CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30024/96
by Joga SINGH and Others
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on 26 September 2000 as a Chamber composed of

Mr W. Fuhrmann, *President*,
Mr L. Loucaides,
Mr P. Kūris,
Mrs F. Tulkens
Sir Nicolas Bratza,
Mr K. Traja,
Mr M. Ugrekhelidze, *judges*,
and Mrs S. Dollé, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 5 September 1995 and registered on 31 January 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The six applicants are all members of the same Sikh family and are Indian citizens. The second applicant Mrs Daljit Kaur was born in 1963 and is resident in Middlesex with her four children, the third to sixth applicants: Miss Amandeep Kaur born in 1983, Miss Sandeep Kaur born in 1984, Master Tejpal Singh born in 1988 and Miss Gurjit Kaur born in 1991. The third and fourth applicants were born in India whilst the fifth and sixth applicants were born in the United Kingdom. The first applicant, born in 1957, is the husband of the second applicant and the father of the other applicants. His current whereabouts are unknown. They are represented before the Court by Ms N. Mole, a lawyer working for the AIRE Centre in London.

A. The circumstances of the case

Commented [Note1]: Where the parties' description of the facts differ their respective versions of the facts should be set out separately.

The facts of the case, as submitted by the parties, may be summarised as follows.

The first and second applicant were married in India in 1983.

The first applicant arrived in the United Kingdom on 1 January 1986 carrying an Indian passport in a false name (Amarjit Singh). He was granted temporary admission, pending the intervention of a Member of Parliament. He failed to report back to the Home Office after his temporary admission expired, and became an overstayer.

The second applicant and her two children, the third and fourth applicants, arrived in the United Kingdom on 12 July 1986 and were given leave to enter for a period of two months. They did not seek any extension of leave and remained in the United Kingdom as overstayers. The fifth and sixth applicant were born in the United Kingdom and have never visited India.

In August 1986 the first applicant was arrested and returned to India. However, on his arrival the Indian immigration authorities refused to accept him and returned him to the United Kingdom, due to his lack of passport and travel documents. On his return to the United Kingdom, the first applicant sought asylum and was granted temporary admission. The applicant was refused asylum and the Immigration Officer set out the following in his report:

> "Mr Amarjit Singh first arrived in this country on 1.1.86. No mention of his political activities and consequent persecution was mentioned at his examination then. On his return to India on 29.8.86 he was not arrested or held by the police as might be expected if he were of any interest to them, but was turned back to this country almost immediately. The first mention of any political aspect of this case came during the interview with D.M. McKean when the passenger stated that the did not wish to return to India because of unrest in his country. The passenger denied any involvement at that stage. He admits that the idea to apply for asylum largely came from individuals he met during detention. In view of the length of time taken by the passenger to mention his justification for staying in the United Kingdom and the source of his inspiration, I feel that little if any credence can be attached to his request."

The applicant absconded from detention and despite the refusal of his asylum application, he remained in the United Kingdom.

In 1988 the second applicant obtained employment as a packer for an aircraft food meal company and she has continued in this employment. The first and second applicants purchased a house in the United Kingdom in 1989.

In June 1992 the first applicant made an application seeking indefinite leave to remain for himself and his family as dependants. This application stated his fears that he would be persecuted on his return due to his involvement before July 1986 with the Sikh Students' Federation. The first applicant had been involved in using his taxi to assist the illegal Sikh Group, Babar Khalsa, for transport and putting up posters. The police illegally commandeered the taxi and the applicant was implicated in the subsequent beating up of two police officers by members of Babar Khalsa. The applicant alleges that, prior to his departure from India, he was harassed and threatened by the police, as was his family, and that he thus went into hiding and subsequently left India for the United Kingdom. The application was treated as a renewed application for asylum. The first applicant was interviewed in connection with his application in December 1992 and February 1993 and he gave evidence at a hearing on 27 June 1993.

On 16 September 1993 the Home Office Immigration Service informed the applicants that removal directions were going to be sent to remove them all to India. On 7 October 1993 the applicants were refused political asylum and notified that removal directions would be sent by the Secretary of State. On 7 October 1993 a notice of appeal against the refusal by the Secretary of State was made to a Special Adjudicator under Section 8 (4) of the Asylum and Immigration Appeals Act 1993. On 26 July 1994 and 25 August 1994 an appeal hearing was held at which the first and second applicants gave oral evidence, as did various other witnesses, including the first applicant's father, who testified, inter alia, that he had returned to India on several occasions to visit his daughter. On 15 September 1994 the appeal was rejected by the Special Adjudicator. In his conclusions, the Special Adjudicator stated:

> "There are many inconsistencies in the evidence given by the [first applicant] at different times and between the evidence given by the [first applicant] and that given by other witnesses. As the summary of the evidence shows, the [first applicant] himself on occasions was obliged to admit these inconsistencies and sought to explain them by saying that he was nervous and confused. Mr Dymond [the applicants' counsel] also had to concede in his submissions that there were inconsistencies, particularly about dates and about some aspects of the [first applicant's] activities in India. He insisted however, that the basic story told had always remained the same.
>
> Perhaps the most glaring of all areas of inconsistency relates to the allegations that the police on a number of occasions commandeered the [first applicant's] taxi. This part of the story does not figure at all in the first interview which the [first applicant] had under his false name in 1986. At his interview in 1993 … the [first applicant] said that it happened about five times over a period of 2-3 weeks in 1984 and happened again an unspecified number of times at the end of 1984. At the hearing in June the [first applicant] said that the police began to take his taxi in 1983 and that it happened two or three times a month for six months. According to the evidence given by the [first applicant's] wife, the [second applicant], the police came regularly two or three times a week but in 1985 it was more often. No other witness mentioned the commandeering of the taxi as late as 1985. The fifth and final witness Parmjit Singh said that the incidents with the taxi were going on in 1981 when he was in India for his own marriage. He said that during the month or so that he was in India the first applicant's taxi was commandeered three or four times. The witness linked these incidents to a most important event in his own life and was adamant about the year in which they had occurred, obviously being unaware of the gross contradiction between his evidence and the other witnesses'."

The Special Adjudicator rejected as self serving evidence two letters from an advocate in India, dated February 1989 and August 1993, that stated the first applicant would be killed by the police if he returned to India. The Special Adjudicator commented as follows:

> "I find it very strange that the [first applicant] as he admitted at the hearing was not aware that a lawyer was looking after his interests in India. There has been no explanation as to how this Advocate came to be briefed and by whom. The contents of these letters seem to bear little relationship to other evidence which I have heard."

The Special Adjudicator also expressed doubt as to the authenticity of two arrest warrants for the first applicant, dated January 1989 and July 1993.

Finally the Special Adjudicator made reference to what he described as the first and second applicants' "deplorable immigration history":

> "The [first applicant's] immigration history is also a factor to be taken into account in assessing his credibility. He used a forged passport in a false name on his first visit to the U.K. and applied for asylum in that false name. He twice absconded and for some years now has been lying low. Clearly he felt no compulsion during those years to apply for asylum. He decided to try to regularise his immigration status in the U.K. when he heard that people who had paid taxes here for five years would be allowed to remain here permanently. The [first applicant's] past immigration history, his two escapes from custody, coupled with the major inconsistencies in the evidence presented by him or on his behalf clearly indicate that the [first applicant] has no scruples in indulging in lies and deceit in his dealings with authority in order to gain his desired ends. His wife, the [second applicant], appears to be equally prepared to deceive the authorities in that she entered the U.K. as a visitor in 1986 but clearly had the intention of remaining here permanently. She has admitted through her previous advisors that she has been an overstayer for most of her time in the U.K."

An appeal was lodged for leave to appeal before the Immigration Appeal Tribunal against the determination of the Special Adjudicator. On 4 October 1994 the application for leave to appeal was refused.

On 24 January 1995 representations were sent to the Home Office that the applicants be permitted to remain in the United Kingdom outside the Immigration Rules. On 21 April 1995 the Home Office replied and stated that the Secretary of State was not persuaded to reverse his decision to remove the applicants to India as illegal immigrants. On 29 June 1995, when the first applicant reported as usual to Southall Police Station, he was detained in police custody for three days and then transferred to Rochester Prison. On 14 July 1995 solicitors acting for the applicants lodged with the Home Office Immigration Service a further application for leave to remain outside the rules, on compassionate grounds. This application included psychological reports detailing the damaging effects on the children if they were to be removed to India and school reports which supported the application. On 1 August 1995 the Secretary of State again refused the request of the applicants to remain in the United Kingdom outside the Immigration Rules.

On 4 September 1995 the applicants sought judicial review of the decision of the Secretary of State of 1 August 1995. On 5 September 1995 the application seeking leave to apply for judicial review was refused. On the same day the first applicant was deported. The whereabouts of the first applicant since his deportation are unknown. The second applicant has fears about the safety of her husband, from whom she has heard nothing since his deportation.

In December 1995 the second applicant made an application for the renewal of her and her children's passports. In a letter dated 23 October 1996 the Home Office confirmed that as a result of medical advice stating the second applicant was unfit to travel due to back surgery there would be no attempt to remove her or her children from the United Kingdom until mid-December 1996.

The second applicant and her children live with her parents-in-law, who have both been permanent legal residents of the United Kingdom since 1988. The third to sixth applicants also have a close relationship with their paternal uncle and his three children, their cousins. The applicants have not visited India since their departure in 1986, the third to sixth applicants do not know their relatives living in India and the fifth and sixth applicants have never visited India. The third to fifth applicants are of school age and are all in full time education. They have never been educated other than in England. Their spoken Punjabi is not fluent and they are unable to read and write Punjabi.

B. Relevant domestic law and practice

Under section 3(1) of the Immigration Act 1971, leave may be given to enter for a specific period. A person who remains in the United Kingdom after the expiry of his leave becomes an overstayer and liable to deportation under section 3(5)(a) of the Immigration Act 1971.

Entering the United Kingdom on a false passport is an offence under section 26(1)(d) of the Immigration Act 1971. A person using a false passport is accordingly an illegal entrant and as such liable to removal pursuant to directions by the Secretary of State under paragraph 9 of Schedule 2 to the Immigration Act 1971.

A false representation to an immigration officer that there was no intention to stay permanently in the United Kingdom is an offence under section 26(1)(c) of the 1971 Act. Any person committing such an offence is categorised as an illegal entrant liable to removal pursuant to directions.

Persons categorised as illegal entrants have the right to apply for asylum.

Following the order for removal from the United Kingdom by the Secretary of State, a person has, by virtue of section 8(4) of the Asylum and Immigration Appeals Act 1993, a right to appeal to a Special Adjudicator on the grounds that such removal would be contrary to the United Kingdom's obligations under the 1951 Geneva Convention on the Status of Refugees.

In deciding whether to allow an appeal under section 8 of the Asylum and Immigration Appeals Act 1993, a Special Adjudicator can review any question of fact on which the decision was based. There is a general right under section 20 of the Immigration Act 1971 to appeal to the Immigration Appeal Tribunal against an unfavourable decision by a Special Adjudicator. Any such appeal requires leave by virtue of paragraph 13(1) of the Asylum and Immigrations Rules 1993.

There is no provision in the Immigration Rules for the Secretary of State to grant exceptional leave to remain in the United Kingdom. Any decision to allow leave is therefore in the exercise of discretion outside the Rules. The Secretary of State's refusal to grant such leave can, however, be challenged in accordance with the normal principles of administrative law.

COMPLAINTS

The applicants claim that the deportation of the first applicant constituted a breach of Article 2 of the Convention. They contend that there were substantial grounds for believing that the deportation of the first applicant to India would lead to a substantial risk for his safety due to his past involvement in the Sikh movement, but that the first applicant was nevertheless deported and has subsequently disappeared. The applicants also allege violation of Articles 3 and 8 of the Convention as regards the deportation of the first applicant.

The second to sixth applicants complain that their deportation would amount to a violation of Article 3 of the Convention due to the real risk that, because of the activities of the first applicant, they would be subject to police harassment, detention and interrogation. They originally alleged violation of Article 8 in this respect.

THE LAW

1. The applicants claim that the deportation of the first applicant and the order for deportation of the second to sixth applicants amount to a breach of Article 3 of the Convention.

Article 3 of the Convention provides as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government submit that whilst the expulsion of an asylum seeker may give rise to an issue under Article 3 where there are substantial grounds for believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the country to which he is returned, a mere possibility of ill-treatment is not sufficient. It is not accepted by the Government that the first applicant has been the subject of a forcible disappearance. Further, the Government state that the existence of the risk must be assessed primarily with reference to those facts which were or ought to have been known to the Contracting State at the time of the expulsion. It is submitted that the evidence presented by and on behalf of the first applicant could not, as a whole, have enabled the United Kingdom to foresee any alleged ill-treatment of the first applicant or any real risk to the second to sixth applicant if deported to India.

The applicants do not accept the Government's submission that the first applicant has not disappeared and state that neither they nor any of their family in India have heard anything from the first applicant, a devoted family man, since he was deported in 1995. The applicants refer to the fact that the Sikh Human Rights Group have expressed their concerns about the risks of making official enquiries as to the first applicant's whereabouts and that unsuccessful attempts were made by the Sikh Human Rights Group to obtain information about the first applicant. The applicants also rely on past incidents of deported Sikhs arriving in India and then "disappearing" on arrival or being subjected to torture. They rely on the situation in Punjab as detailed by the reports of the United Nations Working Group on Involuntary Disappearances in its report to the 52nd session to the Commission on Human Rights and by the Court in Chahal v. the United Kingdom (judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V). The applicants contend that the Court should have regard to facts which have come to light subsequent to the expulsion, namely the fact that the first applicant is missing.

The Court recalls that expulsion by a Contracting State may give rise to an issue under Article 3 where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country (the aforementioned Chahal v the United Kingdom judgment, p. 1853, § 74). However, a mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Article 3 of the Convention (Vilvarajah and Others v the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 37, § 111). The Court further notes that the practice of the Convention organs has been to require compliance with a

standard of proof "beyond reasonable doubt" that ill-treatment of a certain severity has occurred (see Ireland v the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

The Court further recalls that in assessing the existence of the risk of exposing an individual claiming asylum to ill-treatment on return to his home country, the relevant facts are primarily those which were known or ought to have been known to the Contracting State at the time of the expulsion, although the Court is not precluded from having regard to information which comes to light subsequent to the expulsion (see aforementioned Vilvarajah and Others v the United Kingdom judgment, p. 36, § 108).

The Court notes that at the time of the Special Adjudicator's decision of 15 September 1994 to dismiss the applicants' appeal, there was indeed very little by way of evidence which could substantiate the applicants' claims that the first applicant would be in danger if returned to India: the various versions of the story were contradictory, a letter from an advocate gave no reason as to why the advocate should be writing on the first applicant's behalf, and the Special Adjudicator expressed doubts as to the genuineness of the arrest warrants in the first applicant's name. The decision to expel could not therefore be said to be unreasonable or arbitrary.

Since the first applicant was returned to India in September 1995, it appears that nothing has been heard from him. It is open to the Court to have regard to information which comes to light after the deportation as that information may be of value in confirming or refuting the appreciation made by the domestic authorities, or the well-foundedness or otherwise of an applicant's fears (see the above-mentioned Vilvarajah and Others v. the United Kingdom judgment, p. 36, § 107).

In the present case, however, there is no information about the first applicant. Whilst the Court can appreciate the fears of the other applicants, it is not able, on the basis of a complete lack of any sign or sighting of the first applicant, to conclude that he has been killed or ill-treated, whether by State authorities or by others. To the extent that the Government are required to undertake research as to the whereabouts of individuals they deport, the Court notes that the Government were prepared to make inquiries of the responsible Indian authorities, but that the applicants' representatives did not want the name of the first applicant to be disclosed.

The Court does not therefore have information which could confirm the well-foundedness of the applicants' fears at the time of the decision to expel.

It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicants also allege that the expulsion of the first applicant amounted to a violation of Articles 2 and 8 of the Convention. Article 2 of the Convention provides, in so far as relevant, as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law…."

Article 8 provides, so far as relevant, as follows:

"1. Everyone has the right to respect for his private and family life ...

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 ..., public safety or the economic well-being of the country, for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others."

The facts relied on in support of the contention of a breach of Article 2 are the same as those relied on in the Article 3 claim above. The Court considers that the considerations set out above in connection with Article 3 apply equally to the complaints under Article 2 of the Convention.

The facts relied on in support of the contention of a breach of Article 8 are also, to a large extent, the same as those relied on in the Article 3 claim above. Again, the considerations set out above in connection with Article 3 apply, at least in part, to the complaints under Article 8.

To the extent that the Article 8 complaint gives rise to issues separate from those set out above in connection with Article 3, the Court notes the reasons given in the Special Adjudicator's decision of 15 September 1994 for refusing the first and second applicants' appeal, and also notes that at that time it was the clear intention of the United Kingdom authorities to remove all applicants. The Court considers that the deportation of the first applicant constituted an interference with the applicants' right to respect for their Article 8 rights, but that the interference was justified by factors of immigration control weighing in favour of exclusion.

It follows that this part of the application must also be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicants originally alleged that the deportation of the second to sixth applicants would amount to a violation of Article 8 of the Convention.

On 21 September 2000 the applicants' representatives informed the Court that, given the time the applicants had been in the United Kingdom and in the light of the coming into force of the Human Rights Act 1998 on 2 October 2000, they had decided to ask the Secretary of State to re-consider his decision to remove them and to refuse leave to remain in the United Kingdom. They therefore sought to withdraw their applications under Article 8 of the Convention.

The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). It does not consider that respect for human rights as defined in the Convention requires examination to be continued.

The Court therefore decides to strike this part of the application out of its list of cases.

For these reasons, the Court, unanimously,

DECIDES TO STRIKE OUT OF ITS LIST the second to sixth applicants' complaints concerning their deportation;

DECLARES INADMISSIBLE the remainder of the application.

S. Dollé
Registrar

W. Fuhrmann
President