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Contact: *Ireneusz Kondak*
Tel: *03.90.21.59.86*

Date: 11/10/2024

DH-DD(2024)1150

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Meeting: 1514th meeting (December 2024) (DH)

Item reference: Action Plan (11/10/2024)

Communication from Hungary concerning the case of Shahzad v. Hungary (no. 2) (Application No. 37967/18)

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Réunion : 1514^e réunion (décembre 2024) (DH)

Référence du point : Plan d'action (11/10/2024)

Communication de la Hongrie concernant l'affaire Shahzad c. Hongrie (no. 2) (requête n° 37967/18)
(anglais uniquement)



Action Plan of 11 October 2024
in the case of Shahzad (No. 2) v. Hungary (Appl. No. 37967/18 , judgment of 05/10/2023,
final on 05/01/2024)

Introductory case summary

1. This case concerns the ill-treatment of the applicant, a Pakistani migrant, in 2016 by Hungarian law-enforcement officers while he was being escorted back to the external side of Hungarian border fence with Serbia and the lack of effective investigations in this respect (procedural and substantive violation of Article 3).
2. The Court underlined that “the authorities have not provided any plausible explanation as to the cause of the applicant’s injuries”, therefore they “have not satisfactorily established that the applicant’s injuries were caused by anything other than the treatment alleged by the applicant” (§ 78). Furthermore, the Court found that “the investigating authorities’ failure to interview the applicant, order a forensic medical assessment of his injuries and take all the necessary investigative measures to resolve the factual contradictions and uncertainties with which they were faced rendered the investigation into the applicant’s alleged ill-treatment ineffective” (§ 64).

I. Individual measures

a) Just satisfaction

3. The just satisfaction awarded to the applicant in respect of pecuniary and non-pecuniary damage EUR 20,000, and in respect of costs and expenses EUR 5,000 (total: EUR 25,000) and the tax of EUR 1,350 was altogether converted to HUF 10,404,825 (1 € = HUF 394,87) and paid due in time, on 27 March 2024.

b) Further individual measures

4. The Szeged Regional Division of the Central Chief Prosecution Office of Investigation conducted an investigation, under no. 6.Nyom.630/2016. for group assault and other criminal offences, which was terminated on 20 November 2017 on the basis of Article 190 (1) b) of Act XIX of 1998 on the Criminal Procedure Code (herein after referred to as: the CP), due to lack of evidence. The complaint lodged by the legal representative of the applicant, was dismissed by the Office of the Prosecutor General by decision No. TPK.198/2018/1-I dated 9 February 2018.

5. Since the criminal liability for the act has not yet expired, Article 400 of the CP provides for the possibility for the supervising prosecution office to review the proceedings terminated by the prosecution office, even ex officio.

II. General measures

a) Procedure at the border during escort measures

6. The Police carries out escorts pursuant to Section 5 (1a) and (1b) of Act LXXXIX of 2007 on State Borders (hereinafter referred to as the SB Act). There is no implementing legislation in force in connection with the performance of these tasks, therefore in order to establish a uniform legal practice, on 23 March 2017 the Policing Department issued an action plan for the implementation of police tasks arising from Act XX of 2017 amending certain acts related to the tightening of procedures in the border police area, which has been amended several times in view of the changes that have occurred in the meantime.
7. Pursuant to Section 5 (1a) of the SB Act, - as of 5 July 2016, when the given provision entered into force -, the police officer shall be authorised to apprehend a foreigner illegally staying on the territory of Hungary within a radius of 8 km from the border or state border sign in accordance with Article 2 2. of the Schengen Borders Code, and escort through the nearest gate of the facility for the protection of the orderly functioning of the state border (temporary security border crossing point, hereinafter referred to as "IBH"), unless a criminal offence is suspected.
8. Pursuant to Section 5 (1b) of the SB Act, in a crisis situation due to mass immigration, a police officer or a contracted border guard under the Act on the Service Status of Professional Staff of Law Enforcement Agencies may detain any foreigner illegally staying in Hungary and escort him/her through the nearest gate of the IBH, unless there is a suspicion of criminal offence.
9. The detention - the legal basis of which is not Act XXXIV of 1994 on the Police (hereinafter referred to as: the Police Act), therefore it cannot be qualified as a police measure in itself - lasts from the moment the foreign person is taken under control until the moment he or she is escorted through the IBH. For the execution of other police measures or the use of coercive means which become necessary in the course of the performance of the police officer's duties based on the authorisation of the SB Act, the rules of the Police Act and BM Regulation No. 30/2011 (IX. 22.) on the Police Service Regulations apply.
10. In addition the further procedure to be followed by the Police is regulated by internal rules which information is not public.

c) Publication and dissemination

11. The ECtHR's judgment was translated and published on the website of the Ministry of Justice (<https://igazsagugyiinformaciok.kormany.hu/az-emberi-jogok-europai-birosaganak-iteletei>) and was disseminated to the competent authorities.

III. Conclusions of the respondent state

12. The Government consider that the measures adopted have remedied the consequences for the applicant of the violation of the Convention found by the Court in this case, and that Hungary has thus complied with its obligations under Article 46, Paragraph 1 of the Convention.

Budapest, 11 October 2024

Zoltán Tallódi
Agent of the Government of Hungary