EUROPEAN COURT OF HUMAN RIGHTS

069
5.2.2002

Press release issued by the Registrar

JUDGMENT IN THE CASE OF ČONKA v. BELGIUM

The European Court of Human Rights notified a judgment in writing today in the case of **Čonka v. Belgium** (no. 51564/99). (The judgment is not final[1].)

The Court held:

- unanimously, that there had been **a violation of Article 5 § 1** (right to liberty and security) of the European Convention on Human Rights;
- unanimously, that there had been **no violation of Article 5 § 2** (right to be informed of the reasons for arrest) of the Convention;
- unanimously, that there had been **a violation of Article 5 § 4** (right to take proceedings by which lawfulness of detention shall be decided);
- by four votes to three, that there had been **a violation of Article 4 of Protocol No. 4** (prohibition of the collective expulsion of aliens);
- unanimously, that there had been **no violation of Article 13** (right to an effective remedy) **taken together with Article 3** (prohibition of inhuman or degrading treatment);
- by four votes to three, that there had been **a violation of Article 13 taken together with Article 4 of Protocol No. 4**.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 10,000 euros for non-pecuniary damage and 9,000 euros for legal costs and expenses.

1. Principal facts

The applicants, Ján Čonka and Mária Čonková and their children, Nad'a Čonková and Nikola Čonková, are Slovakian nationals of Romany origin.

In November 1998 they left Slovakia for Belgium, where they requested political asylum on the ground that they had been violently assaulted on several occasions by skinheads in Slovakia. On 18 June 1999 the Commissioner-General for Refugees and Stateless Persons upheld a decision of the Minister of the Interior declaring their applications for asylum inadmissible and the applicants were required to leave the territory within five days.

---

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

On 3 August 1999 the applicants lodged applications with the *Conseil d'État* for judicial review of the decision of 18 June 1999 and for a stay of execution under the ordinary procedure. They also applied for legal aid.

On 23 September 1999 the *Conseil d'État* dismissed the applications for legal aid on the ground that they had not been accompanied by the requisite means certificate and invited the applicants to pay the court fees within fifteen days.

In September 1999 the Ghent police sent a notice to a number of Slovakian Romany families, including the applicants, requiring them to attend the police station on 1 October 1999. The notice stated that their attendance was required to enable the files concerning their applications for asylum to be completed.

At the police station the applicants were served with a fresh order to leave the territory and a decision for their removal to Slovakia and their detention for that purpose. A Slovakian-speaking interpreter was present when they were arrested.

They were then taken with other Romany families to the Steenokkerzeel Closed Transit Centre, near Brussels. On 5 October 1999 they and some 70 other refugees of Romany origin whose requests for asylum had also been turned down were taken to Melsbroek military airport, and put on a plane for Slovakia.

2. Procedure and composition of the Court

The application was lodged with the Court on 4 October 1999 and declared partly admissible on 13 March 2001.

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

Jean-Paul **Costa** (French), ***President***,
Willi **Fuhrmann** (Austrian),
Pranas **Kūris** (Lithuanian),
Karel **Jungwiert** (Czech)
Nicolas **Bratza** (British),
Kristaq **Traja** (Albanian), ***judges***,
Jan **Velears** (Belgian), ad hoc ***judge***

and also Sally **Dollé**, ***Section Registrar***.

3. Summary of the judgment[1]

Complaints

Relying on Articles 5 and 13 of the Convention and Article 4 of Protocol No. 4, the applicants complained, in particular, about the circumstances of their arrest and expulsion to Slovakia.

1. This summary by the Registry does not bind the Court.

Decision of the Court

Article 5 § 1

Although the Court by no means excluded its being legitimate for the police to use ploys in order, for instance, to counter criminal activities more effectively, acts whereby the authorities sought to gain the trust of asylum seekers with a view to arresting and subsequently deporting them may be found to contravene the general principles stated or implicit in the Convention.

In that regard, there was every reason to consider that while the wording of the notice was "unfortunate", it had not been the result of inadvertence; on the contrary, it had been deliberately chosen to secure the compliance of the largest possible number of recipients. It followed that, even as regards aliens who were in breach of the immigration rules, a conscious decision by the authorities to facilitate or improve the effectiveness of a planned operation for the expulsion of aliens by misleading them about the purpose of a notice so as to make it easier to deprive them of their liberty was not compatible with Article 5. Consequently, there had been a violation of Article 5 § 1.

Article 5 § 2

The Court observed that on their arrival at the police station the applicants had been informed of the reasons for their arrest and of the available remedies. A Slovakian-speaking interpreter had also been present. Even though those measures by themselves were not in practice sufficient to allow the applicants to exercise certain remedies, the information thus furnished to them nonetheless satisfied the requirements of Article 5 § 2. Consequently, there had been no violation of that provision.

Article 5 § 4

The Court identified a number of factors which undoubtedly had made an appeal to the committals division less accessible. These included the fact that the information on the available remedies handed to the applicants on their arrival at the police station had been printed in tiny characters, in a language they did not understand. Only one interpreter had been available to assist the large number of Romany families who attended the police station in understanding the verbal and written communications addressed to them and although he had been present at the police station, he had not stayed with them at the closed centre. In those circumstances, the applicants had undoubtedly had little prospect of being able to contact a lawyer from the police station with the help of the interpreter and, although they could have contacted a lawyer by telephone from the closed centre, they would no longer have been able to call upon the interpreter's services; despite those difficulties, the authorities had not offered any form of legal assistance at either the police station or the centre.

Furthermore – and this factor was decisive in the eyes of the Court – the applicants' lawyer had only been informed of the events in issue and of his clients' situation at 10.30 p.m. on Friday 1 October 1999, such that any appeal to the committals division would have been pointless because, had he lodged an appeal with the division on 4 October, the case could not have been heard until 6 October, a day after the applicants' expulsion on 5 October. Thus, the applicants' lawyer had been unable to lodge an appeal with the committals division. Consequently, there had been a violation of Article 5 § 4.

Article 4 of Protocol No. 4

The Court noted that the detention and deportation orders had been issued to enforce an order to leave the territory that had been made solely on the basis of section 7, paragraph 1, (2) of the Aliens Act, and the only reference to the personal circumstances of the applicants was to the fact that their stay in Belgium had exceeded three months. In particular, the document 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 in 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.

Article 13

In the instant case, the *Conseil d'État* had been called upon to examine the merits of the applicants' complaints in their application for judicial review. Having regard to the time which the examination of the case would take and the fact that they were under threat of expulsion, the applicants had also made an application for a stay of execution under the ordinary procedure, although the Government said that that procedure was ill-suited to the circumstances of the case. They considered that the applicants should have used the extremely urgent procedure.

The Court was bound to observe, however, that an application for a stay of execution under the ordinary procedure was one of the remedies which, according to the document setting out the Commissioner-General's decision of 18 June 1999, had been available to the applicants to challenge that decision. As, according to that decision, the applicants had had only five days in which to leave the national territory, an application for a stay under the ordinary procedure did not of itself have suspensive effect and the *Conseil d'État* had forty-five days in which to decide such applications, the mere fact that that application had been mentioned as an available remedy had, to say the least, been liable to confuse the applicants.

An application for a stay of execution under the extremely urgent procedure was not suspensive either. In that connection, the Court pointed out that the requirements of Article 13, and of the other provisions of the Convention, took the form of a guarantee and not of a mere statement of intent or a practical arrangement. However, it appeared that the authorities were not required to defer execution of the deportation order while an application under the extremely urgent procedure was pending, not even for a minimum reasonable

period to enable the *Conseil d'État* to decide the application. Further, the onus was in practice on the *Conseil d'État* to ascertain the authorities' intentions regarding the proposed expulsions and to act accordingly, but there did not appear to be any obligation on it to do so. Lastly, it was merely on the basis of internal directions that the registrar of the *Conseil d'État*, acting on the instructions of a judge, contacted the authorities for that purpose, and there was no indication of what the consequences might be should he omit to do so. Ultimately, the alien had no guarantee that the *Conseil d'État* and the authorities would comply in every case with that practice, that the *Conseil d'État* would deliver its decision, or even hear the case, before his expulsion, or that the authorities would allow a minimum reasonable period of grace. Each of those factors made the implementation of the remedy too uncertain to enable the requirements of Article 13 to be satisfied. In conclusion, the applicants had not had a remedy available that satisfied the requirements of Article 13 to air their complaint under Article 4 of Protocol No. 4. Accordingly, there had been a violation of Article 13 of the Convention.

Judge Velaers expressed a partly concurring and partly dissenting opinion and Judge Jungwiert, joined by Judge Kūris, a dissenting opinion, which are annexed to the judgment.

***

The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

Registry of the European Court of Human Rights
F – 67075 Strasbourg Cedex
Contacts: Roderick Liddell (telephone: (0)3 88 41 24 92)
Emma Hellyer (telephone: (0)3 90 21 42 15)
Fax: (0)3 88 41 27 91

The European Court of Human Rights *was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*