

ECtHR - Chahal v. The United Kingdom, Application No. 22414/93, 15 November 1996

Country of Applicant:

India

United Kingdom

Date of Decision:

15-11-1996

Court Name:

European Court of Human Rights (Grand Chamber)

Keywords:[Assessment of facts and circumstances](#) [1][Effective access to procedures](#) [2][Effective remedy \(right to\)](#) [3][Detention](#) [4][Final decision](#) [5][Real risk](#) [6][Procedural guarantees](#) [7][Refugee Status](#) [8][Return](#) [9][Torture](#) [10]**Relevant Legislative Provisions:**International Law > [1951 Refugee Convention](#) [11]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [12] > [Article 3](#) [13]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [12] > [Article 5](#) [14]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [12] > [Article 8](#) [15]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [12] > [Article 13](#) [16]**Headnote:**

This case involved the UK's attempted deportation of an Indian citizen and leader of the Sikh

separatist movement who lived in the UK and was allegedly a national security threat. Because of the risk of ill-treatment, the Court found the UK would breach Art. 3 if he were deported to India, in conjunction with a violation of Art. 13. Because he was not able to review the lawfulness of his prolonged detention, the Court also found a violation of Art. 5 (4).

Facts:

The four applicants were family members and Sikhs. The first applicant, was an Indian citizen who entered the UK illegally in 1971 and was granted indefinite leave to remain under terms of an amnesty for illegal entrants in 1974. The second applicant, also of Indian citizenship, came to England in 1975 following her marriage to the first applicant, and at the time of the case lived in England with their two children, the third and fourth applicants, who by virtue of their birth in the UK had British nationality. The first two applicants applied for British citizenship in 1987; the first applicant's request was refused in 1989 but the second applicant's request was yet to be determined at the time of the case.

The applicant is an orthodox Sikh and became involved in organising passive resistance in Punjab in 1984, where he was subsequently arrested and detained. After his release and return to the UK the applicant became a Sikh leader and was involved in organising the International Sikh Youth Federation (ISYF), perceived as militant by Indian authorities. Following a political split in the ISYF, the applicant was associated with the faction allegedly advocating a violent separatist campaign for Punjab. He was detained and arrested multiple times, including under the Prevention of Terrorism Act 1984 (PTA). In 1986 he was convicted of charges arising out of his connection to disturbances in London, and served sentences of 6 and 9 months but the Court of Appeal then quashed the convictions on grounds that his appearance in court in handcuffs had been seriously prejudicial to him.

In August 1990 the Home Secretary decided that the applicant ought to be deported; the applicant applied for asylum the same day the notice of intention to deport was served. He claimed that he would be subjected to torture and persecution if he returned to India. In 1991 his application was refused, after which he applied for judicial review of the decision. The refusal was quashed by the High Court and referred back to the Home Secretary after finding the reasoning behind it inadequate. On 1 June 1992 the Home Secretary took a fresh decision to refuse asylum, considering that the breakdown of law and order in Punjab were due to the activities of the Sikh terrorists and not evidence of persecution, therefore he took the view that even if the applicant were at risk, he would not be entitled to protection under the UN 1951 Convention on the Status of Refugees (the 1951 Convention) because of the threat he posed to national security. The applicant's application for judicial review was refused in 1993, and his appeal to the Court of Appeal was also subsequently dismissed as it found an absence of evidence of irrationality or perversity, and thus it could not set aside the decision. Leave to appeal was also refused by the House of Lords in 1994. In 1995 his application for habeas corpus was also rejected.

According to material submitted by the UK, the level of violence in Punjab had decreased dramatically and there was little terrorist activity in 1995 and few complaints about politically-motivated abuse by the police. However, other reports, including one by Amnesty International, claimed that abuse and extrajudicial activity continued by the Punjab police.

The applicant applied to the Commission on 27 July 1993, complaining that his deportation to India would expose him to a real risk of torture or inhuman or degrading treatment in violation of Art. 3; that his detention had been too long and that judicial control thereof had been ineffective and slow in breach of Art. 5 (1) and (4); and that contrary to Art. 13, he had no effective domestic remedy for

his Convention claims because of the national security elements of his case (where national security issues are involved, English courts retain a power of review, but it is a limited one). All the applicants complained that the deportation of the first applicant would breach a right to respect for family life under Art. 8, for which they also had no effective domestic remedy, contrary to Art. 13.

Decision & Reasoning:

1. Alleged Breach of Article 3

Although Contracting States have the right to control the entry, residence, and expulsion of aliens, and the right to political asylum is not contained in the Convention or its Protocols, it is well-established that an expulsion may give rise to an Art. 3 issue where substantial grounds have been shown to believe that the person would face a real risk of being subjected to treatment contrary to Art. 3.

The Court rejected the Government's contention that Art. 3 considerations should be balanced against the national security threat allegedly posed by the applicant. According to the Court, the prohibition provided by Art. 3 against ill-treatment is absolute, and unlike most substantive clauses of the Convention and Protocols, makes no provision for exceptions and no derogation from it is permissible under Art. 15 even in the event of a public emergency. Thus, in an expulsion case, where substantial grounds have been shown that an individual would face a real risk of being subjected to ill-treatment, the responsibility of a Contracting State to safeguard him is engaged. The protection afforded by Art. 3 is wider than that provided by Art. 32 and 33 of the 1951 Convention.

For the purposes of assessing the risk of ill-treatment, the Court considered that the relevant time was that of the proceedings, as he had not yet been deported. Therefore while the historical situation was of interest, it was the current one in Punjab that was decisive. After considering both the evidence presented by the Government of the current situation in Punjab and generally in India, the Court decided that despite improvements, there was still a real risk of the applicant being subjected to treatment contrary to Art. 3 if returned to India. The Court emphasized evidence of the continued involvement of Punjab police in killings and abductions, including outside the State, as well as the applicant's high profile. The Court found that the applicant's status as a well-known Sikh separatist heightened the risk, rather than lowered it, as the Government contended. Accordingly, the Court found that his order for deportation to India would give rise to a violation of Art. 3.

2. Alleged Breach of Article 5

A. Article 5 (1)

The Court considered the applicant's allegation that his detention "with a view to deportation" (within the meaning of Art. 5) ceased to be justified because of its duration, i.e. approximately 17 months in total. The Court recalled that under its jurisprudence, any deprivation of liberty under Art. 5 (1)(f) will be justified only for as long as deportation proceedings are in progress, and therefore it must be determined whether the duration of the proceedings was excessive. The Court found that it would have been neither in the interests of the individual applicant nor that of the general public in the administration of justice that decisions over his deportation be taken hastily, without due regard to all the relevant issues and evidence, and as such there was no violation of Art. 5 (1)(f), as none of the periods complained of could be regarded as excessive, either individually or in combination.

The Court also considered whether the detention was 'lawful,' with particular reference to the safeguards provided by the national system and that it had assured that the individual was protected from arbitrariness in view of the extremely long duration of the detention. While the Court found the length of time which he was bound of serious concern, in view of the exceptional circumstances in which the national authorities considered the applicant a threat to national security, and finding that there were sufficient guarantees against the arbitrary deprivation of liberty, especially because an advisory panel reviewed the evidence and agreed with the Home Secretary that he ought to be deported on national security grounds, the Court determined there was no violation of Art. 5 (1)(f).

B. Article 5 (4)

The Court examined the applicant's complaint that he was denied the opportunity to have the lawfulness of his detention reviewed, as required under Art. 5 (4). Art. 5(4) provides a *lex specialis* in relation to the more general requirements of Art. 13, but the Court found it must review the complaint under this provision and not only under Art. 13. The Court explained that the question was whether the available proceedings to challenge the lawfulness of the applicant's detention and seek bail provided an adequate control by the domestic courts. Because national security was involved, the domestic courts were not in a position to review the decisions to detain the applicant. Although the procedure before the advisory panel provided some degree of control, the applicant was not entitled to legal representation before this panel and the panel had no power of decision, and it could not be considered a 'court' within the meaning of Art. 5 (4). Even if national security is at stake, the Court asserted that national authorities cannot be free from effective control by domestic courts whenever they choose to assert that national security and terrorism are involved. The Court found that neither the proceedings for habeas corpus and for judicial review, nor the advisory panel procedure, satisfied the requirements of Art. 5 (4). Exacerbated by the fact that the applicant was detained for a length of time of serious concern, it concluded there had been a violation of Art. 5 (4).

3. Alleged Breach of Article 8

The Court considered whether the interference with respect for all four applicants' family life was 'necessary in a democratic society in the interests of national security,' within the meaning of Art. 8 (2). Having already found that the deportation would constitute a violation of Art. 3, it found it not necessary to decide the hypothetical question whether, in the event of an expulsion, there would also be a violation of Art. 8.

4. Alleged Breach of Article 13

The Court considered the applicants' allegation that they were not provided with effective remedies before national courts, in breach of Art. 13. The Court only found it necessary to examine the complaint in conjunction with Art. 3, and not Art. 5 or 8. In *Vilvarajah* the Court was satisfied with English courts power to review a decision by the Secretary of State to refuse asylum. While in *Klass* and *Leander* the Court established that Art. 13 only required a remedy that was 'as effective as can be' in circumstances where national security considerations did not permit the divulging of certain sensitive information, this requirement is not appropriate in respect of a complaint that a person's deportation will expose him to a real risk of treatment in breach of Art. 3, where issues concerning national security are immaterial. Independent scrutiny of the claim is required given the irreversible nature of harm that might occur. Because neither the advisory panel nor the courts could review the Home Secretary's decision to deport the applicant with reference solely to the question of risk, these procedures could not be considered effective remedies with purposes of Art. 13. Accordingly, the Court found that there had been a violation of Art. 13.

5. Application of Article 50

The Court finally considered the applicants' request to grant them just satisfaction under Art. 50. Because there was no violation of Art. 5 (1) found, the Court made no award for non-pecuniary damage in respect of the time he spent in detention, but considered that the findings that his deportation would constitute a violation of Art. 3 and that there had been breaches of Art. 5 (4) and 13 constituted sufficient just satisfaction.

Outcome:

Application granted in part, denied in part.

Observations/Comments:

This case demonstrates the absolute and fundamental nature of Art. 3, as interpreted by the ECtHR. Under this interpretation, even an individual who likely poses a national security threat cannot be expelled if he faces a real risk of ill treatment or punishment contrary to Art. 3, as no derogation is permitted from this provision. The Court therefore built from its jurisprudence in *Soering*.

Case Law Cited:

UK - Immigration Appeal Tribunal, Charan Singh Gill v. Secretary of State for the Home Department (14 November 1994, unreported)

ECtHR- Ireland v. United Kingdom, Application no. 5310/71

ECtHR - Tomasi v France (Application no. 12850/87)

ECtHR - Cruz Varas & Others v Sweden (Application no. 15576/89)

ECtHR - Leander v. Sweden, 26 March 1987, Series A No. 116, §§ 77 and 81 to 83,

ECtHR - Fox, Campbell and Hartley v. the United Kingdom, Application Nos. 12244/86, 12245/86 and 12383/86

ECtHR - Kolompar v. Belgium, Application No. 11613/85

ECtHR - E. v. Norway, Application No. 11701/85

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De Jong, Baljet and Van den Brink v. Netherlands, 22 May 1984, § 60, Series A No. 77

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Quinn v. France, No. 18580/91, 22 March 1995

ECtHR - Murray v. the Netherlands [GC], no. 10511/10, ECHR 2016

ECtHR - Klass and Others v. Germany, Appl. No. 5029/71, 6 September 1978

[ECtHR - Soering v. The United Kingdom, Application No. 14038/88, 7 July 1989](#) [17]

[ECtHR - Vilvarajah and others v. The United Kingdom, Application Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, 30 October 1991](#) [18]

ECtHR - X v. the United Kingdom, Appl. No. 7215/75, 5 November 1981

UK - Court of Appeal, R. v. Secretary of State for the Home Department, ex parte Chahal [1994] Immigration Appeal Reports

UK - Court of Appeal, Council of Civil Service Unions v. Minister for the Civil Service [1985] Appeal Cases

UK - Court of Appeal, Associated Provincial Picture Houses v Wednesbury Corporation [1947] 1 KB 223; [1947] 2 All ER 680

Attachment(s):

 [Chahal.pdf](#)[19]

Other sources cited:

Canadian Immigration Act 1976

Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, United Nations, reports of 1994 and 1995

Special Rapporteur on extrajudicial, summary or arbitrary executions, United Nations, report of 1994

Working Group on enforced and involuntary disappearances, United Nations, report of 1994

United States' Department of State reports on India, 1995 and 1996

Indian National Human Rights Commission, annual report for 1994/1995

Amnesty International, reports of May 1995, "Punjab police: beyond the bounds of the law" and of October 1995, "India: Determining the fate of the 'disappeared' in Punjab"

Authentic Language:

English

State Party:

United Kingdom

National / Other Legislative Provisions:

UK - Immigration Act 1971

UK - Asylum and Immigration Appeals Act 1993

UK - Habeas Corpus Act 1679

UK - Habeas Corpus Act 1816

UK - Administration of Justice Act 1960

UK - Prevention of Terrorism (Temporary Provisions) Act 1984

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- [1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A10
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- [17] <https://www.asylumlawdatabase.eu/en/content/ecthr-soering-v-united-kingdom-application-no-1403888-7-july-1989>
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