

APPLICATION/REQUÊTE N° 7229/75

X. and Y. v/the UNITED KINGDOM

DECISION of 15 December 1977 on the admissibility of the application

Article 8, paragraph 1 of the Convention : This provision guarantees only a right to respect for existing family life. Factual circumstances leading to a conclusion of absence of family life despite certain legal binds and maintenance allowances.

Article 12 of the Convention : The adoption of a child by a couple might, in certain circumstances, be said to constitute the foundation of a family. However, Article 12 does not guarantee a right to adopt or otherwise integrate into a family a child which is not the natural child of the couple concerned.

Summary of the relevant facts

Applicant X. and his wife are Sikhs born in India. They are "citizens of the United Kingdom and colonies" and have lived in the United Kingdom since 1965. They are unable to have children.

Applicant Y. is the nephew of applicant X. He is of Indian nationality, resident in India and is a student. In 1972, whilst on a visit to India, X. adopted Y. in accordance with Indian law. Acting under Immigration Act 1971 and the Rules made thereunder the British authorities refused entry on the ground that even if the adoption was valid according to Indian law, there had been no genuine transfer of parental responsibility to X. as Y's real parents were able to care for him. X. then stated to send sums of money for the support of Y. and even obtained from the British income-tax authorities a tax allowance for one child. However, the competent immigration authorities maintained their refusal.

THE LAW (Extract)

1. The applicants complain firstly that the refusal of the United Kingdom authorities to allow the second applicant to enter the United Kingdom to join his adoptive father, the first applicant, constitutes an interference with their private and family life and home, contrary to Article 8 of the Convention.

The Commission recalls that it has previously held that, apart from any blood relationship, certain links must exist between persons before their relationship can be said to constitute "family life" within the meaning of Article 8 of the Convention (see *Application No. 2442/66, Singh v. the United Kingdom, Yearbook X, p. 478, Collection of Decisions 24, p. 116*; *Application No. 5269/71, X and Y v. the United Kingdom, Yearbook XV, p. 564, Collection of Decisions 39, p. 104*). Thus in deciding whether "family life" exists, the Commission has taken into account whether, for instance, persons in fact lived together and whether they were financially dependent on one another.

The applicants, whilst conceding that no "effective family life" has been established as between them, submit that this is the result of the respondent Government's refusal to allow the entry of the second applicant. They suggest that the position of an adoptee such as the second applicant is analogous to that of a new-born child, and that the establishment of an "effective family life" would necessarily take time, but has been prevented by the Government. They submit that there is therefore a violation of Article 8 notwithstanding the absence of an "effective family life".

The Commission is unable to accept these submissions. Article 8, as the above-mentioned cases indicate, guarantees a right to respect for existing "family life" (See also : *Application No. 5416/72, X. v. Austria, Collection of Decisions 46, p. 88*). It does not oblige a state to grant a foreign citizen entry to its territory for the purpose of establishing a new family relationship there.

The Commission has examined whether any relationship amounting to "family life" existed between the present applicants. In 1972, at the age of fourteen, the second applicant was adopted under Indian law by his uncle, the first applicant. This adoption is neither recognised nor eligible for recognition in English law. The first applicant has apparently since made financial contributions towards the upkeep of the second applicant. However, throughout his life, both before and after the adoption, he has lived with his natural parents in India. It appears that they have been and are fully capable of supporting him. In these circumstances the applicants have not, in the Commission's opinion, established a relationship between them which amounted at any material time to "family life" within the meaning of Article 8, notwithstanding their blood relationship and any legal relationship created under Indian law by the adoption. The Commission does not consider that the second applicant's relationship with the first applicant is at all comparable to that of a new-born child with its parents, where "family life" might be held to exist from the moment of birth.

It follows that the refusal to allow the second applicant to enter the United Kingdom did not infringe the right of either applicant to respect for his family life as guaranteed by that Article. Furthermore, the Commission finds no indication that this refusal involved any interference with the home or the private life of either applicant.

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

2. The applicants have also submitted that the authorities' action has involved a violation of the right of the first applicant and his wife to found a family, contrary to Article 12 of the Convention.

Article 12 of the Convention provides as follows :

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right".

The respondent Government has suggested that the word "family" in Article 12 should not be interpreted as covering persons other than the natural children of the marriage. However the Commission considers that the adoption of a child and its integration into a family with a couple might, at least in some circumstances, be said to constitute the foundation of a family by that couple. It is quite conceivable that a "family" might be "founded" in such a way. Nevertheless, whilst it is implicit in Article 12 that it guarantees a right to procreate children, it does not as such guarantee a right to adopt or otherwise integrate into a family a child which is not the natural child of the couple concerned. The Commission considers that it is left to national law to determine whether, or subject to what conditions, the exercise of the right in such a way should be permitted.

In the present case, the relevant national law does not allow for recognition of the adoption which took place in India. In addition the Immigration Act 1971 and the Rules made thereunder, do not provide a right of entry for the second applicant for the purpose of undergoing adoption in the United Kingdom or otherwise being integrated into a "family" with the first applicant and his wife. Whilst the first applicant may have been prevented from exercising his right to "found a family" in the particular way in which he desired, the Commission does not therefore consider that this was inconsistent with Article 12, since the relevant national laws did not allow for the exercise of the right in such a way. There is no question of the right of the first applicant and his wife to procreate children having been interfered with.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 (2) of the Convention.