CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27034/05
by Z and T
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 28 February 2006 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Ms F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 18 July 2005,

Having regard to the decision not to apply Rule 39 of the Rules of Court

Having deliberated, decides as follows:

THE FACTS

The applicants, Z. born in Pakistan in 1973 and T. born in Pakistan in 1965 are Pakistani citizens currently resident in Hull. They are represented before the Court by Mr D. Foster, a solicitor practising in Guildford.

A. The circumstances of the case

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

The applicant sisters are Christians. Their parents, Mr and Mrs M., were active in the Christian community in Bahawalpur and Mr M. was a Methodist minister for 38 years. In 1990, the second applicant, T. married her cousin, also a christian and son of a minister in 1990. She went to live in Peshawar and from 1999 worked as a teacher in the Presentation Convent School in Peshawar. The first applicant, Z. had married a fellow Christian in 1997 and moved to live in Sukkur.

On 28 October 2001, after the attacks in the United States on 11 September 2001, there was an attack on the Methodist church in Bahawalpur. Machine guns were fired into the church and many worshippers were killed and injured. One of the policeman on duty at the church was killed. Mrs M. was among the severely injured. Mr and Mrs M, and their son Dr H. fled to the United Kingdom to obtain medical treatment for Mrs M. Their son I. was already in the United Kingdom. All were granted asylum. The applicants' sister A. was also granted asylum on 3 September 2004.

On 28 April 2004, the first applicant travelled to the United Kingdom with her children on a visitors visa to see her mother who continued to be unwell.

On 17 May 2004, Mrs M. died.

On 27 May 2004 the second applicant came to the United Kingdom with her family to attend the funeral.

The first applicant

On 29 April 2004, a day after her arrival, the first applicant applied for asylum, along with her husband and daughter, invoking Articles 2, 3, 5, 6, 8, 9, 10, 11, 12 and 14 of the Convention. She stated that there had been a bomb threat on their church in Sukkur during 2002 when the police had deactivated an explosive device, while in October 2003 her husband and his brother had been attacked by extremists. In the latter incident, although there was shooting, no-one was hurt and the assailants absconded with her husband's motorbike. She and her husband had also received threatening telephone calls.

By letter dated 25 June 2004, the Secretary of State gave reasons for refusal, considering that the applicant had never been physically attacked or ill-treated on the basis of her beliefs and had not been present during the bomb threat at the church where the police had successfully intervened. He noted that Christians were a recognised minority group under the Constitution of Pakistan, that the Government were taking measures to curb acts of sectarian violence and that they were willing and able to take action to protect Christian churches and communities.

By decision of 18 February 2005, the Adjudicator refused her appeal, finding that the authorities offered protection to churches, *inter alia* convicting six men for an attack on a Christian church. He also noted that the applicant had not herself been personally or directly threatened with violence and that she had lived some distance from Bahawalpur, having no direct connection with the incident there. He noted that the assault on her husband in 2003 had been reported as robbery without any mention of religious motivation for the attack. He found no problem arising under Article 9 as there was no bar on Christianity as shown by the fact that her father had been a minister for 38 years. He concluded that she had not shown that she was risk.

On 26 March 2005, the Immigration Appeal Tribunal (IAT), refused the first applicant permission to appeal noting a recent precedent from the House of Lords in *Ullah* (*R (Ullah) v. a Special Adjudicator* [2004] INLR 381) and finding in line with that authority that the situation of Christians in Pakistan who, for example, had their own representatives in Parliament was not so flagrantly bad as to allow exceptionally a case to proceed under Article 9 where there were no grounds under Article 3.

The second applicant

On 13 August 2004, the second applicant applied for asylum, together with her children and husband. She invoked Articles 2, 3, 8, 9 and 14 of the Convention, claiming that she feared that if she returned to Pakistan she would be subjected to attack by Muslim extremists because she was a Christian. She referred to having received nuisance telephone calls during the night after the incident on the Bahawalpur Church.

By letter dated 6 October 2004, the Secretary of State refused asylum, noting *inter alia* that Christians were a recognised minority group under the Constitution of Pakistan, that the Government were taking measures to curb acts of sectarian violence and that they were willing and able to take action to protect Christian churches and communities. He also did not consider that the applicant was at risk because of the incident at Bahawalpur as she lived in Peshawar and since the incident had suffered nothing more serious than nuisance telephone calls. He found no ground for a breach of Article 9 as she had not shown any risk of a flagrant denial of her rights.

By decision of 18 January 2005, the Adjudicator refused the applicant's appeal, noting that the applicant had not applied for asylum at the time of the 2001 attack but had remained in Pakistan for another three years. While she claimed to have received unpleasant telephone calls, she had been able to deal with them by switching off the phone. He found no indication that there would be insufficient protection offered to her by the authorities who had placed guards on the churches and on the school where she worked.

On 1 March 2005, the IAT refused permission for an appeal, noting that the second applicant had not raised her Article 9 complaint before the Adjudicator even though she was represented by specialist advocates and finding no error in the Adjudicator's decision.

B. Relevant domestic case-law

In the case of *R. (on the application of Ullah) v. Special Adjudicator* ([2004] INLR 381), the claimant entered the United Kingdom from Pakistan and applied for asylum, claiming to have a well-founded fear of persecution as a result of his religious beliefs. The Secretary of State dismissed his claim and held that he had not qualified for permission to remain in the country by reason of any Article of the Convention. The claimant's appeal was dismissed, the Special Adjudicator finding that he did not have a well-founded fear of persecution and that, while Article 9 of the Convention could be engaged in such a situation, the Secretary of State had acted lawfully and proportionately and in pursuance of the legitimate aim of immigration control in refusing leave to remain.

The Court of Appeal dismissed the claimant's further appeal, holding that where the Convention was invoked on the sole ground of the treatment to which an alien was likely to be subjected by the receiving State and that treatment was not sufficiently serious to engage Article 3, the court was not required to recognise that any other Article of the Convention was, or might be, engaged.

The House of Lords dismissed the claimant's further appeal. However, differing from the Court of Appeal, the Lords held that where in relation to the removal of an individual from the United Kingdom the anticipated treatment did not meet the minimum requirements of Article 3, other Articles of the Convention might be engaged. While it was hard to conceive that a person could successfully resist expulsion in reliance on Article 9 without being entitled either to asylum on the ground of a well-founded fear of being persecuted for reasons of religious or personal opinion or to resist expulsion in reliance on Article 3, such a possibility could not be ruled out. It would be necessary for a claimant to establish at least a real risk of a flagrant violation of the very essence of the right before the other Articles could become engaged. The House of Lords found that, in the instant appeal, the claimant's case had not come within the possible parameters of a

flagrant, gross or fundamental breach of Article 9 such as to amount to a denial or nullification of the rights conferred by the Article.

COMPLAINTS

The applicants complained under Article 9 that if returned to Pakistan they will be under fear of attack and will not be able live openly and freely as Christians.

The applicants also invoked Article 8, complaining that they were prevented from living in the United Kingdom with their parents, brothers and sister.

THE LAW

The applicants complained that they would be unable to live openly and freely as Christians if returned to Pakistan, invoking Article 9 which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Court recalls that it is a fundamental principle under the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law (see *Aksoy v. Turkey*, judgment of 18 December 1996, ECHR 1996-VI, §§ 51-52, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, ECHR 1996-IV, §§ 65-67). It observes that in the present case neither applicant applied for statutory review by the High Court following the refusal of permission to appeal by the Immigration Appeal Tribunal and that the second applicant did not raise her Article 9 complaint before the Adjudicator. The applicants argue that the High Court would in any event have been bound by the House of Lords approach in *Ullah* (cited above) which they claimed was too restrictive. No explanation is given as to why the second applicant did not raise Article 9 before the Adjudicator.

However, even assuming that the applicants have complied with the requirements of Article 35 § 1, the Court considers that their complaints must be rejected for the reasons set out below.

The Court's case-law indicates that while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion not only in community with others, in public and within the circle of those whose faith one shares, but also alone and in private (see *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, para. 31). Article 9 lists a number of forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance. Nevertheless, Article 9 does not protect every act motivated or inspired by a religion or belief. Moreover, in exercising his freedom to manifest his religion, an individual may need to take his specific situation into account (*Kalaç v. Turkey*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 27).

In this case, the alleged breach arises from the assertion that if the United Kingdom returns the applicants to Pakistan they will be unable, due to the prevailing situation in that largely Islamic country, to live as Christians without risking adverse, if not worse, attention or taking steps to conceal their religion.

It is true that the responsibility of a Contracting State may be engaged, indirectly, through placing an individual at a real risk of a violation of his rights in a country outside their jurisdiction. This was first established in the context of Article 3 (*Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, § 88). The case-law that followed, and which applies equally to the risk of violations of Article 2, is based on the fundamental importance of these provisions, whose guarantees it is imperative to render effective in practice (see *e.g. Soering v. the United Kingdom*, cited above, § 88). The Court emphasised in that context the absolute nature of the prohibition of Article 3 and the fact that it encapsulated an internationally accepted standard and abhorrence of torture, as well as the serious and irreparable nature of the suffering risked. Such compelling considerations do not automatically apply under the other provisions of the Convention. On a purely pragmatic basis, it cannot be required that an expelling Contracting State only return an alien to a country where the conditions are in full and effective accord with each of the safeguards of the rights and freedoms set out in the Convention (see *Soering*, cited above, § 86 and *F. v. the United Kingdom*, no. 17341/03, dec. 22.6.04, where the applicant claimed that he would be unable to live openly as a homosexual if returned to Iran). Nonetheless the Court has not excluded that issues may also arise under Article 6, where the person being expelled has suffered or risks suffering a flagrant denial of a fair trial in the receiving country, particularly where there is the risk of execution (see *Soering*, cited above, § 113; *Mamatkulov and Askarov v. Turkey* [GC], nos.

46827/99 and 46951/99, § 91, ECHR 2005-...), or possibly under Article 5, if the prospect of arbitrary detention was sufficiently flagrant (*Tomic v. the United Kingdom*, 17387/03, dec. 14.10.03).

This case raises the question of what approach should be applied to Article 9 rights allegedly at risk on expulsion. The applicants argue that a flagrant denial test should not be applied in the context of Article 9, as was done by the House of Lords in *Ullah*, as this would fail to respect the primacy of religious rights; and it is contended that effectively requiring them to modify their conduct, concealing their adherence to Christianity and forgoing the possibility of talking about their faith and bearing witness to others, in order to avoid hostile attention would be to deny the right *per se*.

The Court's case-law indeed underlines that freedom of thought, religion and conscience is one of the foundations of a democratic society and that manifesting one's religion, including seeking to convince one's neighbour, is an essential part of that freedom (*Kokkinakis*, § 31). This is however first and foremost the standard applied within the Contracting States, which are committed to democratic ideals, the rule of law and human rights. The Contracting States nonetheless have obligations towards those from other jurisdictions, imposed variously under the 1951 United Nations Convention on the Status of Refugees and under the above-mentioned Articles 2 and 3 of the Convention. As a result, protection is offered to those who have a substantiated claim that they will either suffer persecution for, *inter alia*, religious reasons or will be at real risk of death or serious ill-treatment, and possibly flagrant denial of a fair trial or arbitrary detention, because of their religious affiliation (as for any other reason). Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, the Court considers that very limited assistance, if any, can be derived from Article 9 by itself. Otherwise it would be imposing an obligation on Contracting States effectively to act as indirect guarantors of freedom of worship for the rest of world. If, for example, a country outside the umbrella of the Convention were to ban a religion but not impose any measure of persecution, prosecution, deprivation of liberty or ill-treatment, the Court doubts that the Convention could be interpreted as requiring a Contracting State to provide the adherents of that banned sect with the possibility of pursuing that religion freely and openly on their own territories. While the Court would not rule out the possibility that the responsibility of the returning State might in exceptional circumstances be engaged under Article 9 of the Convention where the person concerned ran a real risk of flagrant violation of that Article in the receiving State, the Court shares the view of the House of Lords in the *Ullah* case that it would be difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3 of the Convention.

In the present application, the applicants have failed to make out a case of persecution on religious grounds or to substantiate that they were at risk of a violation of Articles 2 or 3. Neither applicant had herself been subject to any physical attack or prevented from adhering to her faith. Both have claimed to have received unpleasant telephone calls and to have felt at risk of attack. The essence of their case rests on the general situation in Pakistan where there have been, over the past few years, attacks on churches and Christians. The domestic authorities however gave weight to the fact that the Christian community in Pakistan was under no official bar and indeed had their own parliamentary representatives and that the Pakistani law enforcement and judicial bodies respectively were taking steps to protect churches and schools and to arrest, prosecute and punish those who carried out attacks.

The applicants have emphasised that the police themselves fear the Islamic extremists and that the authorities have failed in the past to protect Christian churches despite the presence of guards. Nonetheless it is not apparent that the authorities are incapable of taking, or are unwilling to take, appropriate action in respect of violence or threats of violence directed against Christian targets.

In those circumstances, the Court finds that, even assuming that Article 9 of the Convention is in principle capable of being engaged in the circumstances of the expulsion of an individual by a Contracting State, the applicants have not shown that they are personally at such risk or are members of such a vulnerable or threatened group or in such a precarious position as Christians as might disclose any appearance of a flagrant violation of Article 9 of the Convention..

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicants complain that the decision of the United Kingdom authorities to grant most of their family asylum and to deny refugee status to themselves breaches Article 8 of the Convention, which provides:

> "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 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 Court observes that where immigration is concerned Article 8 cannot be considered to impose on a State a general obligation to respect immigrants' choice of the country of residence and to authorise family reunion in its territory (see *Gül v. Switzerland*, cited above, loc. cit., *Ahmut v. the Netherlands*, cited above, § 67, and *P.R. v. the Netherlands* (dec.), no.

39391/98, 7 November 2000). As a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory. Moreover, while the exclusion of a person from a country where his or her immediate family resides may in some circumstances raise an issue under Article 8, relationships between adult relatives do not necessarily attract the protection of that provision without further elements of dependency involving more than the normal emotional ties (cf. *Ezzoudhi v. France*, no. 47160/99, 13.2.2001, § 34).

The Court notes that the present applicants are adults, with families of their own, and that they were living separately from their parents and siblings when the 2001 attack on the Bahawalpur Church occurred. They continued living in Pakistan for three years after their parents and brother left. In the circumstances the Court discerns no elements of dependency involving more than the normal emotional ties between the applicants and the members of their family now living in the United Kingdom.

It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Josep CASADEVALL
President