

AS TO THE ADMISSIBILITY OF

Application No. 24131/94
by Mahmood AHMAD, Mohammad KHAN,
Afzal Ahmad RAZA, Abdul REHMANN
and Mirza Amjad HUSSAIN
against Germany

The European Commission of Human Rights (First Chamber) sitting
in private on 27 June 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BİRSAN

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection
of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 15 October 1993
by Mahmood AHMAD, Mohammad KHAN, Afzal Ahmad RAZA, Abdul REHMANN and
Mirza Amjad HUSSAIN against Germany and registered on 11 May 1994 under
file No. 24131/94;

Having regard to the report provided for in Rule 47 of the Rules
of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

All applicants are Pakistan citizens who came to Germany
requesting political asylum which was granted by the competent
authority but, on appeal, was eventually denied. The relevant
documents have been produced on 26 July 1994 only in respect of the
case of the first applicant, Mahmood Ahmad. This applicant was born
in 1960, and is living in Böblingen. He is represented, like the other
applicants, by Mr. O. Seitter, a lawyer practising in Stuttgart.

It follows from his statements and the documents submitted that
the first applicant arrived in Germany on 8 May 1990 and requested
political asylum on 23 July 1990.

On 12 October 1990 the Federal Office for the recognition of
foreign refugees (Bundesamt für die Anerkennung ausländischer
Flüchtlinge) granted the first applicant asylum on the ground that as
a member of the religious Ahmadi community he was subject to political
persecution in his home country.

The Federal Agent for asylum matters (Bundesbeauftragte für

Asylangelegenheiten) brought an action with a view to having this decision set aside. The action was dismissed by the Stuttgart Administrative Court (Verwaltungsgericht) on 14 January 1992.

The Court found that for many years tensions had existed in Pakistan between orthodox Muslims (Saneids) and the Ahmadi community. Since 1974 the state had continuously introduced legislative amendments to the disadvantage of the Ahmadi Muslim movement under the pressure of the militant orthodox Muslims. On 26 April 1984 President Zia-ul-Haq issued the "Anti-Islamic-Activities of the Qadiani-Group, Lahori-Group and Ahmadis (Prohibition and Punishment) Ordinance 1984". The Ahmadis were declared to be non-Muslims. The Pakistan penal code (PPC) was amended to the effect that in practice the expression by Ahmadis of their religious beliefs under certain conditions could be considered to be blasphemy, punishable by the death sentence or by life-long imprisonment plus a fine.

In 1990 the Federal Shariat Court of Pakistan decided that lifelong imprisonment in severe cases of blasphemy was unconstitutional and should be replaced by the death penalty only. In 1991 the Pakistan Federal Government decided to amend the penal code accordingly. However, parliament did not adopt the proposed amendment.

The Administrative Court considered that the new legislative provisions of 1984 were not an empty threat but affected every practising Ahmadi to the very core of his religious rights. Every Ahmadi had, in view of the new legislation, reason to fear that in future he risked up to three years' imprisonment simply for practising his own religion. There was even a danger that the normal practice of the religion might be interpreted as constituting blasphemy, punishable by the death sentence. However, the application of the death penalty has not occurred so far.

The court concluded that in these circumstances the first applicant could not be expected to return to his home country.

An appeal was lodged by the Federal Agent for asylum matters against this judgment with the Baden-Württemberg Administrative Court of Appeal. On 4 December 1992 this court decided against the first applicant. It noted that the first applicant had left his country as a free man and not as a victim of political persecution. It noted that until 1990 when the applicant left Pakistan there had only been a few cases in which persons had been arrested and convicted because of religious activities. As approximately three to four million Ahmadis lived in Pakistan it could not be found that there existed a systematic persecution pattern. The court further considered that the situation had not drastically changed since the applicant's departure from Pakistan. So in particular there were only a few cases of persecution of Ahmadis for expressing their religious beliefs in the private sphere or within their community.

It was true that extremist Islamic forces gained influence in the inner political struggle of Pakistan but nevertheless there was not sufficient evidence to the effect that the applicant had to be considered as being subject to political persecution.

On 19 May 1993, the Federal Administrative Court (Bundesverwaltungsgericht) refused to admit the appeals on points of law (Revision) of the first four applicants, and on 4 June 1993 with regard to the fifth applicant.

The first applicant as well as the four other applicants in the same situation lodged constitutional complaints which were however rejected by a panel of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) on 20 September 1993. The panel considered that the complaints were inadmissible as they did not raise any important issues under constitutional law.

On 20 December 1993 the Federal Office for the recognition of foreign refugees dismissed the first applicant's request to conduct new asylum proceedings and ordered him to leave Germany within one week.

From the documents submitted it appears that new legislation from 1992 requiring an indication of a person's religion on his identity card had been abolished in the meantime.

COMPLAINTS

The applicants do not invoke any specific Article of the Convention. They submit that Ahmadis are systematically persecuted in their country. The situation was worsened by the fact that from 1992 a new law requires that a person's religion is to be indicated on his identity card. They further submit that under Pakistan Penal Law even the habitual form by which Ahmadis greet each other, namely the formula "Assallam-o-aleikom", may lead to a death penalty.

THE LAW

The applicants submit that the denial of political asylum and the risk of being sent back to their home country Pakistan amount to a violation of their human rights.

The Commission considers that the complaints have to be dealt with under Article 3 (Art. 3) of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to political asylum is not protected in either the Convention or its Protocols (Eur. Court H.R., *Vilvarajah and Others* judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 3) 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 concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he is to be expelled (*ibid.*, para. 103). A mere possibility of ill-treatment is not in itself sufficient (*ibid.*, p.37, para. 111).

The Commission notes that according to the findings of the Administrative Court of Appeal, the first applicant had left his country as a free man in the absence of any kind of personal persecution. Taking into account that approximately three to four million Ahmadis lived in Pakistan the Court denied that there existed a systematic persecution pattern. The Court concluded that there was not sufficient evidence to the effect that the first applicant was subject to a risk of political persecution.

The Commission finds that substantial grounds have not been established for believing that the applicants would be exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) on their return to Pakistan.

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber
(M.F. BUQUICCHIO)

President of the First Chamber
(C.L. ROZAKIS)