



Violations in summary expulsion of Pakistani national entering Hungary from Serbia

In today's Chamber judgment¹ in the case of [Shahzad v. Hungary](#) (application no. 12625/17) the European Court of Human Rights held, unanimously, that there had been:

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

a violation of Article 13 (right to an effective remedy) taken in conjunction with Article 4 of Protocol No. 4

The case concerned the applicant's entry from Serbia to Hungary as part of a group and his subsequent summary expulsion by the police.

The Court found in particular that the applicant had been subject to a "collective" expulsion as his individual situation had not been ascertained by the authorities, and they had not provided genuine and effective ways to enter Hungary, and removal had not been a result of his conduct. Furthermore, it found that the applicant had not had an adequate legal remedy available to him.

Principal facts

The applicant, Khurram Shahzad, is a Pakistani national who was born in 1986 and lives in Gujrat (Pakistan).

The applicant left Pakistan in about 2008-09 owing to alleged ill-treatment by the Pakistani military. He entered Greece but was unable to enter other European countries. In 2016 he arrived in Serbia via North Macedonia. According to the applicant he applied for asylum in Serbia unsuccessfully. He attempted to enter Hungary to claim asylum. He was returned. He stayed in the Subotica area and tried to enter Hungary several times, in vain.

On 11 August 2016 the applicant again crossed the border irregularly with a group of others. Several hours later he and the other members of the group were apprehended by Hungarian police and removed to the other side of the border fence between Hungary and Serbia. No formal decision had been taken. Video footage showed the applicant and the others being left at the Serbian side of the border fence. The only way for the applicant to enter Hungary lawfully was through two transit zones. According to the applicant, access there at the time was limited to 15 people. Asylum-seekers also had to register with one of the migrants ("the list manager") before entry (he was refused once for being a single man). There was no official procedure for registering names on the waiting list and then allowing people from that list to enter the transit zone. As the applicant was unable to enter Hungary he stayed in Serbia.

In late 2016 the applicant returned to Pakistan voluntarily.

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.

Complaints, procedure and composition of the Court

Relying on Articles 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) and Article 13 (right to an effective remedy) taken in conjunction with Article 4 of Protocol No. 4, the applicant complained that his expulsion from Hungary had been part of a collective expulsion, and that he had no remedy for his complaint.

The application was lodged with the European Court of Human Rights on 10 February 2017.

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

Ksenija **Turković** (Croatia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),
Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

Article 4 of Protocol No. 4

The Court found that despite having been removed to the strip of land on the other side of the border fence, which was technically Hungarian territory bordering on Serbia, the applicant had been expelled within the meaning of Article 4 of Protocol No. 4.

The Court reiterated that the decisive criterion for an expulsion to be characterised as “collective” was the absence of “a reasonable and objective examination of the particular case of each individual alien of the group”. There were possible exceptions depending on the conduct of the individuals involved.

It was not in dispute between the parties that the applicant had not been identified or had his situation ascertained before removal to Serbia. For the Court, the remaining question was whether this had been a result of his own conduct.

The Court noted that the applicant had entered Hungary as part of a group. However, the Government had not argued that that had created a disruptive situation or a public-safety risk. There had been sufficient Government agents to control the situation; in any case the applicant and his companions had not used force or resisted.

The Court reiterated that with regard to Contracting States like Hungary, which had an external Schengen Area border, the effectiveness of the Convention rights required that those States made available genuine and effective means of legal entry, in particular border procedures for arrivals at the border. In the applicant’s case, the access points available had been located 40 and 84 km away from where he had been returned to Serbia. The applicant argued that those zones had been inaccessible for him owing to the daily limit on entrants and the need to register beforehand. The Court considered that due to the daily admission limits, which had been quite low, and lack of any formal procedure accompanied by appropriate safeguards governing the admission of migrants Hungary had failed to provide an effective means of entry.

As a result, the Court found that the applicant’s expulsion had been “collective” leading to a violation of his rights.

Article 13 taken in conjunction with Article 4 of Protocol No. 4

The Court took note of the Government's argument that individuals being removed under section 5(1a) of the State Borders Act were informed of their right to complain against the police measure. However, they had submitted neither the legal basis for such a complaint nor any relevant case-law. Nor had they referred to any other remedy.

The Court found that the applicant had not had an adequate remedy at his disposal, leading to a violation the Convention.

Just satisfaction (Article 41)

The Court held that Hungary was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

The judgment is available only in English.

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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.