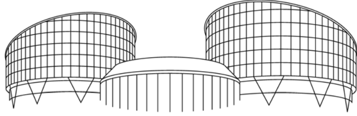

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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This Factsheet does not bind the Court and is not exhaustive

Collective expulsions of aliens

Article 4 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 pending before the European Court of Human Rights

Sharifi and Others v. Italy and Greece (application no. 16643/09)

Application communicated to the Italian and Greek Governments on 23 June 2009

The 35 applicants (32 Afghan nationals, two Sudanese nationals, one Eritrean national) were on different dates intercepted in various Italian ports by the border police, which allegedly returned them immediately to Greece.

Relying on Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the European Convention on Human Rights, the applicants complain about their collective expulsion from Italy. They further raise claims under Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 13 (right to an effective remedy) and 34 (right to individual application) of the Convention.

Khlaifia and Others v. Italy (no. 16483/12)

Application communicated to the Italian Government on 27 November 2012

The three applicants, Tunisian nationals, were intercepted by Italian coastguard officers who escorted them to the port of the island of Lampedusa. They were subsequently sent back to Tunisia.

The applicants contend that the summary procedures for their removal implemented by the Italian authorities under the terms of the bilateral agreements with Tunisia did not comply with the guarantees provided by Article 4 of Protocol No. 4 to the Convention. They allege that they were subjected to collective expulsion solely on the basis of their origin and without any consideration of their individual circumstances. The applicants also rely on Article 3 of the Convention (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy) of the Convention.

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

The Court has found violations of Article 4 of Protocol No. 4 in two cases.

Čonka v. Belgium

5 February 2002

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 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** to the Convention. 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)

The 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 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 applied to a case involving the removal of aliens to a third State carried out outside national territory**.

The Court observed 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 - the Court found that the applicants in this case had fallen within the jurisdiction of Italy -, it could accept that the exercise of extraterritorial jurisdiction by that State had taken the form of collective expulsion. The transfer of the applicants to Libya had been carried out without any examination of each individual situation. The Italian authorities had merely embarked the applicants and then disembarked them in Libya. The Court concluded that the removal of the applicants had been of a collective nature, **in breach of Article 4 of Protocol No. 4**.

The Court also held that there had been:

- **two violations of Article 3** (prohibition of inhuman or degrading treatment) because the applicants had been exposed to the **risk of ill-treatment in Libya** and of **repatriation to Somalia or Eritrea**. The Court found that by transferring the applicants to Libya the Italian authorities had, in full knowledge of the facts, exposed them to treatment proscribed by the Convention and that when the applicants were transferred to Libya, the Italian authorities had known or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin;
- a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 3** 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;

- a **violation of Article 13 taken in conjunction with Article 4 of Protocol No.4** because the remedy under the criminal law against the military personnel on board the ship did not satisfy the criterion of suspensive effect.

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

Sultani v. France

20 September 2007

The 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. He relied on Article 3 (prohibition of inhuman or degrading treatment) of the Convention and Article 4 of Protocol No. 4 to the Convention.

The Court held that there would be **no violation of Article 4 of Protocol No. 4 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.

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

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

23 July 2013

The 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. Relying on Article 4 of Protocol No. 4 to the Convention, the applicant complained 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 taken together with Articles 2 and 3**, a **violation of Article 5 §§ 1** (unlawful detention) **and 4** (effective remedy to challenge lawfulness of detention), and n**o violation of Article 5 § 2** (right to be informed of reasons for arrest and charge).

Cases declared inadmissible

Becker v. Denmark

3 October 1975 (decision of the European Commission of Human Rights[1])

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 of the Court on the admissibility)

The 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.

The Court declared the application **inadmissible** (manifestly ill-founded) under **Article 4 of Protocol No. 4**. Collective expulsion is to be understood as any measure compelling aliens, as a group, to leave a country, except where a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group. 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 submitted an individual application to the immigration authorities and was able to present arguments against his deportation to Croatia. The authorities hence took 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 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 of the Court 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 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** (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.

[1] 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.

Dritsas and Others v. Italy

1 February 2011 (decision 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 on Article 4 of Protocol No. 4 among other provisions, they argued that their removal had amounted to collective expulsion, as no formal individual decisions had been taken or served on them. They also submitted complaints under Article 3 of the Convention (prohibition of inhuman or degrading treatment), Articles 5 (right to liberty and security), 9 (freedom of thought and conscience), 10 (freedom of expression), 11 (freedom of assembly and association) and 13 (right to an effective remedy), and Article 1 of Protocol No. 1 (right to the peaceful enjoyment of possessions).

With regard to **Article 4 of Protocol No. 4**, the Court declared the application **inadmissible** (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**.

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)

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 on Article 4 of Protocol No. 4 to the Convention, the applicants complained of their collective expulsion as aliens. They further raised claims under Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 13 (right to an effective remedy) and 34 (right to individual application) of the Convention.

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, those concerning the 14 applicants who had been expelled and, under Article 34 only, those of the 13 applicants who had been released.

In its judgment of 19 January 2010, concerning the applicants complaints under **Articles 2, 3, 13 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** 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 in his case).

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