections 2 and 3.
[2] See paragraph 18.

24. The situation was different for:

- British protected persons, and

- citizens of the United Kingdom and Colonies in Tanzania [1].

British protected persons, not being citizens of the United Kingdom and Colonies, could even if they obtained a "United Kingdom passport" not fulfil the above condition of section 1 (2) of the 1962 Act. They thus remained subject to immigration control under this Act.

25. The situation of citizens of the United Kingdom and Colonies in Kenya (and Uganda), as set out in paragraphs 9 to 23 above, was in 1968 described by the Under-Secretary of State for the Home Department, Mr. D. Ennals, in the following terms [2]:

> "... the constitution on which Kenya independence was founded was detailed and exact. Those who did not automatically obtain Kenyan citizenship were given a riught to claim a British passport and thus to be exempt from immigration control."

(cc) The British Nationality Act 1964

26. The British Nationality Act 1964 was passed "to facilitate the resumption or renunciation of citizenship of the United Kingdom and Colonies". The resumption of citizenship was regulated in section 1 of the Act.

Subsection (1) of section 1 provided that a person "who has ceased to be a citizen of the United Kingdom and Colonies as a result of a declaration of renunciation" should under certain conditions "be entitled to registration under this section as a citizen of the United Kingdom and Colonies on making application therefore in the prescribed manner". One of the conditions was that the person concerned had "a qualifying connection with the United Kingdom and Colonies or with a protectorate State".

The terms "qualifying connection" was explained in subsections (2) and (3):

> "(2) A person has a qualifying connection with the United Kingdom and Colonies if he, his father or his father's father -

---

[1] Tanzania (Tanganyika) became independent on 9 December 1961, i.e. before the entry into force of the 1962 Act. Citizens of the United Kingdom and Colonies in Tanzania therefore did not normally come within the purview of the 1962 Act. However, none of the present applicants came to the United Kingdom from Tanzania.

[2] The statement was made at the Second Reading of the Commonwealth Immigrants Bill in the House of Commons on 27 February 1968. Mr. Ennals added: "It is disingenuous to suggest that those who were involved in the negotiations for Kenya independence did not know the consequences of the decisions which were taken". See Hansard col. 1354.

(a) was born in the United Kingdom or a colony; or

(b) is or was a person naturalised in the United Kingdom and Colonies; or

(c) was registered as a citizen of the United Kingdom and Colonies; or

(d) became a British subject by reason of the annexation of any territory included in a colony.

(3) A person has a qualifying connection with a protectorate or protected state if -

(a) he was born there; or

(b) his father or his father's father was born there and is or at any time was a British subject."

Subsection (5) of section 1 provided:

"(5) Any reference in this section to any country, or to countries or territories of any description, shall be construed as referring to that country or description as it exists at the date on which the application under this section is made to the Secretary of State; and subsection (2) of this section does not apply to any person by virtue of any certificate of naturalisation granted or registration effected by the Governor or Government of a country or territory outside the United Kingdom which is not at that date a colony, protectorate or protected state."

27. Under the terms of the above Act, persons who had chosen to become citizens of Uganda or Kenya [1] were permitted to resume the citizenship of the United Kingdom and Colonies if they had a "qualifying connection with the United Kingdom and Colonies or with a protectorate or protected state" in the sense of subsection (5). This condition would normally be fulfilled by the so-called "white settlers", but not by members of the Asian communities in East Africa.

(dd) The White Paper "Immigration from the Commonwealth" (1965)

28. In 1965 the United Kingdom Government took measures to bring Commonwealth immigration under more effective control. These measures were set out in the White Paper "Immigration from the Commonwealth" which was presented to Parliament and published in August 1965.

[1] In accordance with the constitutional provisions mentioned in paragraph 21, above.

The step which had the greatest effect on the numbers admitted was the reduction of the annual number of employment vouchers available to persons subject to control under the 1962 Act [1] from 20,800 to 8,500 [2].

The White Paper did not indicate that any change of policy was envisaged with regard to the entry into Britain of citizens of the United Kingdom and Colonies who were then resident in East Africa. When the White Paper was published in August 1965, the time-limit of two years, during which these people could obtain local citizenship by option, had expired in Uganda, but not in Kenya: until 12 December 1965 it would still have been possible for the Asians concerned in Kenya to opt for Kenyan citizenship as a matter of right.

(ee) The East African Immigration and Trade Licensing Acts

29. As stated above [3], Tanzania became independent in 1961, Uganda in 1962 and Kenya in 1963. In the years following their independence, these States introduced policies of "Africanisation" which were designed to give preference to their citizens in certain areas of trade and employment and, in due course, to require the departure of people who were not local citizens and whose right to work or trade there had, consequently, been withdrawn.

30. Thus section 4, subsection (2), of the *Kenya* Immigration Act of 1967 provided:

> "Subject to this section, the presence in Kenya of any person who is not a citizen of Kenya shall, unless otherwise authorised under this Act, be unlawful, unless that person is in possession of a valid entry permit or a valid pass."

The above Immigration Act entered into force on 1 December 1967. It was followed by the Kenya Trade Licensing Act 1967, which entered into force on 8 January 1968. Sections 3 to 5 of this Act provided:

> "3. The Minister may ... declare ... any city, municipality or township to be a general business area ...
>
> 4. The Minister may ... declare any particular goods ... to be specified goods ...
>
> 5. (1) ...
>
> (2) After the appointed day, no person who is not a citizen of Kenya shall conduct a business -

---

[1] See s. 2 (3) (a) of the 1962 Act, reproduced in paragraph 17, above.
[2] See paragraphs 13-16 of the White Paper.
[3] See paragraphs 19 and 24, footnote [1].

(a) in any place which is not a general business area; or

(b) in any specified goods,

unless his licence specifically authorises him to do so."

The above Kenyan legislation was followed by similar legislation in *Uganda* in 1969.

31. These policies of "Africanisation" resulted in a considerable increase in the numbers entering Britain for permanent settlement of citizens of the United Kingdom and Colonies who were of Asian origin and resident in East Africa: between 1965 and 1967 the number of such entrants rose from 6,150 to 13,600; in the first two months of 1968 the number was 12,800.

The Home Secretary of the United Kingdom, Mr. Callaghan, in a statement before the House of Commons on 27 February 1968 [1], described the situation as follows:

> "A steady number of Asians - we do not know exactly how many - were arriving in this country from East Africa during 1963, 1964, 1965 and 1966. The real increase in the flow did not begin until last summer, following the passage of the Kenya Immigration Act and the Trade Licensing Act. When the Kenya Government put these measures on the statute book, emigration from Kenya began to increase and the British Government, because of the nature of the statistics, quickly became aware of what was taking place. Therefore, last October, my right hon. Friend the Secretary of State for Commonwealth Relations visited Kenya for a number of purposes, one of which was to discuss with President Kenyatta the consequences of this emigration.
>
> It would not be proper for me, of course, to go into the details of that conversation, but I am entitled to say that my right hon. Friend specifically raised this question months ago with the Kenya Government. It is also fair for me to say that when he returned he concluded that the Kenya Government's policy towards the Asians who had been born and bred in that country was based on decisions that had been firmly taken by them and which did not seem open to question."

[1] Hansard col. 1247-1248.

(ff) Amendments of the Commonwealth Immigrants Act 1962 by the Commonwealth Immigrants Act 1968 and the Immigration Appeals Act 1969

32. On 1 March 1968 the United Kingdom re-imposed immigration control on citizens of the United Kingdom and Colonies who, as holders of colonial passports, had been persons to whom the 1962 Act applied but who, following the independence of the colony concerned, had obtained United Kingdom passports and thus re-acquired the right to enter the United Kingdom free of any restriction imposed by that Act [1]. The 1962 Act was amended accordingly by the Commonwealth Immigrants Act 1968 [2].

Under section 1 of the 1962 Act, as amended by the 1968 Act [3], Part I of the 1962 Act applies to any Commonwealth citizen (including a citizen of the United Kingdom and Colonies) who is not:

"(a) a person born in the United Kingdom;

(b) a person who holds a United Kingdom passport and is a citizen of the United Kingdom and Colonies *and fulfils the condition specified in subsection (2A) of this section* [4], or who holds such a passport issued in the United Kingdom or the Republic of Ireland; or

(c) a person included in the passport of another person who is excepted under paragraph (a) or paragraph (b) ..."

The 1968 Act thus added the new element that, in order to remain exempt from immigration control, the person referred to in paragraph (b) must fulfil "the condition specified in sub-section (2A)". The new subsection (2A) read as follows:

"The condition referred to in subsection (2) (b) of this section, in relation to a person, is that he, or at least one of his parents or grandparents, -

(a) was born in the United Kingdom, or

(b) is or was a person naturalised in the United Kingdom, or

(c) became a citizen of the United Kingdom and Colonies by virtue of being adopted in the United Kingdom, or

(d) became such a citizen by being registered under Part II of the British Nationality Act 1964, either in the United Kingdom or in a country

[1] Cf. paragraphs 18 and 23, above.
[2] "The 1968 Act".
[3] The original text of section 1 of the 1962 Act is reproduced in paragraph 17, above.
[4] Emphasis added.

which, on the date on which he was so registered, was one of the countries mentioned in section 1 (3) of the said Act of 1948 as it had effect on that date."

Kenya, Uganda and Tanzania were not before their independence mentioned in section 1 (3) of the British Nationality Act 1948. The above reference to registration "either in the United Kingdom or in a country which, on the date on which he was so registered, was one of the countries mentioned in section 1 (3) of the said Act of 1948 as it had effect on that date" thus excluded *inter alios* most persons who had become citizens of the United Kingdom and Colonies by registration in Kenya, Uganda or Tanzania before those countries became independent. It thus:

- imposed (in so far as Tanzania was concerned), or

- re-imposed (in the cases of Kenya and Uganda),

immigration control on the great majority of United Kingdom passport holders who were citizens of the United Kingdom and Colonies [1], of Asian origin and born and resident in East Africa.

33. Section 2 of the 1962 Act was amended not only by the 1968 Act but also by the Immigration Appeals Act 1969. The amended text [2] of section 2 reads as follows:

"2. - (1) Subject to the following provisions of this section, on the examination under this Part of this Act of any Commonwealth citizen to whom section 1 of this Act applies who enters or seeks to enter the United Kingdom, an immigration officer may refuse him admission into the United Kingdom, or may admit him into the United Kingdom subject to conditions as mentioned in paragraph (a) or paragraph (b) of this subsection, or to conditions as mentioned in both these paragraphs, that is to say -

(a) a condition restricting the period for which he may remain in the United Kingdom, with or without conditions for restricting his employment or occupation there;

(b) ... [3]

(2) The power to refuse admission shall not, except as provided by subsection (5) of this section, be exercised on any occasion in respect of a person who -

---

[1] With regard to British protected persons, it will be recalled that they had become, and remained, subject to immigration control under the 1962 Act - see paragraphs 18 and 24, above.

[2] The original text is reproduced in paragraph 17, above.

[3] Concerns medical examination.

(a) satisfies an immigration officer that he is ordinarily resident in the United Kingdom or was so resident at any time within the past two years, or

(b) being a woman, satisfies an immigration officer that she holds a current entry certificate granted for the purposes of this paragraph [1] and that she is the wife of a Commonwealth citizen who is resident in the United Kingdom or of a Commonwealth citizen who enters or seeks to enter the United Kingdom with her.

(2A) ... [2]

(2B) In ... this section any reference to a person entering or seeking to enter the United Kingdom shall be construed as not including a person who, on the occasion in question, is refused admission into the United Kingdom.

(2C) ... [3]

(3) Without prejudice to subsections (2) and (2A) of this section, the power to refuse admission under this section shall not be exercised, except as provided by subsections (4) and (5), in the case of a Commonwealth citizen who satisfies an immigration officer either -

(a) that he wishes to enter the United Kingdom for the purposes of employment there, and is the person described in a current voucher issued for the purposes of this section by or on behalf of the Minister of Labour or the Ministry of Labour and National Insurance for Northern Ireland; or

(b) that he wishes to enter the United Kingdom for the purpose of attending a course of study at any university, college, school or other institution in the United Kingdom, being a course which will occupy the whole or a substantial part of his time; or

(c) that he is in a position to support himself and his dependants, if any, in the United Kingdom otherwise than by taking employment or engaging for reward in any business, profession or other occupation;

---

[1] Issued under section 20 (3) of the Immigration Appeals Act 1969, i.e. a certificate which evidences fulfilment by the person concerned of the requirements of the 1962 Act (as amended). [Note by the Commission.]

[2] Concerns children under 16.

[3] Concerns restrictive conditions, under sub s. (1) (a), in cases of wives or children.

and the power to impose a restrictive condition under this section shall not be exercised in the case of any person who satisfies such an officer of the matters described in paragraph (a) of this subsection.

..."

34. The Commonwealth Immigrants Bill was presented and read the first time in the House of Commons on 23 February [1]. It was debated in the House of Commons on 27 and 28 February [2] and in the House of Lords on 29 February 1968 [3].

The dates showed that, irrespective of party affiliations, opinions were divided on the questions:

(1) whether the re-imposition of immigration control on citizens of the United Kingdom and Colonies coming from East Africa was in conflict with a "pledge" of free entry to the United Kingdom, which was said to have been given to those persons at the time when the East African States concerned became independent; and

(2) whether the Bill discriminated on racial grounds.

35. The terms "pledge" or "undertaking" were used by the Home Secretary and by the Under-Secretary of State for the Home Department. The Home Secretary, Mr. Callaghan, said in the House of Commons on 22 February [4]:

> "I believe that the citizens of this country recognise their responsibilities in respect of obligations which have been entered into by either the present or previous Administrations ... I very much regret that it is not possible for this country to absorb these persons, to whom we have given the most solemn pledges, at a pace. If we did, I fear that it would cause racial disharmony and explosions."

On 27 February the Home Secretary said in the House of Commons [5]:

> "We have given pledges to people which, if they were carried out because of great political turbulence and commotion in a particular area, could result in the services of this country being placed under far greater strain than they are at present."

---

[1] Hansard col. 811. See also Hansard of 22 February 1968, col. 659-667.
[2] See Hansard of 27 February 1968, col. 1241-1368, and 28 February, col. 1421-1714.
[3] Hansard col. 903-1217.
[4] In a statement announcing the forthcoming introduction of the Bill: Hansard col. 662.
[5] Hansard col. 1247.

The Under-Secretary for the Home Department, Mr. Ennals, said later on the same day [1]:

> "To depart in any way from the undertaking given is a very serious matter. It is done by this Government ... with a very heavy heart."

On the opposition side, the Shadow Home Secretary and former [2] Secretary of State for the Colonies, Mr. Maudling, similarly expressed the view that [3]:

> "There is no doubt about the rights which these people possess. When they were given these rights, it was our intention that they should be able to come to this country when they wanted to do so. We knew it at the time. They knew it, and in many cases they have acted and taken decisions on this knowledge. I am certain that there can be no going back on those simple facts."

36. Another view was in particular expressed by the former Secretary of State for the Colonies, Mr. Sandys, who stated [4]:

> "It is said [5] that as Colonial Secretary I gave an undertaking to the Asians in Kenya that they would always have the right to come to Britain. Put in more precise legal terms, it is alleged that I gave a promise that the British Parliament would never ... exercise its right to extend immigration control to United Kingdom citizens in Kenya ... I can assure the House that no such pledge was given, either in public or in private."

37. During the subsequent debate of the Bill in the House of Lords on 29 February 1968, the Lord Chancellor, Lord Gardiner, stated similarly [6]:

> "Nobody ever said to the Asians in Kenya, 'We will promise you that Parliament will never alter the present position'. Nor, of course, would anyone have given such a promise."

---

[1] Hansard col. 1354. See also paragraph 25. above.
[2] 1961-1962.
[3] Hansard col. 1345.
[4] Hansard col. 1274.
[5] The "Spectator" had on 23 February 1968 published "An open letter to Duncan Sandys" by Iain Macleod (Secretary of State for the Colonies, 1959-1961) which read as follows:
"Dear Duncan, ... I understand that you intend to introduce a private member's Bill to limit the rights of Asians from Kenya to come to this country ... The true question must be whether such a Bill as you propose would break an undertaking given freely by this country and her Conservative government. More specifically did you give your word? Did I?
If I understand your position correctly, it is, as you told the Sunday Telegraph, that 'it was certainly never intended to provide a privileged backdoor entry into the UK'. Leaving aside the emotive words that is exactly what was proposed; special entry in certain circumstances which have now arisen. We did it. We meant to do it. And in any event we had no other choice ..."
[6] Hansard col. 931.

The former [1] Home Secretary, Lord Brooke of Cumnor, observed that there had been much reference in the press to a "pledge", conveying the idea "that somebody pledge the United Kingdom Government's word that free entry into Britain for Asians in Kenya would be guaranteed for all time". Lord Brooke continued:

> "I can find no such pledge given to Parliament. Nor do I believe that any such pledge was given elsewhere. Naturally, I do now know what may have happened later, but in the time of the Conservative Government I do not believe any such pledge or guarantee of permanent right of entry was given, any more than there had been a pledge given to Commonwealth countries or Colonies before 1962 that free entry into Britain would be guaranteed for ever. What was done was to pass legislation to protect Asians against possible Statelessness, and it was that legislation, read in conjunction with the 1962 Act, which conferred on them as a consequence free entry into Britain, but with no guarantee that free entry would continue for all time." [2]

38. It appears from the debate of the 1968 Bill - and from declarations made three years later during the debate of the Immigration Bill 1971 [3] - that those who spoke of a "pledge" considered that there was an implied, if not express, undertaking on the part of the United Kingdom to admit to Britain any East African Asian who was a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport [4]. The assumption of an implied "pledge" seems to have been based on the following elements:

- the provisions of the Uganda Independence Act 1962 and the Kenya Independence Act 1963 which allowed those Asians who did not obtain local citizenship to retain their status as citizens of the United Kingdom and Colonies [5];

- the issue, following the independence of Uganda and Kenya, of United Kingdom passports to East African Asians who had so retained their citizenship of the United Kingdom and Colonies [6];

- the provision of the 1962 Act [7] which exempted from immigration control any person "who holds a United Kingdom passport and is a citizen of the United Kingdom and Colonies".

Furthermore, the White Paper "Immigration from the Commonwealth", which was published by the British Government in 1965, had not indicated that any change was envisaged with regard to the entry into Britain of citizens of the United Kingdom

---

[1] 1962-1964.
[2] Hansard col. 942-943.
[3] See below, paragraph 45.
[4] In the sense of section 1, subsection 3, of the 1962 Act - cf. paragraph 17, above.
[5] Cf. paragraph 22, above.
[6] Cf. paragraph 23, above.
[7] Section 2, subsection 1 - cf. paragraphs 17 and 23, above.

and Colonies who were then resident in East Africa [1]. As stated by Sir Dingle Foot in the debate in the House of Commons on 27 February 1968, it would in 1965 still have been open to the Asians concerned in Kenya "to opt for Kenyan citizenship as a matter of right. But they were given no warning whatsoever" [2].

39. Referring to the policy adopted by the United Kingdom in 1962 and 1963 with regard to citizens of the United Kingdom and Colonies in East Africa, the Under-Secretary of State for the Home Department, Mr. Ennals, observed in the House of Commons on 27 February 1968 [3]:

> "It is disingenuous to suggest that those who were involved in the negotiations for Kenya independence did not know the consequences of the decisions which were taken."

Lord Brooke of Cumnor, who had been Home Secretary from 1962 to 1964 and who in 1968 denied that his Government had guaranteed "free entry into Britain for Asians in Kenya ... for all time" [4], also considered that [5]:

> "... it was well realised by British Ministers at the time that this situation over passports was bound to emerge in Kenya. I can vouch for that personally. It was not, as I have said, an act of purposeful policy: it was a situation which we had to accept in the face of Kenya's absolute refusal to give automatic Kenya citizenship to all established Kenya residents." [6]

---

[1] Cf. paragraph 28, above.

[2] Hansard col. 1268. The speaker went on to say: "The position was accepted by the Government in 1965. Indeed, there were various communications between Her Majesty's High Commissioner in Nairobi, Mr. Malcolm MacDonald, and leaders of the Asian Community. The position of both Europeans and Asians was discussed, particularly in relation to the British Nationality Act. It was made clear to the Asians that their position remained unchanged. That is the position on which they have relied, and have been entitled to rely, until Thursday of last week."

[3] Hansard col. 1354 - cf. paragraph 25, above.

[4] Cf. paragraph 37, above.

[5] House of Lords, Hansard of 29 February 1968, col. 942.

[6] Lord Stonham, Minister of State at the Home Office, had on 15 February 1968 stated before the House of Lords (Hansard col. 202 *et seq.*):
"Citizens of the United Kingdom and Colonies who did not acquire local citizenship on independence ... are ... eligible for passports which exempt them from control under the Commonwealth Immigrants Act 1962 ... I think it should be clearly understood that there is this statutory obligation. As 'The Times' leader of February 13 put it:
'In order to achieve a settlement the British Government of the day' - that was, in 1963 - 'in effect handed out promises for the future in the obvious hope that not many of them would have to be honoured. The British Government has changed since then, but the obligation has not.'
... if we did have legislation to remove from these people the freedom from operation of the 1962 Act, it would remove from them their right to United Kingdom citizenship and make them Stateless; and under the United Nations Convention of 1961 the United Kingdom Government are pledged to avoid any increase in future Statelessness ... surely an obligation in a Statute is an undertaking, and in fact an undertaking of a kind which cannot be altered or withdrawn without Parliament's agreeing a new Statute. ... legislation of the kind which has been suggested might well mean that these people would have a British passport but that the only place they could not come to on that passport would be Britain. That would be a very serious matter indeed. ... these people are British citizens and have the right to come here ..."

40. The further question, whether the Bill constituted "a form of discrimination in favour of white people" [1] was also raised on the first day of the debate in the House of Commons. However, both the Home Secretary [2] and the Under-Secretary of State for the Home Department [3] expressed the view that the ancestry clause in the Bill [4] was not racial but geographical. Mr. Callaghan said [5]:

> "It has been suggested that this is a racial conception. That is not so. It is true that Clause 1 does not apply to Australian, or New Zealand or Canadian citizens because all of them are already subject to control. The test that is adopted is geographical, not racial. Those who, or whose fathers or fathers' fathers, were born, naturalised, adopted, or registered in the United Kingdom, will be exempted whatever their race."

Mr. Callaghan also hoped that it would be acknowledged that:

> "it is possible that the origin of this Bill lies neither in panic nor in prejudice but in a considered judgment of the best way to achieve the idea of a multi-racial society." [6]

41. During the subsequent debate of the Bill in the House of Lords on 29 February 1968, the Lord Archbishop of Canterbury considered that the Bill "virtually distinguishes United Kingdom citizens on the score of race". He continued [7]:

> "I use the word 'virtually' because technically arguments can be adduced, and have been adduced this afternoon in the opposite sense ... Clause 1, on any showing, creates two levels of United Kingdom citizens. Strictly, the level is not that of race; strictly the grandfather clause means not race, but geography. But the actual effect on the bulk of the human situation with which the Bill is dealing is that the one level is the level of the European and the other level is the level of the Asian citizens. And that is so because the object of the exercise, and the apology for the exercise, is that we must keep an influx of Asian citizens out of the country. It is inevitable, but virtually the clause is thus read in its practical effect and implication and, indeed, underlying purpose."

During the same debate an amendment was moved by Lord Gifford [8] which would have had the effect of confining the immigration control provided for by the new text of section 1 to those citizens of the United Kingdom and Colonies who had dual

---

[1] Mr. Winnick, Hansard of 27 February 1968, col. 1358. Sir Dingle Foot (col. 1271) said that the Bill "may not be racialist in intention, but it will certainly be racialist in effect".
[2] *Ibid.*, col. 1251.
[3] *Ibid.*, col. 1359.
[4] See paragraph 32, above.
[5] Hansard of 27 February 1968, col. 1251. Cf. also paragraph 35, above.
[6] *Ibid.*, col. 1242.
[7] Hansard col. 951.
[8] Hansard col. 1112-1113.

citizenship. This Amendment was withdrawn after Lord Stonham, Minister of State at the Home Office, had pointed out that, "if the Amendment were approved most of the 200,000 Asians in East Africa would continue to be free to come here at will" [1].

42. As stated in paragraph 6 above, the decisions of the United Kingdom immigration authorities, which form the subject of the present applications, were all taken under the 1962 Act as amended by the 1968 Act and the Immigration Appeals Act 1969.

(gg) The Immigration Act 1971

43. The Immigration Act 1971, which is now in force, repealed most of the 1962 Act and the whole of the 1968 Act and the Immigration Appeals Act 1969 [2]. It replaced the Commonwealth Immigrants Acts and the alien immigration laws [3] by a single code of legislation on immigration control.

44. The Immigration Act 1971 is not directly relevant for the present applications [4]. It may therefore suffice to make the following observations:

(1) Section 2 of the Act defines certain categories of people who are described as "patrials". Such persons have under section 1 the "right of abode" in the United Kingdom.

(2) "Patrials" are persons who have a direct personal or ancestral connection with the United Kingdom. They may be either

- citizens of the United Kingdom and Colonies, or
- other Commonwealth citizens.

(3) Citizens of the United Kingdom and Colonies are "patrials" if:

- they were born, adopted, registered or naturalised in the United Kingdom, or
- have a parent or grandparent with such a connection, or
- have been accepted for permanent residence and resident in the United Kingdom for five years.

---

[1] *Ibid.*, col. 1114-1115.
[2] See section 34 (1) of the 1971 Act in conjunction with Schedule 6 to the Act.
[3] In particular the Aliens Restriction Act 1914.
[4] But it affects the situation of the United Kingdom passport holders who are citizens of the United Kingdom and Colonies, or British protected persons, and still in East Africa.

(4) Other Commonwealth citizens are "patrials" if:

- they have a parent born in the United Kingdom [1], or

- in the case of a woman, if she is or has been the wife of a "patrial".

(5) Persons who are "patrials" and therefore have the "right of abode" in the United Kingdom are free to live there and to come and go as they wish. The entry, stay and departure of all other people are subject to control under the Act.

45. During the debate in the Committee on the new Immigration Bill on 25 March 1971, the following dispute arose between the Home Secretary, Mr. Maudling, and Mr. Powell as to the significance of the decisions taken by the United Kingdom in 1962 and 1963 with regard to the status of the East African Asians [2]:

> "Mr. Maudling: Despite the cogent reasoning of my right hon. Friend ... I have no doubt that we have a special obligation to these people. My right hon. Friend argued with his usual tenacity, but I simply do not accept his account of what happened. He referred quite rightly to the Act of 1962, which is the genesis of the problem. That Act gave the right of entry to this country to United Kingdom and Colonies citizens who were born here and had a right to a United Kingdom passport. That, as my right hon. Friend said, was the point.
>
> At that time Kenya was dependent, and the people there would have had colonial passports, which would not have given them the right of entry to this country. But when Kenya became independent we deliberately provided that those who wished to do so should retain citizenship of the United Kingdom and Colonies rather than acquire the citizenship of the new independent Kenya.
>
> We obviously envisaged that when such people wanted a passport it would be a United Kingdom passport. It could not be anything else. We also clearly envisaged that if they wanted to come to this country it would be their right to do so, because there would be no other country to which they could claim the right of admission. With respect to my right hon. Friend, that was clearly envisaged. He says that we did not say so at the time. We did not say so because it was so obvious. Does my right hon. Friend wish to interrupt?

---

[1] If they only have a grandparent born there, such persons are not "patrials". However, Rule 27 of the Immigration Rules for Control on Entry of 25 January 1973 provides that: "Upon proof that one of his grandparents was born in the United Kingdom and Islands, an applicant who wishes to take or seek employment in the United Kingdom will be granted an entry clearance for that purpose. A passenger holding an entry clearance granted in accordance with this paragraph does not need a work permit and ... should be given indefinite leave to enter."

[2] Parliamentary Debates, House of Commons Official Report, Standing Committee B, Immigration Bill, Third Sitting, col. 109-110.

Mr. Powell: Yes. My right hon. Friend says that something which is of such immense importance to hundreds of thousands of people - even, potentially millions - was clearly envisaged but never stated by the Government at any stage in the passage of the legislation, or in any public document or statement whatever, either in connection with the 1962 or with the 1963 Act. If he is saying something as fantastically improbable as that, we ought to have it on record.

Mr. Maudling: It is on the record, because I have said it, and it happens to be true. In that legislation, which I imagine was supported by my right hon. Friend - although I cannot remember whether he was in the Government at the time - we deliberately gave them the right to be citizens of the United Kingdom and Colonies, from which it automatically followed that they would have a United Kingdom passport if they wanted one, and could come here. I should have though that that was such an automatic consequence of the legislation that its declaration was quite unnecessary. It would have been necessary to make a declaration had we intended at that time to deprive those people of what were the normal consequences flowing from the action that we were taking.

That is how that obligation arose. It is a serious obligation, which we should seek to carry out to the best of our ability."

(c) The practice of immigration control under the Commonwealth Immigrants Act 1968

(aa) The system of quota vouchers

46. As stated above [1], the 1968 Act re-imposed immigration control on the great majority of citizens of the United Kingdom and Colonies who were born and resident in Kenya or Uganda and of Asian origin. While the Act deprived these persons of their right of immediate entry, it was apparently not intended that they should be permanently prevented from immigrating to the United Kingdom. The purpose of the Act, as described by the Home Secretary, Mr. Callaghan, in the House of Commons on 27 February 1968 [2], was "to regulate the flow of these people to the united Kingdom - that is, to form an orderly queue".

47. Accordingly, when the 1968 Act came into force, a system was established whereby an allocation of special vouchers was made available to those citizens brought under immigration control by the Act. These vouchers were separate from, and additional to, the employment vouchers referred to in section 2 (3) (a) of the 1968 Act [3], which were not normally appropriate for United Kingdom passport holders from East Africa.

---

[1] See paragraph 32.
[2] Hansard col. 1255.
[3] See paragraphs 28 and 33, above.

The Home Secretary, when announcing the special vouchers scheme in the House of Commons on 27 February 1968, stated that [1]:

> "the allocation shall be on a special basis and not on the lines of the existing scheme for the allocation of employment vouchers for the rest of the Commonwealth. We are dealing with a very different situation in East Africa, and the existing system of ... employment vouchers ... related to the employment needs of this country, is clearly not appropriate [2].
>
> Accordingly, these vouchers will be allocated on the basis of special and flexible criteria."

The total allocation of special vouchers was 1,500 in 1968, 1969 and 1970. During the proceedings before the Commission, this figure was on 1 June 1971 raised to 3,000 per year; there was also a "once-and-for-all" allocation of a further 1,500 vouchers to be issued by the end of November 1971 [3].

48. The holders of special vouchers are included in the Instructions to Immigration Officers as one of the categories of persons which immigration officials are instructed to admit into the United Kingdom [4]. Where a special voucher is issued to the head of a family, it entitles him, his wife [5] and his children under the age of 25 [6] to enter Britain for permanent settlement. As shown by experience, an annual quota of 1,500 vouchers thus permits an intake to the United Kingdom of about 6,000 to 7,000

---

[1] Hansard col. 1255.

[2] The reason why employment vouchers were not normally appropriate was that most of the United Kingdom passport holders from East Africa were neither professionally trained nor unskilled workers; they were often engaged in commerce.

[3] See the statement made by the Home Secretary before the House of Commons on 26 May 1971, Hansard col. 380.

[4] Cf. paragraphs 5 and 27 of the Instructions of February 1970.

[5] Paragraph 34 of the Instructions states with respect to wives: "A Commonwealth citizen who satisfies the Immigration Officer that she is the wife of a Commonwealth citizen resident in the United Kingdom (including a citizen of the United Kingdom and Colonies) is entitled to admission for settlement provided she is in possession of an entry certificate granted for that purpose and is not herself the subject of a deportation order."
In respect of husbands, paragraph 41 provides: "The fact that his wife was born or is resident in the United Kingdom does not in itself give a man a claim to settlement without an employment voucher. A Commonwealth citizen whose sole claim to settlement is in right of his wife should be admitted only if he has an entry certificate endorsed 'joining wife'. The Secretary of State will authorise the issue of an entry certificate for this purpose only if he is satisfied that there are special considerations, whether of a family nature or otherwise, which render exclusion undesirable; for example, because of the degree of hardship which, in the particular circumstances of the case, would be caused if the wife had to live outside the United Kingdom in order to be with her husband."

[6] In July 1973 the Government raised from 16 to 25 years the age limit for dependent children, provided they are unmarried and unemployed.

persons a year [1]: between 1 March 1968 (the date on which the 1968 Act came into force) and 31 December 1968, 6,034 persons were admitted; in 1969, the figure was 6,219 and, in 1970, 6,839.

49. A United Kingdom passport holder in East Africa - whether citizen of the United Kingdom and Colonies or British protected person - may apply for a special voucher at the appropriate British High Commission. Vouchers are issued, in accordance with a system of priorities, to those applicants who are considered by the High Commissioner to be in the greatest immediate need of them. In determining the priorities between applications, the Commissioner will "take fully into account the personal circumstances of the applicant and his family and also their status under the law of the country from which they seek to emigrate" [2].

Thus, in 1971, applications for special vouchers by United Kingdom passport holders were assessed according to the following categories of priority:

(a) persons under notice to leave their country of residence by a given date;

(b) persons barred from employment or trading in their country of residence;

(c) persons unable to obtain employment (e.g. school-leavers who have never succeeded in obtaining jobs because of local policies in their country of residence);

(d) persons in economic hardship for other reasons (e.g. deserted wives with young children, retired persons with inadequate pensions);

(e) other persons wishing to migrate.

Within categories (a) to (c) priority was given to those suffering economic hardship.

50. When the Commonwealth Immigrants Bill was debated in the House of Commons on 28 February 1968, the Home Secretary also dealt with the question "what we would do about a man who was thrown out of work and ejected from the country". Mr. Callaghan then said: "We shall have to take him. We cannot do anything else in those circumstances" [3].

In 1970, nineteen such persons, accompanied by 34 dependants, were admitted to the United Kingdom [4].

---

[1] That is about the same level of immigration as in 1965 and 1966, i.e. before the upsurge in 1967; cf. paragraph 31, above.

[2] Mr. Callaghan in the House of Commons on 27 February 1968, Hansard col. 1256.

[3] Hansard col. 1501.

[4] Oral hearing on the merits, Vol. 2 p. 37 [not reproduced in this volume].

51. In August 1972 all Asians who were not citizens of Uganda were ordered by President Amin to leave that State by 9 November. The United Kingdom Government decided to grant entry to all United Kingdom passport holders who were expelled from Uganda and had nowhere else to go, and more than 25,000 persons were subsequently received in Britain.

In addition to the refugees expelled from Uganda, over 10,500 United Kingdom passport holders from other parts of the world were in 1972 admitted to Britain under the voucher scheme [1].

52. On 25 January 1973 Mr. Carr, Secretary of State for the Home Department, made the following statement in the House of Commons [2]:

> "The Government ... think it right at this time, when we have just swiftly and honourably accepted the Uganda Asian refugees and when there is no threat to United Kingdom passport holders elsewhere, to make it clear that while we shall continue to accept our responsbility to United Kingdom passport holders by admitting them in a controlled and orderly manner through the special voucher scheme, this is as much as it is reasonable and realistic for us to do if good community relations are to be maintained in Britain."

In a further statement before the House of Commons, Mr. Carr said on 21 February 1973 [3]:

> "I have no doubt that we had an obligation to take those citizens from Uganda when they were expelled. I said publicly, and I repeat, that I would not have remained a member of a Government that did not accept that obligation. But equally, we have a duty to this country, not least to those who came to this country, in the first place as immigrants. Having accepted that burden, as we did, I do not believe that it would be right for any British Government again to accept a similar burden to that which we accepted last summer. I do not regard it as dishonourable, as an act of Government policy, at a time when we have just accepted that burden and where none of our citizens anywhere in the world is under a similar threat to make the statement that we could not again accept a mass exodus of that kind. The vital qualification is that I would not say what I have just said without at the same time accepting absolutely an ultimate responsibility to take in our passport holders in a controlled and orderly manner under the voucher system. For this country to give that notice at a time when none of our people is under that threat is right in our interests and in theirs and is in no way dishonourable."

---

[1] The global number of United Kingdom passport holders admitted for permanent settlement was 13,604 in 1971, 36,635 in 1972 and 6,148 in the first seven months of 1973.

[2] Hansard col. 655-656.

[3] Hansard col. 589.

53. Special vouchers continued to be issued in each of the countries of East Africa other than Uganda at the same rate as before the Uganda crisis. The Government stated in February 1973 that the rate of admission "is not programmed for years in advance" but that it was intended "to maintain the numbers within the order of magnitude of recent years" [1].

54. On 6 December 1973 the Home Secretary, Mr. Carr, made a statement in the House of Commons concerning the Government's decision to increase the allocation of entry vouchers to United Kingdom passport holders in Kenya. He said [2]:

> "I come next to the question of ... United Kingdom passport holders. I made it clear to the House in my statement of 25th January this year that our acceptance of the sudden and large influx of refugees following their expulsion from Uganda had created an entirely new situation, and that a repetition of it would place unacceptable strains on our society. I said that while we confirmed our responsibility to our United Kingdom passport holders we must ensure that the future entry of these people would be in an orderly and controlled manner and on a scale of the same magnitude as in recent years. The global quota for entry vouchers for United Kingdom passport holders was fixed in May 1972 at a maximum of 3,500 per year. Since the Ugandan expulsion the rate of issue of vouchers has been substantially below that maximum and I confirm again that we intend to keep it within that maximum.
>
> We have decided however that, fully consistent with this policy, it will be possible to increase the allocation of vouchers to Kenya. We have been in close touch with the Kenyan Government about this and the consultations have involved not only our representatives on the spot but also my right hon. Friend and Foreign and Commonwealth Secretary personally. I am glad to say that the Kenyan Government have assured us that they understand Her Majesty's Government's policy for the admission of United Kingdom passport holders and will help us to operate it in an orderly way by means of the special voucher scheme. We very much welcome this understanding. We have likewise kept the Tanzanian Government continuously informed about the objectives of our policy. As a result we are satisfied that the situation there can be dealt with satisfactorily within the policies of the two Governments. We are most appreciative also of the attitude of the Tanzanian Government.
>
> ... The figure of 3,500 was fixed in May 1972 and refers to the number of vouchers which may be issued in a year to United Kingdom passport holders who are heads of families. It applies to all countries in which there are United Kingdom passport holders. It is a global total and does not apply to any one particular country.

---

[1] House of Commons, Written Answers, 22 February 1973, Hansard col. 141.
[2] Hansard col. 1475-1476.

We have always refused to publish any specific allocation within the total to any particular country because we wanted to maintain - and I think rightly - the flexibility to use up to that maximum but not beyond it in order to meet the needs of our passport holders as they varied from one country to another. We therefore have this flexibility within the total and we shall not exceed it, but within that total, and without exceeding it, although the amount has not been fixed, we have agreed fairly regular amounts with different governments and we keep in touch with them. We are able while keeping within the total of 3,500 vouchers to increase for Kenya what has been its regular amount in recent years."

(bb) Detention and removal of immigrants

55. Where United Kingdom passport holders seek to immigrate into Britain without being in possession of vouchers, permission to enter is refused and, in accordance with paragraph 3 of the First Schedule to the 1962 Act, directions are given to the transport organisations which brought these persons to the United Kingdom to remove them [1].

Paragraph 3 reads as follows:

"Removal of immigrants on refusal of admission

3. - (1) Where an immigrant is refused admission into the United Kingdom an immigration officer may ... give directions -

(a) to the master of the ship or commander of the aircraft in which the immigrant arrived in the United Kingdom, requiring him to remove the immigrant from the United Kingdom in that ship or aircraft; or

(b) to the owners or agents of the said ship or aircraft, requiring them to remove the immigrant from the United Kingdom in any ship or aircraft specified in the directions, being a ship or aircraft of which they are the owners or agents; or

(c) to the said owners or agents, requiring them to make arrangements for the removal of the immigrant from the United Kingdom in any ship or aircraft bound for a country or territory specified in the directions, being either -

[1] Where a person seeking to immigrate into the United Kingdom is on his way stranded in a third country, the British authorities have, of course, no power to direct his removal. The United Kingdom, however, reached an understanding with several European States whereby United Kingdom passport holders from East Africa who are subject to United Kingdom immigration control are not admitted to their territories unless they are in possession of entry vouchers to Britain or re-entry vouchers to the country they came from in East Africa.

(i) a country of which the immigrant is a citizen; or
(ii) a country or territory in which he has obtained a passport or other document of identity; or
(iii) a country or territory to which there is reason to believe that the immigrant will be admitted, and for securing him a passage to that country or territory.

..."

56. Under paragraph 4 of the above Schedule, an immigrant who is refused admission into the United Kingdom "may be detained under the authority of an immigration officer or constable ... pending the giving of directions under paragraph 3 ... and pending removal in pursuance of such directions".

57. The practice of refusal, detention and removal has, as regards United Kingdom passport holders, not always been effective. Where, for instance, the carrier had brought the person concerned only on the short last leg of his journey, the immigrant would be sent back across the Channel but, not being granted permission to stay there, he would usually re-appear at a United Kingdom port. In other cases the immigrant would be returned to Kenya or Uganda but, having been refused re-admission there, he would equally present himself for entry again at a United Kingdom port.

58. Where, in such cases, the British authorities decided that the United Kingdom passport holder concerned should not be removed a second (or third) time, this person was eventually admitted to the United Kingdom, normally for an initial period of three months which was subsequently extended for further periods.

2. The facts of the individual cases

(a) Group I

Application No. 4403/70 - Mr. S.M. PATEL

59. The applicant was born in Kenya on 24 July 1951. He is a citizen of the United Kingdom and Colonies and the holder of a United Kingdom passport. In his application form he stated that he had lost his job in Kenya. He applied to the British High Commission in Nairobi for a special voucher. He arrived in the United Kingdom on 24 January 1970, when he was refused admission and detained in Canterbury Prison. He was released from prison on 9 March 1970 and admitted to the United Kingdom for three months. He was subsequently reported to be working at the British Button Industry Co. Ltd. in London. His period of residence was extended to 9 September 1970. On 29 September he applied for his conditions to be revoked, to enable him to reside permanently in the United Kingdom. This application was refused and he was notified of his right of appeal under the Immigration Appeals Act 1969. The applicant lodged an appeal, but it was not heard as it was entered outside the time limits provided by the Rules of Procedure. An extension was granted until 9 March 1971, and

he was told that it would be open to him to apply shortly before that date for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4404/70 - Mr. S.L. VARA

60. The applicant was born in Kenya on 25 November 1951. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that he had been out of work since 1968. He applied to the British High Commission in Nairobi for a special voucher, but failed to attend the High Commission for interview in connection with his application. He arrived in the United Kingdom on 24 January 1970 and was refused admission. After being detained, at first in accommodation provided by the British Transport Commission and subsequently in Canterbury Prison, he was removed from Dover to Calais on 6 February 1970, but was refused admission at Calais and returned to Dover. He was again detained in Canterbury Prison until his release on 10 March, when he was admitted to the United Kingdom for three months. This period was subsequently extended to 10 September. On 8 September the applicant applied for a further extension. He was granted an extension until 10 March 1971 and told that shortly before that date it would be open to him to apply for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4405/70 - Mr. C.M.V. PATEL

61. The applicant was born in Kenya on 5 January 1935 and is married with four children. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that he was deprived of his livelihood in Kenya: he had no work permit and was jobless for a year. He arrived in the United Kingdom on 27 January 1970, was refused admission and detained in Canterbury Prison until his release on 11 March 1970, when he was admitted to the United Kingdom for three months. This period was subsequently extended to 11 September 1970. On 6 October 1970 the applicant called at the Home Office and sought permission to reside permanently in the United Kingdom. This was refused and he was notified of his right of appeal under the Immigration Appeals Act 1969 (which he has not exercised). He was however granted a further extension until 11 March 1971 and, subsequently, until 11 September and he was informed that, shortly before the date of expiry, it would be open to him to apply for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4406/70 - Mr. K.C. FATANIA

62. The applicant was born in Kenya on 4 January 1950. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that he had been out of work since 1967. He applied for a special voucher on 4 February 1969, stating that he was a single man who wished to

join a cousin in the United Kingdom. He arrived in the United Kingdom on 24 January 1970, was refused admission and detained in Canterbury Prison until 9 March, when he was released and admitted to the United Kingdom for three months. He was subsequently reported to be working for a firm in Slough. His period of stay was extended to 9 September 1970. On 6 October 1970 he applied for permanent residence in the United Kingdom. This application was refused and he was notified of his right of appeal under the Immigration Appeals Act 1969 (which he did not exercise). He was however granted an extension until 9 March 1971 and told that shortly before that date it would be open to him to apply for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4407/70 - Mr. N.M. PANDIT

63. The applicant was born in what was then Tanganyika (now Tanzania) on 10 October 1952 but had spent most of his life in Kenya. He is a holder of a United Kingdom passport and is accepted as a citizen of the United Kingdom and Colonies. In his application form he stated that, not being a citizen of Kenya, he was unable to continue his studies or to get a job. He arrived in the United Kingdom from Kenya on 24 January 1970, was refused admission and detained, first in accommodation under the supervision of the British Transport Police and from 26 January in Canterbury Prison, until 6 February when he was removed to Calais. He was refused admission into France, returned to Dover and again detained in Canterbury Prison until 10 March, when he was released and admitted to the United Kingdom for three months. His permitted stay was subsequently extended to 10 March 1971 and he was informed that it would be open to him shortly before that date to apply for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4408/70 - Mr. V.K. PATEL

64. The applicant was born in Kenya on 27 January 1952. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that, not being a citizen of Kenya, he was unable to continue his studies or to get a job. He applied to the British High Commission in Nairobi for a special voucher. He arrived in the United Kingdom on 24 January 1970, was refused admission and detained in Canterbury Prison until 6 March 1970 when he was released and admitted to the United Kingdom for three months. He was subsequently reported to be working for the Power Equipment Company in London. His period of stay was extended to 6 March 1971 and he was told that shortly before that date it would be open to him to apply for a further extension of stay. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4409/70 - Mr. H.V. SHAH

65. The applicant was born in Kenya on 18 December 1951. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that he was not permitted to work in Kenya. He did not apply to the British High Commission for a special voucher. He arrived in the United Kingdom on 24 January 1970, was refused admission and detained in Canterbury Prison until 9 March 1970, when he was released and admitted to the United Kingdom for three months. He was subsequently reported to be working for Advanced Anodising Plating in Wembley. His period of stay was extended until 9 March 1971 and he was told that shortly before that date it would be open to him to apply for a further extension of stay. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4410/70 - Mr. N.K.D.S. SHAH

66. The applicant was born in Kenya on 23 October 1949. He is a British protected person (having been born in a part of Kenya which was at that time a British protectorate) and holder of a United Kingdom passport. In his application form he stated that he had to close his shop in Nairobi on 31 December 1969 and was given three months to leave Kenya. He applied to the British High Commission in Nairobi on 2 January 1969 for a special voucher. He was then a single man and held a Kenya Resident's Pass valid for life. He had never been employed, but his father had his own business. He arrived in the United Kingdom on 27 January 1970, was refused admission and detained in Canterbury Prison until 10 March, when he was released and admitted to the United Kingdom for three months. He did not apply for any extension of his permitted stay. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4411/70 - Mr. L.A. RAWAL

67. The applicant was born in Kenya on 16 February 1948. He is a British protected person (having been born in a part of Kenya which was at that time a British protectorate) and holder of a United Kingdom passport. In his application form he stated that, not being a citizen of Kenya, he was refused a work permit. He applied to the British High Commission in Nairobi for a special voucher on 13 May 1969. He arrived in the United Kingdom on 8 February 1970, was refused admission and detained in Canterbury Prison until 13 March, when he was released and admitted to the United Kingdom for three months. This period was subsequently extended, first until 11 September 1970 and later until 13 March 1971, and it was open to the applicant to apply for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4412/70 - Mr. M.W.K. SHAH

68. The applicant was born in Kenya on 22 February 1951. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. He stated before the Commission that his father, who had to wind up his business in Kenya by the end of April 1970, could no longer support him; he himself was not permitted to work or to continue his studies. The applicant did not apply to the British High Commission in Nairobi for a special voucher. He arrived in the United Kingdom on 27 January 1970, was refused admission and detained in Canterbury Prison until 11 March, when he was released and admitted to the United Kingdom for three months. He was subsequently reported to be working for Boots in Nottingham and he is now understood to be studying at the University of Manchester. His permitted period of stay was extended until 11 March 1971 and subsequently to 11 October 1971. It was open to him to apply for further extensions of stay. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4413/70 - Mr. A SHAH

69. The applicant was born in Kenya on 29 June 1951. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. He stated before the Commission that his father had to wind up his business in Kenya by the end of April 1970 and that he himself was not permitted to work. The applicant did not apply to the British High Commission in Nairobi for a special voucher. He arrived in the United Kingdom on 24 January 1970, was refused admission and detained in Canterbury Prison until his release on 6 March 1970, when he was admitted to the United Kingdom for three months. He subsequently obtained employment in the United Kingdom and his permitted period of stay was extended until 6 March 1971. He was informed that shortly before that date it would be open to him to apply for a further extension of stay. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4414/70 - Mr. H. GURJAR

70. The applicant was born in Kenya on 26 December 1950. He is a British protected person (having been born in that part of Kenya which was at that time a British protectorate) and holder of a United Kingdom passport. In his application form he stated that he had been jobless since 1967. He arrived in the United Kingdom on 3 February 1970 and said that he had applied to the British High Commission in Nairobi for a special voucher. He was refused admission and detained in Canterbury Prison until 12 March 1970, when he was released and admitted to the United Kingdom for three months. He called at the Home Office on 10 June 1970, said that he was working as a machine operator and was granted an extension of stay until 12 September 1970. He called again on 14 September when his permitted period of stay was further extended until 12 March 1971. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4415/70 - Mr. N.G. LALJI

71. The applicant was born in Kenya on 9 July 1949. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that he was ordered to leave Kenya. He arrived in the United Kingdom on 3 February 1970 and said that he had applied to the British High Commission in Nairobi for a special voucher and had been told by the Kenya Immigration Department that he should make arrangements to leave Kenya. He was refused admission to the United Kingdom and detained in Canterbury Prison until 12 March when he was released and admitted to the United Kingdom for three months. On 14 May 1970 he was reported to be in employment in the United Kingdom and his permitted period of stay was extended until 12 September 1970. On 26 August he applied for permission to stay permanently in the United Kingdom. He was informed on 24 November 1970 that his application for permanent residence had been refused, but that he had been granted a further extension of stay until 12 March 1971, and that it would be open to him to apply shortly before that date for another extension. He has exercised his right of appeal against the refusal of permanent residence, and the appeal was due to be heard on 1 April. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Applications Nos. 4416/70, 4417/70 and 4418/70 -
MM. R. SHAH, J. SHAH and A. SHAH

72. Mr. R. Shah was born in Kenya on 17 May 1943. Mr. J. Shah was born in Kenya on 1 May 1954. Mr. A. Shah was born in Kenya on 3 May 1951. All three are citizens of the United Kingdom and Colonies and holders of United Kingdom passports. The first applicant stated in his application form that he had to close his business in Kenya in March 1969; he was not allowed to work and lived on his savings for almost a year. The applicants are brothers who arrived in the United Kingdom on 14 February 1970 together with Mr. R. Shah's wife. They said that they did not wish to return to Kenya but had not decided where to settle permanently. They were all refused admission and detained together, as a family, in the detention suite at London Airport until 23 February, when they were released and admitted to the United Kingdom for three months with a condition prohibiting them from taking employment. This condition was imposed because they claimed to be visitors and it was open to them at any time to ask for the condition to be removed. None of them did so, nor did Mr. R. Shah and Mr. J. Shah apply for extensions of stay. Mr. A. Shah called at the Home Office on 4 August 1970 and was granted an extension of stay until 4 February 1971. This was further extended until 4 September 1971. In June 1971 the applicants were given permission to reside permanently in the United Kingndom.

Application No. 4419/70 - Mr. J.G.S. THAKAR

73. The applicant was born in Kenya on 15 November 1950. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. He lived in Kenya for 10 years and subsequently moved to Uganda. In his application form he

stated that he was not allowed to work, or to continue to reside, in Uganda. He arrived in the United Kingdom on 8 February 1970 and said that an application for a special voucher had been made to the British High Commission in Kampala on his behalf, but that he had been told that he would have to wait until March 1970 for the application to be dealt with and had therefore decided to come to the United Kingdom without a voucher (the British High Commission have no trace of the application). He was refused admission to the United Kingdom and detained in Ashford Remand Centre until 19 March, when he was released and admitted to the United Kingdom for three months. It was subsequently reported that he had obtained work with Rank Bush Murphy Ltd on 28 April 1970. His permitted period of stay in the United Kingdom was extended until 19 March 1971 and he was informed that it would be open to him to apply shortly before that date for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4422/70 - Mr. D.N.B. SINGH

74. The applicant was born in Kenya on 25 June 1949. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that he supported his parents but that, not being a citizen of Kenya, he was barred from employment and out of work for about a year. He applied to the British High Commission in Nairobi for a special voucher on 3 February 1969. He arrived in the United Kingdom on 27 January 1970 and was refused admission and detained in Canterbury Prison until 11 March, when he was released and admitted to the United Kingdom for three months. He was employed first at MK Electronics and subsequently at Fergusons of Enfield. He applied on 14 May 1970 for an extension of stay, which was granted until 11 September 1970. He did not apply for any further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4423/70 - Mr. and Mrs. R.K. DHUNNA

75. The first applicant was born in Kenya on 13 March 1947. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. The second applicant was born in Kenya on 4 December 1947. She is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport who, having entered the United Kingdom before the Commonwealth Immigrants Act 1968 came into force, has been resident in the United Kingdom free of conditions since her arrival there. The first applicant arrived in the United Kingdom on 18 January 1969 and was admitted as a visitor for six months in order to visit his brother and mother already resident in the United Kingdom. On 16 June 1969 he married the second applicant and on 1 July 1969 he requested permission to settle permanently in the United Kingdom, giving as his grounds for the request that his mother and brother needed his support. As he had not obtained a special voucher or an employment voucher before entry and did not qualify on any other grounds to settle in the United Kingdom, his request for permanent residence was refused; but in consequence of various representations made on his behalf the period of his visit was extended. Following further representations, and

information that the second applicant was expecting a child in May 1970, the first applicant's stay in the United Kingdom was further extended to 1 July 1970. Further consideration was then given to the compassionate circumstances of the case and it was decided to revoke the condition limiting his stay in the United Kingdom, so as to enable him to reside there permanently. His solicitors were informed of this decision by a letter dated 24 April 1970.

Application No. 4434/70 - Mr. M.R. PATEL

76. The applicant was born in India in 1914. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport (issued in Nairobi in 1964). He arrived in the United Kingdom at Dover on 8 February 1970, accompanied by his son, also called Mr. M.R. Patel, who was born in India in 1934 and is also a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. The applicant was refused admission and sent back, with his son, to Ostend. On 14 February 1970 he sought to enter the United Kingdom (again accompanied by his son) at London Airport. He was again refused admission and was detained, at first in the detention suite at London Airport and afterwards in Pentonville Prison until 23 February, when he was released and admitted to the United Kingdom for three months. In August 1970 the Home Office were informed that the applicant and his son had opened a grocer's shop in Leicester. They were granted extensions of stay until 31 March 1971 and were informed that any application for a further extension would be considered shortly before that date. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4443/70 - Mr. P.J. SHAH

77. The applicant was born in India on 9 November 1945. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. He arrived in the United Kingdom on 28 February 1970 stating that he was an engineering student and that he wished to enter the United Kingdom in order to continue his studies. He admitted that he had made no arrangements to follow a course of studies in the United Kingdom and he produced no evidence to show that his maintenance whilst residing in the United Kingdom was secured. He was refused admission and detained in the detention suite at London Airport until 3 March, when he was released and admitted to the United Kingdom for three months. This period was subsequently extended for a further three months, and on 1 October 1970 a further extension was granted until 3 April 1971. On 25 October 1970 the Home Office were informed that he was a full-time student at Manchester University but would like to be able to take employment during the vacations. On 7 December 1970 the condition prohibiting the taking of employment which had been imposed on the applicant's admission in March was revoked, but he was requested to supply evidence of his status and means of maintenance when he next applied for a variation of his conditions. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Applications Nos. 4476/70 and 4477/70 -
Miss C. BAROT and Mr. B.M. BAROT

78. Miss Barot and her cousin Mr. Barot are both British protected persons (having been born in a part of Kenya which was at that time a British protectorate) and holders of United Kingdom passports. Miss Barot was born in Kenya on 16 September 1951 and Mr. Barot was born in Kenya on 2 June 1950. The applicants stated before the Commission that, not being citizens of Kenya, they were unable to get a job. Miss Barot applied to the British High Commission in Nairobi for a special voucher on 6 December 1969. Her cousin applied on 18 August 1969. They arrived in the United Kingdom at London Airport on 20 February 1970, were refused admission and detained in the detention suite at the airport until later the same day when they were released and admitted to the United Kingdom for three months. In September 1970 they applied for permanent residence in the United Kingdom. Their application was refused on 10 December and they have exercised their rights of appeal. The appeals were not heard but the applicants were granted further extensions of stay until 20 June 1971 and informed that shortly before that date it would be open to them to apply for further extensions. In June 1971 the applicants were given permission to reside permanently in the United Kingdom.

Application No. 4478/70 - Mr. P.G. CHANDARANA

79. The applicant was born in India on 16 June 1943. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that he was ordered to leave Uganda before 1 May 1970. He applied to the British High Commission in Kampala on 24 November 1969 for a special voucher. The applicant's wife, who was exempt from control under the Commonwealth Immigrants Acts, left Uganda for the United Kingdom on 6 March 1970 and has since been resident in the United Kingdom. Mr. Chandarana subsequently left Uganda and tried to enter the United Kingdom indirectly, travelling overland through Europe. In June he became stranded in Belgrade, where he was in due course issued with an entry certificate admitting him to the United Kingdom for a period of three months. He applied for an extension of this period and an extension was granted until 29 April 1971. He was informed that shortly before that date it would be open to him to apply for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4486/70 - Mr. C.P. PATEL

80. The applicant was born in India on 5 July 1922. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. He stated before the Commission that he had to close his grocery in Uganda on 1 January 1970. He applied to the British High Commission in Kampala for a special voucher on 11 July 1969. His wife and six children, who were exempt from United Kingdom immigration control, arrived in the United Kingdom, where they have since resided, in February 1970. The applicant arrived in the United Kingdom on 4 June 1970, was refused admission and

detained until the following day when he was removed to Dieppe. On 11 June he again sought to enter the United Kingdom, was again refused admission and was detained in Canterbury Prison until 14 June when he was sent back by air to Uganda. The Uganda authorities refused to re-admit him and he was returned to the United Kingdom, arriving at London Airport on 16 June. He was again refused admission and detained in Pentonville Prison until 26 June, when he was released and admitted to the United Kingdom for three months. On 16 September 1970 he applied for an extension of stay, stating that he was working for the Birmingham and Midland Omnibus Company as a bus conductor. An extension of stay was granted until 26 March 1971 and he was told that shortly before that date it would be open to him to apply for a further extension. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

(b) Group II

Application No. 4501/70 - Mr. H.G. PATEL

81. The applicant was born in India in 1935. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. He applied to the British High Commission in Kampala for a special voucher in March 1969. His application was considered but it was not found possible to issue him with a special voucher at that time and he was accordingly placed on the waiting list for the issue of vouchers.

At the time of his application to the Commission the applicant was still resident in Uganda. He stated in his application form that his wife, who was exempt from control under the 1962 and 1968 Acts, had arrived in the United Kingdom with their four children in March 1970. He also had a brother resident in the United Kingdom.

The applicant sought to enter the United Kingdom at Newhaven on 4 June 1970 where he was examined by an immigration officer in accordance with paragraph 1 (1) of Schedule 1 to the 1962 Act. The applicant told the immigration officer that he was coming to join his wife and four children who were already resident in the United Kingdom. As he was not in possession of an employment voucher or special voucher, the immigration officer refused him entry into the United Kingdom under section 2 of the 1962 Act. The reasons for refusal were explained to him and he was informed that he could communicate with anyone he wished. The applicant was detained in police cells at Newhaven until 1800 hours on 5 June when he was sent back to Dieppe.

The applicant subsequently sought to enter the United Kingdom at Folkestone on 7 June 1970 where he was again examined and refused admission for the same reasons. He was detained in Canterbury Prison under paragraph 4 (1) of the First Schedule to the 1962 Act until 14 June, when he was sent back by air to Entebbe (Uganda), but the Uganda authorities refused to re-admit him. He was therefore returned to the United Kingdom, arriving at London Airport on 16 June where he was again examined by an immigration officer in accordance with paragraph 1 (1) of Schedule 1 to the 1962 Act. The applicant made it clear that he was seeking entry for

the purpose of settling permanently in the United Kingdom, but as he was not in possession of an employment voucher or special voucher, he was refused admission to the United Kingdom under section 2 of the 1962 Act. Pending consideration of his case the applicant was detained in Pentonville Prison under the powers contained in paragraph 4 of Schedule 1 to the 1962 Act. When persons are detained pending further consideration of an application to settle permanently in the United Kingdom, they are given the same facilities as all persons detained in prison on remand. Where several such persons are detained in the same prison they are permitted to mix together and to share cells. They are allowed to receive visits by representatives of the Joint Council for the Welfare of Immigrants. The applicant was so detained and was eligible for such privileges.

On 26 June 1970, the applicant was admitted to the United Kingdom for a period of three months. On 16 November 1970, the Joint Council for the Welfare of Immigrants applied to the Home Office on behalf of the applicant for the revocation of the conditions attached to his stay in this country. There was no basis on which the Home Office could agree to such a request but an extension of his permitted stay was granted until 30 September 1971. The applicant had a right of appeal against the refusal to revoke his conditions but did not exercise it. Towards the end of his above period of stay, it was open to him to apply for a further extension of his stay. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4526/70 - Mr. L.D. TANK

82. The applicant is a British protected person who was born in 1932 in the territories now comprised in Tanzania; he holds a United Kingdom passport. In his application form he stated that, having been out of work since 1968, he applied to the British High Commission in Kampala for a special voucher in January 1970 and was asked to attend for interview on 31 July. It was not possible to issue him with a special voucher at that time and he was therefore placed on the waiting list for the issue of vouchers.

The applicant decided to travel to the United Kingdom before the date of his interview and without the necessary documents. En route to the United Kingdom, he was refused entry into Austria and became stranded in Belgrade. The applicant was issued with an entry certificate by the British Embassy in Belgrade on 26 June 1970 to enable him to visit the United Kingdom. He was admitted to the United Kingdom on arrival at Dover on 29 June for a period of three months.

The applicant called at the Home Office on 26 October 1970 and an extension of his permitted stay in the United Kingdom was granted until 29 March 1971. He was invited to apply for a further extension. On 8 February 1971, the British Deputy High Commission in Bombay referred to the Home Office an application for entry certificates to enable the applicant's wife and five daughters to come to the United Kingdom from India. The issue of entry certificates was authorised by the Home Office on 18 March 1971 and the applicant was informed of this decision. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4527/70 - Mr. S.H. PANCHOLI

83. The applicant was born in Uganda in 1951. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport. In his application form he stated that, owing to the "Africanisation" policy, he could not get admission to higher education or get a job, and that he applied to the British High Commission in Kampala for a special voucher on 7 April 1970 and was informed that his case would be reviewed in five weeks' time. It was not possible to issue him with a special voucher at that time and he was therefore placed on the waiting list for the issue of vouchers.

He decided to travel to the United Kingdom without the necessary documents. En route he was refused entry into Austria and became stranded in Belgrade. On 26 June 1970 the applicant was issued with an entry certificate by the British Embassy in Belgrade to enable him to visit the United Kingdom and on 29 June he was admitted to the United Kingdom at Dover for a period of three months.

On 9 November 1970, the applicant applied to the Home Office for an extension of his permitted stay in the United Kingdom and it was decided to grant an extension until 29 September 1971. Towards the end of this period it was open to him to apply for a further extension of his permitted stay. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4528/70 - Mr. N.D. PANCHOLI

84. The applicant was born in Uganda in 1950. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport.

In his application form he stated that his father resided in Uganda and his brother and uncle resided in the United Kingdom. Not being a citizen of Uganda, he was unable to find a place at school or a job. His father applied to the British High Commission in Kampala for a special voucher and in an interview there on 25 April 1969 was informed that his application would be reviewed in three months' time. It was not possible to issue his father with a special voucher at that time and he was therefore placed on the waiting list for the issue of vouchers.

The applicant decided to travel to the United Kingdom without the necessary documents. En route he was refused entry into Austria and he became stranded in Belgrade. On 26 June 1970 the applicant was issued with an entry certificate by the British Embassy in Belgrade to enable him to visit the United Kingdom. On 29 June he was admitted to the United Kingdom at Dover for a period of three months.

The Joint Council for the Welfare of Immigrants applied to the Home Office on 22 December 1970 on behalf of the applicant for an extension of his permitted stay in the United Kingdom. It was decided to grant an extension until 29 August 1971. Towards the end of this period it was open to the applicant to apply for a further

extension of his permitted stay. In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4529/70 - Mr. B. MAGANLAL

85. The applicant was born in India in 1933. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport.

In his application form he stated that, not being a citizen of Uganda, he was unable to continue trading or to get a job. He applied to the British High Commission in Kampala for a special voucher, and in an interview there on 8 December 1969 was informed that his application would be reviewed in four months' time. It was not possible to issue him with a special voucher at that time and he was therefore placed on the waiting list for the issue of vouchers. The applicant's wife and two children were resident in India with his widowed mother and younger brother.

The applicant decided to travel to the United Kingdom without the necessary documents. En route he was refused entry into Austria and Holland and the applicant became stranded in Belgrade. On 26 June 1970 he was issued with an entry certificate by the British Embassy in Belgrade to enable him to visit the United Kingdom and on 29 June he was admitted to the United Kingdom at Dover for a period of three months.

The applicant applied to the Home Office for the revocation of his conditions on 26 September 1970. It was decided that there was no basis for the Home Office to agree to this request which was, accordingly, refused, but an extension of the applicant's permitted stay in the United Kingdom until 29 September 1971 was granted. The applicant had a right of appeal against the refusal to revoke his conditions but he did not exercise this right. He was at liberty to apply for a further extension of his permitted stay at the end of the above period.

The applicant also wrote to the Home Office for advice on the admission of his family to the United Kingdom. It was decided that Mrs. Maganlal and her children might be issued with entry certificates on application, and the applicant was advised that his family should make applications for entry certificates to the British High Commission in Kampala.

In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

Application No. 4530/70 - Mr. D.S. PATEL

86. The applicant was born in Uganda in 1941. He is a citizen of the United Kingdom and Colonies and holder of a United Kingdom passport.

In his application form he stated that, not being a citizen of Uganda, he was out of work from January 1970. He had applied to the British High Commission in

Kampala for a special voucher on 29 October 1969 and been told that his application would be reviewed in a month's time It was not possible to issue him with a special voucher at that time and he was therefore placed on the waiting list for the issue of vouchers.

The applicant decided to travel to the United Kingdom without the necessary documents, leaving his wife and son in Uganda. After being refused entry into Holland he became stranded in Belgrade. On 26 June 1970 the applicant was issued with an entry certificate by the British Embassy in Belgrade to enable him to visit the United Kingdom and on 29 June he was admitted to the United Kingdom at Dover for a period of three months.

On 12 September 1970, the applicant applied to the Home Office for an extension of his permitted stay in this country. It was decided to grant an extension until 29 March 1971. He was invited to apply for a further extension of his permitted stay.

On 26 October 1970, the applicant also wrote to the Home Office for advice on the admission of his wife and son to the United Kingdom. It was decided that Mrs. Patel and her son might be issued with entry certificates on application and the applicant was advised that his family should make application for entry certificates to the British High Commission in Kampala.

In June 1971 the applicant was given permission to reside permanently in the United Kingdom.

.....

PART IV

OPINION OF THE COMMISSION

1. Whether or not the United Kingdom's refusal to admit the applicants to Britain, or to allow them to stay there permanently, violated their rights under Article 3 of the Convention [1]

(a) Introduction

179. Following the Commission's decisions on the admissibility of these cases, the first point now at issue is the question whether the United Kingdom authorities violated the applicants' rights under Article 3 - either alone or in conjunction with Article 14 -

[1] See also Part V - individual opinions of MM. Fawcett and Welter [not reproduced in this volume].

of the Convention in that, at the time when their applications were introduced to the Commission, they refused them admission to Britain or permission to remain there permanently [1].

180. Having considered the merits of the applications, the Commission now finds that only Article 3, and only in so far as it prohibits "degrading treatment", is relevant in this connection and it therefore proposes to examine whether the above actions of the United Kingdom authorities constituted such treatment.

In examining the different elements of this issue, the Commission will *inter alia* discuss the question whether the immigration legislation applied in the applicants' cases discriminated against them on the ground of their race or colour. The Commission does not find that Article 14, considered in conjunction with Article 3, adds anything in this context. It is true that Article 14 ensures the enjoyment of the rights and freedoms set forth in the Convention without discrimination on the ground of race or colour. However, as discrimination will in the present cases be considered under Article 3, as one of the elements which might constitute "degrading treatment", the Commission does not find it necessary to examine it again under Article 14 in connection with Article 3 [2].

181. In discussing the point at issue under Article 3, the Commission further proposes to distinguish between two groups of cases:

- the 25 applicants who are citizens of the United Kingdom and Colonies, and

- the 6 applicants who are British protected persons.

(b) The 25 cases of citizens of the United Kingdom and Colonies (Applications Nos. 4403/70-4409/70, 4412/70, 4413/70, 4415/70-4419/70, 4422/70, 4423/70, 4434/70, 4443/70, 4478/70, 4486/70, 4501/70 and 4527/70-4530/70)

182. Article 3 of the Convention provides *inter alia* that no one shall be subjected to "degrading treatment".

The 25 applicants who are citizens of the United Kingdom and Colonies submit that the British authorities, by refusing to admit them to the United Kingdom or to allow them to stay there permanently, reduced them to the status of second-class citizens. This degradation, which was based on their colour or race, amounted to "degrading treatment" in the sense of Article 3.

183. The respondent Government reply that the refusal of entry, or the grant of a limited right of residence, cannot be regarded as violating Article 3, particularly as no right to enter one's own country is guaranteed by the Convention or the First Protocol.

---

[1] Cf. paragraph 4, above.

[2] The Commission also refers in this connection to the considerations set out in paragraph 226, below.

Furthermore, the legislation applied in the present cases did not discriminate against the applicants on the ground of their colour or race and, in any case, discrimination cannot by itself constitute "degrading treatment".

(aa) Preliminary observations concerning the right of entry

184. In its decision of 10 October 1970 on the admissibility of the applications in Group I [1], the Commission, when dealing with the applicants' above complaint, observed that "no right to enter and reside in a particular country is as such guaranteed by the Convention"; further, that Article 3 para. 2 of the Fourth Protocol to the Convention, which has not been ratified by the United Kingdom, provides that "no one shall be deprived of the right to enter the territory of the State of which he is a national"; and that the aim of the Fourth Protocol, as stated in its preamble, is to ensure the collective enforcement of certain rights and freedoms "other than those already included in Section I of the Convention". The Commission concluded that "no right for a person to enter, in particular, the territory of the State of which he is a national is as such guaranteed by the Convention or by the First Protocol".

185. In this connection, the Commission did not expressly discuss the general question whether the refusal of a right which is not itself protected by the Convention could nevertheless in certain circumstances violate another right already included in this treaty. However, by admitting the present applications both under Article 3 and under other provisions of the Convention, the Commission impliedly accepted that the finding of such a violation was not excluded.

186. The Commission now confirms this view. It refers in this connection to its case-law concerning the right of asylum and the right of an alien not to be expelled. Although neither of these rights is guaranteed by the Convention [2], the Commission has nevertheless found that the Contracting Parties agreed to restrict the free exercise of their powers under general international law, including the power to control the entry and exit of aliens, to the extent and within the limits of the obligations which they assumed under this treaty [3]. In certain exceptional circumstances, the deportation of a person may thus be contrary to the Convention and, in particular, constitute "inhuman treatment" within the meaning of Article 3 thereof [4].

187. The Commission finds that the above considerations concerning the position of aliens apply, *mutatis mutandis*, to the present applications brought by citizens. It concludes that, although the right to enter one's country is not protected by the Convention, the refusal of this right may, in certain special circumstances, nevertheless violate quite independently another right already covered by this treaty. It follows that in the present cases, the Commission is not being called upon to consider the rights of

---

[1] Collection 36 p. 92, Yearbook 13 p. 928.
[2] Cf., for example, Nos. 4802/71 and 5564/72, Collection 42 pp. 35, 39 and 114, 121 respectively.
[3] No. 4314/69, Collection 32 pp. 96, 97.
[4] No. 1802/62, Yearbook 6 pp. 462, 480.

entry or residence as such, but that it is being invited to examine the different question whether the decisions complained of amount to "degrading treatment" in the sense of Article 3.

(bb) The meaning of the term "degrading treatment" in Article 3

188. In its interpretation of the term "degrading treatment", the Commission will proceed in accordance with the relevant rules of customary law as stated in Articles 31 to 33 of the Vienna Convention on the Law of Treaties. It refers in this connection to the general observations made in paragraph 44 of its Report of 1 June 1973 in No. 4451/70, Golder v. United Kingdom, Eur. Court H.R., Series B no. 16, pp. 33-34.

Consequently, the Commission will first examine the ordinary meaning of the term "degrading treatment" in its proper context, combined with the object and purpose of the European Convention on Human Rights [1]. It will next take account of the preparatory work, as supplementary means of interpretation [2], and finally consider the relation of its own jurisprudence to the interpretation reached.

189. As a general definition of the term "degrading treatment", the applicants submit that the treatment of a person is degrading "if it lowers him in rank, position, reputation or character, whether in his own eyes or in the eyes of other people" [3].

The Commission finds this broad interpretation of the ordinary meaning useful when defining the term "degrading treatment" in Article 3 of the Convention. In view of the particular context in which the term is used in Article 3, the Commission considers, however, that the above interpretation must be narrowed.

Article 3 states that no one shall be subjected to "torture or to inhuman or degrading treatment or punishment". The term "degrading treatment" in this context indicates that the general purpose of the provision is to prevent interferences with the dignity of man of a particularly serious nature. It follows that an action which lowers a person in rank, position, reputation or character can only be regarded as "degrading treatment" in the sense of Article 3 where it reaches a certain level of severity.

190. The Government suggest a further limitation: they submit that the term "degrading treatment" must be interpreted as referring to physical acts only.

191. The Commission considers that such interpretation of "degrading treatment" would be too restrictive. Even in the case of torture and inhuman treatment, such a physical element is not essential.

---

[1] Cf. Article 31 of the Vienna Convention.
[2] Cf. Article 32 of the Vienna Convention.
[3] Memorial on the merits, paragraph 15 [not reproduced in this volume].

The Government themselves quote the passage in the Commission's Report in the First Greek case [1] dealing with Article 3:

> "The notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, *mental or physical* [2], which in the particular situation is unjustifiable" ... while torture "is generally an aggravated form of inhuman treatment."

The Government also fail to appreciate that part of the Report in the First Greek Case dealing with "non-physical torture or ill-treatment". The Report states [3] that "the notion of non-physical torture is here used to cover the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assaults" and goes on to refer to cases involving different forms of mental cruelty.

If torture does not necessarily require a "physical act or condition", then *a fortiori* this element cannot be a prerequisite of degrading treatment.

192. As regards, further, the general question whether Article 3 of the Convention should be interpreted restrictively, the Commission points out that a restrictive interpretation of the individual rights and freedoms guaranteed by the European Convention on Human Rights would be contrary to the object and purpose of this treaty. The Commission here confirms the view which it has stated in the Golder Case [4] when relying on the judgments of the European Court of Human Rights in the cases of Wemhoff (27 June 1968, Series A no. 7) and Delcourt (17 January 1970, Series A no. 11) and in the Belgian Linguistic Case (23 July 1968, Series A no. 6). It also refers to the Advisory Opinion of the International Court of Justice on Reservations to the Convention on Genocide which, like the European Convention on Human Rights, has a humanitarian character. In that Opinion the Court stated [5]:

> "The Convention was manifestly adopted for a purely humanitarian and civilising purpose ... its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d'être of the Convention ... The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions."

---

[1] Report of 5 November 1969, Yearbook 12 p. 186.
[2] Emphasis added.
[3] *Loc. cit.*, p. 461.
[4] Report of 1 June 1973, paragraph 44, *loc. cit.*
[5] I.C.J. Reports 1951, pp. 15, 23.

193. The Commission further recalls that the European Convention on Human Rights should be interpreted objectively and not by reference to what may have been the understanding of one Party at the time of its ratification [1].

194. The Commission has also had regard to the preparatory work of the Convention which, in fact, shows that there was no analysis or discussion of the particular notion of "degrading treatment" in Article 3.

195. The Commission finally recalls its own statement in the First Greek Case [2] that treatment of an individual may be said to be "degrading" in the sense of Article 3 "if it grossly humiliates him before others or drives him to act against his will or conscience".

This definition is similar to the interpretation reached in paragraph 189 above; in particular, the word "grossly" indicates that Article 3 is only concerned with "degrading treatment" which reaches a certain level of severity.

(cc) The elements to be considered in the present cases

196. In its decision on the admissibility of the applications in Group I [3], the Commission has held that "discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention".

The Commission now confirms this view and further observes that it is not faced with the general question whether racial discrimination in immigration control constitutes as such degrading treatment. The question is rather whether the legislation applied in the applicants' cases, i.e. the Commonwealth Immigrants Act 1962 as amended by the Commonwealth Immigrants Act 1968 and the Immigration Appeals Act 1969, discriminated on the ground of race or colour and, if that be the case, whether its application in the following special circumstances of the present cases constituted "degrading treatment" in the sense of Article 3 of the Convention:

- the "pledge" of free entry, which is said to have been given previously to the citizens of the United Kingdom and Colonies in East Africa who were affected by the Act;

- the fact that the persons concerned were not aliens, but were and remained citizens of the United Kingdom and Colonies, and that as such, although they had the same duties as other citizens, under the 1968 Act they no longer had the same right of entry;

---

[1] Cf. Golder Report, paragraph 44, *loc. cit.*, with a quotation, in footnote 1, from No. 788/60, Austria v. Italy, Dec. 11.1.61, Yearbook 4 pp. 116,140.

[2] *Loc. cit.*

[3] Collection 36, pp. 92, 117, Yearbook 13 pp. 928, 994.

- the increasingly difficult situation with which these persons were faced in East Africa: most of them were deprived of their livelihood and rendered destitute; their continued residence in East Africa became illegal; and, being refused entry by the only State of which they were citizens - the United Kingdom - they had nowhere else to go.

In addition to the above elements, which are common to all the present cases, some of the applications present further features which have to be taken into account as aggravating factors. These relate to the manner in which immigration control was, under the applicable legislation and administrative instructions, exercised in the cases concerned and, in particular, to the practice of shuttlecocking (cf. Applications Nos. 4404, 4407, 4434, 4486 and 4501).

(dd) The question of racial discrimination

197. When the Commonwealth Immigrants Bill 1968 was debated in the House of Commons and the House of Lords in February 1968, opinions were divided on the question whether the Bill discriminated on racial grounds [1]. This issue has been further discussed by the parties in their oral and written submissions to the Commission.

198. The Commission notes [2] that the 1968 Act:

- imposed (in so far as Tanzania was concerned), or

- re-imposed (in the cases of Kenya and Uganda)

immigration control on the great majority of United Kingdom passport holders, who were citizens of the United Kingdom and Colonies, of Asian origin and resident in East Africa. The present applicants all belong to this group.

199. The Commission finds it established that the 1968 Act had racial motives and that it covered a racial group. When it was introduced into Parliament as a Bill, it was clear that it was directed against the Asian citizens of the United Kingdom and Colonies in East Africa and especially those in Kenya. The Commission refers in this connection to statements made in both Houses of Parliament during the debate on the Bill in February 1968 [3].

It notes in particular that a former Secretary of State for the Colonies had proposed legislation to limit the rights of Asians from Kenya to enter the United

[1] See pargraphs 34 and 40-41, above.
[2] See paragraph 32, above.
[3] See paragraphs 34 *et seq.*, above.

Kingdom [1], and that the main purpose of the Government's Bill was apparently to exclude that "most of the 200,000 Asians in East Africa would continue to be free to come here at will" [2].

200. The Government, while claiming that the Act was based on geography, nevertheless admitted that it had racial motives: the Home Secretary stated in the House of Commons on 27 February 1968 "that the origin of this Bill lies ... in a considered judgment of the best way to achieve the idea of a multi-racial society" [3]; and the Government submitted in the present proceedings that the Act was intended to promote "racial harmony".

201. The Commission concludes that the 1968 Act, by subjecting to immigration control citizens of the United Kingdom and Colonies in East Africa who were of Asian origin, discriminated against this group of people on grounds of their colour or race.

202. It further considers that the discriminatory provisions of the above Act should be seen in the context of two other laws, and of further regulations, in the field of citizenship and immigration which also gave preference to white people.

It recalls, first, that the 1968 Act was preceded by the British Nationality Act 1964. The latter Act, as stated above [4], facilitated the resumption of citizenship of the United Kingdom and Colonies by persons who had chosen to become citizens of Uganda or Kenya, provided that such persons had a "qualifying connection with the United Kingdom or Colonies or with a protectorate or protected state"; this condition would normally be fulfilled by the so-called "white settlers", but not by members of the Asian communities in East Africa.

The Commission notes, secondly, that the 1968 Act has in the meanwhile been replaced by the Immigration Act 1971. Under the latter Act, persons who belong to the category of "patrials" have a "right of abode" in the United Kingdom, irrespective of whether they are citizens of the United Kingdom and Colonies [5]; such persons would normally be white Commonwealth citizens. The Asian citizens of the United Kingdom and Colonies in East Africa, on the other hand, would not normally be "patrials" and thus have no "right of abode" in the United Kingdom, the State of which they are citizens.

---

[1] See paragraph 36, footnote [5], above.
[2] Cf. the statement made by Lord Stonham, Minister of State at the Home Office, before the House of Lords on 29 February 1968, quoted in paragraph 41, above.
[3] See paragraph 40, above.
[4] See paragraph 27, above.
[5] See paragraph 44, above.

The Commission observes, thirdly, that Rule 27 of the Immigration Rules for Control on Entry of 25 January 1973, which were laid down by the Home Secretary as to the practice to be followed in the administration of the Immigration Act 1971, provides as follows [1]:

> "Upon proof that one of his grandparents was born in the United Kingdom and Islands, an applicant who wishes to take or seek employment in the United Kingdom will be granted an entry clearance for that purpose. A passenger holding an entry clearance granted in accordance with this paragraph does not need a work permit and ... should be given indefinite leave to enter."

The Commission considers that this Rule constitutes, in effect, an extension of the above category of "patrials", which would normally operate in favour of white people.

(ee) The special circumstances which are common to the present cases

203. In the debate of the Commonwealth Immigrants Bill 1968, the question was also discussed whether the imposition or re-imposition of immigration control on citizens of the United Kingdom and Colonies coming from East Africa was in conflict with a "pledge" of free entry to the United Kingdom, which was said to have been given to those persons at the time when the East African States concerned became independent [2].

The Commission does not find it established that the United Kingdom gave an express undertaking, by way of a formal pledge, that its citizens of Asian descent in East Africa would always be free to come to Britain. It notes, however, that those who assumed that there had been an implied "pledge" of this nature seem to have based this assumption on the following elements:

- the provisions of the Uganda Independence Act 1962 and the Kenya Independence Act 1963 which allowed those Asians who did not obtain local citizenship by birth or by option to retain their status as citizens of the United Kingdom and Colonies [3];

- the issue, following the independence of Uganda and Kenya, of United Kingdom passports to East African Asians who had so retained their citizenship of the United Kingdom and Colonies [4];

---

[1] See paragraph 44, p. 32, footnote [1], above.
[2] See paragraphs 34 *et seq.*, above.
[3] Cf. paragraph 22, footnote [1], above.
[4] Cf. paragraph 23, above.

- the provision of the 1962 Act [1] which exempted from immigration control any person "who holds a United Kingdom passport and is a citizen of the United Kingdom and Colonies".

Furthermore, the United Kingdom authorities did not until February 1968 indicate that any change was envisaged with regard to the entry into Britain of citizens of the United Kingdom and Colonies coming from East Africa. In particular, the White Paper "Immigration from the Commonwealth", which was published by the British Government in 1965, while proposing to limit immigration from the Commonwealth, did not contain any reference to the East African Asians who were citizens of the United Kingdom and Colonies [2].

These people had apparently not opted for local citizenship, but retained their status as citizens of the United Kingdom and Colonies, because they considered this status as a safeguard for their future position in that it gave them the rights of entry into, and residence in, the United Kingdom [3]. The time-limit of two years, during which they could obtain local citizenship by option, had in 1965, at the time of the publication of the above White Paper, expired in Uganda. However, for the Asians concerned in Kenya, it would then still have been possible to opt for Kenyan citizenship as a matter of right.

204. The Commission does not find it necessary to determine whether the above circumstances can be considered as constituting an implied pledge of free entry to the United Kingdom. It believes, however, that they must be taken into account, as additional important elements, in the examination of the applicants' complaint under Article 3 of the Convention.

205. The Commission further considers it relevant that the persons concerned were not aliens, but were and remained citizens of the United Kingdom and Colonies. As such, they had the same rights as other citizens. They were thus, as submitted by the applicants, reduced to the status of second-class citizens.

206. The Commission finally recalls the increasingly difficult situation with which the Asians were faced in East Africa. As a result of the policies of "Africanisation" [4], which had been introduced by the East African States in the years following their independence [5], most of the Asians concerned were deprived of their livelihood and rendered destitute: their trading licences and trading areas were restricted [6] and their continued residence in East Africa became illegal; being refused entry by the only State of which they were citizens - the United Kingdom - they had no other country to which they could make out a claim for admission.

---

[1] Section 1 (2); cf. paragraphs 17 and 23, above.
[2] Cf. paragraph 28, above.
[3] See e.g. paragraph 35, above (Mr. Maudling).
[4] See paragraphs 29 *et seq.*, above.
[5] As stated in paragraphs 19 and 24, footnote [1], above, Tanzania became independent in 1961, Uganda in 1962 and Kenya in 1963.
[6] See paragraphs 29 *et seq.*, above.

The Commission considers that all this was foreseeable at the time when the 1968 Act was passed. It is true that the subsequent hardship of the applicants resulted primarily from the actions of the Kenyan and Uganda authorities, but even if the United Kingdom did not directly cause the hardship, they exposed the applicants to the possibility of it occurring.

The Commission also recalls that some of the applications present further features which have to be taken into account as aggravating factors [1].

(ff) Conclusion

207. The Commission has stated above [2] that the legislation applied in the present cases discriminated against the applicants on the grounds of their colour or race. It has also confirmed the view, which it expressed at the admissibility stage, that discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention [3].

The Commission recalls in this connection that, as generally recognised, a special importance should be attached to discrimination based on race; that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity; and that differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question [4].

208. The Commission considers that the racial discrimination to which the applicants have been publicly subjected by the application of the above immigration legislation constitutes an interference with their human dignity which, in the special circumstances described above [5], amounted to "degrading treatment" in the sense of Article 3 of the Convention.

209. It therefore *concludes*, by six [6] votes against three [7] votes, that Article 3 has been violated in the present cases.

---

[1] See paragraph 196 *in fine*.
[2] Paragraphs 201 and 202.
[3] See paragraph 196, above.
[4] See the Commission's decision on the admissibility of the applications in Group I, Collection 36 pp. 92, 117, Yearbook 13 pp. 928, 994.
[5] Paragraphs 203-206.
[6] In addition, two other members of the Commission, who were not present when the vote was taken, expressed their agreement with this conclusion.
[7] Vote taken on 11 October 1971.

(gg) Final observations (Article 25)

210. The Commission notes that during the present proceedings all 25 applicants were eventually given permission to stay permanently in the United Kingdom.

The Government has in this connection invoked Article 25 of the Convention, submitting that under this provision, an applicant may only complain to the Commission if he is still the victim of a violation of the Convention.

211. The Commission observes that Article 25 refers to petitions from persons "claiming to be" the victims of such violations. It considers that its competence under this provision covers violations which have occurred in the past and have been terminated, as in the cases of the present applicants.

212. The Commission in any case considers that, until their final admission to the United Kingdom, the applicants were and remained victims of a violation of Article 3 for the reasons stated above. This violation was substantially terminated on the date of the admission. It was not, however, as regards the period before that date, retroactively eliminated, nor were all effects of the earlier violation disposed of.

(c) The six cases of British protected persons (Applications Nos. 4410/70, 4411/70, 4414/70, 4476/70, 4477/70 and 4526/70)

213. The Commission considers that the six applications brought by British protected persons must be distinguished from the 25 cases of citizens of the United Kingdom and Colonies examined under (b) above. It notes that:

- according to English law, British protected persons, although not aliens, are not British subjects [1];

- they became and remained subject to immigration control under the 1962 Act [2];

- their position as regards entry to the United Kingdom was not changed by the 1968 Act [3];

- the immigration legislation concerned did not distinguish between different groups of British protected persons on any ground of race or colour.

[1] See paragraphs 9 and 11, above.
[2] See paragraphs 18 and 24, above.
[3] See paragraph 32 *in fine* (p. 24, footnote [1]), above.

214. The Commission considers that, in view of the above circumstances, the legislation complained of cannot in the present cases of British protected persons be regarded as discriminatory and even less as constituting degrading treatment in the sense of Article 3 of the Convention.

215. The Commission therefore *concludes* unanimously [1] that Article 3 has not been violated in these cases.

2. Whether or not the United Kingdom's refusal to admit the applicants to Britain, or to allow them to stay there permanently, violated their rights under Article 5 - either alone or in conjunction with Article 14 - of the Convention

216. The second point at issue in the present applications [2] is the question whether the United Kingdom authorities violated the applicants' rights under Article 5 - either alone or in conjunction with Article 14 - of the Convention.

(a) Article 5

217. Article 5 para. 1, first sentence, states that everyone has the right "to liberty and security of person" (in the French text: "à la liberté et à la sûreté").

It follows from the terms of its decision on the admissibility of the applications in Group I [3] that, at the present stage, the Commission is only concerned with "security" and not with "liberty" of person.

218. The applicants submit that "*security of person*" under Article 5 means something more than "liberty of person". They consider that the protection of "security" is concerned with arbitrary interference, by a public authority, with an individual's personal existence.

The Government reply that "security of person" under Article 5 is to be understood in the general context of "liberty of the person". Article 5 does not cover arbitrary action as such, and furthermore the United Kingdom authorities have not acted arbitrarily.

219. The Commission considers that the term "security of person" under Article 5 of the Convention must be interpreted in its particular context [4]. The full text of Article 5 reads as follows:

"(1) Everyone has the right to liberty and security of person.

---

[1] Vote taken on 11 October 1973.
[2] Cf. paragraph 4, above.
[3] Collection 39 pp. 92, 118, Yearbook 13 pp. 928, 996.
[4] Cf. the principles of interpretation set out in paragraph 188, above.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(3) Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

220. The text of Article 5 shows in the Commission's view that the expression "liberty and security of person" in paragraph 1 must be read as a whole and that, consequently, "security" should be understood in the context of "liberty".

221. This view is further supported by an examination of the structure of the Articles of the Convention. In several Articles - Articles 2, 7, 8, 9, 10 and 11 - the first paragraph sets out in general terms the right guaranteed which is then further defined or qualified by the succeeding paragraphs. Article 1 of the First Protocol to the Convention shows a similar pattern: the first sentence defines the right guaranteed, the following sentences deal with its limitation.

In the case of Article 5 of the Convention, the initial statement of the right guaranteed is qualified within paragraph 1 itself. The succeeding paragraphs then set out certain additional rights of a person who has been deprived of his liberty.

It appears, therefore, to be in accordance with the structure both of Article 5 and of the Convention as a whole to take the expressions "liberty" and "security" of person in paragraph 1 of Article 5 as being closely connected.

222. This does not, however, mean that the term "security" is otiose in Article 5. In the Commission's view, the protection of "security" is in this context concerned with *arbitrary* interference, by a public authority, with an individual's personal "liberty". Or, in other words, any decision taken within the sphere of Article 5 must, in order to safeguard the individual's right to "security of person", conform to the procedural as well as the substantive requirements laid down by an already existing law.

This interpretation is confirmed both by the text of Article 5 and by the preparatory work of the Convention, which show that protection against arbitrary arrest and detention was one of the principal considerations of the drafters of this treaty.

223. The Commission does not find that the application of the immigration legislation complained of constitutes in the applicants' cases an interference with their right to "security of person", as interpreted above.

224. The Commission *concludes*, by eight [1] votes against one [2] vote, that Article 5 of the Convention has not been violated in the present cases.

(b) Article 14 in conjunction with Article 5

225. The Commission has also considered the applicants' complaint under Article 14 in conjunction with Article 5 of the Convention and in this respect makes the following observations.

---

[1] In addition, two other members of the Commission, who were not present when the vote was taken, expressed their agreement with this conclusion.

[2] Vote taken on 11 October 1973.

226. It is accepted by both parties, following the judgment of the European Court of Human Rights in the Belgian Linguistic Case, that while Article 14 does not have an autonomous role, there may be a violation of Article 14 in conjunction with another Article of the Convention although there is no violation of that other Article taken alone [1]. However, the cases of such a violation of Article 14 all seem to arise where the right or freedom in question is further defined or qualified in some way in the Article concerned, as it is for example by the succeeding paragraphs of certain Articles [2]. The effect of Article 14 in such cases is that, where the exercise of a right may be restricted, the restriction must not be discriminatory.

227. The right to *security of person* under Article 5, like the rights protected by Article 3, is guaranteed in absolute terms, and the Commission does not consider that there could be an "independent" violation of Article 14 in combination with this right.

228. The Commission therefore *concludes*, by eight votes [3] against one [4] vote, that there has been no violation of Article 14 in conjunction with Article 5.

3. Whether or not the United Kingdom's refusal to admit to Britain the applicants in Applications Nos. 4478/70, 4486/70 and 4501/70 violated these applicants' rights under Articles 8 and 14 of the Convention

229. Article 8 para. 1 of the Convention states *inter alia* that everyone has the right to respect for his family life. Paragraph 2 of Article 8 permits such interference by public authorities with the exercise of this right as are in accordance with the law and are "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 14 of the Convention imposes a further limitation on the above exceptions regarding the interference of public power in matters affecting family life: it states that the enjoyment of the rights and freedoms set forth in the Convention "shall be secured without discrimination on any ground such as sex".

230. The above three applicants, whose petitions were declared admissible under Articles 8 and 14 of the Convention, submit that the United Kingdom authorities, in preventing them from entering Britain after admitting their respective wives to permanent residence, violated their rights to respect for their family life.

---

[1] Judgment of 23 July 1968, *loc. cit.*, p. 33, paragraph 9.

[2] See paragraph 221 above.

[3] In addition, two other members of the Commission, who were not present when the vote was taken, expressed their agreement with this conclusion.

[4] Vote taken on 11 October 1973.

The Government reply that in each case the separation of husband and wife occurred voluntarily; further, in so far as Article 8 guarantees a right for a family to reside together at a particular place, that place is where the husband lawfully is and not the wife.

231. The Commission notes that:

(1) Section 2 (2) (b) of the 1962 Act, as amended by the 1968 Act and the Immigration Appeals Act 1969, exempted from immigration control the wife of a Common-wealth citizen resident in the United Kingdom: she was entitled to admission for settlement, provided she held an entry certificate evidencing fulfilment of this provision [1];

(2) that there was no corresponding exemption for husbands of Commonwealth citizens resident in the United Kingdom. Indeed, paragraph 41 of the Instructions to Immigration Officers of February 1970 stated expressly [2]:

> "The fact that his wife was born or is resident in the United Kingdom does not in itself give a man a claim to settlement without an employment voucher. A Commonwealth citizen whose sole claim to settlement is in right of his wife should be admitted only if he has an entry certificate endorsed 'joining wife'. The Secretary of State will authorise the issue of an entry certificate for this purpose only if he is satisfied that there are special considerations, whether of a family nature or otherwise, which render exclusion undesirable; for example, because of the degree of hardship which, in the particular circumstances of the case, would be caused if the wife had to live outside the United Kingdom in order to be with her husband."

(3) under the above legislation, the three applicants concerned, being the husbands of Commonwealth citizens resident in the United Kingdom were, at the time when their applications were introduced with the Commission, refused admission to Britain, while they would have been admitted had they been the wives of such citizens.

232. The Commission considers that this refusal of admission constituted, in the circumstances of the present cases, an interference with the applicants' "family life" in the sense of Article 8 of the Convention in that it prevented, against their will, the reunion in the United Kingdom of the members of the applicants' families, who were all citizens of the United Kingdom and Colonies.

[1] See paragraphs 33 and 48, footnote [5], above.
[2] See paragraph 48, footnote [5], above.

The Commission further considers that this interference with family life was in the circumstances of the present cases contrary to Article 14, read in conjunction with Article 8 of the Convention, in that it discriminated against male immigrants on the ground of their sex.

233. It *concludes*, by seven [1] votes against two [2] votes, that there has in these cases been a violation of Article 14 in conjunction with Article 8.

234. The Commission finally notes that during the present proceedings the three applicants concerned were eventually given permission to stay permanently in the United Kingdom, and it refers in this connection to the observations made in paragraphs 210 to 212 above.

4. Complaints under Articles 1 and 13 of the Convention

235. The Commission notes that the applicants' original complaints under Articles 1 and 13 of the Convention have not been pursued during the examination of the merits of these cases.

236. It *concludes* unanimously that they need not be examined further [3] and therefore expresses no opinion in regard to them.

.....

[1] In addition, two other members of the Commission, who were not present when the vote was taken, expressed their agreement with this conclusion.
[2] Vote taken on 11 October 1973.
[3] Vote taken on 11 October 1973.