



Slovakian police did not subject Afghani nationals to collective expulsion when they returned them to Ukraine

In today's Chamber judgment¹ in the case of [Asady and Others v. Slovakia](#) (application no. 24917/15) the European Court of Human Rights held, **by four votes to three**, that there had been:

no violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the European Convention on Human Rights.

The case concerned the applicants' expulsion to Ukraine by the Slovakian police.

The Court examined the complaints of only seven of the 19 applicants, striking the case out of its list in respect of the others. It found in particular that despite short interviews at the police station, they had been given a genuine possibility to draw the authorities' attention to any issue which could have affected their status and entitled them to remain in Slovakia. Their removal had not been carried out without any examination of their individual circumstances.

Principal facts

The applicants are 19 Afghan nationals born on various dates between 1980 and 1999.

In November 2014 the applicants were found hidden in a truck by the Slovak Border and Foreigners Police near the border with Ukraine. The applicants were part of a group of 32 people who were subsequently taken to the border police station in Petrovce to establish their identities.

The police subsequently issued individual decisions on the administrative expulsion of each applicant with a three-year ban on re-entry. They were removed to Ukraine late in the evening of the same day they had been apprehended and were placed in temporary detention in the town of Chop. Twelve of the people apprehended at the same time as the applicants asked for asylum and were transferred to an asylum-seekers' reception centre.

The first four applicants appealed against the Slovakian administrative expulsion decisions, alleging violations of Article 13 (right to an effective remedy) of the European Convention on Human Rights, taken in conjunction with Article 3 (prohibition of torture and inhuman and degrading treatment) and Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the Convention. The Slovak border police directorate dismissed their appeals in January 2015.

Complaints, procedure and composition of the Court

The applicants complained about their expulsion under Article 4 of Protocol No. 4 and Article 13.

The application was lodged with the European Court of Human Rights on 17 May 2015.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Judgment was given by a Chamber of seven judges, composed as follows:

Paul Lemmens (Belgium), *President*,
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Alena Poláčková (Slovakia),
Gilberto Felici (San Marino),
Erik Wennerström (Sweden),
Lorraine Schembri Orland (Malta),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

The Court first decided by a majority to strike out of the list the case as it far it concerned 12 of the applicants and, unanimously, to not strike out of its list the case concerning applicants 4 to 8, and applicants 10 and 12. Those applicants had provided sufficient information to show that they still wished to pursue the proceedings, including contact on Facebook with their legal representative.

These applicants were respectively Sher Badov Shinwari, residing in Austria as an asylum-seeker; Abdul Hamid Nasri, living in Denmark as an asylum-seeker; Mohammad Azam, residing in Kabul; Samiuddin Faizy, currently in France as an asylum-seeker; Mohammad Shakib, residing in Odessa; Zabiullah Zazai, living in Mazar-e-Sharif, Afghanistan; and Abobaker Jamil, residing in Afghanistan.

[Article 4 of Protocol No. 4](#)

The Court found that the applicants' removal had amounted to an expulsion within the meaning of the Convention. The question was whether it had been collective in nature. It thus had to determine whether they had been given the opportunity to submit arguments against their removal and whether their personal circumstances had been genuinely and individually taken into account.

The Court noted that the parties disagreed as to whether proper interviews had been carried out or whether the applicants had said they intended to seek asylum.

According to the official transcripts, the applicants' interviews had lasted 10 minutes each and had been conducted by two police officers in the presence of an interpreter. Some of the times of the interviews had overlapped, but that was not by itself sufficient to find that the applicants had not had individual interviews. In any case, the Convention did not guarantee a right to an individual interview. The Court reiterated that what mattered was whether the applicants had been able to present their arguments against expulsion in an effective manner.

The Court accepted that the applicants had been asked standardised questions and had given similar answers, although that was possibly because of the similarity of their experiences. However, the sums of money mentioned as being in their possession were different, which suggested an individualised approach. Moreover, the short length of the interviews could have been due to the fact that they had not stated anything which had required a more thorough examination.

Nor had the applicants put forward any arguments to refute their statements as recorded in the interviews that they had not suffered persecution in Afghanistan or had faced the death penalty there; rather they had left that country for economic reasons and had wished to travel on to Germany without seeking asylum in Slovakia.

The Court did not have any proof that the transcripts were not a genuine record, that they had been wrongly translated, or that requests for asylum by the applicants had been ignored. It had to be noted that no personal reasons to support requests for asylum had been mentioned in their conversations with their Ukrainian lawyer or in their expulsion appeals.

Furthermore, it was significant that 12 people detained at the same time as the applicants in Slovakia had expressed a wish to claim asylum and had not been returned to Ukraine.

Lastly, the applicants did not dispute the fact that an interpreter had been present at the police station at least during the time of their interviews. The Court also did not doubt that, as affirmed by documents which they and the interpreter had signed, they had been informed of their right to legal aid and to comment on the case file and adduce evidence.

In conclusion the Court did not find that the applicants had been deprived of the possibility to draw the attention of the national authorities to any circumstance which might have affected their status and entitled them to remain in Slovakia, or that their removal to Ukraine had been carried out without any form of examination of their individual situation.

The Court held by a majority that there had therefore been no violation of Article 4 of Protocol No. 4.

Other articles

The Court noted that it had not been persuaded that the applicants' expulsion had been collective. Nor had they raised any separate complaints under Article 2 (right to life) or Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention. The Court thus found that the applicants did not have an arguable claim under Article 13. It therefore by a majority rejected the complaint under that provision as being manifestly ill-founded and thus inadmissible.

Separate opinions

Judge Keller expressed a dissenting opinion. Judges Lemmens, Keller and Schembri Orland expressed a joint dissenting opinion.

The judgment is available only in English.

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Press contacts

Journalists can continue to contact the Press Unit via echrpess@echr.coe.int

Patrick Lannin
Tracey Turner-Tretz
Denis Lambert
Inci Ertekin

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.