AS TO THE ADMISSIBILITY OF

Application No. 35693/97
by Ranjanbern N. PATEL
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 22 October 1998, the following members being present:

MM	M.P. PELLONPÄÄ, President
	N. BRATZA
	E. BUSUTTIL
	A. WEITZEL
	C.L. ROZAKIS
Mrs	J. LIDDY
MM	L. LOUCAIDES
	B. MARXER
	I. BÉKÉS
	G. RESS
	A. PERENIČ
	C. BÎRSAN
	M. VILA AMIGÓ
Mrs	M. HION
Mr	R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the 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 5 March 1997 by Ranjanbern N. PATEL against the United Kingdom and registered on 22 April 1997 under file No. 35693/97;

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 an Indian national, born in 1961 and currently resident in India. She is represented before the Commission by JR Immigration Consultancy, London.

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

On 21 November 1985 the applicant gave birth in India to a daughter (D). The applicant's first husband died in a car accident in November 1988. On 3 March 1991 the applicant married a UK citizen in India who agreed to sponsor her to come to the United Kingdom. On 6 September 1991 she arrived in the United Kingdom with her daughter and she was granted leave to enter as a foreign wife for one year. She commenced living with her husband and his family. D started at school on 3 September 1992.

The applicant claims that as a result of her inheritance from her first husband, she and her daughter were treated badly by her husband's family. She also claims that she was overworked, abused and assaulted and that her daughter was given little to eat. Her husband, according to the applicant, was indifferent to her and her daughter's treatment.

In or about October 1991 the applicant was thrown out of the family home by her mother-in-law and her husband informed the Home Secretary of this. The applicant saw her husband for the last time in or around late 1993 but they did not speak to each other.

On 1 September 1992 the applicant applied for further leave to remain. On 25 February 1993 that application was refused by the Home Secretary on the ground that the applicant could not show a subsisting marriage. Her stay was extended until 25 March 1993. The Special Adjudicator rejected her appeal on 10 March 1993. Neither the Secretary of State nor the Special Adjudicator were satisfied that the applicant and her husband were living together or had the intention of doing so. An application for leave to appeal was refused by the Immigration Appeal Tribunal on 21 June 1994.

On 8 March 1995 the Home Secretary issued a notice to the applicant requiring her to leave the United Kingdom for India and prohibiting her from re-entering the United Kingdom while the order was in force. She appealed against the decision to a Special Adjudicator and on 11 August 1995 the appeal was dismissed. The Adjudicator noted that the applicant's counsel accepted that her appeal would not be successful but, nevertheless, he applied for a recommendation outside the rules on compassionate grounds - the applicant would not be accepted by her family in India, her parents in India were elderly, her separation from her husband was caused by his parents and there may be a possibility of reconciliation if the applicant remained in the United Kingdom. The recommendation was refused. The Immigration Appeal Tribunal refused leave to appeal on 11 September 1995.

On 4 January 1996 the Home Secretary signed a Deportation Order. Directions for removal were issued on 14 June 1996 and a date for deportation was set for 18 July 1996. The applicant failed to appear and new removal directions were issued on

24 February 1997 with a date for removal being set for 7 March 1997. On 22 January 1997 the High Court refused leave to apply for judicial review. The applicant was advised by counsel that renewal of the application for leave to appeal has no prospect of success. The applicant and her daughter left the United Kingdom on 7 March 1997 for India.

COMPLAINTS

1. The applicant complains that her removal to India with her daughter amounts to inhuman and degrading treatment contrary to Article 3 of the Convention.

2. The applicant also complains that their removal constitutes an interference with her right to respect for her home and her private and family life contrary to Article 8 of the Convention.

3. She further complains under Article 13 that the domestic immigration rules failed to provide an effective domestic remedy.

THE LAW

1. The applicant complains under Article 3 that her removal to India together with her daughter would amount to inhuman and degrading treatment. Article 3 provides as follows:

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

The applicant submits that she was deceived into coming to the United Kingdom to form a family with her daughter (by a former marriage) and her new husband whom she had married in March 1991. She refers to the harsh treatment to which she was subjected by her husband's family in the United Kingdom. She also submits that due recognition should be given to the fact that, in the culture from which she comes, a divorced and rejected woman is treated as an outcast and to "whether" the applicant and her daughter would have any relatives or friends to help them in that predicament.

The constant case-law of the Convention organs establishes that a decision by a Contracting State to deport an individual may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of the State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to inhuman or degrading treatment in the receiving country (Eur. Court HR, Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 35, para. 91). The case-law also establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of that minimum is relative and depends on all the

circumstances of the case, such as the duration of the treatment and its physical or mental effects (Eur. Court HR, Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162).

The Commission accepts that hardship may result from their removal to India but does not find that the applicant has substantiated this hardship to be of sufficient severity as to fall within the scope of Article 3 of the Convention. It follows that this complaint must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant also complains that her and her daughter's expulsion would constitute an interference with her right to respect for her home together with her private and family life contrary to Article 8 of the Convention which, insofar as relevant, provides as follows:

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

The Commission recalls that the Convention does not guarantee, as such, a right of asylum or any right to enter, reside or remain in a State of which one is not a national (for example, No. 21808/93, Dec. 8.9.93, D.R. 75, p. 234). In addition, the duty imposed by Article 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 HR, Abdulaziz, Cabales and Balkandali, v. the United Kingdom judgment of 28 May 1985, Series A no. 94, p. 34, para. 68).

However, the exclusion or removal of a person from a country where his close relatives reside or have the right to reside may raise issues as regards respect for family life under Article 8 (see, inter alia, No. 9088/80, Dec. 6.3.82, D.R. 28, p. 160; No. 9213/80, Dec. 5.5.81, D.R. 24, p. 239; No. 9285/81, Dec. 6.7.82, D.R. 29, p. 205; and No. 25439/94, Dec. 5.4.95, D.R. 81-B, p. 142). Whether the removal or expulsion of a family member from a Contracting State is incompatible with the requirements of Article 8 will depend on a number of factors: the extent to which family life is effectively ruptured, whether there are obstacles to establishing family life in either of the spouses' home countries, whether there are special reasons why that could not be expected of them and whether there exists factors of immigration control or considerations of public order (Eur. Court HR, Abdulaziz, Cabales and Balkandali judgment, loc. cit., para. 68; Berrehab v. the Netherlands judgment of 21 June 1988, Series A no. 138, para. 29 and Gül v. Switzerland judgment of 19 February 1996, Reports 1996-I, p. 159 at p. 176, para. 42).

The Commission notes that the applicant left India when she was twenty years old and her daughter (by a former marriage) was almost six years old. She had lived with her husband in India for two weeks after their marriage and they only lived together for approximately 6 weeks in the United Kingdom (in September and October 1991) during which time, as the applicant points out, she was prevented by her husband's family from

having much contact with her husband. The applicant last saw her husband in late 1993 on which occasion they did not speak to each other. She accepts that she was deceived into coming to the United Kingdom by her husband. It is also noted that the applicant refers to a surviving parent and to her relatives in India and that, apart from her husband from whom she is clearly separated, she has no relatives in the United Kingdom. The Commission also notes that D attended school in the United Kingdom from 1993 until she left for India. However, the Commission observes that the applicant's daughter lived until she was almost six years old in India and considers that she could adapt to life and the education system in India.

In such circumstances, the Commission considers that there are no elements concerning respect for the home, family or private life which in this case outweigh the valid considerations relating to the proper enforcement of immigration controls. It concludes that the removal of the applicant does not disclose a lack of respect for her rights as guaranteed by Article 8 of the Convention. Accordingly, this complaint must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The applicants further complains under Article 13 that she had no effective domestic remedy. Article 13, insofar as relevant, 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 ... ".

The Commission recalls that Article 13 does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (Eur. Court HR, Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). The Commission finds that the applicant cannot be said, in light of its findings above, to have an "arguable claim" of a violation of her Convention rights.

Accordingly, this part of the application must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber