

**Abdulaziz, Cabales, and Balkandali v UK (Application nos. 9214/80; 9473/81; 9474/81)**

**1) Reference Details**

Jurisdiction: The European Court of Human Rights

Date: 28 May 1985

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695293&portal=hbkm&source=externalbydocnumber&table=1132746FF1FE2A468ACCB CD1763D4D8149>

**2) Facts**

The applicants, three lawfully and permanently settled residents of the UK, sought to challenge the Government's refusal to permit their husbands to join or remain with them on the basis of the 1980 immigration rules in force at the time. The rules applied stricter conditions for the granting of permission for husbands to join their wives than *vice versa*. The Government claimed this measure had been put in place in order to protect the domestic labour market and maintain "public tranquillity". These conditions did not apply to the wives of male permanent residents. The applicants claimed discrimination on the grounds of race and sex, and in the case of the third Applicant, Ms. Balkandali, on the grounds of birth.

**3) Law**

The applicants alleged violation of Article 14 (prohibition of discrimination), Article 3 (prohibition of torture), Article 8 (respect for family life) and Article 13 (right to an effective remedy) of the European Convention on Human Rights.

The applicants sought to challenge the Statement of Changes in Immigration Rules introduced on 20 February 1980 ("the 1980 Rules").

**4) Legal Arguments**

*The Applicants*

The applicants submitted that Article 8 encompassed the right to establish one's home in the State of one's lawful residence, and that being forced to either move abroad or be separated from one's spouse was inconsistent with this principle. On this basis the applicants claimed that, as a result of unjustified differences of treatment in securing the right to respect for their family life, based on sex, race and, in the case of Mrs. Balkandali, birth, they had been victims of a violation of Article 14 of the Convention, taken in conjunction with Article 8. The applicants claimed there was no objective and reasonable justification for the difference in treatment, rather the Government's claims ignored the modern role of women and the fact that men may be self-employed and create rather than seek jobs, as in the case of Mr. Balkandali. In response to Government's claims that the law aimed to advance "public tranquillity", the applicants asserted that the racial prejudice of the United Kingdom population could not be advanced as a justification for the measures.

In alleging discrimination on the grounds of race, the applicants' relied heavily on a minority opinion of the Commission stating that by their effect, the Rules were inherently racist. Mrs. Balkandali also alleged discrimination on the grounds of birth on

the basis that only those born or having a parent born in the country could have their non-national husband accepted for settlement. The applicants also alleged violations of Article 3, on the basis that the discrimination against them amounted to an affront to human dignity, and of Article 13, on the basis that they had no effective remedy for their complaints under Articles 3, 8 and 14. They claimed costs and expenses, and for “moral damage” under Article 50.

### *The Government*

The Government submitted that neither Article 8, nor any other Article of the Convention, applied to immigration control which was governed by Protocol 4. Further to this, the applicants were claiming a right which was not secured even by Protocol 4. The Government argued that if the Court found that Article 8 did apply, there still was no difference on the basis of race, any difference in treatment on the basis of sex and birth had objective and reasonable justification, and that the measures taken were proportionate to a legitimate aim, in this case the need to protect the domestic labour market at a time of high domestic unemployment, and to advance public tranquillity through effective immigration control which benefited settled immigrants as well as the indigenous population. The margin of appreciation awarded by the Court was emphasised, as was the perceived likelihood of men being more likely to seek work thereby having a stronger impact on the labour market. The Government contested the alleged violation of Article 3, and argued that Article 13 does not require that a remedy be provided when immigration rules are at issue.

## **5) Decision**

The Court determined that the facts of the case fell within the ambit of Article 8, which was examined in conjunction with Article 14, though it held that Article 8 when taken alone had not been violated. It unanimously found a violation of Article 14 together with Article 8 on the basis that there had been discrimination on the grounds of sex, opining that the State’s reasons for disparate treatment were not justified, particularly when taking into account the attempts to achieve gender equality underway at the time.

The Court rejected the State’s claim that its generosity towards one group, beyond the measures required by the Convention, did not constitute discrimination. It found no other violation of Article 14 together with Article 8, opining that the immigration provisions did not contain regulations which distinguished between people on the basis of race or ethnic origin, and that rules requiring the wife of the entrant to be born or have a parent born within the UK was not discriminatory, rather it was aimed at benefiting those with close links to the UK. The Court also unanimously held that there had been a violation of Article 13 as the UK had failed to provide an “effective remedy”.