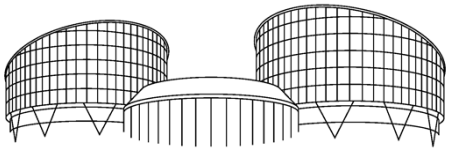

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF H.K. v. HUNGARY

(Application no. 18531/17)

JUDGMENT

STRASBOURG

22 September 2022

This judgment is final but it may be subject to editorial revision.

In the case of H.K. v. Hungary,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Raffaele Sabato, President,

Péter Paczolay,

Davor Derenčinović, judges,

and Liv Tigerstedt, Deputy Section Registrar

Having regard to:

the application (no. 18531/17) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 March 2017 by an Iranian national, H.K., born in 1988 and living in Berlin ("the applicant") who was represented by Ms B. Pohárnok, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 30 August 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's removal from Hungary after his irregular entry.

2. The applicant left his country of origin – Iran – allegedly in fear of persecution because of his religion. After crossing several countries, he arrived in Serbia around May or June 2016. He went to the pre-transit area near the border between Hungary and Serbia and reported himself to "an Afghan man" who was managing the waiting list for the admission to the Hungarian transit zone. On 4 August 2016, his name was recorded as number 102 on the waiting list. While waiting for his access to the transit zone the applicant tried several times to enter Hungary irregularly but was every time removed back to Serbia without any decision.

3. During one such attempt, on 2 September 2016 at around 11 p.m., the applicant together with another Iranian national, crossed on foot the Hungarian-Serbian border near Kelebia. They walked several hours before being apprehended by the Hungarian police officers in Kisszállás (Hungarian village several kilometres from the border) in the early hours of 3 September 2016. The officers handcuffed them and called for reinforcement. After the arrival of another four or five officers, the applicant and his companion were taken to a minibus in which two other individuals were waiting. The applicant was allegedly physically assaulted by the officers and attacked by their dogs before being taken to the police minibus.

4. The minibus stopped at a police station where the officers looked at photos of some individuals and seemingly compared them to the applicant. They asked the applicant, in basic English, if he was entering Hungary for the first time to which he replied yes, though this was not true. The applicant allegedly said to the officers that he "want[ed] to be a refugee in Hungary" but was told to go back home or to Serbia because Europe was full.

5. The applicant received no information or documents. He was taken back to the minibus and driven to the border fence. Photos and videos of this part of the removal had been taken by the Hungarian officers but were not submitted to the Court. The applicant and the other individuals in the group were then made to walk through the gate in the border fence in the direction of Serbia.

6. Following his removal, the applicant went to Subotica hospital (in Serbia) to have his injuries treated. After that, he remained in Serbia until 26 September 2016 when he was allowed to enter the Röszke transit zone in Hungary. There he applied for asylum and was transferred to an inland reception centre. On 16 February 2017 his asylum application was rejected by the Hungarian authorities. However, in the meantime, he had left for Germany where he currently resides.

7. The applicant removal from Hungary on 3 September 2016 appeared to have been based on section 5(1a) of the State Borders Act (see *Shahzad v. Hungary*, no. 12625/17, § 17, 8 July 2021). According to the official statistics seventy-six individuals were removed from Hungary in that way, on that day.

8. The applicant complained that he had been part of a collective expulsion on 3 September 2016, in violation of Article 4 of Protocol No. 4 to the Convention. He further complained under Article 13 of the Convention, that he had had no remedy at his disposal that would have enabled him to complain of a violation of Article 4 of Protocol No. 4 to the Convention.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 4 TO THE CONVENTION

9. The Court observes from the outset that the applicant submitted several screenshots of his GPS coordinates demonstrating his movements during the removal in question as well as a screenshot of a message he received from the Hungarian telecommunication provider upon entering Hungary. None of these has been called into question by the respondent Government who did not dispute that the applicant had been escorted by the Hungarian officers to the external side of the border fence on 3 September 2016. Having regard to its findings in *Shahzad* (cited above, §§ 45-53), the Court considers that the

removal of the applicant amounted to expulsion within the meaning of Article 4 of Protocol No. 4.

10. Since this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, it must be declared admissible.

11. As regards the "collective" nature of the expulsion, the present case is similar to *Shahzad* (cited above). In that case the Court found that the removal of the applicant, which had taken place in August 2016 and had been based on section 5(1a) of the State Borders Act, had been in violation of Article 4 of Protocol No. 4 to the Convention because it had been carried out in the absence of any decision and examination of the applicant's situation (ibid., §§ 60-67). The Court also found that the only means of legal entry to Hungary – namely the two transit zones – could not have been considered to be effective with respect to the applicant, who was a single man, in view of the limited access (daily quota) and lack of any formal procedure accompanied by appropriate safeguards governing the admission of individual migrants (ibid., §§ 63-65). The Court found it established that those wishing to enter the transit zone had had to first register their name on the waiting list – an informal tool for establishing the order of entering the transit zones – and then potentially wait several months in Serbia before being allowed to enter Hungary (ibid., § 64).

12. The Court notes that unlike the applicant in *Shahzad*, the present applicant had in fact been put on the waiting list and, after a few months of waiting in Serbia and a few failed attempts to enter Hungary irregularly, he was admitted to the transit zone where he was able to apply for asylum. However, on 3 September 2016, when the applicant entered Hungary irregularly and was removed, he had no information as to whether or when he would be able to gain access to the asylum procedure. The Court thus considers that the mere fact that he later managed to enter the transit zone could not make his removal from Hungary on 3 September 2016 compliant with the Convention. Having regard to the information in its possession and noting that the Government did not put forward any argument demonstrating that at the time of the applicant's removal the procedure for legal entry had been effective, the Court cannot but concluded that the applicant's removal was of a collective nature.

13. There has accordingly been a violation of Article 4 of Protocol No. 4 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 4 OF PROTOCOL NO. 4 TO THE CONVENTION

14. The applicant's complaint under Article 13 of the Convention read in conjunction with Article 4 of Protocol No. 4 is not manifestly ill-founded

within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds (see *Shahzad*, cited above, §§ 70-74). Accordingly, it must be declared admissible. Having examined all the material before it and taking into account its findings in *Shahzad* (cited above, §§ 75-79), the Court concludes that this complaint discloses a violation of Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage and 9,340 euros (EUR) in respect of costs and expenses incurred before the Court.

16. The Government argued that the claims were excessive.

17. Having regard to the circumstances of the present case, and making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

18. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 1,500 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

19. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 4 of Protocol No. 4 to the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Raffaele Sabato
Deputy Registrar	President