



POSITIVE CARE OBLIGATIONS TOWARDS CHILDREN AND FAMILIES AND PRACTICAL EXAMPLES OF ALTERNATIVES TO DETENTION

BULGARIAN EXAMPLE



LAW ON THE FOREIGNERS IN THE REPUBLIC OF BULGARIA (UNACCOMPANIED MINORS)

- The extreme **vulnerability** of children takes precedence over their immigration status and their **best interests** should be a primary consideration in all actions concerning them
- States should take into account the age and personal situation of the child, and take **adequate** measures and provide **care** and **protection** for their specific needs
- The detention in the pre-removal context of unaccompanied minors in Bulgaria was abolished in 2013
- The authority that issues the order **transfers** the child (**shall notify**) to an employee of the respective Social Support Directorate that takes **protection measures** pursuant to the Child Protection Act (amendment from 2017)
- Children apply for international protection
- When the asylum procedure ends ...
- STORY

ACCOMPANIED MINORS

- Can be detained in SHTAF for max 3 months
- The detention order can be appealed before the respective administrative court
- Usually the court hearing is scheduled after about 3 months (there are cases after 5 months)
- the court have one more month to issue the decision
- Article 5 § 4 of the ECHR requires speedy review of the detention by a national court. The detention measures constitute "deprivation of liberty"
- SHTCF are of "closed" and immigrants detained there through a detention order are not allowed to leave the center while the order is in force
- There is not a prompt review of the detention in SHTAF in accordance with the standards laid down in Article 5 § 4 of the ECHR

RIGHT TO EDUCATION

- The Constitution:
- Art. 53.
- (1) Everyone shall have the right to education.
- (2) School attendance up to the age of 16 shall be compulsory ...
- Bulgaria did not provide for access to education for children in an irregular situation
- lays down the right to education only for asylum-seeking children
- STORY

POLICE PROTECTION

- When the child is left without supervision. It can be for max 48 hours
- The protected child can be placed in a Temporary Residential Centre
- There the child can be 'placed' for up to 15 days. The placement can be prolonged up to 2 months with an approval by the prosecutor
- **ECtHRA. and others v. Bulgaria (application no. 51776/08)**: B. had twice been taken by the police to the temporary residential centre, a facility attached to the Interior Ministry which was similar in nature to a juvenile prison, the Court held that her placement there could be said to amount to a deprivation of liberty ... As Bulgarian law did not provide for any remedy by which B. could have contested the lawfulness of her placement before the courts, the Court concluded that there had been a violation of Article 5 § 4

APPLYING ALTERNATIVES

- The children should not be detained BUT they should not be separated from their parents - **alternative measures for the entire family** (the families to be kept together as far as possible, alternatives to be considered so that detention of children is truly a measure of last resort)
- Families with young children are less likely to abscond (engaged in schooling and other activities)
- So the detention might be disproportionate measure to the aim pursued in light of the absence of any real risk of absconding



THANK YOU

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Right to Childhood Foundation and

BLHR