

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 21783/08
by Ruhul ANAM
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 7 June 2011 as a Chamber composed of:

Lech Garlicki, *President,*
Nicolas Bratza,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 May 2008,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ruhul Anam, is a Bangladeshi national who was born in 1970 and lives in Harmondsworth.

A. The circumstances of the case

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

The applicant arrived in the United Kingdom with his parents and siblings on 15 June 1984. The family were subsequently granted indefinite leave to remain. The applicant has four brothers and five sisters; it is not known whether all of them live in the United Kingdom but some do, as does the applicant's mother. He has family still in Bangladesh. The applicant married in 1994 and has three children, whom he has not seen since separating from his wife in 2000.

The applicant's offending history began in 1991, when he was twenty-one years of age, and when he was convicted of assault occasioning actual bodily harm and going equipped for theft. He was given a conditional discharge in respect of each offence. In 1995, the applicant was sentenced to four months' imprisonment for various offences of dishonesty and subsequently to seven and a half months' imprisonment for assault occasioning actual bodily harm and perverting the course of justice. He received subsequent convictions leading to short prison terms over the next several years, for shoplifting, making off without paying and obstructing the police. Then, in January 2000, he was convicted of offences of dishonesty, failing to surrender to bail and failing to surrender to custody, for which he was sentenced to twelve months' probation and community service. Later in 2000 he was convicted of, *inter alia,* assault. In December 2000, he was sentenced to eighteen months' imprisonment for offences of dishonesty. Subsequently, he amassed further convictions for offences of dishonesty as well as failure to surrender to custody on five occasions and failure to surrender to bail on two.

On 12 January 2007, the applicant was convicted of two counts of theft and one of robbery, and sentenced to four years' imprisonment. He was informed of his liability to deportation on 5 September 2007, and invited to make representations. He did not do so, and a deportation order was served on him on 5 February 2008. Directions were set for his removal, but were cancelled because he became disruptive. He made representations based on his mental health on 2 May 2008, and on the same date lodged an out of time appeal against the decision to deport him. Further removal directions were cancelled when the applicant claimed asylum on 7 May 2008. The basis of his claim was that he would be imprisoned on arrival in Bangladesh because he had been deported from the United Kingdom.

His appeal proceeded, despite its lateness, and was dismissed on 12 August 2008. The then Asylum and Immigration Tribunal accepted that the applicant had been diagnosed as suffering from paranoid schizophrenia and had spent time in a mental hospital in 2005. The Tribunal further took note of a psychiatric report, which stated that the drug, Risperidone, on which the applicant had previously been stabilised and which he was prepared to resume taking, was not included on a list of drugs available in Bangladesh, and that there was a dearth of psychiatric beds available in that country. The Tribunal noted that the report failed to indicate the importance

of the drug to the applicant's health; whether it was available privately; whether alternatives would suffice; and whether it was also unavailable in many other countries. The Tribunal also took note of objective evidence, which indicated that the majority of psychiatric drugs were available in Bangladesh and that there were psychiatric practitioners, though the level of care was not necessarily up to United Kingdom standards. The Tribunal concluded that although the applicant might not benefit from the same level of treatment in Bangladesh as he could expect in the United Kingdom, there was not a complete lack of facilities and drugs available. He was not in the last stages of a terminal illness. He did not meet the high threshold of Article 3.

In terms of Article 8, the Tribunal accepted that the applicant would like to see his children, but noted that he did not have contact at present and was unlikely to in future, having twice been refused contact by a court. It was accepted that the applicant enjoyed private and family life in the United Kingdom, particularly with his mother and siblings. These relatives stated at the hearing that if the applicant were released, he would live with his mother and they would all support him to ensure that he took his medication and did not commit further offences. The Tribunal found, contrary to the applicant's assertions, that he had spent long periods of time in Bangladesh since moving to the United Kingdom. He had returned to Bangladesh shortly after his arrival in the United Kingdom and had spent approximately a year living with an aunt and uncle. He spent a further period of around a year and a half there when he was in his early twenties and had returned for other, shorter trips.

The Tribunal accepted that the applicant's deportation would interfere with his private and family life and that the interference would be sufficiently grave to engage Article 8. However, the interference was necessary for the prevention of crime. It was also proportionate, given the applicant's long history of criminal offending culminating in a serious robbery; his lack of contact with his children and lack of prospects of such contact in the future; his extended trips to Bangladesh in the past; and the fact that his siblings could help him to resettle in Bangladesh.

A High Court review was refused on 28 August 2008. The applicant's outstanding asylum claim was refused on 25 September 2008, on the grounds that there was no evidence available to support his claims that he would be imprisoned indefinitely upon return. It was not United Kingdom policy to inform receiving states of the reasons for a person's removal from the United Kingdom. The applicant's statements were contradictory and unsubstantiated. No right of appeal was available against the refusal of asylum; however, a further High Court review of the Tribunal decision was refused on 22 October 2008, on the grounds that the decision reached was one which the Tribunal had been entitled to reach on the basis of the evidence presented and that the determination contained no error of law.

The applicant sought interim measures under Rule 39 to prevent his deportation. His application was refused on 2 January 2009. His removal directions, set for 5 January 2009, were in any event cancelled as the applicant had made a fresh claim for asylum. This was refused in February 2009. The applicant initiated judicial review proceedings regarding the length of his detention. His application was rejected by the High Court on 13 October 2009. The applicant has not been deported and remains in immigration detention. He has not raised any complaints regarding his length of detention before this Court.

B. Relevant domestic law

Section 3(5)(a) of the Immigration Act (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.

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

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.

COMPLAINTS

The applicant complained that his deportation to Bangladesh would violate Articles 2, 3 and 8 of the Convention.

Article 2 provides as relevant:

> "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally..."

Article 3 provides:

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

Article 8 provides as relevant:

> "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 in accordance with law and is necessary in a democratic society ... for the prevention of disorder or crime..."

THE LAW

A. Articles 2 and 3 of the Convention

The Court finds it appropriate to deal with the complaint under Article 2 together with the related complaint under Article 3 and will proceed on this basis (see *Said v. the Netherlands*, no. 2345/02, § 37, ECHR 2005-VI and *D. v. the United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III, § 59).

1. The applicant's submissions

The applicant did not pursue his asylum claim before this Court, but invoked Articles 2 and 3 in the context of his mental health. He maintained that his deportation would amount to a breach of these provisions of the Convention because he was mentally ill, relied heavily on his family for support and would be deprived of this support if deported, and needed treatment which would not be available to him in Bangladesh.

2. The Court's assessment

The Court recalls its findings in the case of *Bensaid v. the United Kingdom*, no. 44599/98, §§ 37-40, ECHR 2001-I, which involved an Algerian man diagnosed with schizophrenia and psychotic illness, who was to be removed from the United Kingdom to Algeria. The applicant in that case maintained that the difficulties in obtaining medication and the stress inherent in returning to his area of Algeria, where there was violence and active terrorism, would seriously exacerbate his already existing mental illness and cause relapse into hallucinations and psychotic delusions involving self-harm and harm to others. The Court accepted that the suffering associated with such a relapse could, in principle, fall within the scope of Article 3. However, it also found that the applicant faced a risk of his mental health deteriorating even if he remained in the United Kingdom. Although his removal would arguably increase the risk and the applicant's circumstances in Algeria would be less favourable than in the United Kingdom, there was treatment available in Algeria, albeit limited. The Court found, overall, that the applicant's claim that his removal would lead to deterioration in his mental state and that he would not receive the appropriate treatment or care was, to a large extent, speculative. Having regard to the high threshold set by Article 3, particularly where the case did not concern the direct responsibility of the Contracting State for the infliction of harm, the Court did not find that there was a sufficiently real risk that the applicant's removal would be contrary to the standards of Article 3. The case did not disclose the exceptional circumstances of *D. v. the United Kingdom*, 2 May 1997, *Reports of Judgments and*

Decisions 1997-III, where the applicant was in the final stages of a terminal illness, AIDS, and had no prospect of medical care or family support on expulsion to St Kitts.

The Court further recalls the Grand Chamber's findings in the case of *N. v. the United Kingdom* [GC], no. 26565/05, §§ 42-45, 27 May 2008, that the decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. The Court did not exclude that there may be other very exceptional cases where the humanitarian considerations were equally compelling. However, it considered that it should maintain the high threshold set in *D. v. the United Kingdom,* cited above, and applied in its subsequent case-law, which was correct in principle, given that in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-State bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country. As regards the applicant in *N.*, a Ugandan woman with HIV/AIDS, the Court found that, although the quality of her life, and her life expectancy, would be affected if she were returned to Uganda, she was not at the present time critically ill. The rapidity of the deterioration which she would suffer and the extent to which she would be able to obtain access to medical treatment, support and care, including help from relatives, had to involve a certain degree of speculation, particularly in view of the constantly evolving situation as regards the treatment of HIV and AIDS worldwide. As such, her case did not disclose very exceptional circumstances, and her removal to Uganda would not breach Article 3.

Turning to the facts of the instant case, the Court observes that the applicant has submitted no more up-to-date medical evidence in respect of his condition than was before the Tribunal which considered his appeal against deportation in 2008. The Court has therefore been given no reason to depart from the findings of the Tribunal, namely that the applicant has been diagnosed as suffering from paranoid schizophrenia and that he was previously stabilised on a particular drug, Risperidone. In the absence of further information, it is not possible to conclude whether the applicant is currently taking this drug or not. As noted by the Tribunal, it has not been established whether or not this drug is available privately in Bangladesh or whether there are available alternatives that would treat the applicant's condition satisfactorily.

The Court further observes that the Article 3 claim in this case is even more speculative than those in *Bensaid* and *N.*, given the apparent absence of evidence as to the applicant's current mental health and the treatment he is receiving, if any, and the likely availability of treatment in Bangladesh.

Although it is accepted that the psychiatric facilities available to the applicant are likely to be of a lesser standard in Bangladesh than in the United Kingdom, and that the applicant relies on his family in the United Kingdom for support in dealing with his mental health problems, the applicant has not established that he will be unable to have access to suitable treatment or alternative support in Bangladesh. Nor has he shown that, in the absence of such treatment or support, his health would inevitably deteriorate to a level where it would amount to inhuman and degrading treatment.

In the Court's view, the applicant's case cannot be distinguished from *Bensaid* or *N.*, in that it does not disclose very exceptional circumstances, as found to be present in *D.* It follows that the applicant's complaints under Articles 2 and 3 of the Convention must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Article 8 of the Convention

1. The applicant's submissions

The applicant submitted that he was heavily dependent on his family, specifically his mother and siblings, as a result of his mental health problems and would not have the same support in Bangladesh. He did not seek to argue before this Court that his deportation would breach Article 8 as a result of his relationship with his children, but did rely on the length of time he had been resident in the United Kingdom. He also invoked Article 8 in respect of his mental health.

2. The Court's assessment

As a preliminary matter, the Court finds that the applicant's mental health problems have already been fully considered under Article 3 of the Convention and that no separate issue arises under Article 8. It does not therefore find it necessary to examine this element of the applicant's Article 8 complaint (see *N.*, § 53, cited above).

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 v. Austria* [GC], no. 1638/03, ECHR 2008 § 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).

Having regard to the considerable period of time the applicant has lived in the United Kingdom, the Court considers that his expulsion would constitute an interference with his right to respect for his private life. As regards the applicant's alleged family life in the United Kingdom, the Court observes that the applicant claims to be particularly dependent on his mother and siblings because of his mental health problems and that these family members attended the hearing of his appeal against deportation and pledged to support the applicant in the event of his being permitted to remain in the United Kingdom and to prevent him from further offending. The Court takes the view, in the light of the applicant's lengthy and frequent history of criminal conduct, that it was perhaps unduly optimistic on the part of the applicant's family members to state that they would be able to prevent him from further offending, given that they have evidently not been able to influence his behaviour for the better in the past. Nonetheless, the Court accepts that the applicant has a higher degree of reliance on his mother and adult siblings than other adults as a result of his diagnosed mental health problems and finds, for this reason, that family life exists between them. The applicant's deportation would therefore interfere with both his private and his family life.

Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 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 Court finds that the first requirement is unquestionably satisfied, since the impugned measure had a basis in domestic law, namely section 3(5)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999). The Court further finds that the impugned measure would serve a legitimate aim, namely the "prevention of crime". It only remains, therefore, to determine whether the applicant's deportation would be proportionate, or "necessary in a democratic society" in pursuit of the relevant legitimate aim.

The Court recalls that the criteria used to determine whether an interference with private or family life in an expulsion case is "necessary in

a democratic society" have been summarised by the Grand Chamber as follows (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57-58, ECHR 2006-XII):

> "- 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;
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> - the time elapsed since the offence was committed and the applicant's conduct during that period;
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> - 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;
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> - 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.
>
> 58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:
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> - 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."

The Court notes in this regard the applicant's lengthy and continuous pattern of offending since 1991. Despite several custodial sentences over the years, he does not appear at any point to have reformed or ceased his criminal conduct. Furthermore, while some of his offences may be described as being at the less serious end of the criminal spectrum, his criminal career has also included offences of violence and, most recently, a serious robbery resulting in a four-year sentence. The applicant's history indicates that he represents a significant risk of future offending and, consequently, of harm to the public. This must be borne in mind when balancing his rights under Article 8 against the public interest.

The Court further observes that, while the applicant's close relatives all live in the United Kingdom, there is nothing to suggest that they could not visit the applicant in Bangladesh or remain in contact with him by telephone, letter and email and help to support him in this manner. Their willingness to support him in the United Kingdom by all possible means suggests that they would also help him to resettle himself in Bangladesh. The applicant also still has family members in Bangladesh, and has spent time there on various occasions since moving to the United Kingdom. While the applicant undoubtedly suffers from mental illness and would

therefore find his deportation from the United Kingdom and the reestablishment of his life in Bangladesh more difficult than the average person, the Court is not of the view that the difficulties would be so grave as to render his deportation disproportionate, having regard to his serious offending history.

Finally, the Court notes that the Tribunal which heard the applicant's appeal against deportation, and which gave full and appropriate consideration to all issues arising under Article 8, found that the applicant's deportation would be proportionate. Given the findings above, the Court does not consider that it has been given any reason to find differently or to strike a different balance.

For all these reasons, the Court finds that the applicant's deportation is justified as being necessary in a democratic society. It follows that the applicant's complaint under Article 8 of the Convention must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President