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Collective expulsions of aliens

Article 4 (prohibition of collective expulsion of aliens) of Protocol No. 4 to the European Convention on Human Rights: "Collective expulsion of aliens is prohibited".

"Collective expulsion" = any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.

Cases in which the Court found a violation of Article 4 of Protocol No. 4 to the Convention

Čonka v. Belgium

5 February 2002 (Chamber judgment)

The applicants, Slovakian nationals of Romany origin, said that they had fled from Slovakia where they had been subjected to racist assaults with the police refusing to intervene. They had been arrested with a view to their expulsion after they had been summoned to complete their asylum requests. The applicants complained, in particular, about the circumstances of their arrest and expulsion to Slovakia.

The Court held that there had been a **violation of Article 4 of Protocol No. 4** to the Convention, noting in particular that the expulsion procedure had not afforded sufficient guarantees demonstrating that the personal circumstances of each of those concerned had been genuinely and individually taken into account. In the Court' view, the procedure followed did not enable it to eliminate all doubt that the expulsion might have been collective, that doubt being reinforced by several factors: the political authorities had previously given instructions to the relevant authority for the implementation of operations of that kind; all the aliens concerned had been required to attend the police station at the same time; the orders served on them requiring them to leave the territory and for their arrest were couched in identical terms; it was very difficult for the aliens to contact a lawyer; the asylum procedure had not been completed.

In this case the Court also found a violation of **Article 5 §§ 1** (right to liberty and security) **and 4** (right to take proceedings by which lawfulness of detention shall be decided) of the Convention, and a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 4 of Protocol No. 4**. It further held that there had been **no violation of Article 5 § 2** (right to be informed of the reasons for arrest) and **no violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Hirsi Jamaa and Others v. Italy

23 February 2012 (Grand Chamber judgment)

This case concerned Somalian and Eritrean migrants travelling from Libya who had been intercepted at sea by the Italian authorities and sent back to Libya. The applicants complained in particular that they had been subjected to collective expulsion prohibited

by Article 4 of Protocol No. 4 to the Convention. They also submitted that they had had no effective remedy in Italy in that respect.

The Court found that **the applicants had fallen within the jurisdiction** of Italy **for the purposes of Article 1** (obligation respect human rights) of the Convention: in the period between boarding the ships and being handed over to the Libyan authorities, the applicants had been under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities.

In this case the Court was **required**, **for the first time**, **to examine whether Article 4 of Protocol No. 4** to the Convention **applied to a case involving the removal of aliens to a third State carried out outside national territory**. It observed in particular that the notion of expulsion, like the concept of "jurisdiction", was clearly principally territorial but found that where a State had, exceptionally, exercised its jurisdiction outside its national territory, it could accept that the exercise of extraterritorial jurisdiction by that State had taken the form of collective expulsion. The Court also noted that the transfer of the applicants to Libya had been carried out without any examination of each individual situation, as the Italian authorities had merely embarked the applicants and then disembarked them in Libya. It therefore concluded that the removal of the applicants had been of a collective nature, **in breach of Article 4 of Protocol No. 4**.

In this case the Court also found a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention because the applicants had been exposed to the risk of ill-treatment in Libya and of repatriation to Somalia or Eritrea. It lastly found a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3** of the Convention **and with Article 4 of Protocol No. 4**, because the applicants had been unable to lodge their complaints with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced, and because the remedy under the criminal law against the military personnel on board the ship did not satisfy the criterion of suspensive effect.

Georgia v. Russia (I)

3 July 2014 (Grand Chamber judgment)

This case essentially concerned the alleged existence of an administrative practice involving the arrest, detention and collective expulsion of Georgian nationals from the Russian Federation in the autumn of 2006.

The Court held in particular that there had been a **violation of Article 4 of Protocol No. 4** to the Convention, finding that the expulsions of Georgian nationals during the period in question had amounted to an administrative practice in breach of that Article.

The Court pointed out that Article 4 of Protocol No. 4 was applicable, irrespective of the question of whether the Georgian nationals in this case had been lawfully resident or not, given that that Article did not only refer to those lawfully residing within the territory of a State.

As regards the question of whether the expulsion measures had been taken following, and on the basis of, a reasonable and objective examination of the particular situation of each of the Georgian nationals, the Court took note of the concordant description given by the Georgian witnesses and international governmental and non-governmental organisations of the summary procedures conducted before the Russian courts. It observed in particular that, according to the Parliamentary Assembly of the Council of Europe Monitoring Committee, the expulsions had followed a recurrent pattern all over the country and that in their reports the international organisations had referred to coordination between the administrative and judicial authorities.

During the period in question the Russian courts had made thousands of expulsion orders expelling Georgian nationals. Even though, formally speaking, a court decision had been made in respect of each Georgian national, the Court considered that the conduct of the expulsion procedures during that period, after the circulars and instructions had been issued, and in view of the high number of Georgian nationals

expelled – from October 2006 – had made it impossible to carry out a reasonable and objective examination of the particular case of each individual.
While every State had the right to establish their own immigration policy, concluded the Court, it had to be underlined that problems with managing migration flows could not justify practices incompatible with the State's obligations under the Convention.

See also: **Berdzenishvili and Others v. Russia** and **Shioshvili and Others v. Russia**, Chamber judgments[1] of 20 December 2016.

Sharifi and Others v. Italy and Greece

21 October 2014 (Chamber judgment)

This case concerned 32 Afghan nationals, two Sudanese nationals and one Eritrean national, who alleged, in particular that they had entered Italy illegally from Greece and been returned to that country immediately, with the fear of subsequent deportation to their respective countries of origin, where they faced the risk of death, torture or inhuman or degrading treatment. They also submitted, with regard to Italy, that they had been subjected to indiscriminate collective expulsion.
The Court held that there had been a **violation** by Italy **of Article 4 of Protocol No. 4** to the Convention concerning the four applicants who had maintained regular contact with their lawyer in the proceedings before the Court[2], considering that the measures to which they had been subjected in the port of Ancona had amounted to collective and indiscriminate expulsions. It also held, concerning the four same applicants, that there had been a **violation** by Italy **of Article 13** (right to an effective remedy) **combined with Article 3** (prohibition of inhuman or degrading treatment) of the Convention **and Article 4 of Protocol No. 4** on account of the lack of access to the asylum procedure or to any other remedy in the port of Ancona. It further held that there had been a **violation** by Greece **of Article 13 combined with Article 3** on account of the lack of access to the asylum procedure for them and the risk of deportation to Afghanistan, where they were likely to be subjected to ill-treatment, and a **violation** by Italy **of Article 3**, as the Italian authorities, by returning these applicants to Greece, had exposed them to the risks arising from the shortcomings in that country's asylum procedure.
In this case, the Court held, in particular, that it shared the concerns of several observers with regard to the automatic return, implemented by the Italian border authorities in the ports of the Adriatic Sea, of persons who, in the majority of cases, were handed over to ferry captains with a view to being removed to Greece, thus depriving them of any procedural and substantive rights.
In addition, the Court reiterated that the "Dublin" system[3] – which serves to determine which European Union Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national – must be applied in a manner compatible with the Convention: no form of collective and indiscriminate returns could be justified by reference to that system, and it was for the State carrying out the return to ensure that the destination country offered sufficient guarantees in the application of its asylum policy to prevent the person concerned being removed to his country of origin without an assessment of the risks faced.

[1]. These judgments will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.
[2]. In respect of the 31 other applicants, the Court struck the application out of its list of cases, pursuant to Article 37 (striking out applications) of the European Convention on Human Rights.
[3]. See the "Dublin cases" factsheet.

Cases in which the Court found no violation of Article 4 of Protocol No. 4

Sultani v. France

20 September 2007 (Chamber judgment)

This case concerned the risk of deportation on a collective flight used to deport illegal immigrants. The applicant submitted, in particular, that if he were to return to Afghanistan he ran the risk of being subjected to inhuman and degrading treatment. He complained of the deportation proceedings against him, and in particular of the short time taken by the French Agency for the Protection of Refugees and Stateless Persons (OFPRA) to consider his second asylum application.

The Court held that there would be **no violation of Article 4 of Protocol No. 4** to the Convention **if the deportation decision were to be enforced**. The French authorities, in their decision to refuse the asylum applications, had taken account of both the overall situation in Afghanistan and the applicant's statements. The Court therefore found that the applicant's case had been examined individually and provided sufficient grounds for his deportation. In this case the Court also held that there would be **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention if the applicant were to be deported.

See also: **Ghulami v. France**, decision (Chamber) on the admissibility of 7 April 2009.

M.A. v. Cyprus (application no. 41872/10)

23 July 2013 (Chamber judgment)

This case concerned a Syrian Kurd's detention by Cypriot authorities and his intended deportation to Syria after an early morning police operation removing him and other Kurds from Syria from an encampment outside government buildings in Nicosia in protest against the Cypriot Government's asylum policy. The applicant complained in particular that the Cypriot authorities had intended to deport him as part of a collective expulsion operation, without having carried out an individual assessment and examination of his case.

The Court held that there had been **no violation of Article 4 of Protocol No. 4** to the Convention. It noted in particular that it was important that every case concerning deportation was looked at individually and decided on its own particular facts. The fact that the protestors, including the applicant, were taken together to the police headquarters, that some were deported in groups, or that deportation orders and letters were phrased in similar terms and therefore did not specifically refer to earlier stages of respective applications did not make this a collective measure. Each decision to deport a protestor had been based on the conclusion that they were an irregular immigrant following the rejection of his or her asylum claim or the closure of the file, which had been dealt with on an individual basis over a period of more than five years. Consequently, the measures in question did not have the appearance of a collective expulsion.

In this case the Court further held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Articles 2** (right to life) **and 3** (prohibition of inhuman or degrading treatment) of the Convention, a **violation of Article 5 §§ 1** (unlawful detention) **and 4** (effective remedy to challenge lawfulness of detention) of the Convention, and **no violation of Article 5 § 2** (right to be informed of reasons for arrest and charge) of the Convention.

Khlaifia and Others v. Italy

15 December 2016 (Grand Chamber judgment)

This case concerned the detention in a reception centre on Lampedusa and subsequently on ships moored in Palermo harbour, as well as the repatriation to Tunisia, of clandestine migrants who had landed on the Italian coast in 2011 during the events linked to the

"Arab Spring". The applicants submitted in particular that they had been subjected to collective expulsion.
The Grand Chamber held that there had been **no violation of Article 4 of Protocol No. 4** to the Convention. It found in particular that Article 4 of Protocol No. 4 did not guarantee the right to an individual interview in all circumstances. The requirements of that provision were satisfied where each alien had the possibility of raising arguments against his or her expulsion and where those arguments had been examined by the authorities of the respondent State. In the present case, the Grand Chamber concluded that, having been identified on two occasions, and their nationality having been established, the applicants had had a genuine and effective possibility of raising arguments against their expulsion. The Grand Chamber also held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention **combined with Article 4 of Protocol No. 4**, finding that the lack of suspensive effect of a remedy against a removal decision did not in itself constitute a violation of Article 13 where the applicants did not allege a real risk of a violation of the rights guaranteed by Articles 2 (right to life) or 3 (prohibition of torture and inhuman or degrading treatment) of the Convention in the destination country. Lastly, the Grand Chamber held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, a **violation of Article 5 § 2** (right to be informed promptly of the reasons for deprivation of liberty), a **violation of Article 5 § 4** (right to a speedy decision by a court on the lawfulness of detention), **no violation of Article 3** (prohibition of inhuman or degrading treatment) as regards both the conditions in the Lampedusa early reception and aid centre and the conditions on the ships in Palermo harbour, and a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 3** concerning the lack of a remedy by which the applicants could have complained about the conditions in which they were held in the Lampedusa reception centre or on the ships.

Cases declared inadmissible under Article 4 of Protocol No. 4

Becker v. Denmark

3 October 1975 (decision of the European Commission of Human Rights[4])
The applicant, who was a journalist and the director of a body called "Project Children's Protection and Security International" alleged that the return to Vietnam of 199 Vietnamese children received in Denmark would represent, if carried out, a violation of Article 4 of Protocol No. 4 to the Convention.
The European Commission of Human Rights declared the application **inadmissible** (incompatible *ratione materiae*). Since Denmark had agreed to a case-by-case examination, and since it could be in the interests of some of the children to be repatriated rather than to remain in Denmark, no issue of collective expulsion could arise.

Andric v. Sweden

23 February 1999 (decision (Chamber) on the admissibility)
This case concerned the expulsion to Croatia and Bosnia-Herzegovina of ethnic Croatians from Bosnia-Herzegovina holding both Bosnian and Croatian citizenships. They requested asylum in Sweden after having fled Bosnia-Herzegovina and the immigration authorities decided to deport them to Croatia after rejecting their requests. The applicants complained under Article 3 (prohibition of inhuman or degrading treatment) of the Convention and Article 4 of Protocol No. 4 to the Convention.

[4] Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States' compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1st November 1998.

The Court declared the application **inadmissible** under **Article 4 of Protocol No. 4** to the Convention as being manifestly ill-founded. It observed in particular that the fact that a number of aliens receive similar decisions should not lead to the conclusion that there has been a collective expulsion when each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis. In the present cases, each applicant had submitted an individual application to the immigration authorities and had been able to present arguments against his deportation to Croatia. The authorities hence had taken into account not only the general situation but also each applicant's background and the risks allegedly facing him upon return. Moreover, in rejecting their applications the authorities had issued individual decisions concerning each applicant's situation.
The Court also declared the complaint under **Article 3** of the Convention **inadmissible**.

Berisha and Haljiti v. "The former Yugoslav Republic of Macedonia"

16 June 2005 (decision (Chamber) on the admissibility)
The applicants are spouses and nationals of Serbia and Montenegro, from the Kosovo province. They are of Roma ethnic origin. They claimed that they were harassed by Albanians from their village on a daily basis, and forced by members of the Kosovo Liberation Army and other villagers to leave their house. They complained that they had been subjected to collective expulsion, contrary to Article 4 (prohibition of collective expulsion of aliens) of Protocol No. 4 to the Convention, since the authorities had issued a single decision for both of them without providing reasonable and objective examination of the particular circumstances of each.
The Court declared the application **inadmissible** as being manifestly ill-founded. The mere fact that the authorities had issued a single decision for both of them, as spouses, was a consequence of their own conduct: they had arrived together to "The former Yugoslav Republic of Macedonia", lodged their asylum request jointly, produced the same evidence and submitted joint appeals. In these circumstances, the applicants' deportation did not reveal any appearance of a collective expulsion.

Dritsas and Others v. Italy

1 February 2011 (decision (Chamber) on the admissibility)
In July 2001 the 46 applicants, all Greek nationals, had boarded a ferry in Patras bound for Ancona and then Genoa, together with some eight hundred Greek nationals belonging to the Greek anti-G8 protest committee, in order to attend the demonstrations against the G8 summit. They alleged in particular that they had been arrested by the police on their arrival in Ancona and eventually forced to return to Patras. Relying in particular on Article 4 (prohibition of collective expulsion of aliens) of Protocol No. 4 to the Convention, they notably argued that their removal had amounted to collective expulsion, as no formal individual decisions had been taken or served on them.
With regard to **Article 4 of Protocol No. 4**, the Court declared the application **inadmissible** as being manifestly ill-founded. Even supposing that the applicants had shown their identity documents to the police initially, the demonstrators in the group of which they had formed part had not complied with two subsequent requests to do so. The documents in question had been requested with a view to drawing up removal orders in respect of the persons concerned, in accordance with the instructions issued to the police by the Interior Ministry. In those circumstances, the respondent Government could in no sense be held responsible for the fact that no individual orders had been issued for the applicants' removal.
The Court also declared the applicants' **other complaints inadmissible**.

See also, more recently: **Abdi Ahmed and Others v. Malta**, decision (Chamber) on the admissibility of 16 September 2014.

Cases struck out of the Court's list of cases insofar as Article 4 of Protocol No. 4 was concerned

Hussun and Others v. Italy

19 January 2010 (strike-out judgment (Chamber))

In 2005 the 84 applicants, who told the Court that they belonged to a group of around 1,200 illegal immigrants, arrived in Italy on board boats coming from Libya, and were placed in temporary reception centres. Deportation orders were issued in respect of a number of the applicants. Some of those concerned were released as they had been held for longer than the maximum period allowed; the others were deported. Relying in particular on Article 4 (prohibition of collective expulsion of aliens) of Protocol No. 4 to the Convention, the applicants notably complained of their collective expulsion as aliens.

In a decision on the admissibility of 11 May 2006, the Court had adjourned examination of the applications concerning the 57 applicants whose whereabouts were unknown and declared admissible, under Articles 2, 3, 13 and 34 of the Convention and Article 4 of Protocol No. 4 to the Convention, those concerning the 14 applicants who had been expelled and, under Article 34 of the Convention only, those of the 13 applicants who had been released.

In its judgment of 19 January 2010, concerning the applicants' complaints under **Articles 2** (right to life), **3** (prohibition of inhuman or degrading treatment), **13** (right to an effective remedy) of the Convention and **4 of Protocol No. 4** to the Convention, as to the group of 14 applicants expelled to Libya, the Court noted that the expulsion order against each one of them had been individually endorsed by a district court following a hearing held in the presence of a lawyer and an interpreter. The Court further noted that the validity of the powers of attorney concerning some of these applicants was open to doubt. As regards the group of 57 applicants whose whereabouts were unknown, at least some of whom seemed to have absconded towards the end of March 2005, the Court noted that according to the graphologist's report the powers of attorney of a large number of them had been written and signed by one and the same person. In any event, the representatives had lost contact with all of the applicants concerned, so the Court was unable to learn any more about the particular situation of each one. In view of all these elements, the Court held that **further examination of the applications** in this respect was **not justified** and they should be **struck out of the list** pursuant to Article 37 § 1 (c) of the Convention.

As to the applicants' complaint under **Article 34** (right of individual petition) of the Convention, the Court found, for the same reasons as above, that **further examination** of the applications in this respect was **not justified** and they should be **struck out of the list** (with the exception of one application: in this case, there was no doubt as to the authenticity of the applicant's power of attorney and he had remained in contact with his counsel – the Court however noted that there was no sign of any conduct on the part of the domestic authorities that might have prevented him from lodging an application with the Court, or rendered his application ineffective and held that there had therefore been no violation of Article 34 of the Convention in his case).

Selection of cases pending before the Court

N.D. and N.T. v. Spain (nos. 8675/15 and 8697/15)

3 October 2017 (Chamber judgment) – case referred to the Grand Chamber in January 2018

This case concerns the immediate return to Morocco of sub-Saharan migrants who attempted on 13 August 2014 to enter Spanish territory illegally by scaling the barriers which surround the Melilla enclave on the North African coast. Both applicants claim in particular that they have been subjected to a collective expulsion without an individual assessment of their situation, with no basis in law and without the provision of any legal advice. They also complain that it was impossible to have their identity established, to

put forward their individual situations, to challenge before the Spanish authorities their return to Morocco and to have the risk of ill-treatment that they ran in that State taken into consideration.
In its Chamber judgment of 3 October 2017, the Court held, unanimously, that there had been a violation of Article 4 of Protocol No. 4. The Chamber noted in particular that the applicants had been expelled and sent back to Morocco against their wishes and that the removal measures had been taken in the absence of any prior administrative or judicial decision. At no point were the applicants subjected to any identification procedure by the Spanish authorities. The Chamber concluded that, in those circumstances, the measures had indeed been collective in nature. The Chamber also held, unanimously, that there had been a violation of Article 13 (right to an effective remedy) of the Convention taken together with Article 4 of Protocol No. 4. In this regard, it observed in particular that the applicants' version of the attempt to scale the barriers towards Melilla had been corroborated by numerous statements, gathered by various witnesses and journalists as well as by the UN High Commissioner for Refugees or by the Council of Europe Human Rights Commissioner. Furthermore, the Chamber noted the existence of a clear link between the collective expulsion to which the applicants had been subjected at the Melilla border and the fact that they had been effectively prevented from having access to a remedy that would have enabled them to submit their complaint to a competent authority and to obtain a thorough and rigorous assessment of their requests before their removal.
On 29 January 2018 the Grand Chamber Panel accepted the Spanish Government's request that the case be referred to the Grand Chamber.
On 26 September 2018 the Grand Chamber held a hearing in the case.

Doumbe Nnabuchi v. Spain (no. 19420/15)

Application communicated to the Spanish Government on 14 December 2015

Asady and Others v. Slovakia (no. 24917/15)

Applications communicated to the Slovakian Government on 26 September 2016

A.A. and Others v. "the former Yugoslav Republic of Macedonia" and four other applications (nos. 55798/16, 55808/16, 55817/16, 55820/16 and 55823/16)

Applications communicated to the Government on 23 January 2017

Balde and Abel v. Spain (no. 20351/17)

Application communicated to the Spanish Government on 12 June 2017

M.K. v. Poland (no. 51246/17)

Application communicated to the Polish Government on 13 July 2017

M.K. and Others v. Poland (no. 43643/17)

Application communicated to the Polish Government on 21 July 2017

M.A. and Others v. Poland (no. 42907/17)

Application communicated to the Polish Government on 3 August 2017

D.A. and Others v. Poland (no. 51246/17)

Application communicated to the Polish Government on 7 September 2017

Moustahi v. France (no. 9347/14)

Application communicated to the French Government on 30 October 2017

W.A. and Others v. Italy (no. 18787/17)

Application communicated to the Italian Government on 24 November 2017

M.H. and Others v. Croatia (no. 15670/18)

Application communicated to the Croatian Government on 11 May 2018

Further readings

See in particular:

- **Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights – Prohibition of collective expulsions of aliens**, document prepared by the Research and Library Division, within the Directorate of the Jurisconsult.

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