

The case-law of the European Court of Human Rights on the detention of unaccompanied and separated children

1. Unaccompanied and separated children in administrative detention

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, no. 13178/03, § ..., ECHR 2006-XI
Detention of the second applicant, who was then five years old, for nearly two months in a closed centre for adults.

2nd applicant was very young, an illegal immigrant in a foreign country and unaccompanied; therefore highly vulnerable.

§ 55- in view of the absolute nature of the protection afforded by Article 3 of the Convention, it is important to bear in mind that this is the decisive factor and it takes precedence over considerations relating to the second applicant's status as an illegal immigrant.

Violation of Article 3 in respect of child and her mother in respect of the child's detention - violation of both applicants' rights under Article 3 of the Convention on account of the child's deportation.

Violation of Article 8 in respect of both applicants

Violation Article 5 § 1 (f) -Belgian legal system at the time and as it functioned in this instance did not sufficiently protect the second applicant's right to liberty. Violation of Article 5 § 4.

Rahimi v. Greece, no. 8687/08, § ..., 5 April 2011

15 year old separated boy detained on the island of Lesbos for 2 days in the Pagani closed centre.

Violation of Article 3 in respect of his detention and in respect of the period following detention when he was released but not provided with any help or accommodation (following *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § ..., ECHR 2011).

Violation of 5 § 1 f)

§ 108 : *Enfin, la Cour note que, dans le contexte de sa jurisprudence sur l'article 8 de la Convention et la protection de la vie familiale, elle a déjà admis qu'il existe actuellement un large consensus – y compris en droit international – autour de l'idée que dans toutes les décisions concernant des enfants, leur intérêt supérieur doit primer (Neulinger et Shuruk c. Suisse [GC], no 41615/07, § 135, 6 juillet 2010)*. References to Articles 3 and 37 of the UN 1989 Convention.

Bikir v. Belgium, n° 17161/10 communicated to the parties on 3 March 2012

Unaccompanied minor detained for 5 days in a closed immigration centre.

2. Accompanied children in administrative detention

Muskhadzhiyeva and Others v. Belgium, no. 41442/07, § ..., 19 January 2010

1 month's detention with their mother for 4 children aged 7 months, 3 ½, 5 and 7 years old in the closed centre 127 bis.

§ 58 - The fact that the children were accompanied was not sufficient to exempt the authorities from their duty to protect children and adopt adequate measures by reason of their positive obligations arising out of Article 3.

Violation of Article 3 in respect of the children (not the Mother as she was at least with her children) – medical certificate to show the psychological trauma they experienced - Violation Article 5 § 1 (f) following the reasoning in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*. Complaint under Article 8 declared manifestly ill- founded.

Kanagaratnam v. Belgium, no. 15297/09, § ..., 13 December 2011

4 month's detention of a mother and 3 children the closed centre 127 bis.

Violation Article 3 in respect of children (not Mother) – Court recalls the extreme vulnerability of children which is more important than their illegal residence status. Court must protect children under Art. 3 and adopt adequate positive measures for them. In this case, there was no certificate in respect of the child attesting to particular psychological troubles (as there was in *Muskhadzhiyeva and Others v. Belgium*). But this was not determinative as the Court places the welfare of the children as set out in Article 3 of the UN Convention on the Rights of the Child. Violation Article 5 § 1 (f) following the reasoning in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*

Popov v. France, nos. 39472/07 and 39474/07, § ..., 19 January 2012

Husband, wife and 2 young children (5 months and 3 years)- 15 days administration detention in centre in Rouen-Oissel.

Violation of Article 3 in respect of the children only – conditions of detention were not appropriate for children

Article 5 § 1 (f) in respect of the children, following the reasoning in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*

Violation Article 8- § 142 apparently France is one of 3 countries which systematically detains accompanied minor children.

3. Other relevant principles:

M.S.S. v. Belgium and Greece [GC], no. 30696/09, § ..., ECHR 2011

Court recognises the particular vulnerability of asylum seekers - § 250

Neulinger and Shuruk v. Switzerland [GC], n° 41615/07, §§135-6, CEDH 2010.

General development of the principle of the best interests of the child. See also *Rahimi v. Greece*, § 108 and *Nunez v. Norway*, n° 55597/09, § 84, 28 June 2011