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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39642/03
by Prince Charles and Akeem HEADLEY
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 1 March 2005 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*.

Having regard to the above application lodged on 25 November 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The first applicant, Mr Prince Charles Headley, is a Jamaican national, who was born in 1970 and is currently detained in Manchester. The second applicant, Akeem Headley, is a Jamaican citizen, born in 1991 who currently lives in Sheffield.

The applicants were represented before the Court by Mr J. Dickinson, a solicitor practising in Sheffield, and Hugh Southey of Counsel. The

respondent Government were represented by Ms. E Wilmott, Foreign and Commonwealth Office.

A. The circumstances of the case

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

The first applicant claims that he ran a successful record promoting business in Kingston, Jamaica which, he alleges, drew the attention of gangs, who demanded to become involved. When he refused to continue sharing profits with the gang, on 11 August 1993 the first applicant was shot in the face by gang members and was admitted to hospital suffering with paralysis of the left side of his face. On 12 October 1993 gang members forced their way into his home in the early morning and shot at the applicant and his girlfriend, Sandra Satchell. The first applicant was readmitted to Kingston Hospital at 7-30 a.m. with multiple gun shot wounds, to the right jaw-bone, the left forearm and right arm, to the right "axillary fold", the tip of the right shoulder and to the right side of his chest. One of the bullets intended for him hit Ms Satchell, who was fatally injured and died, aged 25, on 13 October 1993.

The first applicant alleges that he had to be kept under police protection in hospital, and that at one point gang members attempted to enter the hospital to kill him, in order to destroy evidence relating to Ms Satchell's murder. One of the gang members, a cousin of Ms Satchell, was subsequently convicted of a firearms offence and sentenced to a determinate period of imprisonment. According to the first applicant, he has now been released from prison.

The first applicant did not give evidence at the trial. In January 1994 the first applicant, whose mother is a British citizen, entered the United Kingdom on a six months medical visa, to allow him to gain treatment for his gunshot injuries. This visa was subsequently extended until August 1995.

In 1996 the first applicant visited Jamaica to see his grandfather, who was terminally ill. In 1997 he again travelled to Jamaica, for his grandfather's funeral. He claims that he was shot at by gang members, and had to return to the United Kingdom after a stay of only six days. He has not been back to Jamaica since.

The first applicant claims he set up a business in the United Kingdom importing clothing from continental Europe. He has been married twice in the United Kingdom. On the basis of his first marriage in June 1995 he was granted, on 17 April 1996, leave to remain for twelve months. The marriage broke down – although it produced a daughter (born 9 June 1996), with whom he still has some contact – and he did not apply for indefinite leave to remain.

The first applicant claims that in 1996 he started a relationship with the C. The couple had a child together, R, born on 10 December 1997. Although they were married on 24 February 2003, it does not appear that their relationship was continuous in the meantime.

On 27 May 1998 the applicant was joined from Jamaica by his son Akeem, the second applicant, who was born on 2 November 1991, and is the younger son of Ms Satchell. His older brother still lives in Jamaica.

Upon arriving in the United Kingdom the second applicant was given six months' extended leave to remain. The first applicant claims that the second applicant lived with him until he was imprisoned. However, it is not clear who else was living with the first applicant at the time. At the time of his arrest in January 1999 the first applicant said he was living with a girlfriend by the name of "Angela Smith".

The first applicant appears to have remained in prison from the time of this arrest in January 1999 until the time of his trial in January 2000. On 31 January 2000 the first appellant was convicted of conspiracy to import a Class A drug and sentenced to seven years' imprisonment and a GBP 9,000 confiscation order. He had made several trips to and from Amsterdam, one of them in the company of a woman who was arrested when re-entering the United Kingdom with 247 grams of cocaine hidden in her vagina. The first applicant had three previous convictions, namely two counts of assault on a police officer, for which he was sentenced in September 1997 to two months' and four months' imprisonment, and one offence of affray, for which he was sentenced in February 1998 to four months' imprisonment.

It is not clear whom the second applicant lived with while the first applicant was in prison. On 22 September 1999 a person by the name of Maria Smith made an application for indefinite leave to remain on behalf of the second applicant. In that application she described herself as the second applicant's "stepmother". On 9 June 2000, Sheffield City Council recorded in a social work assessment that the second applicant was living with a "family friend". However, it is accepted by the Government that by the time of this application to the court, in November 2003, the second applicant was living with C and R.

The trial judge did not recommend that the applicant be deported, but the Secretary of State nonetheless, because of the drugs conviction, made a deportation order against him on 13 February 2002. The first applicant appealed against this decision and claimed asylum, on the basis that he would risk violence from gang members if returned to Jamaica. On 13 December 2002 the Secretary of State decided to refuse asylum and to refuse to revoke the deportation order. On 2 June 2003 the decision was made to give directions for the first applicant's removal. The first applicant appealed against these decisions under Part 4 of the Immigration and Asylum Act 1999 (see below). His appeals were dealt with jointly and refused by an adjudicator on 25 September 2003, after a hearing at which

the first applicant represented himself. The first applicant did not seek permission to appeal that decision to the Immigration Appeal Tribunal.

On 2 February 2004 the Government set directions for the removal of the first applicant on 12 April 2004. The first applicant was nominally released from imprisonment on 12 February 2004 but was immediately detained by the immigration authorities pending deportation. However, the deportation was stayed pending the outcome of this application and on 11 June 2004 the first applicant was granted bail on condition that he stay with C.

Around this time the first applicant discovered that C was in a relationship with another man. It was alleged that he made violent threats against this other man and on 16 June 2004 he was remanded back into custody on charges of possessing an illegal firearm and making unlawful threats. These charges were subsequently dismissed. However, C has since indicated that she no longer wishes to have contact with the first applicant.

When the first applicant returned to prison, in June 2004, the second applicant moved in with C's brother, S, S's partner and their daughter. He has lived there ever since. S has indicated that the second applicant can stay there "forever – or as long as he wants".

The Government have not yet made any decision as to whether or not they intend to remove the second applicant.

The applicants have submitted various reports in relation to the second applicant. A letter from the head teacher of his junior school states that he has slight learning difficulties and would find it difficult to adjust to any further changes in his life. In September 2003 the second applicant started at secondary school. A letter from his current head teacher, dated 19 February 2004, states that the second applicant has behaved aggressively at school. However, according to S's witness statement, dated 31 July 2004, the second applicant's behaviour at school "stabilised" after he moved in with S's family in June 2004.

Two reports were prepared in connection with the present application by Ms Andrea Pecherek, a chartered psychologist. The first report appears to have been based on various false assumptions, such as that the second applicant lived as part of a "nuclear family" with the first applicant and C for four years (between 1996 and 2000).

The second report, dated 16 October 2004, contains the following conclusions: (1) there were two consistent factors in the second applicant's life: his father and his black British identity; (2) it is in the second applicant's interests to maintain both; (3) the second applicant's sense of security and family has been maintained by living with S and his partner – "an extremely positive solution to what could have been an extremely negative situation".

B. Relevant domestic law and practice

1. Statutory Law

Part 4 of the Immigration and Asylum Act 1999 ("the 1999 Act") provided that anyone who was the subject of an immigration decision, such as a decision to make or refuse a deportation order or a decision to set removal directions, should have a right of appeal to an adjudicator if they alleged that that decision was in breach of their rights under either the European Convention on Human Rights ("the Convention") or the Geneva Convention relating to the Status of Refugees.

The appeal provisions in Part 4 of the 1999 Act were later repealed by the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). Sections 82 and 83 of the 2002 Act brought in new appeal provisions, which did not, however, have effect in relation to any events which took place before 1 April 2003. For all such events the appeal provisions under Part 4 of the 1999 Act continued to have effect.

Section 101 (1) of the 2002 Act provides as follows:

> "A party to an appeal to an adjudicator under section 82 or 83 may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law."

Paragraph 1 (4A) of Schedule 2 to the Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (as amended) provides as follows:

> "Section 101 (1) of the 2002 Act shall apply to a party to an appeal to an adjudicator under Part 4 of the 1999 Act which is determined on or after 9th June 2003, as it applies to a party to an appeal to an adjudicator under section 82 or 83."

Section 2 of the Human Rights Act 1998 provides that, in determining any question that arises in connection with a Convention right, courts and tribunals must have regard to all relevant case law from this Court.

2. Case-Law

In the case of *R v IAT ex p AC* ((2003) EWHC 389 Admin), the High Court held that, in determining appeals relating to Article 8 of the Convention, adjudicators and tribunals were obliged to consider the rights under Article 8 of the appellant's family as well as the appellant himself.

Samaroo and Sezek v Secretary of State for the Home Department ([2002] INLR 55) concerned a Guyanan national, who was given permission to visit the United Kingdom for six months in June 1988. Three months later he married a British citizen and was given indefinite leave to remain. In 1991 a son was born to their marriage. In 1994 Mr Samaroo was convicted of being knowingly concerned with the importation of 4 kg of cocaine worth GBP 450,000 and was sentenced to 13 years imprisonment.

While in prison he behaved as a model prisoner and it was accepted by the Secretary of State that he was unlikely to re-offend. Nonetheless the Secretary of State made an order that he be deported, relying in particular on the importance of deportation as a deterrent to actual and prospective drug traffickers. Mr Samaroo appealed against this decision. In finding against him the Court of Appeal held that the Secretary of State had been entitled to attach importance to his general policy of deporting those convicted of importation of class A drugs in order to protect those resident in the United Kingdom from the harmful effect of drugs and, by deterring others, in the interests of preventing crime and disorder.

COMPLAINTS

The first applicant complains under Article 2 of the Convention that if he is deported to Jamaica his life will be at risk. Both applicants complain under Article 8 that the first applicant's deportation would amount to a disproportionate interference with their right to respect for their family life.

THE LAW

A. Alleged failure to exhaust domestic remedies

1. The parties' submissions

The Government submit that domestic remedies have not been exhausted. They point out that the first applicant made no attempt to appeal against the decision of the adjudicator on 25 September 2003 to the Immigration Appeal Tribunal ("IAT"), even though the IAT would have been obliged to allow the appeal if the decision to deport the applicant were in breach of the United Kingdom's obligations under the Convention. Moreover, if the first applicant had appealed, the IAT would have been obliged to take into account the Article 8 rights of the second applicant as well (see *ex parte AC*, cited above).

In response, the applicants' representatives note that the Government were not alleging that the second applicant had failed to exhaust his domestic remedies. In addition they contend that the first applicant would have had no prospect of success on appeal, because the IAT would have been bound by the case of *Samaroo* (cited above), which, they submit, did not adequately reflect the case law of the European Court of Human Rights.

2. The Court's assessment

It is not disputed that the first applicant could have sought permission to appeal to the IAT against the decision of the adjudicator, but that he failed to do so.

The Court does not accept that the IAT would have failed to provide an effective remedy, or that the judgment in *Samaroo* demonstrates that the case law of the United Kingdom fails to give effect to the United Kingdom's obligations under Article 8 of the Convention. In any case, the Court observes that, if the applicant had any arguments in this regard, he could have raised them with the IAT, which would have been obliged, by virtue of section 2 of the Human Rights Act 1998, to take into account the case law of this Court.

The Court considers that it is more difficult to determine whether the second applicant has failed to exhaust domestic remedies because he was not a party to the proceedings before the adjudicator and because it is not clear what proceedings, if any, he could have brought himself.

In any event, the Court does not consider it necessary to decide on this issue, because, for the reasons set out below, it considers that the application is manifestly ill-founded.

B. Alleged violation of Article 2 of the Convention

The first applicant complains that his deportation to Jamaica would breach his right to life. He relies on Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. ..."

He claims that if he were returned to Jamaica he would face a real risk of being killed by members of the gang which tried to kill him before, and that the Jamaican authorities would be unable to give sufficient protection against such gangs.

The Court recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to asylum is not protected in either the Convention or its Protocols. However, expulsion by a Contracting State of an alien may give rise to an issue under Article 2 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being killed (see, *mutatis mutandis*, the *H.L.R. v. France* judgment of 29 April 1997, *Reports* 1997-III, §§ 33-34; *Sinnarajah v. Switzerland* (dec.), no. 45187/99, 11 May 1999, unpublished; and *Razaghi v. Sweden*, (dec.) no. 64599/01, 11 March 2003).

The Court recalls also that, owing to the importance of the right to life, the Convention may apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (see, *mutatis mutandis*, *H.L.R. v. France*, § 40). The risk is to be assessed as at the date the Court considers the case (ibid., § 37).

The Court accepts that Mr Headley was shot at on two occasions in 1993, and that on the second occasion Akeem's mother, Sandra Satchell, was killed. The applicants have not, however, provided any evidence in support of the assertion that the first applicant was shot at again in Jamaica in 1997.

Moreover, even if he was attacked in 1997, that was nearly eight years ago and the applicants have not submitted any evidence to suggest that the gang members would still want to target Mr Headley now or that, if they did, he would be at substantially more risk in Jamaica than in the United Kingdom. The facts that Mr Headley did not claim asylum in the United Kingdom until February 2002, and that he took the risk of becoming involved in the importation of illegal drugs at a time when his residence status in the United Kingdom was precarious, further suggest that the first applicant himself did not take very seriously the danger to his life which he claims he will face if deported.

Having regard to all these considerations, it cannot be said that the first applicant has shown substantial grounds for believing that, if he returned to Jamaica now, there would be a real risk of his being killed.

It follows that the present case discloses no appearance of a violation of Article 2 of the Convention on its facts and that it must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Alleged violation of Article 8 of the Convention

The applicants complain that the deportation of the first applicant to Jamaica would breach their right to respect for their family life. They rely on Article 8 of the Convention, which provides:

> "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."

1. Is there "family life" within the meaning of Article 8?

(a) The parties' submissions

The Government submit that Article 8 is not applicable, since the contact between the two applicants has been very limited. Mr Headley left Akeem behind in Jamaica when he was two years old and they have lived together in the United Kingdom for only eight months (from May 1998 to January 1999).

The applicants claim that there is family life between them.

(b) The Court's assessment

It follows from the concept of family on which Article 8 is based that a child born of a marital union is *ipso jure* part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to “family life”, which subsequent events cannot break save in exceptional circumstances (see *Gül v. Switzerland*, judgment of 19 February 1996, *Reports* 1996-I, § 38).

Although the applicants have lived together only for eight months at most, that is principally because the first applicant has been in prison for most of the last five years. The Government do not appear to dispute that, during that time, Mr Headley made regular telephone calls to Akeem and fully intended to continue his relationship with him upon his release. The court does not find any exceptional circumstances to suggest that the bond of “family life” between the two has been broken.

2. Is the deportation order an unjustified interference with that family life?

(a) The parties' submissions

The Government submit that, if there is family life between the applicants, the deportation order would not interfere with it because there are no insurmountable obstacles to both applicants' living in Jamaica. In the alternative, they reason that, even if deportation would constitute interference with family life, it would be a proportionate measure with a legitimate aim.

The applicants claim that the deportation order would constitute an interference with their rights under Article 8. There are insurmountable barriers to the second applicant's returning to Jamaica, in particular the fact that he has lived in the United Kingdom from 1998 onwards. In addition, he is “likely to fear Jamaica” as both his parents have both been shot there, his mother fatally, and the psychologist who interviewed him considered that it was in his best interests to live in Sheffield with his father.

(b) The Court's assessment

The Court recalls that it is for the Contracting States to maintain public order, and that to that end they have the power to deport aliens convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see, *inter alia, Boultif v Switzerland*, no. 54273/00, § 46, *Reports* 2001-IX).

When assessing whether in the circumstances the deportation order struck a fair balance between the relevant interests, namely the applicant's right to respect for his family life, on the one hand, and the prevention of disorder or crime, on the other, the Court will consider the following: the nature and seriousness of the offence committed by the applicant; the duration of the applicant's stay in the country from which he is going to be expelled; the time which has elapsed since the commission of the offence and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage; other factors revealing whether the individuals lead a real and genuine family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; and whether there are children in the marriage and, if so, their age. Not least, the Court will also consider the seriousness of the difficulties which the other family members would be likely to encounter in the applicant's country of origin, although the mere fact that a person might face certain difficulties in accompanying her or his family member cannot in itself preclude expulsion (*Boultif*, § 50).

The first applicant's offence indisputably constituted a serious breach of public order and undermined the protection of health of others. In view of the devastating effects of drugs on people's lives, authorities are entitled to show great firmness to those who actively contribute to the spread of this scourge (see, for example, *D. v. the United Kingdom,* judgment of 2 May 1997, *Reports* 1997-III, § 46). In addition, the first applicant has been convicted of three other offences, each involving violence, in the relatively short time that he has been at liberty in the United Kingdom.

Furthermore, the Court observes that both the applicants are Jamaican nationals with no legal right to remain in the United Kingdom. Although the second applicant has lived in the United Kingdom since May 1998, he lived the first six and a half years in Jamaica and he has a brother and grandmother there. The Government have not yet made any decision to remove the second applicant. Unless and until they make such a decision, it appears that it will be possible for the second applicant to continue living in the United Kingdom with S's family, as he has done for the last seven months.

Besides, even if Akeem would prefer to live with his father, Article 8 does not guarantee a right to choose the most suitable place to develop family life (*Gül v. Switzerland*, § 46). The Court accepts that, in view of the past attack on the first applicant's life, which led also to the fatal shooting of the second applicant's mother, both applicants may be fearful of returning to Jamaica. However, as the Court has already found in connection with Article 2, there is no substantial evidence that, some twelve years after the original shooting and eight years after the last alleged shooting, there would still be a real risk to Mr Headley's life in Jamaica. Accordingly, the Court does not consider that the applicants have shown insurmountable obstacles to their being able to maintain family life in Jamaica.

Having regard to all these considerations, it cannot be said that the respondent State has failed to strike a fair balance between the applicants' interests on the one hand and its own interest in preventing disorder and crime.

It follows that the present case discloses no appearance of a violation of Article 8 of the Convention on its facts and that it must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE Josep CASADEVALL
Registrar President