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## **ECtHR - Abdulaziz, Cabales and Balkandali v The United Kingdom, Application nos. 9214/80; 9473/81 and 9474/81, 28 May 1985**

**Country of Applicant:**

Malawi  
Philippines  
United Kingdom

**Date of Decision:**

28-05-1985

**Citation:**

Abdulaziz, Cabales and Balkandali v the United Kingdom [1985] ECtHR, Application nos. 9214/80; 9473/81; 9474/81

**Court Name:**

European Court of Human Rights

**Keywords:**

[Discrimination](#) [1]  
[Effective remedy \(right to\)](#) [2]  
[Family member](#) [3]  
[Family reunification](#) [4]  
[Family unity \(right to\)](#) [5]  
[Nationality](#) [6]  
[Race](#) [7]

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**Relevant Legislative Provisions:**

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [8] > [Article 3](#) [9]  
Council of Europe Instruments > ECHR (Fourth Protocol)  
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [8] > [Article 8](#) [10]  
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [8] > [Article 12](#) [11]  
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[8] > [Article 14](#) [13]

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Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [8] > [Article 50](#) [22]

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#### **Headnote:**

The ECtHR held that the 1980 UK Immigration Rules breached ECHR Article 14 taken together with Article 8 as they discriminated on the ground of sex against three female applicants settled in the UK who wished to be joined by their spouses. It was easier for men settled in the UK to be joined by a non-national spouse than women but no objective and reasonable justification was found for this difference of treatment.

#### **Facts:**

The three applicants, all with indefinite leave to remain in the UK, had husbands who under the 1980 Immigration Rules had been refused the right to join their wives in the UK or to remain with them there. All three marriages had taken place after the applicant had settled in the UK. Under the 1980 rules, there were different, stricter rules for non-British husbands joining wives in the UK than for wives joining husbands. On this account the applicants submitted that they had been victims of a practice of discrimination on the grounds of sex, race, and also in the case of Mrs Balkandali, birth, thus meaning that Article 3 and Article 8, alone or in conjunction with Article 14 of the Convention, had been violated. They also submitted that Article 13 had been violated as there was no effective domestic remedy to these claims.

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#### **Decision & Reasoning:**

Firstly, Article 8 of the convention was found to be applicable. Although by guaranteeing the right to respect for family life Article 8 presupposes the existence of a family? (*Marckx v Belgium*), and the ?family? in question did not yet exist at the time of the women?s settlement in the UK, the Court held that all intended family life is not automatically outside the ambit of Article 8. ?Family? must include a lawful, genuine and committed married relationship like those of the applicants.

However, there was not found to be a violation of Article 8. The Court held that Contracting Parties enjoy a wide margin of appreciation with regard to ?respect for family life? and that the situation

also concerned immigration: it has long been established that States may control the entry of non-nationals onto their territory. Article 8 cannot be seen as a general obligation on a Contracting Party to respect the choice by married couples of the country of residence and always accordingly to accept the non-national spouses for settlement on their territory. The applicants did not show that there were special circumstances which would have prevented them from establishing family life in their own or their husbands' home countries and moreover knew or should have known at the time of marriage that it would be likely that their husbands' requests for settlement would be refused.

With regard to the alleged violation of Article 14 taken together with Article 8, there was found to be a violation, i.e. discrimination, on the ground of sex. While there was no dispute that under the 1980 Rules it was easier for a man settled in the UK to obtain permission for his spouse to enter or remain in the country, the Government claimed there was an objective and reasonable justification. They argued that the difference of treatment was to limit 'primary immigration' as the domestic labour market was experiencing high unemployment as male immigrants would have a greater impact on the market. The Court accepted that this aim was legitimate, and that again Contracting Parties enjoy some margin of appreciation in this area, but held that equality of the sexes is one of the major goals in the member states and thus that more convincing reasons would be needed to justify this difference of treatment. A modern view on the role of women should be taken and the impact on the domestic labour market of women immigrants should not be underestimated. The aim of advancing public tranquility also proposed by the Government was also held not to be served by the distinction drawn between men and women in the 1980 Rules. Finally, the more general argument that the UK had acted more generously in some areas than required by the Convention by admitting non-national wives was rejected because this does not preclude the discrimination in question. So Articles 14+8 had been violated on the ground of sex.

There was not found to be a violation of Articles 14+8 with regard to discrimination on the ground of race. Most immigration policies differentiate on the basis of nationality and therefore indirectly by race; the Court held that it was not racial discrimination to give preferential treatment to persons from countries with which a State has the closest links. The 1980 Rules indeed even included a specific instruction to immigration officers to carry out their duties without regard to race (paragraph 2).

There was also no violation of Articles 14+8 with regard to discrimination on the ground of birth (as alleged by Mrs Balkandali). The Court held that the aim of avoiding the hardship of women with close ties to the UK having to move abroad to remain with their husbands was legitimate. There are also persuasive social reasons for giving special treatment to those whose link with a country stems from birth.

The Court also held there was no violation of Article 3. The difference of treatment did not show any lack of respect for the personality of the applicants and caused them no humiliation, simply being designed to achieve the aims stated above.

There was found to be a violation of Article 13 as, due to the UK having not incorporated the Convention into its domestic law, there was no 'effective remedy' to the discrimination on the ground of sex in the 1980 Rules. The channels of complaint available could only be used if the discrimination resulted from the 1980 Rules being misapplied.

Finally, under Article 50 it was held that the applicants could not receive monetary compensation as the findings of violation themselves are sufficient satisfaction. However, costs and expenses were to be reimbursed, the Government indicating that they were prepared to cover costs in accordance with Court practice.

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**Outcome:**

Application granted with regard to violation of article 14 taken together with article 8 granted on ground of sex and with regard to violation of article 13 again granted in regard to discrimination on ground of sex. The application for reimbursement of costs and expenses as calculated was also granted. Application with regard to violation of article 8 alone, article 3 and article 14 taken together with article 8 with regard to discrimination on grounds of race and birth denied.

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**Subsequent Proceedings :**

This case was closed by the Committee of Ministers in [Resolution DH \(86\) 2](#). [23]

**Observations/Comments:**

This case summary was written by Tabatha Pinto, GDL student at BPP University

**Case Law Cited:**

ECtHR - Zimmerman and Steiner v Switzerland (application no. 8737/79), 13 July 1983, Series A no. 66

ECtHR - Campbell and Fell v United Kingdom (application nos. 7878/77; 7819/77), 28 June 1984, Series A no. 80

ECtHR - Silver and Others v United Kingdom (application no. 6205/73), 25 March 1983, Series A no. 61

ECtHR - Rasmussen v Denmark (application no. 8777/79), 28 November 1984

ECtHR - National Union of Belgian Police v Belgium (application no. 4464/70), 27 October 1975, Series A no. 6

R v Secretary of State for the Home Department, ex parte Hosenball [1977] 3 All England Law Reports 452

ECtHR - Belgian Linguistic Case (A/6)

ECtHR - Young, James and Webster v. the United Kingdom, Nos. 7601/76 7806/77, 18 October 1982

ECtHR - Marckx v Belgium, 13 June 1979, § 41, Series A No. 31

ECtHR - Airey v Ireland, 9 October 1979, Series A No. 32 § 26

**Attachment(s):**



[case-of-abdulaziz-cabales-and-balkandali-v-the-united-kingdom1.doc](#)[24]

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**Other sources cited:**

European Court of Human Rights, Rules of Court, Rules 21 paras. 3(b), 4 and 5, 30, 33 para. 3 (d) and 37 para. 1

**Authentic Language:**

English

**State Party:**

United Kingdom

**National / Other Legislative Provisions:**

UK - British Nationality Act 1948

UK - Immigration Act 1971

UK - British Nationality Act 1981

UK - Commonwealth Immigrants Act 1962

UK - Commonwealth Immigrants Act 1968

UK - Statement of Changes in Immigration Rules (HC 394)

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**Links:**

- [1] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A966](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A966)
- [2] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A30](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30)
- [3] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A2481](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2481)
- [4] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A2482](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2482)
- [5] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A196](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A196)
- [6] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A199](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A199)
- [7] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A197](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A197)
- [8] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [9] [https://m.asylumlawdatabase.eu/node/195#toc\\_12](https://m.asylumlawdatabase.eu/node/195#toc_12)
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- [23] <http://hudoc.exec.coe.int/ENG?i=001-55436>
- [24] <https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/case-of-abdulaziz-cabales-and-balkandali-v-the-united-kingdom1.doc>