AS TO THE ADMISSIBILITY OF

Application No. 20598/92
by Rohimun MAHFAZ
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 30 June 1993, the following members being present:

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

Mrs. M.F. BUQUICCHIO, 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 2 April 1992 by Rohimun MAHFAZ against the United Kingdom and registered on 18 September 1992 under file No. 20598/92;

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 British national born in 1970 and resident in Hull. She is represented in the proceedings before the Commission by Messrs. Hafiz & Co., Solicitors, London.

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

The applicant was born in Bangladesh from where she emigrated, on 11 February 1986, at the age of 16 to join her late father in the United Kingdom.. At present she works as a waitress in an Indian restaurant owned by one of her relatives.

On 8 October 1986 AHM, a Bangladeshi national whom the applicant had first met in Bangladesh in 1985, was granted temporary admission to the United Kingdom, formal leave of entry having been refused. AHM had already applied unsuccessfully for entry clearance to the United Kingdom in 1978 using another name and claiming to be the son of his paternal uncle. A week after his arrival he met the applicant again through his sister, who is the applicant's sister-in-law. Talks about marriage between the applicant and AHM apparently began in early March

1987. They were married at a religious ceremony on 26 March 1987 and at a Registry Office on 15 April 1987. Some 15 days later he was removed from the United Kingdom by the Home Office.

The couple lived separately for one and a half years, then on 4 December 1988 the applicant visited AHM in Bangladesh. They lived together until 8 April 1989 when the applicant returned to the United Kingdom. She gave birth to a child on 10 September 1989.

In December 1987 AHM applied for entry clearance on the basis of the marriage, but on 1 March 1989 the application was refused as it was believed to be a marriage of convenience contracted for the primary purpose of securing AHM's settlement in the United Kingdom. Amongst the reasons given for the refusal was the fact that there had been no talk of marriage prior to AHM's arrival in the United Kingdom. The applicant had married knowing that her husband would have to leave the country three weeks later, but she had no intention of following him except "as a last resort". AHM was apparently unemployed, supported by remittances from his uncle in the United Kingdom. Unusually the dowry was high and had been paid in total, whereas it is common practice for only a portion to be paid, the balance being due if the marriage fails.

AHM appealed to an Adjudicator who dismissed his appeal on 16 January 1991. The Adjudicator considered that the applicant's marriage was genuine, there being evidence of devotion since it had been contracted. However, such elements were outweighed by the husband's immigration background and the other evidence that his primary purpose in marrying the applicant had been to obtain his admission to the United Kingdom. On 25 June 1991 the Adjudicator's decision was upheld by an Immigration Appeal Tribunal. On 11 March 1992 an application for judicial review was refused by the High Court.

COMPLAINTS

The applicant complains that the refusal to allow her husband to enter the United Kingdom is in breach of her rights under Articles 8, 12 and 13 of the Convention.

THE LAW

The applicant complains of the British Immigration Authorities' refusal of her husband's entry into the United Kingdom and invokes Articles 8, 12 and 13 (Art. 8, 12, 13) of the Convention.

1. Article 8 para. 1 (Art. 8-1) of the Convention provides:

> "Everyone has the right to respect for his private and family life, his home and his correspondence."

The Commission notes the findings of fact by the Entry Clearance Officer, upheld by an Adjudicator and Immigration Appeal Tribunal, and their conclusion that, in the circumstances of the present case, it seemed that the primary purpose of the applicant's husband in marrying the applicant was to obtain admission to the United Kingdom.

The Commission recalls that, 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 Article 8 (Art. 8) of the Convention (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).

The Commission notes that the applicant and AHM have lived together in the United Kingdom for a few weeks in 1987 and for four

months in Bangladesh in 1988-89. They also have a young child.

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. In its judgment in the case of Mmes Abdulaziz, Cabales and Balkandali, the Court made the following statement:

> "The duty imposed by Article 8 (Art. 8) cannot be considered as extending to a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country".

(Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, p. 34, para. 68).

The Commission finds that it has not been shown that there were obstacles to establishing family life in the applicant's home country, Bangladesh, from where she originates and lived until she was 16 years of age. Moreover she lived there with her husband from 4 December 1988 to 8 April 1989.

In these circumstances the Commission concludes that the decision to refuse the applicant's husband entry into the United Kingdom has not failed to respect her right to respect for family life, ensured by Article 8 para. 1 (Art. 8-1) of the Convention. It follows that 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 next complains of a violation of Article 12 (Art. 12) of the Convention, which guarantees "the right to marry and found a family according to the national laws governing the exercise of this right".

However, the Commission finds no evidence that the applicant's rights under Article 12 (Art. 12) of the Convention have been infringed, given that she has been able to marry and found a family unhindered. The applicant cannot derive from this provision a right to choose the geographical location where family life can be enjoyed or a right of entry clearance for her foreign husband (cf. mutatis mutandis, No. 12236/86, Shaw v. the United Kingdom, Dec. 16.10.86, unpublished). The Commission concludes, therefore, that this aspect of the case must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant has also invoked Article 13 (Art. 13) of the Convention in respect of her complaints. Article 13 (Art. 13) provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The case-law of the European Court of Human Rights establishes, however, that Article 13 (Art. 13) does not require a remedy in domestic law for all claims alleging a violation of the Convention; the claim must be an arguable one (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). In the light of the above conclusions concerning the applicant's complaints under Articles 8 and 12 (Art. 8, 12) of the Convention, the Commission finds that the applicant does not have an arguable claim of a breach of these provisions which warrants a remedy under Article 13 (Art. 13). This part of the application must also therefore 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 — Acting President of the First Chamber

(M.F. BUQUICCHIO) (F. ERMACORA)