

The Admissibility of the Detention of Minors in Guarded Centers for Refugees in the Context of the Principle of Best Interests of the Child

Judgment of the European Court of Human Rights (First Section) of 3 March 2022 in case of *Nikoghosyan and Others v. Poland*, 14743/17

1. “[...] The child’s best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life [...]”.
2. “The confinement of young children in detention establishments should be avoided and that only placement in suitable conditions may be compatible with the Convention, on condition, however, that the authorities establish that they took this measure of last resort only after actually verifying that no other measure less restrictive of liberty could be put in place and that the authorities act with the required expedition [...]”.
3. “Various international bodies, including the Council of Europe, are increasingly calling on States to expeditiously and completely cease or eradicate the immigration detention of children”.

Dorota Lis-Staranowicz

University of Warmia and Mazury, Poland

staran@uwm.edu.pl

ORCID: 0000-0002-2118-3761

<https://doi.org/10.26881/gsp.2022.4.06>

Commentary

Introduction

One hundred and seven days have passed since the outbreak of the Russian-Ukrainian war, during which 3.8 million Ukrainian citizens have arrived in Poland. As reported by the border authorities, 1.968 million Ukrainian citizens have returned to Ukraine. One hundred and sixty thousand Ukrainian children attend Polish schools, and 40,000 at-

tend nurseries. The vast majority of refugees from Ukraine is represented by women with children able to rely on State assistance.¹ This face of Polish hospitality, which is an expression of solidarity and humanitarian aid, is not without fault, casting a shadow over the activities of the authorities competent to grant international protection to aliens.² On 3 March 2022, i.e., during the Ukrainian exodus,³ the European Court of Human Rights (ECHR) delivered a judgment in the case of *Nikoghosyan and Others v. Poland* (application no. 14743/17), which concerned, inter alia, the unlawful extension of detention of refugees, including children, in closed guarded centers.⁴ It is neither the first nor a precedent case, as the ECHR has repeatedly found that Poland infringed the provisions of the Convention for the same reason. For the record, the judgment in the case of *Bilalova and Others v. Poland* (application no. 23685/14), in which the ECHR found a breach of art. 5 par. 1 (f) of the Convention (right to liberty and security) for placing the applicant and her five children (aged three to nine) in a guarded center for aliens for a period of five months should also be acknowledged.⁵ Another case to be noted concerned the detention of a family with a one-year-old child in a guarded center for a period of nine months (case of *A.B. and others v. Poland*, application nos. 23685/1415845/15 and 56300/15). In the said case, based on expert

¹ Information for refugees from Ukraine, Ministry of the Interior and Administration <https://www.gov.pl/web/mswia/informacja-dla-uchodzcow-z-ukrainy> (accessed: 2022.06.12). In addition, an act dedicated to Ukrainian citizens was adopted, specifying the extent of state aid – see the Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that country (Journal of Laws of 2022, item 583, as amended). The diversified public law status of aliens in the light of asylum law in Poland is noted by Mateusz Pilich, who distinguishes between as many as six status types – see M. Pilich, “Uchodźcy w prawie prywatnym międzynarodowym”, *Gdańskie Studia Prawnicze* 2022, no. 1, p. 19.

² The so-called hybrid war is being waged at the Polish-Belarusian border, which is also the border of the European Union. The Belarusian regime is destabilizing the situation at the border with Lithuania. For this purpose, it uses economic refugees from poor regions of the world. It is estimated that “[...] this crisis was artificially triggered by the authorities in Belarus (Operation Sluice), as a form of retribution against the European Union for imposing sanctions on the regime of Alexander Lukashenko, seems to be reflected in reality” – see K. Chochowski, “Kryzys na granicy polsko-białoruskiej jako przejaw wojny hybrydowej. Aspekty administracyjnoprawne”, *Roczniki Nauk Społecznych KUL* 2021, no. 4, p. 81.

³ E.g., the Border Guard reported that on 3 March 2022, 99.2 thousand Ukrainian citizens entered Poland. 20 attempts to illegally cross the Polish-Belarusian border by citizens of Iraq (18 people) and Syria (two people) were noted.

⁴ Refugee centers are divided into open and guarded (closed) facilities, while the latter are divided into facilities for women, men, families, unaccompanied minors, men and women (mixed-gender facilities). An alien placed in a guarded center is forbidden to move outside the area of the guarded center or to stay in places the access to which is banned by the administration of a center – the Act of 12 December 2013 on aliens (consolidated text: Journal of Laws of 2021, item 2354, as amended; hereinafter: the Act on aliens). In place of compulsory detention in a guarded center, the Border Service authorities and courts may use alternative measures, which include: a) reporting at specified intervals to the indicated authority, b) payment of a security deposit in a specified amount, not lower than twice the amount of the minimum wage stipulated by minimum wage regulations, c) residence in a designated place, d) depositing the travel document or another identity document with the authority indicated in the decision (art. 317 of the Act on aliens).

⁵ It awarded compensation to be paid by Poland to the applicant and her children in the amount of EUR 10,700 (non-pecuniary damage).

opinions, the Polish authorities asserted that the child had been developing harmoniously and that his placement in the center had not had any negative consequences for him. The authorities noted his hospitalization and considered that he had received the correct treatment for his illness and had been released from the hospital in a good state of health. Notwithstanding the above, the Court found a breach of art. 8 of the Convention and awarded compensation⁶. In another case, "The Government acknowledged a violation of the applicants' rights under art. 5 par. 1 and 4 of the Convention, as well as their right to respect for a private and family life in breach of Article 8 of the Convention⁷." The Polish Government voluntarily undertook to pay compensation to the applicants⁸. This sequence of judgments includes the ruling under consideration, which confirms that Poland persistently breaches the Convention by placing refugee minors in closed guarded centers under a prison-like regime. It should be emphasized that the detention of children seeking asylum is a problem that affects all countries⁹. There has been an increase in the number of underage foreigners left unaccompanied by adults in detention¹⁰.

Facts

The case of *Nikoghosyan and Others v. Poland* was decided under the following facts. An application was made by five Armenian nationals (a married couple and their three children born in 2002, 2003, and 2015)¹¹. On 6 November 2016, the applicant-father applied for asylum with the border guards in Medyka on his own behalf and that of the other family members on political grounds and in view of a potential threat to the safety of the family due to persecution in their home country. The applicant was refused refugee status. He therefore appealed against that decision. Concurrently, the District Court in Przemyśl issued a decision to place the first applicant and his children in a guarded center for aliens in Biała Podlaska for a period of 60 days. According to the Polish court, the applicant posed a high risk of absconding, as he had attempted to

⁶ It awarded compensation to be paid by Poland to the applicants (three persons) in the amount of EUR 10,000 (non-pecuniary damage). A considerably higher compensation was awarded by the ECHR to the applicant who crossed the Polish border and applied for protection only after 30 failed attempts – see the ECHR judgment of 14 December 2020, *M.K. and Others v. Poland*, applications nos. 40503/17, 42902/17 and 43643/17.

⁷ Judgment of the ECHR of 1 July 2021, *M.Z. and Others v. Poland*, (application no. 79752/16).

⁸ An alien is entitled to compensation for damage and for non-material damage from the State Treasury in the event of undue detention or undue placement in a guarded center or detention for aliens.

⁹ „[...] multiple studies show the high prevalence of depression/anxiety and post-traumatic stress disorder of children in immigration detention, with higher behavioural, social and emotional difficulties than the community – see S. Song, "Mental health of unaccompanied children: effects of U.S. immigration policies", *BJPsych Open* 2021, vol. 7, p. 3.

¹⁰ E.g., L. Button, "Unlocking Childhood: Current immigration detention practices and alternatives for child asylum seekers and refugees in Asia and the Pacific", *Save the Children Australia* 2017, p. 77.

¹¹ The applicants were represented by Sylwia Paduchowska, the Rule of Law Institute Foundation in Lublin, which provides support for the protection of the rights of refugees.

cross the border illegally a number of times. The Polish court stated that “the first applicant’s presence in Poland could not be ensured by any of the statutory alternatives to detention, such as regular reporting to the authorities, a deposit equal to twice the monthly minimum salary (that is, 3,700 Polish zlotys; approximately 874 euros (EUR)), or his residence at a specified address”. The family had only 50 euros on them and did not have any address in Poland. Such circumstances made it impossible to apply a less stringent measure than detention in a guarded center for aliens. The applicant lodged an appeal against that judgment, which was dismissed in its entirety. After 60 days, the authorities applied to the court again for an extension of detention of the applicant and his children until 6 May 2017. The domestic court granted the request since further detention was necessary to gather evidence in the pending asylum proceedings. During those proceedings, the applicants brought an action before the ECHR. They raised, *inter alia*, pleas alleging an infringement of art. 5 par. 1 (f) of the Convention¹².

The applicants argued that their detention in a guarded center was arbitrary and that the authorities assumed that: a) the family wished to settle in Poland for economic reasons, b) they posed a risk of absconding. “The applicants claimed that the authorities had not considered any alternative and less stringent measure to secure their presence in Poland pending completion of the asylum proceedings. Instead, the authorities had treated their case in a superficial manner, influenced by the general situation at the country’s border. As to the latter, the applicants essentially noted that there had been a pattern of ordering administrative detention of persons who, like them, had lodged their first asylum application after having previously been turned away from the Polish border.”

Moreover, the rights and interests of the child are an important aspect of the action under consideration. The applicants argued that although the family was not apart and the three children and an infant born in Poland remained under the care of their parents, the six-month stay in a closed center affected their emotional well-being. “In that connection they submitted medical certificates issued in March 2017. These documents stated that the third applicant, the eldest child, had been experiencing chest pains, headaches, dizziness, fainting, sleep disturbance, lack of appetite, depression, social withdrawal and constant anxiety. The doctors had attributed these symptoms to the family’s detention”¹³.

The applicants also emphasized that save for the hearing of the applicants in December 2016, the authorities had failed to take any steps to clarify their status¹⁴.

¹² Art. 5 par. 1 (f) of the Convention: “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (f) the lawful arrest or 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”.

¹³ The applicants were released from the guarded center as the maximum statutory period for administrative detention had come to an end.

¹⁴ The Government made a preliminary objection alleging that the application was inadmissible for non-exhaustion of domestic remedies.

Reasoning of the ECHR Judgement

The Court found a violation of art. 5 par. 1 (f) of the Convention and declared the application to be inadmissible as to the remainder due to non-exhaustion of legal remedies. It has paid particular attention to the problem of detained children. It reiterated that detention of minors must be a measure of last resort. As held by the ECHR “Various international bodies, including the Council of Europe, are increasingly calling on States to expeditiously and completely cease or eradicate the immigration detention of children. The Court has found that the presence in a detention centre of a child accompanying its parents will comply with art. 5 par. 1 (f) only where the national authorities can establish that such a measure of last resort was taken after verification that no other measure involving a lesser restriction of their freedom could be implemented [...]. (cf. Bilalova and Others, cited above, § 76)”.

In the case under consideration, the extension of the family’s detention was not necessary and indispensable, and the administrative and judicial authorities failed to duly examine the factual and legal situation of the applicants. First of all, they failed to take account of the fact that the applicant-mother gave birth to the fourth child in the territory of Poland. In addition, the ECHR found a failure of diligence on the part of the authorities which, apart from the hearing on 9 December 2016, did not take any procedural steps with the participation of the applicants¹⁵. Moreover, following the decision at first instance refusing to grant them asylum (19 April 2017), no further information was requested from the applicants. This means that “the authorities had indeed obtained the necessary clarifications from the first and second applicants as early as 9 December 2016”. On the other hand, the court which examined the applications for release from detention misidentified the applicant-mother by using masculine personal pronouns to ultimately consider her to be the son of the applicants. Consequently, the ECHR concluded that “the detention of both the adult and the child applicants, for a period of almost six months, was not a measure of last resort in the Court’s view. The Court is of the view that the fact that minors were being detained called for greater speed and diligence on the part of the authorities”. It therefore awarded the applicant compensation of EUR 15,000.

¹⁵ It is an important stage of the proceedings at which the applicant presents evidence of the circumstances that compelled him/her to leave the country and to seek international protection – see: M. Baran-Kurasiewicz, “Uzyskanie statusu uchodźcy i sytuacja uchodźców w Polsce”, *Polityka i Społeczeństwo* 2019, no. 3, p. 11. Children who came to Poland unaccompanied should be interviewed with particular care. The number of unaccompanied refugee children is steadily increasing – see P. Jankowska, “Wybrane aspekty procedur prawnych, których podmiotem może być małoletni cudzoziemiec przebywający na terytorium Polski bez opieki”, *Rocznik Praw Człowieka i Prawa Humanitarne* 2018, vol. 9, pp. 96–98.

Author's Position

The above ECHR judgment does not raise any concerns and deserves full endorsement. Undoubtedly, Poland breached art. 5 par. 1 (f) of the Convention by, *inter alia*, extending the children's detention. Therefore, it is difficult to comment on a decision whose factual and legal status is not under dispute and the court consistently follows the developed line of case-law. It also seems that the judgment was not surprising to human rights defenders in Poland (Ombudsman for Human Rights, Ombudsman for Children). It is not my intention to comprehensively analyse the ECHR judgment, but I wish to note that in the case under consideration the administrative and judicial authorities also acted in breach of the provisions of the Constitution of the Republic of Poland of 2 April 1997.

Pursuant to art. 72(1), first sentence, of the Constitution, Poland shall ensure the protection of the rights of the child. Every child who is in the territory of Poland is in the care of the State and is an autonomous legal person¹⁶. Article 72(1) of the Constitution does not set out a catalog of children's rights that are subject to legal protection. Its structure is based on a reference to other constitutional provisions, national, European, and international normative instruments. It may not be ruled out that the reference is more extensive than positive law and reaches as far as *ius naturale*. As the Constitutional Court notes, "The concept of 'rights of the child' in the provisions of the Constitution should be construed as an obligation to ensure the protection of the interests of a minor, who, in practice, can assert it to a very limited extent. The good of the child is also the value that determines the form of other institutional solutions, including primarily under the Family and Guardianship Code. It is also upheld as a special value in the provisions of the United Nations Convention on the Rights of the Child of 20 November 1989 ratified by Poland¹⁷. Article 3(1) thereof states that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"¹⁸ (the best interest principle)¹⁹.

The principle of the child's best interests is a directive on the interpretation and application of asylum law by State authorities²⁰. "This obligation applies both to a minor under the care of an adult alien and to an unaccompanied minor staying in the territory of the Republic of Poland. In cases concerning detention of unaccompanied

¹⁶ E. Morawska, "Ochrona dziecka w świetle art. 72 Konstytucji. Uwagi na tle orzecznictwa Trybunału Konstytucyjnego", *Kwartalnik Prawa Publicznego* 2007, no. 7, p. 126.

¹⁷ Journal of Laws of 1991, no. 120, item 526, as amended.

¹⁸ Judgment of 17 April 2007, file ref. no. SK 20/05.

¹⁹ The principle of the child's best interests is also expressed in art. 24 of the Charter of Fundamental Rights: "Children shall have the right to such protection and care as is necessary for their well-being".

²⁰ The obligation to ensure the best interests of the child as a primary consideration has been reiterated in EU asylum *acquis* – see more in: "Practical guide on the best interests of the child in asylum procedures", *European Asylum Support Office* 2018, p. 13.

alien minors, the court shall take into account, in particular, the degree of physical and mental development of a minor alien, his/her personality traits, the circumstances of his/her detention and the personal conditions in favor of placing him/her in a guarded center (Article 397(2) of the Act on aliens). An alien (and therefore also a minor alien) shall be placed in a guarded center or in detention for aliens for as short a period as possible (Article 403(6) of the Act on aliens). The court is also obliged to assess whether it is possible to apply alternative measures to detention with respect thereto (Article 401(5) of the Act on aliens)²¹.

The principle of the child's best interests allows a child's stay with a convicted mother in prison in Poland. However, the legislator sets an upper limit on the age of the child, after which he/she must part with the mother. Pursuant to art. 87(4) of the Act of 6 June 1997 Penal Enforcement Code (i.e., Journal of Laws of 2021, item 53, as amended), in order to enable an incarcerated mother to exercise permanent and direct care over her child, facilities for mother and child are organized at indicated prisons, in which the child may stay at the mother's request until the age of three, unless educational or health reasons, confirmed by the opinion of a doctor or psychologist, are an argument for separating the child from the mother or for extending or shortening that period. The child's best interests require that he or she leaves the facility before the age of three. "The Code allows a child to stay at such special facilities also after the age of three. However, such situations should be deemed exceptional. In practice, they will result from the necessity to find a guardian for the child, the mother's incarceration coming to an end, etc. The adopted upper limit of the age up to which a child may stay in the prison with the mother, results from the study of psychologists. In their opinion, a child up to the age of three is able to forget his or her stay in such a facility"²². The national legislature therefore assumes that a child's stay in prison is permissible until he or she has become able to form memories. In other words, a child should not recollect living behind bars for the sake of his/her own well-being. For the purposes of this gloss, I refer to that regulation as the "rule of no recollection".

In that context, there are serious concerns relating to the assertions of the Polish national authorities which, in order to extend detention in this and in other cases, have relied on the fact that children in isolation are in good mental and physical health. It seems that the rule of no recollection may be an additional and subsidiary test for assessing the usefulness and necessity of placing children in guarded centers. The rule of no recollection strikes a balance between the public interest and the best interests of the child who is at risk as a result of deprivation of liberty. At this point, it should be noted that there is no uniform standard setting the maximum legal age of a child "behind bars" and so, for example, it is five years in Australia, six years in Mexico, four years in Kenya, or 18 months in Great Britain²³. In the vast majority of European Union coun-

²¹ As in J. Białas, "Detencja cudzoziemców w Polsce a standard EHCR" [in:] *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych*, D. Pudzianowska (ed.), Warszawa 2016, LEX/el.

²² A. Kwieciński, "Skazani-rodzice. Sytuacja prawna osadzonych sprawujących opiekę nad dziećmi", *Nowa Kodyfikacja Prawa Krajowego 2012*, vol. 28, p. 195.

²³ M. Paurus, "International Report on the Conditions of Children of Incarcerated Parents A Survey

tries, the age of a minor does not exceed three years, although, in Bulgaria, Hungary, and Ireland a mother may only personally care for her child until the age of one²⁴. Thus, a child's detention in a guarded center until the age of three may be deemed safe for his/her psychophysical development, and thereafter – detention is presumed to exert a negative impact. In such circumstances, border guard authorities or courts should first consider the application of alternative protective measures. According to Tomasz Sieniow, alternative forms respect the principle of humane treatment of refugees whose access to, for example, information, legal aid, employment is facilitated, and above all, they “ [...] are treated individually in relation to their asylum applications”²⁵.

In lieu of a summary, I will refer to a decision of the District Court in Lublin of 16 December 2021 (file ref. no. Kz V 1157/21) which is encouraging, as it suggests a shift in the approach of judicial authorities to applications for the extension of detention. As the domestic court has pointed out, a failure of the authorities to act and their inaction (the absence of a decision on asylum) cannot justify a further extension of the detention of aliens, including children²⁶. This new line of case-law is confirmed by other court decisions at the first instance that emphasise that a significant risk of an alien's absconding, to which the asylum authority refers, is insufficient to grant the request to extend detention²⁷.

Literature

- Baran-Kurasiewicz M., “Uzyskanie statusu uchodźcy i sytuacja uchodźców w Polsce”, *Polityka i Społeczeństwo* 2019, no 3.
- Białas J., “Detencja cudzoziemców w Polsce a standard EHCR” [in:] *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych*, D. Pudzianowska (ed.), Warszawa 2016, LEX/el.
- Button L., “Unlocking Childhood: Current immigration detention practices and alternatives for child asylum seekers and refugees in Asia and the Pacific”, *Save the Children Australia* 2017.
- Chochowski K., “Kryzys na granicy polsko-białoruskiej jako przejaw wojny hybrydowej. Aspekty administracyjnoprawne”, *Roczniki Nauk Społecznych KUL* 2021, no. 4.

of Prison Nurseries”, <https://cicmn.org/wp-content/uploads/2017/03/Melanie-Report-Edited.pdf> (accessed: 2022.06.11).

²⁴ Age limits for children living in prisons, https://childrenofprisoners.eu/facts_and_figures/age-limits-for-children-living-in-prisons/ (accessed: 2022.06.11).

²⁵ T. Sieniow, *Stosowanie alternatyw do detencji cudzoziemców w Polsce w latach 2014–2015 raport z monitoringu*, Lublin 2016, p. 114.

²⁶ See also the Rule of Law Institute, report on operations for the period from 2021.01.01 to 2021.12.31 <https://panstwowoprawa.org/o-nas/sprawozdania-z-dzialalnosci/> (accessed: 2022.06.11). Decisions of the Regional Court in Lublin of: 2022.01.05, file ref. no. Kz 1188/21; 2022.02.02, file ref. no. XI Kz 71/22 and XI Kz 76/22; 2.03.2022 r., file ref. no. V Kz 184/22 [in:] *Pismo Instytutu na Rzecz Państwa i Prawa z 3 marca 2022*, nr: IPP-TS/2/3/202.

²⁷ Decision of the District Court in Biała Podlaska of: 2022.02.25, file ref. no. II Ko 41/22 and file ref. no. II Ko 40/22; decision of 2022.03.03, file ref. no. II Ko 49/22 [in:] *Pismo Instytutu na Rzecz Państwa i Prawa z 3 marca 2022*, nr: IPP-TS/2/3/202.

- Jankowska P., "Wybrane aspekty procedur prawnych, których podmiotem może być małoletni cudzoziemiec przebywający na terytorium Polski bez opieki", *Rocznik Praw Człowieka i Prawa Humanitarne* 2018, vol. 9.
- Kwieciński A., "Skazani-rodzice. Sytuacja prawna osadzonych sprawujących opiekę nad dziećmi", *Nowa kodyfikacja prawa krajowego* 2012, vol. 28.
- Morawska E., "Ochrona dziecka w świetle art. 72 Konstytucji. Uwagi na tle orzecznictwa Trybunału Konstytucyjnego", *Kwartalnik Prawa Publicznego* 2007, no 7.
- Paorus M., *International Report on the Conditions of Children of Incarcerated Parents A Survey of Prison Nurseries*, <https://cicmn.org/wp-content/uploads/2017/03/Melanie-Report-Edited.pdf> (accessed: 2022.06.11).
- Pilich M., "Uchodźcy w prawie prywatnym międzynarodowym", *Gdańskie Studia Prawnicze* 2022, no 1.
- Sieniow T., *Stosowanie alternatyw do detencji cudzoziemców w Polsce w latach 2014–2015 raport z monitoringu*, Lublin 2016.
- Song S., "Mental health of unaccompanied children: effects of U.S. immigration policies", *BJPsych Open* 2021, vol. 7.

Summary

Dorota Lis-Staranowicz

The Admissibility of the Detention of Minors in Guarded Centers for Refugees in the Context of the Principle of Best Interests of the Child

The glossed ECHR judgment concerns the extension of detention in a guarded center of an Armenian family seeking international protection. The Court has found that Poland breached art. 5 par. 1 (f) of the Convention for the Protection of Human Rights and Fundamental Freedoms. It has upheld its position expressed in the case of *Bilalova and Others v. Poland* (application no. 23685/14), that "Various international bodies, including the Council of Europe, are increasingly calling on States to expeditiously and completely cease or eradicate the immigration detention of children. The Court has found that the presence in a detention centre of a child accompanying its parents will comply with art. 5 par. 1 (f) only where the national authorities can establish that such a measure of last resort was taken after verification that no other measure involving a lesser restriction of their freedom could be implemented [...]". Therefore, the "rule of no recollection" operating in Polish legislation may be an additional test verifying the admissibility of minors' detention in guarded centers.

Keywords: refugees; detention in a guarded center; the rights of the child; "rule of no recollection".

Streszczenie

Dorota Lis-Staranowicz

Dopuszczalność detencji małoletnich w strzeżonych ośrodkach dla uchodźców w kontekście zasady dobra dziecka

Głosowany wyrok ETPCz dotyczy przedłużenia pobytu armeńskiej rodziny w ośrodku strzeżonym, ubiegającej się przyznanie ochrony międzynarodowej. Trybunał stwierdził naruszenie przez Polskę art. 5 par. 1 (f) Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności. Powtórzył swój pogląd wyrażony w sprawie Bilalova i Inni przeciwko Polsce (skarga nr 23685/14), że: "Różne organy międzynarodowe, w tym Rada Europy, coraz częściej wzywają państwa do szybkiego i całkowitego zaprzestania lub zlikwidowania detencji dzieci w celach imigracyjnych. Trybunał stwierdził, że obecność w ośrodku detencyjnym dziecka towarzyszącego rodzicom będzie zgodna z art. 5 par. 1 (f) tylko wtedy, gdy władze krajowe mogą wykazać, że taki środek ostateczny został zastosowany po sprawdzeniu, że nie można było zastosować żadnego innego środka wiążącego się z mniejszym ograniczeniem ich wolności [...]". Dlatego dodatkowym testem weryfikującym dopuszczalność pobytu małoletnich w ośrodkach strzeżonych mogłaby być "reguła zapomnienia" obecna w polskim ustawodawstwie.

Słowa kluczowe: uchodźcy; detencja w ośrodkach zamkniętych; prawa dziecka; tzw. reguła zapomnienia.