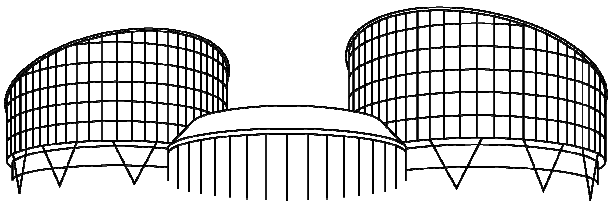

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 19641/07
by Manwar KHAN
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 8 December 2009 as a Chamber composed of:

Lech Garlicki, *President*,
Nicolas Bratza,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Mihai Poalelungi,
Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 6 May 2007,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Manwar Khan, is a Pakistani national who was born in 1957 and lived in Derby. He was represented before the Court by Mr Kesar of HiAce Solicitors, a lawyer practising in Croydon. The United Kingdom

Government ("the Government") were represented by their Agent, Mr D. Walton of the 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 applicant was born in 1957 and lives in Pakistan.

The applicant arrived in the United Kingdom on 26 June 1976 with his parents and siblings and was granted Indefinite Leave to Remain. In 1979 he returned to Pakistan to marry and his wife was granted leave to join him in the United Kingdom. When he returned to the United Kingdom he initially undertook casual work of a manual nature but later suffered a back injury which prevented him from undertaking further permanent work. In 1982 he suffered a stroke, which left him partially paralysed.

The applicant and his wife have four children living in the United Kingdom. The youngest will turn eighteen on 30 December 2009 and the oldest is twenty-seven. The applicant claims that two of his children have a disability. The applicant and his wife separated in 2000 although the applicant submits that they were later reconciled.

Following the applicant's stroke in 1982, he was convicted of thirty-seven offences for which he was sentenced to a total of fourteen years' imprisonment. These offences included rape, wounding under section 18 of the Offences against the Person Act 1861, and living off the earnings of a prostitute. On 26 July 2002 the applicant was convicted by a Crown Court of possession of a Class A controlled drug with intent to supply. He was sentenced to three years and six months' imprisonment.

On 15 July 2004 the applicant was served with a notice of decision to make a deportation order. The Secretary of State had considered the effect that deportation was likely to have upon the applicant and his family but concluded that in the light of the seriousness of the applicant's criminal offence, his removal was necessary in a democratic society for the prevention of disorder and crime and for the protection of health and morals.

The applicant's appeal against this decision was dismissed on 14 July 2005 by an Immigration Judge. The judge concluded that, having regard to the serious nature of the offence for which the applicant was imprisoned, the number and gravity of his past offences, and the high risk of re-offending, the public interest outweighed the compassionate circumstances of the case.

In particular, the Immigration Judge noted that the applicant continued to deny culpability for the offence and did not demonstrate any remorse for it. During the previous twenty years his disregard of the law had been blatant

and frequent and the probation officer considered that the risk of re-offending was high.

In relation to the applicant's medical condition, the judge accepted that he had some residual physical disability arising from a stroke in 1982. In particular, he had a limp and could not walk without the assistance of a stick. He also accepted that the applicant suffered from asthma and epilepsy, but noted that no medical evidence had been submitted to substantiate the level of the applicant's claimed disabilities. He concluded that the applicant had exaggerated the extent of his disability, and found that his medical needs could be met in Pakistan.

Moreover, the judge was not satisfied that the applicant no longer had connections in Pakistan. In relation to the applicant's family life in the United Kingdom, he did not accept that the applicant and his wife had become reconciled. He noted that following his release from prison, the applicant lived in a different town from his wife. Although he visited his wife and children on alternatives weekends, he did not stay in his wife's home during these visits.

On 11 November 2005 a deportation order was signed. On 6 March 2006 the applicant was detained and removal directions were set for 13 May 2006. The applicant sought permission to apply for judicial review. The Administrative Court deferred the removal directions pending the determination of the judicial review proceedings.

On 7 August 2006 the Administrative Court refused the application for permission to apply for judicial review. The applicant renewed his application for permission to an oral hearing, which took place on 8 March 2007. Permission to apply for judicial review was again refused by the Administrative Court. The applicant made further representations to the Secretary of State, which were rejected as containing no new information.

The applicant was deported to Pakistan on 13 May 2007.

B. Relevant domestic law and practice

Section 3(5)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999) provides that a person who is not a British citizen shall be liable to deportation from the United Kingdom if the Secretary of State for the Home Department deems his deportation to be conducive to the public good. Sections 82(1) and 84 of the Nationality, Immigration and Asylum Act 2002 provide for a right of appeal against this decision on the grounds, *inter alia*, that the decision is incompatible with the Convention.

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 take into account any case-law from this Court so far as, in

the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

The Rules relating to the revocation of a deportation order are contained in paragraphs 390 to 392 of the Immigration Rules HC 395 (as amended), supplemented by Chapter 13 of the Immigration Directorates Instructions ("IDIs"). There is no specific period after which revocation will be appropriate although Annex A to Chapter 13 of the IDIs gives broad guidelines on the length of time deportation orders should remain in force after removal. Cases which will normally be appropriate for revocation 3 years after deportation include those of overstayers and persons who failed to observe a condition attached to their leave, persons who obtained leave by deception, and family members deported under section 3(5)(b) of the Immigration Act 1971. With regard to criminal conviction cases, the normal course of action will be to grant an application for revocation where the decision to deport was founded on a criminal conviction which is now "spent" under section 7(3) of the Rehabilitation of Offenders Act 1974. Paragraph 391 of the Rules, however, indicates that in the case of an applicant with a serious criminal record continued exclusion for a long term of years will normally be the proper course. This is expanded on in Annex A to Chapter 13 of the IDIs, which indicates that revocation would not normally be appropriate until at least 10 years after departure for those convicted of serious offences such as violence against the person, sexual offences, burglary, robbery or theft, and other offences such as forgery and drug trafficking.

COMPLAINT

The applicant complained that his removal to Pakistan violated his rights under Article 8 of the Convention.

THE LAW

A. The parties' submissions

1. The Government

The Government submitted that the applicant had failed to exhaust domestic remedies in accordance with Article 35 of the Convention because he did not apply for an order for reconsideration of the Immigration Judge's decision. Moreover, the applicant did not apply for permission to appeal to

the Court of Appeal following the High Court's refusal to grant permission to apply for judicial review.

Alternatively, the Government submitted that the application should be declared manifestly ill-founded on the merits.

In the event that the Court found the application to be admissible, the Government submitted that the applicant had not established that there had been a violation of his Article 8 rights. The Government accepted that the applicant's deportation violated his right to respect for his family and private life, but submitted that the interference was in pursuit of a legitimate aim and was proportionate.

In particular, the applicant spent his formative years in Pakistan, only arriving in the United Kingdom when he was nineteen years old. During the thirty-one years that he lived in the United Kingdom, the applicant was convicted for thirty-seven criminal offences and prison sentences in aggregate of over fourteen years. He demonstrated a flagrant disregard for the criminal laws of the United Kingdom and would have presented a high risk of re-offending had he been permitted to stay.

Moreover, his criminal conduct was serious as well as prolific: he has a conviction for rape, a number of convictions for violent offences and a conviction for possession of a Class A drug with intent to supply.

In respect of his family life, the Government submitted that the applicant's wife, to the extent that she could still be considered his wife, was a Pakistani citizen who had also spent her formative years in Pakistan. While the applicant's children were presumably British citizens, they could still join the applicant in Pakistan if they so wished. If they did not join him there, they could keep in contact by telephone and writing and they could visit him during the holidays.

2. The applicant

The applicant's observations on the admissibility and merits of the case were submitted after the deadline imposed by the Court. By letter dated 7 April 2008 the Court advised the applicant that the observations were out of time and would therefore not be considered by the Court.

B. The Court's assessment

The Government have accepted that the applicant's deportation interfered with his right to respect for his family life and the Court endorses this view. It is not in dispute that the impugned measure had a basis in domestic law, namely section 3(5)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999). It is also not in dispute that the interference served a legitimate aim, namely "the prevention of disorder and crime".

The principal issue to be determined is whether the interference was "necessary in a democratic society". The relevant criteria that the Court uses to assess whether an expulsion measure is necessary in a democratic society have recently been summarised as follows (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57 - 58, ECHR 2006-...):

> "57. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in *Moustaquim v. Belgium*, *Beldjoudi v. France* and *Boultif v. Switzerland*, [cited above]; see also *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Yilmaz v. Germany*, no. 52853/99, 17 April 2003; and *Keles v. Germany*, 32231/02, 27 October 2005). In the case of *Boultif* the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria, as reproduced in paragraph 40 of the Chamber judgment in the present case, are the following:
>
> - the nature and seriousness of the offence committed by the applicant;
> - the length of the applicant's stay in the country from which he or she is to be expelled;
> - the time elapsed since the offence was committed 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, and other factors expressing the effectiveness of a couple's family life;
> - whether the spouse knew about the offence at the time when he or she entered into a family relationship;
> - whether there are children of the marriage, and if so, their age; and
> - the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.
>
> 58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:
>
> - the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
> - the solidity of social, cultural and family ties with the host country and with the country of destination."

The Court observes that that the facts of the present case are similar to those of *Joseph Grant v. the United Kingdom*, no. 10606/07,

8 January 2009, in which the Court found no violation of Article 8. In the present case, however, many of the applicant's offences were serious in nature and included crimes of violence, a sexual offence and a serious drug offence. In *Grant*, the applicant's offences generally fell at the less serious end of the spectrum of criminal activity.

When considered against the *Boultif* criteria, as summarised and developed in the above-cited *Üner* judgment, there are no other factors which would distinguish the present case from that of *Grant*. Prior to his deportation, the applicant had lived in the United Kingdom for thirty-one years but, like the applicant in *Grant*, he had spent his formative years in Pakistan and had only come to the United Kingdom when he was nineteen years old. Although he had formed strong ties to the United Kingdom, there is no evidence to suggest that he no longer maintained any ties to Pakistan.

Furthermore, the strength of the applicant's family ties in the United Kingdom is unclear. Although he asserted that he and his wife had become reconciled, this was not accepted by the Immigration Judge and the applicant has submitted no further evidence to substantiate his claim. Even if the couple had become reconciled, as the applicant's wife is a citizen of Pakistan who had spent the formative years of her life there, the Court considers that she is unlikely to encounter serious difficulties were she to join the applicant. While the applicant has four children in the United Kingdom, three of them are now adults and the youngest will reach the age of majority on 30 December 2009. It is therefore unlikely that they would return to Pakistan to be with him. The Court observes, however, that contact can be maintained by telephone and letter. The applicant's children could also visit him during the holidays.

Finally, the Court notes that while the applicant suffers from a number of medical complaints, he has submitted no evidence to suggest that any of these complaints are particularly serious or that the necessary treatment would not be available in Pakistan. The Immigration Judge accepted that he had some residual disability following a stroke in 1982, but found that he had grossly over-exaggerated the severity of his condition. In particular, he noted that the rape and the violent offences for which the applicant was convicted were all committed following his stroke in 1982. He accepted that the applicant had developed asthma and epilepsy, but found that the necessary treatment would be available in Pakistan. The applicant has submitted no evidence which would refute the Immigration Judge's findings.

The Court therefore finds that, if considered against the criteria set down in *Boultif v. Switzerland*, no. 54273/00, ECHR 2001-IX and *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-..., the interference with the applicant's family life was proportionate to the legitimate aims pursued, namely the maintenance of an effective system of immigration

control, the prevention of disorder and crime and the protection of health and morals.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President