



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

Information Note on the Court's case-law 211

October 2017

N.D. and N.T. v. Spain - 8675/15 and 8697/15

Judgment 3.10.2017 [Section III]

Article 4 of Protocol No. 4

Group of migrants immediately taken back to neighbouring country's territory after climbing border fences: *violation*

[This case was referred to the Grand Chamber on 29 January 2018]

Facts – In August 2014 a group of about 80 sub-Saharan migrants, including the applicants, attempted to enter Spain by scaling the barriers surrounding the town of Melilla, a Spanish enclave on the North African coast. Once they had crossed the barriers, they were arrested by members of the *Guardia Civil*, who handcuffed them and returned them to the other side of the border, without an identification procedure or the possibility of explaining their personal situation.

Orders for expulsion were subsequently issued against the applicants, who had succeeded in re-entering Spain illegally. Their administrative appeals, and the asylum application lodged by one of them, were dismissed.

Law

(a) *Jurisdiction of the respondent State* (Article 1) – It was immaterial whether the barriers scaled by the applicants were located in the territory of Spain or Morocco: from the moment the applicants climbed down from those barriers, they had been under the continuous and exclusive *de facto* control of the Spanish authorities. Speculation as to the powers, functions and action of the Spanish security forces or the nature and purpose of their intervention could not lead to any other conclusion. In consequence, there was no doubt that the alleged facts fell within the jurisdiction of Spain within the meaning of Article 1.

(b) *Admissibility* – (i) *Victim status* (Article 34)

(a) *Evidence* – The Court rejected as follows the Government's doubts as to whether the applicants were indeed part of the group of migrants concerned:

– the applicants had given a coherent account of the circumstances, their countries of origin and the difficulties that had led them to the makeshift camp on Mount Gurugu (a migrant camp on the neighbouring Moroccan territory), and of their participation with other migrants in the attempt to scale the barriers surrounding the Beni-Enzar border crossing on 13 August 2014, with the aim of entering Spanish territory; they had provided video images which appeared credible;

– the Government did not deny the existence of summary expulsions; shortly after the events in question it had even amended the Institutional Act on the rights and freedoms of foreign nationals, with a view to legalising these "on-the-spot expulsions". In any

event, they could not rely on the fact the applicants had not been identified when they were themselves responsible for that circumstance.

(β) *Absence of loss* – The fact that the applicants had subsequently succeeded in entering Spanish territory by other means could not divest them of their status of victims of the Convention violations alleged in this application, as those allegations had not been the subject of any examination in the course of the subsequent proceedings.

Conclusion: preliminary objection dismissed (unanimously).

(ii) *Exhaustion of domestic remedies* (Article 35): It was immaterial that the applicants had not lodged judicial appeals against the deportation orders issued against them after their second entry into Spain. These orders had been issued subsequent to the facts complained of in this present application, which concerned only the collective expulsion following the events of 13 August 2014.

Conclusion: preliminary objection dismissed (unanimously).

(c) *Merits* – Article 4 of Protocol No. 4: The question of the applicability of this provision was joined to the merits.

(i) *"Expulsion"* – It was not necessary at this point to establish whether the applicants had been deported after having entered Spanish territory or whether they had been turned back before they had been able to do so. Even interceptions on the high seas fell within the ambit of Article 4 of Protocol No. 4 (*Hirsi Jamaa and Others v. Italy* [GC], 27765/09, 23 February 2012, [Information Note 149](#)); logically, it could not be otherwise for a refusal to grant leave to enter the national territory to persons who arrived illegally by land. It was against their will that the applicants, who had been under the continuous and exclusive control of the Spanish authorities, had been sent back to Morocco.

(ii) *"Collective" nature* – The applicants had had imposed on them a general measure, consisting in containing and driving back the migrants' attempts to cross the border illegally. The removal measures were taken without any prior administrative or judicial decision. At no point were the applicants subjected to any identification procedure. In the absence of any examination of the applicants' individual situations, their deportation had to be considered collective in nature.

Conclusion: violation (unanimously).

The Court also held, unanimously, that there had been a violation of Article 13 of the Convention taken together with Article 4 of Protocol No. 4.

Article 41: EUR 5,000 each in respect of non-pecuniary damage.

(See also the [Guide on Article 4 of Protocol No. 4](#) and the Factsheet [Collective expulsions of aliens](#))