

THE FACTS

Whereas the facts presented by the Applicants' solicitors Messrs Bernard Sheridan and Company, of London, may be summarised as follows:

The first Applicant is X., a shoemaker by trade, born on .. April 1936, at Port Louis, Mauritius. On .. June 1961, he was married at Port Louis to Y., the second Applicant. There are 3 children of the marriage, Z., born .. July 1962, and V., born .. April 1965 - both born in Mauritius, and a son born in London on .. September 1967 - the third, fourth and fifth Applicants.

As a citizen of the United Kingdom and Colonies, X. was issued on .. July 1966, by the Governor of Mauritius with a British Passport No., and was admitted to the United Kingdom on .. July 1966, for a period of 6 months. He obtained employment as a packer, and on .. December 1966, he was joined in the United Kingdom by his wife who was given an Entry Certificate entitling her to enter Britain "to join husband". X. requested his employer to make application to the Ministry of Labour to allow him to work on a permanent basis. However, it was explained to the firm who had applied on his behalf that he could not be allowed to remain indefinitely in employment, without an employment voucher which it was not proposed to issue. Consequently, on the completion of the 6 months period he left the United Kingdom on .. January 1967 for Mauritius, his wife and 2 children remaining in London with relatives.

As his wife was very shortly expecting a further child, he returned to the United Kingdom by chartered flight on .. July 1967, in order to see his wife, children and other relatives, and in order to be present during the birth of the third child. At the same time he proposed to explore the possibility of obtaining permission once again from the Ministry of Labour for employment in the United Kingdom, failing which he proposed to return to Mauritius. For these purposes he had in his possession the sum of £ 150 by bank draft, and should it be necessary to return again to Mauritius after the birth of the child, a return air ticket to Mauritius valid for a charter flight on .. August 1967.

On his arrival at Gatwick Airport he was questioned by 2 Immigration Officers about the purpose of his visit. He had no opportunity for legal advice during this questioning, and fearful that steps might be taken to deport his pregnant wife, and children, he did not disclose their continuing presence in the United Kingdom, and stated that his intention was merely to visit relatives in London for one month.

The Immigration Authorities refused him permission to enter the United Kingdom and he was detained pending return to Mauritius. He then instructed B. and Company to take all possible steps to secure his release and entry into the United Kingdom. The Chief Immigration Officer at Gatwick Airport handed the first Applicant a document refusing him leave to land in the United Kingdom and ordered that he be returned on the next available flight to Mauritius. The Applicant appealed to the immigration officials to defer repatriation until he had been able to demonstrate his right to enter the United Kingdom but the immigration officials nevertheless by serving on him notice refusing him admission to the United Kingdom, implemented their decision without affording either him or his wife a reasonable opportunity to establish such right of entry.

He submits that he had and has no right which may be enforced under English law in respect of the decision to exclude him from the United Kingdom under Section 2 of the Commonwealth Immigrants Act 1962. But he did apply for a Writ of Habeas Corpus ad subjiciendum challenging the right of the immigration officials to deny him entry into the United Kingdom, on the ground that the Commonwealth Immigrants Act 1962 did not cover citizens of the United Kingdom and Colonies resident in

a colonial territory and possessing a valid British passport. This application was refused on .. August 1967, by the Queen's Bench Divisional Court of the High Court of Justice in London, and on .. August 1967, the Applicant's appeal against that decision was dismissed by the Court of Appeal. The Applicants submit that they have exhausted any domestic remedies they might have had.

These legal proceedings having failed, and it being still intended to return the first Applicant to Mauritius he then, for the first time, disclosed to his solicitors the residence in London of his wife and children. The solicitors made representations to the Home Office, arising out of which permission was given to the first Applicant on compassionate grounds to remain in the United Kingdom for a period of one month as a "visitor" to cover the period during which the birth of his third child was expected. On .. August 1967, solely because of the imminent confinement of his wife the Applicant was admitted to the United Kingdom on condition that he does not remain longer than one month and does not engage in any employment and on the basis that he must make arrangements for his return and that of his family to Mauritius within the period for which he has been admitted. Subsequently, however, the United Kingdom Government allowed Mr X. the right of unrestricted entry into the country.

The Applicants submit that, in accordance with the Commonwealth Immigrants Act 1962, and the instructions to Immigration Officers, since the wife, as a citizen of the United Kingdom and Colonies, lawfully entered the United Kingdom, and since at that time no conditions were imposed by the Immigration Authorities, and she has not committed an offence in respect of which she could be deported, she has acquired lawful residence in the United Kingdom, and cannot be deported. They further submit that their third child born in the United Kingdom would not in any circumstances be liable to the provisions of the Commonwealth Immigrants Act, since the child will be a citizen of the United Kingdom and Colonies by birth and thus exempt from the provision of the Act.

The Applicants allege the following violations of the Convention:

- a. Violation of Applicants' right under Article 8 to respect for family life;
- b. Violation of Applicants' rights under Article 6 in the determination of the first Applicant's civil rights to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in that:
 - i. the entire proceedings were held in private;
 - ii. the first Applicant was not permitted to be legally represented during the interrogation;
 - iii. the first Applicant was not given sufficient time or facilities to enable him to obtain evidence to satisfy the immigration officials of his right to enter;
 - iv. the first Applicant had no right to resort to an independent and impartial tribunal whether by way of appeal or otherwise;
- c. Violations of the Applicants' rights under Article 13 to an effective remedy before a National Authority for Violation;
- d. Violations of the Applicants' rights under Article 13 to enjoyment of the Applicants' rights and freedoms without discrimination on the ground of the Applicants' social origin or birth, namely the Applicants' birth in Mauritius.

When lodging their Application the Applicants claimed the right of

entry into the United Kingdom for the first Applicant; in the alternative a fair and impartial hearing of the matters in issue by an independent tribunal; and damages.

After the first Applicant has been allowed the right of unrestricted entry, they have maintained their complaint with regard to damages for the time when he was excluded from the United Kingdom, the time which he spent in prison and for the time during which he was not allowed to engage in employment.

THE LAW

Whereas the Applicants complain that the immigration authorities initially refused to allow the first Applicant to enter the United Kingdom without restriction; whereas in this respect it is first to be observed that the Convention, under the terms of Article 1 (Art. 1), guarantees only the rights and freedoms set forth in Section I of the Convention; and whereas, under Article 25, paragraph (1) (Art. 25-1), only the alleged violation of one of those rights and freedoms by a Contracting Party can be the subject of an application presented by a person, non-governmental organisation or group of individuals;

Whereas otherwise its examination is outside the competence of the Commission *ratione materiae*;

Whereas the Commission has already held in several decisions that a general right to enter, to reside in, and not to be expelled from, a particular country or a certain part of it, is not as such a right guaranteed by any provision of the Convention, not even for the citizens of that country (see Applications Nos 214/56, *De Becker against Belgium*, Yearbook II, page 224, and 996/61, *C. against Belgium*, unpublished decision of 16 December 1961); whereas it follows that under this aspect, the Application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2);

Whereas the Applicants complain in particular that the initial refusal by the immigration authorities to allow the first Applicant to enter the United Kingdom without restrictions constituted a violation of the Applicants' right to respect for their family life as is guaranteed under Article 8 (Art. 8) of the Convention; whereas it is true that the exclusion of a person from a country where close members of his family are living, can amount to an infringement of this right; whereas, in this respect, the Commission refers to its decision of 15 July 1967, on the admissibility of Applications Nos 2991/66 (*Alam and Khan against the United Kingdom*) and 2992/66 (*Singh against the United Kingdom*), Collection of Decisions, Volume 24, page 116; concerning 2 similar cases; whereas in that decision the Commission observed that the refusal by the immigration authorities to allow an immigrant to enter the United Kingdom in order to join a close member of his family, raises issues of law and fact whose determination should depend upon an examination of the merits of the case and whereas the Commission consequently declared that Application to be admissible;

Whereas, however, in the present case the Commission has had regard to the particular circumstances which lead to a different conclusion;

Whereas, indeed, it is to be observed that the refusal by the authorities of entry or continued residence of the husband did not prevent the wife and children from joining him abroad, no reason appearing, given the short period of their residence in the United Kingdom, why they could not do so; and whereas the refusal, therefore, would not have constituted a separation of the family by the authorities, if the wife and children were entitled to, and chose, to remain in the United Kingdom;

Whereas consequently an examination of the case as it has been

submitted, including an examination made ex officio does not disclose any appearance of a violation of the right for respect for family life set forth in Article 8 (Art. 8) of the Convention; whereas it follows that this part of the Application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the Applicants have also submitted that their rights under Article 6, paragraph (1) (Art. 6-1), in the determination of the first Applicant's civil rights to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law were violated in that neither the proceedings before the immigration authorities did meet the requirements of Article 6, paragraph (1) (Art. 6-1), nor did the Applicants have any right under the law of the United Kingdom to resort to an independent and impartial tribunal whether by way of appeal or otherwise;

Whereas the right to enter and reside in a country is determined by public law, through acts of public administration, from which it follows that the term "civil rights", in Article 6, paragraph (1) (Art. 6-1), does not include any such right and that therefore neither the decision to grant or refuse entry, nor the proceedings through which that decision is reached, are governed by the provisions of Article 6, paragraph (1) (Art. 6-1);

Whereas, insofar as the rights of the Applicants to live together as a family may be among the "civil rights" covered by Article 6, paragraph (1) (Art. 6-1), the Commission has found that the initial refusal of entry to, or continued residence in, the United Kingdom of the first Applicant did not, in all the circumstances of the case, constitute a separation of the family or an interference with those rights, by the acts of the authorities; whereas consequently, the decision of refusal did not purport to be, and was not, a determination of any "civil rights" within the meaning of Article 6, paragraph (1) (Art. 6-1) (see decision on admissibility of Application No 2992/66, loc cit, page 131);

Whereas it follows that this part of the Application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2);

Whereas the Applicants further allege a discrimination, within the meaning of Article 14 (Art. 14) of the Convention, between them and certain other citizens of the United Kingdom and Colonies, in respect of entry to, and residence in, the United Kingdom; whereas, in this respect, it is to be observed that Article 14 (Art. 14) only prohibits discrimination with regard to the enjoyment of the rights and freedoms set forth in the Convention and the Protocol (P1) (see decisions on the admissibility of Applications Nos 472/59, Yearbook, Volume III, page 212 and Nos 1821 and 1822/63, Collection of Decisions, Volume 19, page 70);

Whereas the Commission has already found that a right to be admitted to a particular country or a certain part of it is not as such guaranteed by any of the provisions of the Convention; whereas it follows that the exclusion or restriction upon entry or residence of some individuals and not others cannot constitute discrimination in respect of a right or freedom guaranteed by the Convention; whereas it follows that, also under this aspect, the Application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2);

Whereas the Applicants' allegation concerning discrimination within the meaning of Article 14 (Art. 14) is further to be considered in conjunction with the complaint made under Article 8 (Art. 8); whereas the Commission has already found that, in the particular circumstances of this case, the refusal of the immigration authorities to allow the first Applicant to enter the United Kingdom without restrictions cannot

constitute a violation of the right to respect for family life; whereas it is true that, according to the Commission's jurisprudence (see Application No 2299/64, Grandrath against Federal Republic of Germany, Commission's Report of 12 December 1966, page 33, Resolution of the Committee of Ministers (67) DH 1 of 29 June 1967; Belgian Linguistics Case, Commission's Report of 24 June 1965, page 374), Article 14 (Art. 14) may be violated in a field dealt with by another Article although there is otherwise no violation of that Article.

Whereas, however, with regard to the question whether there has been any discrimination as to the Applicants' right to respect for their family life, it is to be observed that, under the Commonwealth Immigrants Act 1962, throughout the period of his stay in the United Kingdom, the first Applicant, as all citizens of the United Kingdom, was allowed to be joined by his family and to live together with them; whereas, therefore, regardless of the question whether there was a discrimination with regard to their admission to the country, an examination of the case does not disclose any appearance of discrimination with regard to the Applicants' right to respect for their family life;

Whereas it follows that this part of the Application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the Applicants finally complain that the United Kingdom Government was responsible for a breach of Article 13 (Art. 13) of the Convention in that it failed to provide any effective remedy before a national authority for the alleged violations of the provisions of the Convention;

Whereas, however, this provision relates exclusively to a remedy in respect of a violation of one of the rights and freedoms set forth in the other Articles of the Convention (see the Commission's decisions on the admissibility of Applications Nos 472/59, Yearbook, Volume III, page 212, and No 655/59, Yearbook, Volume III, page 286);

Whereas, the Applicants not having established even the appearance of a violation of one of the other rights invoked by them, there is in the present case no basis for the application of Article 13 (Art. 13) of the Convention;

Whereas it follows that this part of the Application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention (see also decision on the admissibility of Application No 2992/66, Collection of Decisions, Volume 24, page 131);

Now therefore the Commission declares this Application INADMISSIBLE.