AS TO THE ADMISSIBILITY OF

Application No. 19628/92
by R.B.
against the United Kingdom

The European Commission of Human Rights sitting in private on 29 June 1992, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Sir Basil HALL
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 8 November 1991 by R.B. against the United Kingdom and registered on 12 March 1992 under file No. 19628/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of the United Kingdom born in Bangladesh in 1980. She is represented before the Commission by Messrs James & Co., Solicitors, Bradford.

The facts of the present case, as submitted by the applicant and which may be deduced from documents lodged with the application, may be summarised as follows.

The applicant's father, of Bangladeshi origin, went to the United Kingdom in 1959 and became a British citizen in 1966. He married the applicant's mother, also a Bangladeshi, in 1967. Three weeks later he married another Bangladeshi woman, who joined him in the United Kingdom in 1989. That year the applicant and her elder sister (born in 1971) were also admitted to the United Kingdom as their father's offspring, paternity having been established by DNA blood testing.

The applicant's mother applied to enter the United Kingdom in 1990, but her application was refused as immigration legislation provides that wives and minor children who do not have British citizenship or the right of abode in the United

Kingdom would be allowed entry if the husband/father could accommodate them, but only one wife would be so permitted. Section 2 of the Immigration Act 1988 provides that a woman would not be granted a certificate of entitlement to the right of abode, on the basis of a polygamous marriage, if another woman had already been admitted to the United Kingdom as the wife of the same husband. The intention of Parliament, according to the Home Office Ministers' explanation to the applicant's lawyers in a letter dated 16 January 1991, is to prevent the formation of polygamous households, the practice of polygamy being unacceptable to the vast majority of people in the United Kingdom. The applicant's mother has appealed against the refusal of entry to an Adjudicator, but it is alleged that the appeal holds no prospect of success in view of this legislation.

COMPLAINTS

The applicant complains of an infringement of her right to respect for family life and alleges that the refusal to allow her mother to enter the United Kingdom as her father's wife is discriminating on grounds of sex in that, inter alia, it allows the husband to choose the wife who shall join him in the United Kingdom.

THE LAW

1. The applicant complains of the refusal by the British immigration authorities to grant her mother a certificate of entitlement as her father's wife which would enable her to join the applicant and her father in the United Kingdom. It was refused because the marriage is polygamous and the applicant's father already has a wife settled with him in the United Kingdom.

The Commission does not consider that the application should be dismissed for non-exhaustion of domestic remedies, as envisaged by Article 26 (Art. 26) of the Convention, because the appeal by the applicant's mother to the Adjudicator appears to have little prospect of success in view of the provisions of Section 2 of the Immigration Act 1988 which prevent more than one foreign wife of a man settled in the United Kingdom being entitled to join him there.

The Commission recalls that whilst the Convention does not guarantee a right, as such, to enter a particular country, the exclusion of a person from a country where his or her close relatives reside may raise an issue under Article 8 (Art. 8) of the Convention (eg. No. 7816/77, Dec. 19.5.77, D.R. 9 p. 219; No. 9088/80, Dec. 6.3.82, D.R. 28 p. 160, and No. 9285/81, Dec. 6.7.82, D.R. 29 p. 205).

The relevant part of Article 8 (Art. 8) of the Convention provides as follows:

"1. Everyone has the right to respect for his .. 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 ... for the protection of ... morals, or for the protection of the rights and freedoms of others".

Article 8 (Art. 8) of the Convention presupposes the

existence of a family life and at least includes the relationship that arises from a lawful and genuine marriage although family life may not have been fully established. The Commission notes that the applicant's parents have been married since 1967 even if there is no evidence in the case-file that they have lived together for any prolonged period of time. The applicant lived with her mother for the first nine years of her life. A family life has, therefore, been established in the present case.

The Commission recalls, however, that the State's obligation to admit to its territory aliens who are relatives of persons resident there will vary according to the circumstances of the case. The Court has held that Article 8 (Art. 8) does not impose a general obligation on States to respect the choice of residence of a married couple or to accept the non-national spouse for settlement in the State concerned (Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A No. 94, p. 34, paras 67 and 68). Nevertheless, in the circumstances of the present case the Commission concludes that the refusal of the certificate of entitlement and, as a consequence, the refusal of entry to the applicant's mother, constituted an interference with the applicant's right to respect for family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. The question arises, therefore, whether this interference was justified under the second paragraph of Article 8 (Art. 8).

The Commission notes that the interference was in accordance with the law, namely, Section 2 of the Immigration Act 1988, which prevents more than one foreign wife joining the husband already settled in the United Kingdom and is intended to prevent the formation of polygamous households, the practice of polygamy being deemed unacceptable to the majority of people who live there. The aim of the provision would appear, therefore, to be the preservation of the Christian based monogamous culture dominant in that country. The Commission considers that such an aim is legitimate and falls within the scope of the protection of morals or the rights and freedom of others within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

In assessing whether the interference with the applicant's family life was necessary in a democratic society, the Commission recalls that the Contracting States have a certain margin of appreciation in the field of immigration policy (cf. Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A No. 138, p. 15-16, para. 28). Furthermore, in establishing an immigration policy on the basis of family ties, a Contracting State "cannot be required to give full recognition to polygamous marriages which are in conflict with their own legal order" (mutatis mutandis, No. 14501/89, Alilouch El Abasse v. the Netherlands, Dec. 6.1.92 unpublished). In this connection the Commission notes that for centuries it has been an offence in the United Kingdom, by virtue of the criminal law on bigamy, to contract a marriage with more than one woman at a time on United Kingdom territory.

As regards the facts of the present case, the Commission observes that when the applicant's parents decided that she should join her father in the United Kingdom it was clear from the domestic law that the mother had no entitlement to enter and that she would be separated from her daughter. Despite over 20 years of marriage her parents had not sought to establish their family life together either in Bangladesh or in the United Kingdom as they might have done. The applicant's father chose instead to have his second wife join him in the United Kingdom. This decision must have been taken by him and the family knowing that the applicant and her mother would face immigration difficulties as a result. Moreover there is no evidence in the

case-file that prior to the Immigration Act 1988 the applicant's father would have been entitled to have more than one foreign wife join him. He must have been aware of the general disapproval of polygamy in the United Kingdom ever since his arrival there.

In the circumstances of the case the Commission is of the view that the family life circumstances in the present case do not outweigh the legitimate considerations of an immigration policy which rejects polygamy and is designed to maintain the United Kingdom's cultural identity in this respect. It finds, therefore, that the interference with the applicant's right to respect for family life was in accordance with the law and justified as being necessary in a democratic society for the protection of morals and the rights and freedoms of others.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains of discrimination, in particular sexual discrimination, arising out of the facts of her case.

Article 14 (Art. 14) of the Convention requires States to secure Convention rights "without discrimination on any ground such as sex ...". However the Commission finds no evidence of sexual discrimination on the part of the respondent Government in the present case. The relevant domestic immigration law permits, in principle, a British citizen or an alien settled in the United Kingdom, to be joined by his or her foreign spouse. The entitlement is granted to just the one spouse for the duration of the marriage. The discrimination of which the applicant complains flows essentially from the practice of polygamy by the applicant's father for which the respondent Government is not answerable under the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)