



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF A.H. KHAN v. THE UNITED KINGDOM

(Application no. 6222/10)

JUDGMENT

STRASBOURG

20 December 2011

FINAL

20/03/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.H. Khan v. the United Kingdom,
The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:
Lech Garlicki, *President*,
David Thór Björgvinsson,
Nicolas Bratza,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges*,
and Lawrence Early, *Section Registrar*,
Having deliberated in private on 29 November 2011,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6222/10) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Pakistani national, Mr Altaf Hussein Khan (“the applicant”), on 1 February 2010.

2. The applicant was represented by Malik Legal Solicitors Ltd., a firm of lawyers practising in Manchester. The United Kingdom Government (“the Government”) were represented by their Agent, Mr J. Grainger, of the Foreign and Commonwealth Office.

3. The applicant alleged that his deportation to Pakistan would violate his rights under Article 8 of the Convention. He sought interim measures from the Court under Rule 39 of the Rules of Court, but this application was refused by the Acting President of the Fourth Section on 12 February 2010. The applicant was deported to Pakistan on 15 February 2010.

4. On 14 October 2010, the Acting President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Pakistan. He is the elder brother of the applicant in the case of *A.W. Khan v. the United Kingdom*, no. 47486/06, 12 January 2010.

6. The present applicant appears to have travelled from Pakistan to the United Kingdom with his family in 1978. He was subsequently granted indefinite leave to remain in the United Kingdom as the dependant of his parents. There is some dispute as to whether he remained continuously in the United Kingdom after his arrival, but it is clear that he returned to Pakistan at least twice prior to his deportation and that he married there in 1989. His current marital status and the whereabouts of his wife are not known.

7. The applicant's mother and siblings still live in the United Kingdom and are all naturalised British citizens. The applicant claimed, furthermore, that his mother was in poor health with diabetes and a heart condition and as such was more than normally dependent on the applicant and her other children. The applicant has six children, all of whom were born in the United Kingdom, by two separate partners. His children are aged between 12 and 17 years. At the time of his deportation, the applicant claimed to be in a relationship not with either of the mothers of his children but with a third British citizen, whom he had started seeing whilst in immigration detention in 2008.

8. On 18 February 1992, the applicant was convicted of having sexual intercourse with an underage female and of two counts of attempted robbery. He was sentenced to four years' imprisonment in a young offenders' institution. On 30 November 1994, he was convicted for the theft of a vehicle and sentenced to two hundred hours of community service. On 4 January 1996, the applicant was convicted of driving whilst disqualified and without insurance and sentenced to twenty weeks' imprisonment. He was also disqualified from driving for three years.

9. The applicant appears to have spent three months in Pakistan in 1998. On 19 December 2000, he was convicted of two counts of battery and of resisting or obstructing a constable, and sentenced to four months' imprisonment. On 26 January 2001, following a conviction for dangerous driving and other related offences, the applicant was sentenced to eighteen months' imprisonment, disqualified from driving for a further three years, and disqualified until he passed a driving test.

10. On 5 July 2001, the applicant was convicted of robbery, for which he was initially sentenced to six years' imprisonment. The sentence was reduced to five years on appeal. As a result of this conviction, deportation

proceedings against the applicant commenced and on 22 May 2006, he was notified of the Secretary of State's intention to make a deportation order against him.

11. The applicant did not exercise his right of appeal against the decision to deport him and the deportation order was signed on 2 October 2006. The applicant was convicted of a further driving offence in 2006. Directions were set for his removal to Pakistan on 25 June 2008, but cancelled when the applicant sought judicial review. The judicial review application was withdrawn by consent following agreement that further consideration would be given to the applicant's case on human rights grounds. A decision was made on 15 October 2008 to refuse to revoke the deportation order but to grant the applicant an in-country right of appeal against this decision.

12. The applicant's appeal was dismissed by the Asylum and Immigration Tribunal ("the Tribunal") on 27 January 2009. The appeal was argued purely on the grounds of Article 8. The Tribunal accepted that the applicant enjoyed family life in the United Kingdom. Although there were no insurmountable obstacles to his two partners, both of whom were of Pakistani origin, and his children accompanying him to Pakistan, it was accepted that it would be unreasonable to expect them to do so, given that all were British citizens and the children had been educated in the United Kingdom. There was little evidence before the Tribunal as to the impact that the applicant's deportation would have on his children, since neither of the two mothers of his children nor any third party had attended the hearing to give evidence. In any event, it was noted that the applicant had not seen any of his children since he had been remanded in custody in 2000, though he claimed to speak to all of them by telephone every day.

13. The Tribunal did not believe the applicant's claims not to have returned to Pakistan since his arrival in the United Kingdom and not to have married there, since there was evidence to the contrary. It was not therefore accepted that he had no connections in Pakistan. No serious difficulty for the applicant in re-establishing himself in Pakistan was envisaged.

14. The Tribunal accepted that Article 8 would be engaged by the applicant's deportation, since he would inevitably be separated from his partners and children. However, the interference with his family life would be proportionate, having regard on the one hand to the applicant's persistent offending and the high risk he posed to public safety, as assessed by his probation officer, and, on the other, to the lack of evidence as to a meaningful relationship between the applicant and his children over the past eight years.

15. An application for reconsideration of the Tribunal's decision was refused on 15 May 2009. Directions were again set for the applicant's removal, but cancelled when he claimed asylum on 25 June 2009. The basis of his claim was that his parents' families in Pakistan might seek to harm him because they had disapproved of his parents' love marriage and their

emigration to the United Kingdom; and that the relatives of three women with whom he had had relationships in the United Kingdom were also after him. It is not clear who the women concerned were. His asylum claim was refused on 20 October 2009, since the applicant had had no direct contact with any of those persons whom he claimed to fear and it was not believed that any of them would recognise him, or know that he had returned to Pakistan, or be able to trace him. In any event, there was found to be a sufficiency of protection against the actions of non-state actors available in Pakistan. The applicant's asylum claim was certified as clearly unfounded, meaning that he had no further right of appeal from within the United Kingdom.

16. The applicant made further representations on 16 November 2009 and 13 and 14 January 2010, claiming that he feared his current partner's ex-husband, who had recently been deported to Pakistan, and that he was taking medication, namely methadone and various sleeping tablets, which would not be available to him once deported. His representations were rejected on 18 January 2010, as the applicant had not raised any new issues regarding his fear of return and his family life had previously been considered by the Tribunal. As to his concerns regarding his health, there were mental health facilities available in Pakistan. In any event, the applicant had been assessed by medical staff at the immigration detention centre as being fit to fly and had not been noted as having any particular medical problems.

17. Directions were set on 5 January 2010 for the applicant's deportation to Pakistan on 20 January 2010. The applicant sought permission to apply for judicial review of the decision to set removal directions, but his application was refused by the High Court on 12 February 2010. In the meantime, the applicant had also sought interim measures from this Court under Rule 39 of the Rules of Court on 2 February 2010, to prevent his deportation which had been reset for 15 February 2010. His application for interim measures was refused on 12 February 2010.

18. The applicant was deported to Pakistan on 15 February 2010.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Section 3(5)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999) provides that a person who is not a British citizen shall be liable to deportation from the United Kingdom if the Secretary of State deems his deportation to be conducive to the public good.

20. Sections 82(1) and 84 of the Nationality, Immigration and Asylum Act 2002 provide for a right of appeal against this decision, *inter alia*, on the grounds that the decision is incompatible with the Convention.

21. Section 2 of the Human Rights Act 1998 provides that, in determining any question that arises in connection with a Convention right,

courts and tribunals must take into account any case-law from this Court so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

22. Sections 1(4) and 3(2) of the Immigration Act 1971 provide for the making of Immigration Rules by the Secretary of State. Paragraph 353 of the Immigration Rules provides:

“353. When a human rights or asylum claim has been refused and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

(i) had not already been considered; and

(ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.”

A fresh claim, if it is accepted as such by the Secretary of State, and if refused, gives rise to a fresh right of appeal on the merits. If submissions are not accepted as amounting to a fresh claim, their refusal will give rise only to a right to seek judicial review of the decision not to treat them as a fresh claim.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that his deportation to Pakistan violated Article 8 of the Convention, which provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is 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.”

24. The Government contested that argument.

A. Admissibility

25. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a) The applicant

26. The applicant claimed to enjoy family life, as detailed at paragraph 7 above, and private life in the United Kingdom. He relied upon the fact that the Court had previously found that his younger brother's deportation to Pakistan would violate Article 8. He further relied on the facts that his mother's poor state of health rendered her particularly dependent on the applicant and her other children; that he had six children, all born in the United Kingdom; and that he was in a relationship with a British citizen.

27. The applicant denied the Government's contention that it was unclear when he had entered the United Kingdom and whether he had remained there continuously until his deportation. He claimed that he had entered for the first time in 1978 and, in support of this claim, submitted a photocopy of his mother's passport, which showed that she had entered the United Kingdom in 1978 together with her children, the applicant among them. He further maintained that he had remained in the United Kingdom since then, except for two visits to Pakistan: in 1989, when he had entered into an arranged marriage; and in 1998, when he had stayed for three months.

28. The applicant maintained that he had no ties to Pakistan and no surviving relatives there. He was not in contact with his wife. He claimed that since his deportation, he had been accommodated and fed by a local mosque and was dependent upon charity to obtain money to call his children in the United Kingdom.

b) The Government

29. The Government accepted that the applicant had enjoyed family and private life in the United Kingdom prior to his deportation and stated that it was not in doubt, and had not been contended by the applicant, that his deportation was anything other than in accordance with the law and in pursuit of a legitimate aim. As such, the only issue before the Court was whether the deportation was necessary in a democratic society.

30. In the view of the Government, the applicant's deportation was proportionate to the legitimate aim pursued because his level of integration into the society of the United Kingdom had not been such as to outweigh the risk he posed to the public. The applicant's case could be distinguished from that of his younger brother for a number of reasons. Firstly, the applicant's conviction for robbery had represented the culmination of a long history of criminal conduct, and he had gone on to commit further offences after his release from prison, even in the knowledge that the Secretary of State was seeking his deportation. By contrast, his younger brother had committed no serious previous offences prior to his deportation offence and committed no further offences following his release from prison (see *A.W. Khan v. the United Kingdom*, cited above, § 41). Secondly, as regards the brothers' respective ties to Pakistan, the present applicant had either arrived in the United Kingdom at the age of seven, or, on one reading of the evidence, had first arrived at the age of four but had then returned to Pakistan where he lived between the ages of seven and eighteen. His brother, on the other hand, had arrived in the United Kingdom at the age of three and had remained there since. The present applicant had, even on his own admission, made at least two visits back to Pakistan and had married there in 1989. It appeared that the marriage was still, at least legally, subsisting. He therefore had far closer ties to his country of origin than his younger brother. Thirdly, as regards the relative strength of the brothers' respective ties to the United Kingdom, the Government pointed out that, while the present applicant relied on his family ties to his mother and siblings, he had at no stage produced any evidence of the strength of these ties, contrary to his younger brother whom the Court had accepted enjoyed a close relationship, involving an additional degree of dependence, with his mother. Furthermore, the applicant had not seen any of his six children since 2000 and had not provided any evidence to show that his deportation would have a detrimental effect on any of them. Indeed, given that four of his children had at various times been classed as "at risk" by social services due to the applicant's behaviour towards them and their mothers, it was considered that the applicant's children might well be better off if he were removed from their country of residence. On the other hand, the applicant's younger brother had established that he had a stable relationship with his girlfriend and their daughter.

31. Finally, the Government pointed out that the Tribunal which heard the applicant's appeal against deportation had considered all of the relevant factors as set out by the Grand Chamber in *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57-58, ECHR 2006-XII, and had concluded that in all the circumstances of his case, his deportation would be proportionate. The Government invited the Court to uphold this finding.

2. *The Court's assessment*

a) **General principles**

32. The Court recalls that, as Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants such as the applicant and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Indeed it will be a rare case where a settled migrant will be unable to demonstrate that his or her deportation would interfere with his or her private life as guaranteed by Article 8 (see *Miah v. the United Kingdom* (dec.), no. 53080/07, § 17, 27 April 2010). Not all settled migrants will have equally strong family or social ties in the Contracting State where they reside but the comparative strength or weakness of those ties is, in the majority of cases, more appropriately considered in assessing the proportionality of the applicant's deportation under Article 8 § 2. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see *Maslov*, cited above, § 63). However, the Court has previously held that there will be no family life between parents and adult children or between adult siblings unless they can demonstrate additional elements of dependence (*Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003 X; *Kwakye-Nti and Dufie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000).

33. An interference with a person's private or family life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned. The Grand Chamber has summarised the relevant criteria to be applied, in determining whether an interference is necessary in a democratic society, at §§ 57-58 of *Üner*, cited above, as follows:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- the nationalities of the various persons concerned;
- the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
- whether the spouse knew about the offence at the time when he or she entered into a family relationship;

- whether there are children of the marriage, and if so, their age; and
- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.
- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.

b) Application to the facts of the case

34. The Court notes at the outset that it is not in issue between the parties that the applicant's deportation was "in accordance with the law" and pursued a legitimate aim, namely the prevention of crime. It only remains, therefore, for the Court to determine whether it was also "necessary in a democratic" society, in pursuit of that aim.

35. In so determining, the Court has had regard to the criteria set down by the Grand Chamber in the case of *Üner*, cited above, of which many are relevant to the applicant's case. The Court will consider the relevant criteria in turn.

36. As regards, firstly, the nature and seriousness of the offence committed by the applicant, the Court observes that the offence which gave rise to the deportation proceedings was a robbery, for which the applicant was sentenced to five years' imprisonment. The length of the sentence clearly reflects the gravity of the crime committed, and the Court also notes the sentencing judge's remarks, which described the manner in which the applicant had frightened and physically attacked a pregnant woman in her own home. The Court further notes that this was not the applicant's first conviction for a violent offence. Finally, the Court recalls that the applicant also had a long history of previous offences, as detailed at paragraphs 8-10 above. The Court takes the view that the offence which led to the applicant's deportation, particularly when viewed against the background of his history of criminal conduct, was of very considerable seriousness.

37. Turning now to the length of the applicant's stay in the United Kingdom, the Court notes that this is a matter of some dispute. The applicant maintained that he had been in the United Kingdom since the age of seven and had remained there continuously since, but for two short visits to Pakistan. The Government, on the other hand, pointed out that on one reading of the evidence before the Tribunal which heard the applicant's appeal against deportation, the applicant had first entered the United Kingdom in 1975 and had then returned to Pakistan three years later, where he had remained until re-entering the United Kingdom after his marriage in 1989. The Court has had regard to the Tribunal's findings as to the applicant's lack of credibility and willingness to mislead in order to gain an advantage. However, having also had regard to evidence submitted by the

applicant's representatives, namely a copy of the applicant's mother's passport, which would tend to indicate that she and her children, including the applicant, entered the United Kingdom for settlement in 1978, the Court finds that, on balance, the applicant lived in the United Kingdom from 1978, when he was aged seven, returning to Pakistan only for visits. It is therefore accepted that he has lived in the United Kingdom since an early age, a factor which means that serious reasons would be required before his deportation could be found to be proportionate (see *Maslov v. Austria* [GC], no. 1638/03, § 75, 23 June 2008).

38. However, as well as the seriousness of the applicant's crime, the Court also notes the applicant's conduct since the commission of the offence which gave rise to the deportation proceedings against him, specifically the fact that he was convicted of a further driving offence in 2006. The Court is of the view that the applicant's lapse into re-offending, so soon after his release from prison, demonstrates that his conviction and lengthy term of imprisonment did not have the desired rehabilitative effect and that the domestic authorities were entitled to conclude that he continued to present a risk to the public. The Court therefore finds that the applicant's conduct subsequent to the deportation offence renders all the more compelling the Government's reasons for deporting him.

39. The Court must now consider the applicant's circumstances in the United Kingdom, with a view to determining whether his family and private life, and his consequent level of integration into British society, were such as to outweigh the seriousness of his criminal history. Looking first at the nationalities of the persons involved, the Court notes that, unlike the applicant, his mother and siblings are all now naturalised British citizens. The applicant's six children are also British citizens, as are their mothers. Finally, the applicant claimed to be in a relationship with a British citizen. The Court notes that, although this relationship apparently began in 2008, the applicant made no mention of this partner at his appeal hearing in 2009, when both of the mothers of his children were referred to as his current partners. The applicant appears to have mentioned his new partner for the first time in representations to the Secretary of State in November 2009, only a few months before he was deported. The applicant has not stated whether the relationship has still subsisted since his deportation. The Court cannot therefore attach much weight to this relationship, or find that it is a relationship akin to marriage.

40. As regards the applicant's relationship with his children and their mothers, the Court notes that, as predicted by the Tribunal, neither woman chose to accompany the applicant to Pakistan and both remain in the United Kingdom with their children. The Court also notes that the extent of the applicant's relationship with his children and their mothers was limited even at the time of his deportation, given that he had not lived with them since 1999 or seen the children since 2000. The applicant had not therefore seen

his children in the ten years prior to his deportation and the eldest child would only have been aged four the last time he or she had seen his or her father. There was also, as noted by the Tribunal, some doubt as to whether the applicant fulfilled a positive role in his children's lives, given that four of the six had, at various times, been on the social services' "at risk" register. Given the length of time since the applicant last had face-to-face contact with his children, as a result of his offending and consequent imprisonment, and the lack of evidence as to the existence of a positive relationship between the applicant and his children, the Court takes the view that the applicant has not established that his children's best interests were adversely affected by his deportation.

41. Finally, the Court turns to the question of the respective solidity of the applicant's ties to the United Kingdom and to Pakistan. The Court notes that, unlike his younger brother, the applicant returned to Pakistan for visits following his arrival in the United Kingdom and also married there. In the absence of any evidence to the contrary, the Court assumes that this marriage is still, legally at least, subsisting. The applicant therefore maintained some level of connection to his country of origin and was not deported as a stranger to the country. As regards his ties to the United Kingdom, the Court has addressed the question of his family life, both with his parents and siblings and with his various partners and children, above, and found it to be limited in its extent. Furthermore, the applicant's private life in the United Kingdom, as observed by the Tribunal, has been constrained by his convictions and spells in prison. Whilst he was mainly educated in the United Kingdom and has worked, he does not appear to have established a lengthy or consistent employment history. In short, and despite the length of his stay, the applicant did not achieve a significant level of integration into British society. The Court is aware that, as a settled migrant who spent much of his childhood in the United Kingdom, serious reasons would be required to render the applicant's deportation proportionate (see *Maslov*, cited above, § 75). However, having regard to his substantial offending history, including offences of violence and recidivism following the commencement of deportation proceedings against him, the Court is of the view that such serious reasons are present in the applicant's case. His private and family life in the United Kingdom were not such as to outweigh the risk he presented of future offending and harm to the public and his deportation was therefore proportionate to the legitimate aim of preventing crime. As such, the applicant's deportation to Pakistan did not amount to a violation of Article 8.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 20 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President