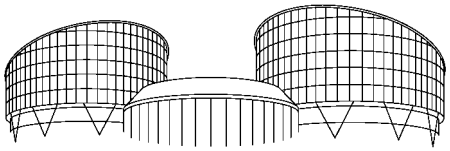

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights

Prohibition of collective expulsions of aliens

Updated on 30 April 2017

This Guide has been prepared by the Directorate of the Jurisconsult and does not bind the Court. It may be subject to editorial revision.

This Guide was first published in April 2016. It will be updated regularly as the case-law evolves. This update was finalised on 30 April 2017.

The document is available for downloading at www.echr.coe.int (Case-law – Case-law analysis – Case-law guides). For publication updates please follow the Court's Twitter account at https:/twitter.com/echrpublication.

Table of contents

Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 4 of Protocol No. 4 to the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") until 30 April 2017. Readers will find the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25.). The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], no. 30078/06, § 89, ECHR 2012).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Article 4 of Protocol No. 4 – Prohibition of collective expulsion of aliens

"Collective expulsion of aliens is prohibited."

HUDOC keyword

Prohibition of collective expulsion of aliens (P4-4)

I. Origins and purpose of the Article

1. When Protocol No. 4 was drafted in 1963, it was the first international treaty to address collective expulsion. Its explanatory report reveals that the purpose of Article 4 was to formally prohibit "collective expulsions of aliens of the kind which was a matter of recent history". Thus, it was "agreed that the adoption of [Article 4] and paragraph 1 of Article 3 (prohibition of expulsion of nationals) could in no way be interpreted as in any way justifying measures of collective expulsion which may have been taken in the past" (*Hirsi Jamaa and Others v. Italy* [GC], § 174).

2. The core purpose of the Article is to prevent States from being able to remove a certain number of aliens without examining their personal circumstances and, consequently, without enabling them to put forward their arguments against the measure taken by the relevant authority (ibid., § 177).

II. The definition of "collective expulsion"

3. The well-established definition of "collective expulsion" is "any measure of the competent authorities compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group" (*Andric v. Sweden* (dec.); *Čonka v. Belgium*, § 59; *Sultani v. France*, § 81; and the Commission decisions *Becker v. Denmark*; *K.G. v. Germany*; *O. and Others v. Luxembourg*; *Alibaks and Others v. the Netherlands*; *Tahiri v. Sweden*). The fact that a number of aliens receive similar decisions does not lead to the conclusion that there is 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 (*Alibaks and Others v. the Netherlands*, Commission decision; *Andric v. Sweden* (dec.); *Sultani v. France*, § 81). That does not mean, however, that where there has been a reasonable and objective examination of the particular case of each individual "the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4" (*Čonka v. Belgium*, § 59).

4. Furthermore, there will be no violation of Article 4 of Protocol No. 4 if the lack of an expulsion decision made on an individual basis is the consequence of an applicant's own culpable conduct (*Berisha and Haljiti v. the former Yugoslav Republic of Macedonia* (dec.), where the applicants had pursued a joint asylum procedure and thus received a single common decision; *Dritsas v. Italy* (dec.), where the applicants had refused to show their identity papers to the police and thus the latter had been unable to draw up expulsion orders in the applicants' names).

5. "Expulsion" can be taken to have the same meaning as it has under Article 3 of the Protocol (prohibition of expulsion of nationals): according to the drafters of Protocol No. 4, the word "expulsion" should be interpreted "in the generic meaning, in current use (to drive away from a

place)" (*Hirsi Jamaa and Others v. Italy* [GC], § 174, with references to the *travaux préparatoires* of Protocol No. 4). In *Khlaifia and Others v. Italy* [GC], the Italian Government emphasised that the procedure which the applicants had been subjected to was classified in domestic law as a "refusal of entry with removal" and not as an "expulsion". The Court, however, saw no reason to depart from its earlier established definition and noted that there was no doubt that the applicants, who had been on Italian territory (in a reception centre on the island of Lampedusa and later transferred to ships moored in Palermo harbor), were removed from that State and returned to Tunisia against their will, thus constituting an "expulsion" within the meaning of Article 4 of Protocol No. 4 (ibid., §§ 243-244).

III. The personal scope of application: the definition of "aliens"

6. The "aliens" to whom Article 4 of Protocol No. 4 refers are not only those lawfully residing within the territory, but also "all those who have no actual right to nationality in a State, whether they are merely passing through a country or reside or are domiciled in it, whether they are refugees or entered the country on their own initiative, or whether they are stateless or possess another nationality" (*Hirsi Jamaa and Others v. Italy* [GC], § 174, with references to the *travaux préparatoires* of Protocol No. 4; *Georgia v. Russia (I)* [GC], § 168). The wording of Article 4 of Protocol No. 4 does not refer to the legal situation of the persons concerned, unlike Article 2 of the Protocol (freedom of movement of persons "lawfully within the territory of a State") and Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens "lawfully resident in the territory of a State").

7. In accordance with that interpretation, in the cases that have been brought before it the Court has applied Article 4 of Protocol No. 4 to persons who, for various reasons, were residing within the territory of a State (asylum-seekers in *Čonka v. Belgium* and *Sultani v. France*; migrants in *Georgia v. Russia (I)* [GC], § 170, irrespective of whether they were lawfully resident in the respondent State or not) or were intercepted on the high seas by ships flying the flag of the respondent State and returned to the originating State (*Hirsi Jamaa and Others v. Italy* [GC]).

IV. Questions of territorial applicability and jurisdiction

8. The majority of the cases brought before the Convention organs under Article 4 of Protocol No. 4 involved aliens who were already on the territory of the respondent State (*K.G. v. Germany*, Commission decision; *Andric v. Sweden* (dec.); *Čonka v. Belgium*). Therefore, no question of territorial applicability arose.

9. *Hirsi Jamaa and Others v. Italy* [GC] concerned push-back operations on the high seas and transfer of irregular migrants to Libya by the Italian authorities. The Court had to consider whether Article 4 of Protocol No. 4 applied when the removal took place outside national territory, namely on the high seas. The Court observed that neither the text nor the *travaux préparatoires* of the Convention precluded the extraterritorial application of that provision. Furthermore, if Article 4 of Protocol No. 4 were to apply only to collective expulsions from the national territory of the States Parties to the Convention, a significant component of contemporary migratory patterns would not fall within the ambit of that provision and migrants having taken to the sea, often risking their lives, and not having managed to reach the borders of a State, would not be entitled to an examination of their personal circumstances before being expelled, unlike those travelling by land. The notion of expulsion, like the concept of "jurisdiction", was clearly principally territorial. Where, however, the Court found that 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 reiterated that the special nature of the maritime environment did not make it an area outside the law. It therefore concluded that the removal of aliens carried out in the context of interception on the high seas by the authorities of a State in the exercise of their sovereign authority, the effect of which is to prevent migrants from reaching the borders of the State or even to push them back to another State, constitutes an exercise of jurisdiction which engages the responsibility of the State in question under Article 4 of Protocol No. 4 (ibid., §§ 169-182).

10. The Court followed the same approach regarding the interception and immediate deportation by the border police of migrants who had arrived clandestinely, therefore rejecting the Government's objection that Article 4 of Protocol No. 4 was not applicable *ratione materiae* to cases of refusal to allow entry to the national territory to persons who arrived illegally (*Sharifi and Others v. Italy and Greece*, §§ 210-213, concerning deportation to Greece of migrants who had clandestinely boarded vessels for Italy and arrived in the Italian port of Ancona). The Court did not consider it necessary to determine whether the applicants had been returned after reaching the Italian territory or before, since Article 4 of Protocol No. 4 was in any event applicable to both situations.

V. Examples of collective expulsions

11. The Court has found a violation of Article 4 of Protocol No. 4 only in six cases. In four of them (*Čonka v. Belgium*, *Georgia v. Russia (I)* [GC], *Shioshvili and Others v. Russia*, *Berdzenishvili and Others v. Russia*), the individuals targeted for expulsion had the same origin (Roma families from Slovakia in the first case and Georgian nationals in the others). In the other two cases (*Hirsi Jamaa and Others v. Italy* [GC] and *Sharifi and Others v. Italy and Greece*), the violation found involved the return of an entire group of people (migrants and asylum-seekers) without adequate verification of the individual identities of the group members.

12. In *Čonka v. Belgium* the applicants were deported solely on the basis that their stay in Belgium had exceeded three months and the orders made no reference to their application for asylum or to the decisions on that issue. In those circumstances and in view of the large number of persons of the same origin who had suffered the same fate as the applicants, the Court considered that the procedure followed did not enable it to eliminate all doubt that the expulsion might have been collective. That doubt was reinforced by a series of factors: *firstly*, prior to the applicants' deportation, the political authorities concerned had announced that there would be operations of that kind and given instructions to the relevant authority for their implementation; *secondly*, all the aliens concerned had been required to attend the police station at the same time; *thirdly*, the orders served on them requiring them to leave the territory and for their arrest had been couched in identical terms; *fourthly*, it had been very difficult for the aliens to contact a lawyer; *lastly*, the asylum procedure had not been completed. In short, at no stage during the period between the service of the notice on the aliens to attend the police station and their expulsion had the procedure afforded sufficient guarantees demonstrating that the personal circumstances of each of those concerned had been genuinely and individually taken into account. In conclusion, there had been a violation of Article 4 of Protocol No 4 (ibid., §§ 59-63).

13. In *Hirsi Jamaa and Others v. Italy* [GC] the transfer of the applicants (Somali and Eritrean nationals) to Libya had been carried out without any examination of each individual situation. No identification procedure had been carried out by the Italian authorities, who had merely embarked the applicants and then disembarked them in Libya. Moreover, the personnel aboard the military ships were not trained to conduct individual interviews and were not assisted by interpreters or legal advisers. The Court concluded that the removal of the applicants had been of a collective nature, in breach of Article 4 of Protocol No. 4 (ibid., §§ 185-186).

14. *Georgia v. Russia (I)* [GC] concerned Russian courts' orders to expel thousands of Georgian nationals. The Court noted that, even though a court decision had been made in respect of each Georgian national, the conduct of the expulsion procedures during that period (September 2006-January 2007) and the number of Georgian nationals expelled made it impossible to carry out a reasonable and objective examination of the particular case of each individual. Furthermore, Russia had implemented a coordinated policy of arresting, detaining and expelling Georgian nationals. Even though the Court did not call into question the right of States to establish their own immigration policies, problems with managing migratory flows could not justify recourse to practices not compatible with the Convention. The Court concluded that the expulsions of Georgian nationals had not been carried out on the basis of a reasonable and objective examination of the particular case of each individual and that this had amounted to an administrative practice in breach of Article 4 of Protocol No. 4 (ibid., §§ 171-178).

15. The case of *Shioshvili and Others v. Russia* concerned the expulsion from Russian territory of a heavily pregnant Georgian woman, accompanied by her four young children. The Court found a violation in the case of the mother, because she had been subjected to the administrative practice of expelling Georgian nationals in the autumn of 2006, without a proper examination of their individual cases (§ 71). The Court reached the same conclusion in the case of *Berdzenishvili and Others v. Russia*, §§ 83-84, in respect of fourteen Georgian nationals whose expulsion had been ordered by domestic courts during the same period.

16. In *Sharifi and Others v. Italy and Greece*, Italy had deported certain individuals (Afghan nationals) to Greece, while claiming that only Greece had jurisdiction under the Dublin system (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) to rule on the possible asylum requests. The Court, however, considered that the Italian authorities ought to have carried out an individualised analysis of the situation of each applicant in order to establish whether Greece did indeed have jurisdiction on this point, rather than deporting them all. No form of collective and indiscriminate returns could be justified by reference to the Dublin system, which had, in all cases, to be applied in a manner compatible with the Convention. Furthermore, the Court took note of the concurring reports submitted by the intervening third parties or obtained from other international sources, which described episodes of indiscriminate return to Greece by the Italian border authorities in the ports of the Adriatic Sea, depriving the persons concerned of any substantive and procedural rights. According to these sources, it was only through the goodwill of the border police that intercepted persons without papers were put in contact with an interpreter and officials capable of providing them with the minimum information concerning the procedures relating to the right of asylum. More often than not, they were immediately handed over to the captains of ferries for return to Greece. In the light of all these elements, the Court concluded that the immediate returns to which the applicants had been subjected amounted to collective and indiscriminate expulsions in breach of Article 4 of Protocol No. 4 (ibid., §§ 214-225).

VI. Examples of measures not amounting to collective expulsions

17. In *Sultani v. France*, the Court found that the applicant's situation had been examined individually. He had been able to set out the arguments against his expulsion and the domestic authorities had taken account, not only of the overall context in Afghanistan, but also of the applicant's statements concerning his personal situation and the risks he would allegedly run in the event of a return to his country of origin (ibid., § 83, where the deportation of the applicant on a "collective flight" to Afghanistan had not been enforced due to the interim measure indicated by the Court on the basis of Rule 39 of its Rules of Court; *Ghulami v. France* (dec.), where the same

approach was followed concerning an enforced deportation to Afghanistan; see also, for no appearance of a collective expulsion, *Andric v. Sweden* (dec.); *Tahiri v. Sweden*, Commission decision).

18. Where the persons concerned have had an individual examination of their personal circumstances, no violation will be found, even if they had been taken together to police headquarters, some had been deported in groups and the deportation orders and the corresponding letters had been couched in formulaic and, therefore, identical terms and had not specifically referred to the earlier decisions regarding the asylum procedure (*M.A. v. Cyprus*, §§ 252-255, concerning an individual who claimed to have been subjected to a collective expulsion operation with a group of Syrian Kurds; compare the circumstances in *Čonka v. Belgium*, § 10). The mere fact that a mistake had been made in relation to the status of some of the persons concerned (in particular the applicant, since the deportation order had been issued when his asylum proceedings were still pending) could not be taken as showing that there had been a collective expulsion (*M.A. v. Cyprus*, §§ 134 and 254).

19. In *Khlaifia and Others v. Italy* [GC], the Court clarified that Article 4 of Protocol No. 4 does not guarantee the right to an individual interview in all circumstances; the requirements of this provision may be satisfied where each alien has a genuine and effective possibility of submitting arguments against his or her expulsion, and where those arguments are examined in an appropriate manner by the authorities of the respondent State (ibid., § 248). The applicants had undergone identification on two occasions, their nationality had been established and they had at all times had a genuine and effective possibility of submitting arguments against their expulsion had they wished to do so. Although the refusal-of-entry orders had been drafted in comparable terms - only differing as to the personal data of each migrant - and despite the fact that a large number of migrants from the same country (Tunisia) had been expelled at the relevant time, the Court found that the relatively simple and standardised nature of the orders could be explained by the fact that the applicants did not have any valid travel documents and had not alleged either that they feared ill-treatment in the event of their return or that there were any other legal impediments to their expulsion. It was therefore not unreasonable in itself for those orders to have been relatively simple and standardized. In the particular circumstances of the case, it followed that the virtually simultaneous removal of the three applicants did not lead to the conclusion that their expulsion was collective (ibid., §§ 249-254).

20. In *Shioshvili and Others v. Russia*, §§ 70-72, and *Berdzenishvili and Others v. Russia*, §§ 81-82, in the absence of any expulsion order from a court or any other authority against the applicants, the Court was unable to conclude that they had been the subject of a "measure compelling aliens, as a group, to leave a country". This held true even if an administrative practice in place at the relevant time had led the applicants in both cases to fear arrest, detention and expulsion and it was therefore understandable that they might leave the country in anticipation of an expulsion order. Nonetheless, although the situation of the applicants in itself might contain elements of compulsion to leave, it could not be equated with an expulsion decision or other official coercive measure. The Court found no violation of Article 4 of Protocol No. 4 in such circumstances.

VII. Relationship with Article 13 of the Convention

Article 13 of the Convention – Right to an effective remedy

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

HUDOC keywords

Effective remedy (Art. 13) – Arguable claim (Art. 13) – National authority (Art. 13)

21. The notion of an effective remedy under Article 13 of the Convention requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible. Consequently, it is inconsistent with Article 13 for such measures to be executed before the national authorities have examined whether they are compatible with the Convention (*Čonka v. Belgium*, § 79). This means that a remedy must have a suspensive effect to meet the requirements of Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4 (ibid., §§ 77-85, concerning the effectiveness of the remedies before the *Conseil d'État*). However, it should be noted that the lack of suspensive effect of a removal decision does not in itself constitute a violation of Article 13 taken together with Article 4 of Protocol No. 4, where an applicant does not allege that there is a real risk of a violation of the rights guaranteed by Articles 2 or 3 in the destination country (*Khlaifia and Others v. Italy* [GC], § 281). In such situation the Convention does not impose an absolute obligation on a State to guarantee an automatically suspensive remedy, but merely requires that the person concerned should have an effective possibility of challenging the expulsion decision by having a sufficiently thorough examination of his or her complaints carried out by an independent and impartial domestic forum (ibid., § 279).

22. The absence of any domestic procedure to enable potential asylum-seekers to lodge their Convention-based complaints (under Article 3 of the Convention – prohibition of torture and inhuman or degrading treatment – and Article 4 of Protocol No. 4) with a competent authority and to obtain a thorough and rigorous assessment of their requests before the enforcement of the removal may also lead to a violation of Article 13 of the Convention (*Hirsi Jamaa v. Italy* [GC], §§ 201-207; *Sharifi and Others v. Italy and Greece*, §§ 240-243). In some circumstances, there is a clear link between the enforcement of collective expulsions and the fact that the persons concerned were effectively prevented from applying for asylum or from having access to any other domestic procedure which met the requirements of Article 13 (ibid., § 242).

23. However, since the lack of effective and accessible remedies is also examined under Article 4 of Protocol No. 4 on its own, the Court may also consider that in a particular case there is no need to examine this aspect separately under Article 13 of the Convention (*Georgia v. Russia (I)* [GC], § 212).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

—A—

Alibaks and Others v. the Netherlands, no. 14209/88, Commission decision of 16 December, Decisions and Reports 59
Andric v. Sweden (dec.), no. 45917/99, 23 February 1999

—B—

Becker v. Denmark, no. 7011/75, Commission decision of 3 October 1975, Decisions and Reports 4
Berdzenishvili and Others v. Russia, nos. 14594/07 and 6 others, 20 December 2016
Berisha and Haljiti v. the former Yugoslav Republic of Macedonia (dec.), no. 18670/03, ECHR 2005-VIII (extracts)

—C—

Čonka v. Belgium, no. 51564/99, ECHR 2002-I

—D—

Dritsas v. Italy (dec), no. 2344/02, 1 February 2011

—G—

Georgia v. Russia (I) [GC], no. 13255/07, ECHR 2014 (extracts)
Ghulami v. France (dec.), no. 45302/05, 7 April 2009

—H—

Hirsi Jamaa and Others v. Italy [GC], no. 27765/09, ECHR 2012

—K—

K.G. v. Germany, no. 7704/76, Commission decision of 1 March 1977
Khlaifia and Others v. Italy [GC], no. 16483/12, ECHR 2016 (extracts)

—M—

M.A. v. Cyprus, no. 41872/10, ECHR 2013 (extracts)

—O—

O. and Others v. Luxembourg, no. 7757/77, Commission decision of 3 March 1978

—S—

Sharifi and Others v. Italy and Greece, no. 16643/09, 21 October 2014
Shioshvili and Others v. Russia, no. 19356/07, 20 December 2016
Sultani v. France, no. 45223/05, ECHR 2007-IV (extracts)

—T—

Tahiri v. Sweden, no. 25129/94, Commission decision of 11 January 1995