

# Advocates' Fact Sheet

## Immigration Detention of Children



The European Court of Human Rights has consistently emphasised that children are particularly vulnerable to harm and therefore require extra protection irrespective of their immigration status

**"It is important to bear in mind that the child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal migrant."**

*Abdullahi Elmi and Aweys Abubakar v. Malta § 103; see also Mubilanzila Mayeka and Kaniki Mitunga v. Belgium § 55; Popov v France § 91*



The Court has been clear that the decision to detain a child must not be taken arbitrarily

**"The necessity of detaining children in an immigration context must be very carefully considered by the national authorities."**

*Abdullahi Elmi and Aweys Abubakar v. Malta § 144*



The right to family life not only requires states to work to keep families together, but also to avoid their confinement in detention

**"The Court is of the view that 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."**

*Bistieva and others v. Poland § 85*

**"The essential object of Article 8 is to protect the individual against arbitrary action by public authorities. This creates positive obligations inherent in effective "respect" for family life. States are under an obligation to "act in a manner calculated to allow those concerned to lead a normal family life."**

*Popov v. France § 133*



The best interests of the child are a paramount concern in all decisions concerning the child and require efforts to avoid detaining children, whether alone or with their families

**"A measure of confinement must [...] be proportionate to the aim pursued by the authorities, namely the enforcement of a removal decision in the present case. 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 interest. In this connecting the Court would point out that 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 [...] It can also be seen from international reports that the 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."**

*Bistieva and others v. Poland § 78*

**"Under the international Convention on the Rights of the Child (Article 3) the best interests of the child must be a primary consideration in all actions concerning children. Similarly, the "reception" directive [...], as transposed in the CESEDA legislation, provides expressly that member States must ensure that the child's best interest is a primary consideration. It can also be seen from international reports [...] that the 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".**

*Popov v. France § 141*



Article 3 of the ECHR imposes positive obligations on authorities to protect and care for children, even outside the context of detention centres and facilities

**See, Rahimi v. Greece, children released from custody were not in receipt of any measure to provide accommodation or protect them from violence, such that other acts of exploitation were likely.**

**Article 3 of the Convention must provide effective protection for children, including measures to prevent ill-treatment that authorities know, or should know, about**

*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium § 54*

Table of ECtHR Case Law

Case Name	Citation
A.B. and Others v. France	Application No. 11593/12
A.M. and Others v. France	Application No. 24587/12
Abdullahi Elmi and Aweys Abubakar v. Malta	Application No. 25794/13 and 28151/13
S.F. and Others v. Bulgaria	Application No 8138/16
Bistieva and Others v. Poland	Application No 75157/14
Bubullima v. Greece	Application No. 41533/08
Housein v. Greece	Application No. 71825/11
Kanagaratnam and Others v. Belgium	Application No. 15297/09
Mohamad v. Greece	Application No. 70586/11
Mubilanzila Mayeka and Kaniki Mitunga v. Belgium	Application No. 13178/03
Muskhadzhiyeva and Others v. Belgium	Application No. 41442/07
Popov v. France	Application NO 39472/07 and 39474/04
Rahimi v. Greece	Application No. 8687/08

Legal Basis of ECtHR Cases

	Art. 3	Art. 5.1	Art 5.2	Art. 5.4	Art.8	Art.13	
Abdullahi Elmi and Aweys Abubakar v. Malta	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<b>Key</b> <input type="checkbox"/> ECtHR found a violation <input checked="" type="checkbox"/> ECtHR found no violation <input checked="" type="checkbox"/> ECtHR deemed that the application was inadmissible or did not require separate examination
Mubilanzila Mayeka and Kaniki Mitunga v. Belgium	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		
(a) Bubullima v. Greece				<input type="checkbox"/>			
Rahimi v. Greece	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
Mohamad v. Greece	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Housein v. Greece	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Bistieva and Others v. Poland		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Muskhadzhiyeva and Others v. Belgium	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Kanagaratnam v. Belgium	<input type="checkbox"/>	<input type="checkbox"/>					
Popov v. France	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		
A.M. and Others v. France	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
A.B. and Others v. France	<input type="checkbox"/>	<input type="checkbox"/>					
S.F. and Others v. Bulgaria	<input type="checkbox"/>						

Art 3	Prohibition on torture or inhuman and degrading treatment or punishment
Art 5.1	Right to liberty and security
Art 5.2	Right to be informed promptly upon arrest, in a language which the detainee understands, of the reasons for their arrest
Art 5.4	Right to proceedings to challenge the lawfulness of one's detention
Art 8	Right to respect for private and family life
Art 13	Right to an effective remedy for violations of the ECHR before national authorities

ECtHR considerations: Accompanied Children in Detention

	Last Resort	Proportionality and Necessity	Weight and Relevance Given to a Child's Age	Best Interests of the Child	Alternatives to Detention	Conditions of Detention
Bistieva and Others v. Po-land	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
Muskhadzhiyeva and Others v. Belgium			<input type="checkbox"/>			<input type="checkbox"/>
Kanagaratnam v. Belgium			<input type="checkbox"/>			<input type="checkbox"/>
Popov v. France	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A.M. and Others v. France		<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
A.B. and Others v. France	<input type="checkbox"/>		<input type="checkbox"/>			<input type="checkbox"/>
S.F. and Others v. Bulgaria						<input type="checkbox"/>

ECtHR considerations: Unaccompanied Children in Detention

	Last Resort	Proportionality and Necessity	Weight and Relevance Given to a Child's Age	Best Interests of the Child	Alternatives to Detention	Conditions of Detention
Abdullahi Elmi and Aweys Abubakar v. Malta	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
Mubilanzila Ma-yeka and Kaniki Mitunga v. Belgi-um	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bubullima v. Greece						
Rahimi v. Greece	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		
Mohamad v. Greece	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Housein v. Greece	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		