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This Factsheet does not bind the Court and is not exhaustive

## Accompanied migrant minors in detention

See also the factsheets on [“Unaccompanied migrant minors in detention”](#) and [“Migrants in detention”](#).

“[T]he child’s extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant (...). ... [C]hildren have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. The [European] Court [of Human Rights] would, moreover, observe that the Convention on the Rights of the Child encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents (...).” (judgment [Popov v. France](#) of 19 January 2012, § 91).

“A measure of confinement must ... be proportionate to the aim pursued by the authorities, namely the enforcement of a removal decision ... It can be seen from the Court’s case-law that, where families are concerned, the authorities must, in assessing proportionality, take account of the child’s best interests. In this connection ... there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (...).[T]he protection of the child’s best interests involves both keeping the family together, as far as possible, and considering alternatives so that the detention of minors is only a measure of last resort ...” (judgment [Popov v. France](#) of 19 January 2012, §§ 140-141).

### Conditions of detention

[Muskhadzhiyeva and Others v. Belgium](#) (see also below, under “Deprivation of liberty”)

19 January 2010

In October 2006, having fled from Grozny (Chechnya), the applicants – a mother and her four children (respectively aged seven months, three and a half years, five and seven years at the material time), Russian nationals of Chechen origin – arrived in Belgium, where they sought asylum. As they had spent some time in Poland, the Polish authorities agreed to take charge of them, by virtue of the “Dublin II” Regulation<sup>1</sup>. The Belgian authorities accordingly issued a decision refusing them permission to stay in Belgium and ordering them to leave the country. In January 2007 they were placed in a closed transit centre run by the Aliens Office near Brussels airport, where aliens (single adults or families) were held pending their removal from the country.

In view of the young age of the children, the duration of their detention and their state of health as attested by medical certificates during their detention, the European Court of Human Rights found that the conditions in which the children had been held in the closed transit centre had attained the minimum level of severity required to constitute a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the [European Convention on Human Rights](#). The Court recalled in particular that the extreme

<sup>1</sup>. The “Dublin system” aims at determining which EU Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national. See also the factsheet on [“Dublin’ cases”](#).

vulnerability of a child was a paramount consideration and took precedence over the status as an illegal alien. It was true that in the present case the four children had not been separated from their mother, but that did not suffice to exempt the authorities from their obligation to protect the children. They had been held for over a month in a closed centre which was not designed to house children, as confirmed by several reports cited by the Court. The Court also referred to the concern expressed by independent doctors about the children's state of health. The Court held, however, that there had been **no violation of Article 3** of the Convention in respect of the first applicant, noting in particular that she had not been separated from her children and that their constant presence must have somewhat appeased the distress and frustration she must have felt at being unable to protect them against the conditions of their detention, so that it did not reach the level of severity required to constitute inhuman treatment.

**Kanagaratnam v. Belgium** (see also below, under "Deprivation of liberty")

13 December 2011

This case concerned the detention for almost four months in a closed transit centre, pending their removal, of a mother and her three children (respectively aged 13, 11 and eight years at the material time), Sri Lankan nationals of Tamil origin asylum seekers who had arrived in Belgium in January 2009.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the children. It noted in particular that the circumstances of the instant case were comparable with those of the case of *Muskhadzhiyeva and Others v. Belgium* (see above). The Court also reiterated that the particular vulnerability of the children, who were already traumatised even before their arrival in Belgium as a result of circumstances relating to the civil war in their home country and their flight, had also been recognised by the Belgian authorities since they had finally granted the family refugee status. That vulnerability had increased on their arrival in Belgium, following their arrest at the border and placement in a closed centre pending their removal. Therefore, despite the fact that the children had been accompanied by their mother, the Court considered that by placing them in a closed centre, the Belgian authorities had exposed them to feelings of anxiety and inferiority and had, in full knowledge of the facts, risked compromising their development. Consequently, the situation experienced by the children had amounted to inhuman and degrading treatment. The Court found, however, that there had been **no violation of Article 3** of the Convention in respect of the children's mother. While acknowledging that the dilution of her parental role, her reduced power to control her children's lives and her powerlessness to end her children's suffering had certainly exposed her to extreme uncertainty and helplessness, it did not have sufficient grounds for departing from the approach adopted in the case of *Muskhadzhiyeva and Others*.

**Popov v. France** (see also below, under "Deprivation of liberty" and "Right to respect for family life")

19 January 2012

The applicants, a married couple from Kazakhstan accompanied by their two children, applied for asylum in France, but their application was rejected, as were their applications for residence permits. In August 2007, the applicants and their children, then aged five months and three years, were arrested at their home and taken into police custody and the following day they were transferred to Charles-de-Gaulle airport to be flown back to Kazakhstan. The flight was cancelled, however, and the applicants and their children were then taken to the Rouen-Oissel administrative detention centre, which was authorised to accommodate families.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention had occurred with respect to the detention conditions of the children. It observed in particular that, while families were separated from other detainees at the Rouen-Oissel centre, the only beds available were iron-frame beds for adults, which were dangerous for children. Nor were there any play areas or activities for children, and the automatic doors to the rooms were dangerous for them. The Court further noted that the Council of Europe Commissioner for Human Rights and

the [European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment](#) (CPT) had also pointed out that the stress, insecurity, and hostile atmosphere in these centres was bad for young children, in contradiction with international child protection principles according to which the authorities must do everything in their power to avoid detaining children for lengthy periods. Two weeks' detention, while not in itself excessive, could seem like a very long time for children living in an environment ill-suited to their age. The conditions in which the applicants' children had been obliged to live with their parents in a situation of particular vulnerability heightened by their detention were bound to cause them distress and have serious psychological repercussions. The Court found, however, that there had been **no violation of Article 3** of the Convention in so far as detention conditions of the parents were concerned, noting in particular that the fact that they had not been separated from their children during their detention must have alleviated the feeling of helplessness, distress and frustration their stay at the administrative detention centre must have caused them.

### **Mahmundi and Others v. Greece**

31 July 2012

This case concerned the detention in the Pagani detention centre on the island of Lesbos of a married couple from Afghanistan, accompanied by their children aged two and six. The woman was eight months pregnant and gave birth in Lesbos Hospital while in detention. Her sister was accompanied by her 14-year-old twins. In August 2009, after being rescued by the maritime police from a boat that was starting to sink off the island of Lesbos, they were taken into detention pending deportation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicants' conditions of detention had amounted to inhuman and degrading treatment. It noted in particular that, following its visit to Pagani in September 2009, the [European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment](#) (CPT) had found that the centre was filthy beyond description, and deplored the fact that there had been no improvement in the situation despite the "abominable" conditions of detention it had criticised in its 2008 report. The Court also stressed, in particular, the absence of any specific supervision of the applicants despite their particular status as minors and a pregnant woman. In this case the Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, noting in particular that it had been materially impossible for the applicants to take any action before the courts to complain of their conditions of detention in Pagani.

**A.B. and Others v. France (n° 11593/12)** (see also below, under "Deprivation of liberty" and "Right to respect for family life")

12 July 2016

This case concerned the administrative detention of a child, then aged four, for eighteen days, in the context of a deportation procedure against his parents, Armenian nationals. The applicants alleged in particular that the placement in administrative detention of their son in the Toulouse-Cornebarrieu administrative detention centre had amounted to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the applicant's child, finding that, given his age and the duration and conditions of his detention in the administrative detention centre, the French authorities had subjected him to treatment which had exceeded the threshold of seriousness required by Article 3. The Court noted in particular that, where the parents were placed in administrative detention, the children were *de facto* deprived of liberty. It acknowledged that this deprivation of liberty, which resulted from the parents' legitimate decision not to entrust them to another person, was not in principle contrary to domestic law. The Court held, however, that the presence in administrative detention of a child who was accompanying his or her

parents was only compatible with the European Convention on Human Rights if the domestic authorities established that they had taken this measure of last resort only after having verified, in the specific circumstances, that no other less restrictive measure could be applied. Lastly, the Court observed that the authorities had not taken all the necessary steps to enforce the removal measure as quickly as possible and thus limit the time spent in detention. In the absence of a particular risk of absconding, the administrative detention of eighteen days' duration seemed disproportionate to the aim pursued.

See *also* the judgments delivered by the Court on the same day in the cases of [A.M. and Others v. France](#) (no. 24587/12), [R.C. and V.C. v. France](#) (no. 76491/14), [R.K. and Others v. France](#) (no. 68264/14) and [R.M. and Others v. France](#) (no. 33201/11).

### **S.F. and Others v. Bulgaria (no. 8138/16)**

7 December 2017<sup>2</sup>

This case concerned a complaint brought by an Iraqi family about the conditions in which they had been kept in immigration detention for a few days when trying to cross Bulgaria on their way to Western Europe in 2015. The applicants complained in particular about the conditions in which the three minors – then aged 16, 11 and one and a half years – had been kept in the detention facility in Vidin. Submitting a video recording, they alleged in particular that the cell in which they had been held had been extremely run-down. They also maintained that the authorities had failed to provide them with food and drink for the first 24 hours of their custody and that the baby bottle and milk of the youngest child had been taken away upon their arrival at the facility and only given to the mother 19 hours later.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the three children. It noted in particular that the amount of time spent by the applicants in detention – a period of either thirty-two hours or forty-one hours (the exact length of time was disputed by the parties) – was shorter than the periods referred to in the above-mentioned cases. However, the conditions were considerably worse than those in all those cases (including limited access to toilet facilities, failure to provide food and drink and delayed access to the toddler's baby bottle and milk). For the Court, by keeping the three minor applicants in such conditions, even for a brief period of time, the Bulgarian authorities subjected them to inhuman and degrading treatment. While acknowledging that in recent years the States Parties that sit on the European Union's external borders have had difficulties in coping with the massive influx of migrants, the Court found, however, that it could not be said that at the relevant time Bulgaria was facing an emergency of such proportions that it was practically impossible for its authorities to ensure minimally decent conditions in the short-term holding facilities in which they decided to place minor migrants immediately after their interception and arrest.

### **Pending applications**

#### **Bilalova v. Poland (no. 23685/14)**

Application communicated to the Polish Government on 13 October 2014

This case concerns the detention for three months of the applicant and her five children, aged between four and ten, in a supervised centre for foreigners in Poland pending their expulsion to Russia.

The Court gave notice of the application to the Polish Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 5 § 1 (right to liberty and security) and 8 (right to respect for private and family life) of the Convention.

<sup>2</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

### **A.S and Others v. Hungary (no. 34883/17)**

Application communicated to the Hungarian Government on 10 July 2017

The application concerns the confinement, in conditions which were allegedly inhuman, of an Afghan family (a mother who was eight months pregnant at the material time, her husband and their two underage children) to the Röszke transit zone at the border of Hungary and Serbia during one month, pending the examination of their asylum request. The Court gave notice of the application to the Hungarian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention.

Similar applications pending: **N.A and Others v. Hungary** (no. 37325/17) and **H.M and Others v. Hungary** (no. 38967/17), communicated to the Government on 13 September 2017.

## Deprivation of liberty and challenging the lawfulness of detention

### **Muskhadzhiyeva and Others v. Belgium** (see also above, under “Conditions of detention”)

19 January 2010

This case concerned the detention for more than a month of three underage children and their mother in a closed transit centre. They complained in particular that their detention had been unlawful and the remedy against it before the Court of Cassation ineffective, as they had been removed from the country before the court had reached a decision.

The Court noted in particular that the applicants had been in a situation where it was in principle possible under the Convention to place them in detention (the Convention authorises the “lawful arrest and detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”). That did not mean, however, that their detention was necessarily lawful. In the present case, in so far as the four children had been kept in a closed centre designed for adults and ill-suited to their extreme vulnerability, even though they were accompanied by their mother, the Court found that there had been a **violation of Article 5 § 1** (right to liberty and security) in their respect. The Court saw however no reason, on the other hand, to find the mother’s detention in breach of the Convention. She had been lawfully detained with a view to her expulsion from Belgium. The Court therefore held that there had been **no violation of Article 5 § 1** of the Convention in her respect. The Court further held that none of the applicants had been the victim of a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. It was true that the Belgian Court of Cassation had delivered its decision concerning the applicants’ request for release after they had been sent back to Poland. Prior to that, however, two courts having *de facto* and *de jure* jurisdiction had examined the request without delay while they were still in Belgium. The Court pointed out that it was sufficient in principle for an appeal to be examined by a single court, on condition that the procedure followed had a judicial character and gave the individual concerned guarantees appropriate to the kind of deprivation of liberty in question.

### **Kanagaratnam v. Belgium** (see also above, under “Conditions of detention”)

13 December 2011

This case concerned the detention of a mother and her three underage children for almost four months in a closed centre for illegal aliens pending their removal. They complained in particular that their continued detention had not been in accordance with the law and had been arbitrary.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the three children and their mother, finding that their detention had been unlawful. Concerning the children in particular, the Court considered that by placing them in a closed centre designed for adult illegal aliens, in

conditions which were ill-suited to their extreme vulnerability as minors, the Belgian authorities had not sufficiently guaranteed the children's right to their liberty. The fact that the children had been accompanied by their mother was not a reason to depart from that conclusion.

**Popov v. France** (see also above, under "Conditions of detention", and below, under "Right to respect for family life")

19 January 2012

This case concerned the administrative detention of a couple of asylum-seekers and their two underage children for two weeks pending their removal. They complained in particular that their detention had been unlawful.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the children. It found in particular that, although the children had been placed with their parents in a wing reserved for families, their particular situation had not been taken into account by the French authorities, who had not sought to establish whether any alternative solution, other than administrative detention, could have been envisaged. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention concerning the children. In this respect, it noted in particular that, while the parents had had the possibility to have the lawfulness of their detention examined by the French courts, the children "accompanying" their parents had found themselves in a legal void, unable to avail themselves of such a remedy. In the present case no removal order had been issued against the children that they might have challenged in court. Nor had their administrative detention been ordered, so the courts had not been able to examine the lawfulness of their presence in the administrative detention centre. That being so, they had not enjoyed the protection required by the Convention.

See also: judgments in the cases of **A.B. and Others v. France** (no. 11593/12), **R.K. and Others v. France** (no. 68264/14) and **R.M. and Others v. France** (no. 33201/11) of 12 July 2016.

**A.M. and Others v. France (no. 24587/12)** (see also above, under "Conditions of detention", and below, under "Right to respect for family life")

12 July 2016

This case concerned the administrative detention of two underage children who were accompanying their mother in the context of a deportation procedure.

In the present case, the Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the child. It noted in particular that the option of resorting to a less coercive measure had been dismissed by the prefect on account of the mother's refusal to contact the border police with a view to organising her departure, the absence of identity papers and the uncertain nature of her accommodation. The French authorities had thus effectively sought to establish whether the placement of this family in administrative detention was a measure of last resort for which no alternative was available. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention concerning the child.

See also the judgment delivered by the Court on the same day in the case of **R.C. and V.C. v. France** (no. 76491/14).

### **Pending applications**

#### **Bilalova v. Poland (no. 23685/14)**

Application communicated to the Polish Government on 13 October 2014

See above, under "Conditions of detention".

#### **A.S and Others v. Hungary (no. 34883/17)**

Application communicated to the Hungarian Government on 10 July 2017

See above, under "Conditions of detention".

## Right to respect for family life

**Popov v. France** (See also above, under “Conditions of detention” and “Deprivation of liberty”)

19 January 2012

This case concerned the administrative detention of a couple of asylum-seekers and their two children for two weeks pending their removal. The applicants argued in particular that their placement in detention had not been a necessary measure in relation to the aim pursued and that the conditions and duration of their detention had constituted a disproportionate interference with their right to a private and family life.

The Court held that there had been a **violation of article 8** (right to respect for private and family life) of the Convention in respect of the children and their parents. It firstly observed that the interference with the applicants’ family life because of their two-week detention at the centre had been in accordance with the French Code governing the entry and residence of foreigners and the right of asylum, and pursued the legitimate aim of combating illegal immigration and preventing crime. Then, referring to the broad consensus, particularly in international law, that the children’s interests were paramount in all decisions concerning them, the Court noted that France was one of the only three European countries that systematically had accompanied minors placed in detention. In the present case, as there had been no particular risk of the applicants absconding, their detention had not been justified by any pressing social need, especially considering that their placement in a hotel in August 2007 had posed no problem. Yet the French authorities did not appear to have sought any solution other than detention, or to have done everything in their power to have the removal order enforced as promptly as possible. Lastly, after recalling that, in the case of *Muskhadzhiyeva and Others v. Belgium* (see above, under “Conditions of detention” and “Right to liberty and security”), it had rejected a complaint similar to the applicants’, the Court considered, however, considering the above factors and the recent case-law developments concerning “the child’s best interests” in the context of the detention of child migrants<sup>3</sup>, that the child’s best interests called not only for families to be kept together but also for the detention of families with young children to be limited. In the applicants’ circumstances, the Court found that two weeks’ detention in a closed facility was disproportionate to the aim pursued.

See *also*: judgments in the cases of **A.B. and Others v. France** (no. 11593/12) and **R.K. and Others v. France** (no. 68264/14).

**A.M. and Others v. France (no. 24587/12)** (see also above, under “Conditions of detention” and “Deprivation of liberty”)

12 July 2016

This case concerned the administrative detention of two underage children who were accompanying their mother in the context of a deportation procedure.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in respect of the children and their mother, finding that they had not sustained a disproportionate interference with their right to respect for their family life. It noted in particular that the detention measure pursued the legitimate aim of combating illegal immigration and controlling the entry and residence of foreigners in France. It served, *inter alia*, to protect national security, law and order and the country’s economy and to prevent crime. In the present case, the Court considered that the detention, for a total duration of eight days, did not appear disproportionate to the aim pursued.

See *also* the judgment delivered by the Court on the same day in the case of **R.C. and V.C. v. France** (no. 76491/14).

<sup>3</sup> See **Rahimi v. Greece**, judgment of 5 April 2011.

### **Pending application**

#### **[Bilalova v. Poland \(no. 23685/14\)](#)**

Application communicated to the Polish Government on 13 October 2014

See above, under “Conditions of detention”.

### **Texts and documents**

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See in particular:

- **[Handbook on European law relating to asylum, borders and immigration](#)**, European Union Fundamental Rights Agency / European Court of Human Rights, 2013
  - Council of Europe Commissioner for Human Rights **[web page](#)** on the thematic work “Migration”
  - Special Representative of the Council of Europe Secretary General on migration and refugees **[web page](#)**
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