AS TO THE ADMISSIBILITY OF

Application No. 18713/91
by R.C.
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 1 April 1992, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First Chamber

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

Having regard to the application introduced on 9 August 1991 by R.C. against the United Kingdom and registered on 22 August 1991 under file No. 18713/91;

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 British citizen, born in 1968. She resides in London and is a housewife.

She is represented in the proceedings before the Commission by Messrs. Salim and Co., solicitors practising in London.

The facts, as submitted by the applicant and as may be determined from the documents lodged with the application, may be summarised as follows.

The applicant was born in Bangladesh. She entered the United Kingdom on 5 June 1980. She became a British citizen by registration on 16 September 1982.

The applicant's husband A. is a Bangladeshi citizen. He was born in 1958 in Bangladesh where he is still resident.

On 22 September 1986 the applicant married A. in Bangladesh. The couple have two children, T. and W., who were born in the United Kingdom on 20 July 1987 and 2 May 1990 respectively. The children are British citizens and reside in the United Kingdom with the applicant.

On 14 December 1986 A. submitted an application to the Immigration Section of the British High Commission at Dhaka for entry clearance to settle in the United Kingdom as the applicant's husband.

On 9 May 1988 A. was refused entry clearance by a British clearance officer at Dhaka. The latter was not satisfied that the marriage was not entered into primarily to allow A.'s admission into the United Kingdom.

On 7 June 1988 A. entered a notice of appeal against the refusal of entry decision.

On 9 January 1989, the applicant returned to Bangladesh for nine months.

On 8 February 1990 A.'s appeal was heard by an Adjudicator.

The Adjudicator's determination is dated 7 March 1990. The Adjudicator concluded as follows:

> "I am faced therefore with the fact that I consider that both the sponsor and the appellant have lied. I ask myself, given the fact that I accept that there is a settled marriage between these two, where does it leave the issue that I have to decide? There is clear evidence that the sponsor has spent long periods of time in Bangladesh and was quite prepared to continue to live there, albeit she says reluctantly because she claims she is constantly ill there. I accept that she had had illnesses there, but I would not put it any higher than that. It is a question of this couple agreeing to marry and then getting married on the basis that they will, if possible live in this country but if they can't, they will live in Bangladesh. I agree that this is a possible interpretation but it is for the appellant to satisfy me on the balance of probabilities, and looking at all the circumstances in the round I am not satisfied that at the time he got married to [the applicant] he did not do so, primarily to get into this country.
>
> `The appeal is dismissed`".

On 18 April 1990 A. applied for leave to appeal against the Adjudicator's determination.

On 18 March 1991 the Immigration Appeal Tribunal refused leave to appeal.

On 4 June 1991 the applicant applied for leave to apply for judicial review of the determination of the Immigration Appeal Tribunal.

On 15 July 1991 Mr. Justice Rose dismissed the application for leave to apply for judicial review.

On 22 July 1991 the applicant was advised by Counsel that she would have no prospects of obtaining such leave upon renewed application to the Court of Appeal.

The applicant states that she is unable to live in Bangladesh because she was constantly ill there and because she believes that the future of her two children is and will remain in the United Kingdom.

COMPLAINTS

The applicant contends that by refusing A. permission to enter the United Kingdom as the applicant's husband the United Kingdom authorities are denying the applicant the right to family life and the right to found a family. She invokes Articles 8 and 12 of the Convention. The applicant also contends that paragraph 46 of HC 169/503 (the relevant immigration rule) is inconsistent with the United Kingdom's obligations under the Convention and in particular, under Article 14 thereof. In this respect she submits that in

practice wives find it easier to satisfy immigration authorities than husbands.

THE LAW

1. The applicant complains of the refusal of British immigration authorities to allow her husband to enter the United Kingdom to live with her. The Commission has examined her complaints under Article 8 (Art. 8) of the Convention, the relevant part of which 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 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."

The present case raises an issue under Article 8 (Art. 8) of the Convention, for, whilst the Convention does not guarantee a right, as such, to enter or remain in a particular country, the Commission has constantly held that the exclusion of a person from a country where his close relatives reside may raise an issue under this provision (e.g. 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).

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 ... even if a family life ... has not yet been fully established" (Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A No. 94, p. 32, para. 62).

The Commission notes in the present case that the applicant and her husband have lived together for brief intervals in Bangladesh and that they now have two children.

The Commission recalls that the State's obligation to admit to its territory aliens who are relatives of persons resident there may vary according to the circumstances of the case. The Court 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, para. 68).

The Commission has had regard to the findings of fact by the Adjudicator, upheld by the Immigration Appeal Tribunal and their conclusion that, in the circumstances of the present case, it seemed that the primary purpose of the marriage was to effect the husband's entry into the United Kingdom.

The Commission observes that the applicant's husband has no strong ties with the United Kingdom, never having visited it and not having any relatives there apart from his wife. Moreover there seem to be no serious obstacles preventing the applicant returning to Bangladesh, where she had previously lived for twelve years, to live with her husband. In the light of these circumstances, the Commission concludes that there has not been an interference with the applicant's right to respect for family life ensured by Article 8 para. 1 (Art. 8-1) of the Convention and that, accordingly, this complaint must be rejected as being manifestly ill-founded within the meaning of

Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains of the refusal of entry under Article 12 (Art. 12) of the Convention which provides as follows:

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

The Commission notes that the applicant married her husband unhindered. Furthermore, for the same reasons given above in respect of Article 8 (Art. 8) of the Convention, the Commission finds that Article 12 (Art. 12) of the Convention also does not impose a general obligation upon Contracting States to respect a married couple's choice of the place where they wish to found a family or to accept non-national spouses for settlement to facilitate that choice. It follows that this aspect of the case is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Finally, the applicant alleges a violation of Article 14 (Art. 14) of the Convention, read in conjunction with Article 8 (Art. 8), insofar as he complains that the "primary purpose" restriction contained in the Statement of Changes in Immigration Rules is discriminatory on the grounds of sex, race or social origin.

Article 14 (Art. 14) of the Convention prohibits discrimination in the securement of Convention rights and freedoms on any ground such as race. The Commission notes, however, that paragraph 46 of HC 169/503 prohibits entry clearance being given to foreign spouses on the ground, inter alia, that the primary purpose of the marriage was to emigrate to the United Kingdom.

The Commission finds no evidence that such a restriction is intended to discriminate against persons on the ground of sex, race or social origin. The provision makes no reference to a particular sex or racial or social groups and applies to all persons equally who fall within its scope (cf. aforementioned Abdulaziz, Cabales and Balkandali judgment, paras. 84-86). The Commission concludes, therefore, that this aspect of the case is unsubstantiated and must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M. de. SALVIA) — (J. A. FROWEIN)