

**APPLICATION/REQUÊTE N° 11579/85**

Janis KHAN v/the UNITED KINGDOM

Janis KHAN c/ROYAUME-UNI

**DECISION** of 7 July 1986 on the admissibility of the application

**DÉCISION** du 7 juillet 1986 sur la recevabilité de la requête

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**Article 9 of the Convention :** *The term "practice" does not cover every act which is motivated by a religion or belief.*

*Marriage cannot be considered simply as a form of expression of thought, conscience or religion but is governed by the specific provisions of Article 12.*

**Article 12 of the Convention :** *The obligation to respect the legal marriageable age does not constitute a denial of the right to marry, even if the individual's religion permits marriage at a younger age.*

*Lawful detention of a married person does not of itself constitute a violation of the right to found a family.*

**Article 9 de la Convention :** *Le mot « pratiques » ne recouvre pas tous les actes qui ont pour mobile une religion ou une conviction.*

*Le mariage ne peut être considéré uniquement comme une forme d'expression de la pensée, de la conscience ou de la religion. Il est régi par les dispositions spécifiques de l'article 12.*

**Article 12 de la Convention :** *Ne constitue pas un refus du droit au mariage l'obligation de respecter l'âge nubile légal, même si la religion de l'intéressé autorise le mariage à un âge inférieur.*

*La détention régulière d'une personne mariée ne constitue pas, en elle-même, une violation du droit de fonder une famille.*

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## THE FACTS

(français : p. 256)

The applicant is a British citizen, born in 1961 and resident in Huddersfield. The facts, as submitted by the applicant, may be summarised as follows.

The applicant, a Muslim, met and fell in love with a Muslim girl under the age of 16. They requested the girl's father's consent to marry, which was refused on three occasions. The girl left home with the applicant's assistance and they underwent an Islamic marriage ceremony on 5 November 1982. Under Islamic law, a Muslim girl may marry without her parents' consent on attaining the age of 12 years. The girl was then 14 1/2 years of age and the applicant 21 years of age. The couple lived in London for approximately 14 months until on 21 December 1983 the girl's father forcibly removed her.

The applicant was charged with abduction of a girl from the possession of the father contrary to Section 20 of the Sexual Offences Act 1956 ("the 1956 Act") and with sexual intercourse with a girl under the age of 16 contrary to Section 6 (1) of the 1956 Act. The applicant was tried on 19 June 1984 and sentenced to nine months' imprisonment on the second count. The applicant appealed to the Court of Appeal but his appeal was refused by a single judge on 20 August 1984. He did not appeal to the full Court of Appeal since he feared the loss of time counting towards his sentence and since legal aid was not available.

## COMPLAINTS

### *Article 9*

The applicant claims that he was prevented from manifesting his religion through his marriage under Islamic law by the operation of Section 6 (1) of the Sexual Offences Act 1956.

### *Article 12*

The applicant claims that the custodial sentence imposed on him under the 1956 Act prevented him consummating his marriage and from founding a family.

### *Article 14*

The applicant claims that he was discriminated against in that the judge failed to take into consideration his religion, under which it is considered lawful for a girl to marry on attaining the age of 12 years without her parents' consent.

## THE LAW (Extract)

1. The applicant complains that he has been prevented from manifesting his religion through his Islamic marriage by the operation of the legislation which makes it an offence to have sexual intercourse with a girl under the age of 16. By Islamic

law, the applicant may marry a girl without her parents' consent if she has reached the age of 12. He also complains that the custodial sentence imposed on him prevented him from exercising his right to marry and found a family.

It is true that Article 9 secures to everyone the right to freedom of thought, conscience and religion and to manifest their religion or belief in worship, teaching, practice or observance. However, the term "practice" as employed in Article 9 para. 1 does not cover each act which may be motivated or influenced by a religion or belief. While the applicant's religion may allow the marriage of girls at the age of 12, marriage cannot be considered simply as a form of expression of thought, conscience or religion, but is governed specifically by Article 12 (see eg. No. 6167/73, Dec. 18.12.74, D.R. 1 p. 64). The Commission therefore must examine the applicant's complaints under Article 12.

Article 12 states that:

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

The Commission recalls that under English law, a girl may lawfully marry with her parents' consent on attaining the age of 16 and without their consent on reaching the age of 18. A marriage contracted with a girl under the age of 16 is invalid and sexual intercourse with a girl under 16 is an offence under Section 6 of the Sexual Offences Act 1956, the provision under which the applicant was lawfully sentenced to nine months' imprisonment. The applicant's girl friend was therefore not of the marriageable age required by internal law. Since the right to marry guaranteed under Article 12 is subject to the internal laws governing the exercise of this right, the Commission concludes that in the circumstances of the case there is no appearance of a violation of the rights under the Convention and in particular of Articles 9 and 12.

As regards the applicant's complaint that the custodial sentence itself prevented him consummating his marriage and founding a family, the Commission recalls that even if the marriage was considered valid under national law, lawful detention must of necessity interfere in the relations of a married couple and does not of itself constitute a violation of Article 12 (see eg. No. 8166/73, Dec. 3.10.78, D.R. 13 p. 241).

It accordingly follows that this part of the application must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

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