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President of the First Section
European Court of Human Rights

Application no. 40002/22
V.M. and Others v. Poland

**WRITTEN COMMENTS BY A THIRD-PARTY:
THE ASSOCIATION FOR LEGAL INTERVENTION**

I. INTRODUCTION

1. This third-party intervention is submitted by the Association for Legal Intervention (*Stowarzyszenie Interwencji Prawnej*, SIP), pursuant to the leave granted by the President of the First Section of the European Court of Human Rights (ECtHR) under Rule 44 §3 of the Rules of the Court. The case of *V.M and Others v. Poland* concerns a protracted immigration detention of a mother with two minor children. The applicants invoke violations of Article 3, Article 5(1)(f) and Article 8 of the ECHR.

2. SIP is a Polish professionalised non-governmental organization established in 2005 with the aim of combating social exclusion as well as protecting and advancing the rights of foreigners. SIP is providing legal assistance in the guarded centres for foreigners, both directly, during visits in these detention facilities, and remotely. SIP also regularly represent foreigners in domestic detention proceedings (e.g. concerning the extension of detention, release from detention, compensation for unlawful detention) and in immigration detention cases brought before the ECtHR (e.g. ECtHR, *R.M. and Others v. Poland*, no. 11247/18, Judgment of 9 February 2023). Moreover, SIP, with the Helsinki Foundation for Human Rights (HFHR), published two reports concerning conditions of detention in Poland.¹

¹ SIP, HFHR, 'Still Behind Bars', J. Białas, W. Klaus (eds), 2014, available here: <https://interwencjaprawna.pl/wp-content/uploads/still-behind-bars.pdf>, and SIP, HFHR, 'Migration Is Not a Crime', W. Klaus, K. Rusiłowicz (eds), 2013, available here: <https://interwencjaprawna.pl/wp-content/uploads/migration-is-not-a-crime.pdf>

3. The *V.M. and Others* case illustrates the long-standing practice of detaining families with children and victims of violence for immigration purposes in Poland. This third-party intervention focuses on:

1. Conditions of detention in Poland, with a particular focus on children's detention and the access to medical and psychological assistance in detention, and
2. Polish law and practice concerning immigration detention of children and victims of violence.

II. CONDITIONS OF IMMIGRATION DETENTION IN POLAND

4. This part of the intervention aims at providing the Court with the up-to-date information concerning the detention conditions in Poland. In the previous cases concerning immigration detention in Poland, the ECtHR kindly relied on the two reports published by the SIP and HFHR after their monitoring of the guarded centres for foreigners (*strzeżone ośrodki dla cudzoziemców*) conducted in 2012 and 2014.² However, these reports were drafted many years ago and are no longer adequate for assessing immigration detention conditions in Poland. In fact, those conditions have much worsened since 2021.

5. In 2021, the minimum standard for personal living space in the detention centres was decreased to 2 square meters. In consequence, overcrowding has been reported in the detention centres in the recent years.³ The new rules concerning the personal space remain in force even though they breach international human rights standards and they have been unitedly criticized by NGOs and Polish Human Rights Commissioner (*Rzecznik Praw Obywatelskich*).⁴ This new space

<https://interwencjaprawna.pl/wp-content/uploads/2020/06/migration-is-not-a-crime.pdf>.

² ECtHR, *Bistieva and Others v. Poland*, no. 75157/14, 10.04.2018, §§10-16, *Bilalova and Others v. Poland*, no. 23685/14, 26.03.2020, §33; *A.B. and Others v. Poland*, nos. 15845/15 and 56300/15, 4.06.2020, §47; *Nikoghosyan and Others v. Poland*, no. 14743/17, 3.03.2022, §84; *R.M. and Others v. Poland*, no. 11247/18, 9.02.2023, §7.

³ ECRE, *Seeking Refuge in Poland: A Fact-Finding Report on Access to Asylum and Reception Conditions for Asylum Seekers*, April 2023, available here: <https://ecre.org/ecre-fact-finding-report-seeking-refuge-in-poland-access-to-asylum-and-reception-conditions-for-asylum-seekers/>, 26.

⁴ SIP, *Input to the EUAA's Asylum Report*, February 2023, available here: https://interwencjaprawna.pl/wp-content/uploads/2021/01/CSO_input_AR2023-SIP-final.pdf, 8, referring to Human Rights Commissioner, *Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi. Raport z wizytacji Krajowego Mechanizmu Prewencji Tortur*, June 2022, available here:

limitation has been applied in practice also in the guarded centres where minors are detained. For instance, from 1 January to 24 April 2022, it was applied in the centres in Biała Podlaska and Kętrzyn.⁵

6. Accompanied and unaccompanied children continue to be detained in Poland. The detention centres remain – to a great extent – of a prison-like character.⁶ In 2022, the Polish Commissioner for Human Rights stated that the conditions that are provided in the guarded centres are generally not suitable for children.⁷ According to the Commissioner, staying in the Polish immigration detention centres may affect negatively the children’s development and psychophysical state. The Commissioner was informed about the cases of children’s mental health deteriorating in the detention centres so much that they needed to be hospitalized. In practice, the Border Guard rarely releases on its own initiative third-country nationals, including children, even in case of a risk for the life and limb. Moreover, children placed in the guarded centres do not have sufficient access to education.⁸ For all those reasons, the Commissioner appealed to the Polish courts to apply alternatives to detention in case of families with children or unaccompanied minors. If that is not possible, detention should be ordered only for as short period as possible. The Commissioner relied in its letter to the Polish judges on the ECtHR’s rulings concerning immigration detention in Poland.⁹ The Commissioner’s approach to children’s immigration detention was later mirrored in the statement of

<https://bip.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport>, 64-66. See also SIP, *Wsparcie zamiast przemocy*, June 2023, available here: <https://interwencjaprawna.pl/wp-content/uploads/2023/05/wsparcie-zamiast-przemocy-raport-SIP.pdf>, 14.

⁵ Information provided to SIP by the Border Guard Headquarters, 31.01.2023.

⁶ See also *Nikoghosyan and Others*, op. cit., §85.

⁷ Human Rights Commissioner, *Do strzeżonych ośrodków nie powinny trafiać m.in. rodziny migrantów z dziećmi. Marcin Wiącek pisze do polskich sądów*, 2.02.2022, available here: <https://bip.brpo.gov.pl/pl/content/rpo-sady-migranci-strzezone-osrodki-rodziny-dzieci>. See also K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, *AIDA: Poland 2022 Update*, ECRE 2023, available here: https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-PL_2022-Update.pdf, 94.

⁸ See also ECRE, *The Right to Education for Asylum Seekers in the EU*, March 2023, available here: <https://ecre.org/wp-content/uploads/2023/03/Policy-Note-Accessing-to-Education-for-Asylum-Seekers-in-the-EU-March-2023.pdf>, 2; SIP, *SIP’s submission to ECRI*, June 2022, available here: <https://interwencjaprawna.pl/wp-content/uploads/2022/06/ECRI.pdf>, 2.

⁹ Human Rights Commissioner, *Do strzeżonych ośrodków nie powinny...*, op. cit.

the UN Special Rapporteur on the human rights of migrants published upon his visit in Poland in 2022.¹⁰

7. Access to the health care in the guarded centres is hampered. There are not enough doctors providing medical assistance in the immigration detention centres. In the 2022 report, the Human Rights Commissioner revealed that, at the end of 2021, only 1-2 doctors were working in most of the detention centres despite their increased capacity. For instance, two doctors worked in the centre in Biała Podlaska (a capacity of 200 persons); one doctor in the centre in Czerwony Bór (a capacity of 147 persons), and two doctors were available for up to 478 persons in Kętrzyn.¹¹

8. Moreover, detainees struggle to access expert medical assistance.¹² The difficulties in receiving needed health care are reported even in the event of bone fractures or pregnancy.¹³ In 2023, upon her visit in Poland, the UN Special Rapporteur on violence against women and girls, its causes and consequences stated that immigration detention conditions in Poland are 'problematic', particularly for women and children, 'who have inadequate access to health services, including sexual and reproductive health, psycho-social support (...)'.¹⁴ This statement is confirmed by the SIP's practice. For instance, by a case of a family of five from Afghanistan that was detained in Poland for 97 days. Their detention was a traumatic experience for the whole family and amplified bad memories from the country of origin and the Polish-Belarusian border. During the detention in Biała Podlaska, the mother had a miscarriage. She was not provided with an adequate medical care during the pregnancy and prior miscarriage. The compensation for unlawful detention was granted in the first instance in this case.¹⁵

¹⁰ OHCHR, *End of visit statement of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Poland and Belarus (12 – 25 July 2022)*, 28.07.2022, 9.

¹¹ Human Rights Commissioner, *Sytuacja cudzoziemców...*, op. cit., 50-52. See also Amnesty International, *Poland: Cruelty Not Compassion, At Europe's Other Borders*, April 2022, available here: <https://www.amnesty.org/en/wp-content/uploads/2022/04/EUR3754602022ENGLISH.pdf>, 9.

¹² Human Rights Commissioner, *Sytuacja cudzoziemców...*, op. cit., 50.

¹³ SIP, *SIP in Action. Report on the activities of the Association for Legal Intervention (SIP) in 2021, 2022*, available here: <https://interwencjaprawna.pl/wp-content/uploads/2022/06/RAPORT-2022-ENG.pdf>, 13.

¹⁴ UN Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, *Official visit to Poland 27 February – 9 March 2023, Preliminary Findings and Recommendations*, 9.03.2023, 11.

¹⁵ SIP, *We ask for compensation for unlawful detention for a family from Afghanistan*, 4.08.2022, available here: <https://interwencjaprawna.pl/en/we-submit-an->

Moreover, the Rule of Law Institute (RLI) informed in 2023 that pregnant women are routinely detained in Poland. They are not released until the very end of the pregnancy. In 2021, at least two women miscarried in the detention centre in Biała Podlaska. Despite their fragile state after the miscarriage, their detention continued. For instance, as reported by RLI, a pregnant Afghan national was detained for 100 days. Despite that she miscarried in the 65th day, her detention continued for the next month.¹⁶

9. The access to emergency medical assistance in detention centres is also hindered. For instance, in January 2023, an ambulance was called for a third-country national on a hunger strike detained in the centre in Lesznów. There was no medical staff at the time in the centre. The emergency unit was not allowed to enter the detention centre and provide medical assistance to the foreigner.¹⁷

10. Psychological assistance in detention centres in Poland continues to be insufficient: not enough psychologists provide this support. For example, the Human Rights Commissioner informed in its 2022 report that, at the end of 2021, only 2 psychologists worked full-time in the centre in Biała Podlaska (with a capacity of 200 persons, an additional psychologist was also available for 16 hours per month) and only one psychologist was working in the centre in Kętrzyn (while its capacity was at the time 478 persons).¹⁸ Moreover, the psychologists working in the detention centres are often not trusted by detainees.¹⁹ Meanwhile, access to detention centres in Biała Podlaska, Kętrzyn, Lesznów and Wędrzyn for external psychologists has been hampered since 2021. The Border Guard repeatedly denied access to

[application-for-compensation-for-stay-in-guarded-centers-for-foreigners-on-behalf-of-a-family-from-afghanistan/](#).

¹⁶ RLI, *Migrants have the right to have rights – detencja cudzoziemców*, 2023, available here: <https://panstwowpawa.org/wp-content/uploads/2023/01/Detencja.pdf>, 57-58.

¹⁷ See e.g. SIP, *Lack of medical assistance for foreigners in the guarded center for foreigners*, 24.03.2023, available here: <https://interwencjaprawna.pl/en/lack-of-medical-assistance-for-foreigners-in-the-guarded-center-for-foreigners/>.

¹⁸ Human Rights Commissioner, *Sytuacja cudzoziemców...*, op. cit., 44. See also OHCHR, *End of visit ...*, op. cit., 9; UN Special Rapporteur on violence..., op. cit., 11.

¹⁹ Human Rights Commissioner, *Pomoc psychologiczna w strzeżonych ośrodkach dla cudzoziemców – także ze strony NGO-sów. Odpowiedź SG*, 20.10.2022, 22.11.2022, 25.04.2023, available here: <https://bip.brpo.gov.pl/pl/content/rpo-cudzoziemcy-osrodki-pomoc-psychologiczna-ngo-sg-odpowiedz>; ECRE, *Seeking Refuge...*, op. cit., 28.

detention centres to psychologists working in NGOs.²⁰ The insufficiency of psychological assistance provided in the detention centres is well-illustrated by the case of the family with a two-year old child that has been supported by SIP. Their detention lasted almost 6 months despite the poor mental condition of a mother and a child. The best interest of the child and the alternatives to detention were not properly considered. Both the mother and the child were not covered by permanent psychological care, and SIP was denied the possibility of organizing an additional psychological consultation with an independent psychologist for the family. The case is waiting for the communication before the ECtHR.²¹

III. POLISH LAW AND PRACTICE CONCERNING IMMIGRATION DETENTION OF CHILDREN AND VICTIMS OF VIOLENCE

11. This part of the intervention aims at providing the Court with the up-to-date information concerning Polish law and practice concerning immigration detention in Poland, in particular as regards children and victims of violence.

12. Polish law allows for a deprivation of liberty of all accompanied minors (pending asylum and return proceedings) and unaccompanied minors above 15 years old (pending return proceedings). Children are in practice detained in Poland. In 2022, 210 children were detained (10.8% of detainees in 2022).²²

13. The Polish approach to detaining families with children in Poland has been already several times criticized by the ECtHR.²³ The Court recognized the prison-like character of the Polish detention centres, the fact that the applicants' deprivation of liberty was not a measure of last resort, the alternatives were not scrutinized (sufficiently or at

²⁰ SIP, *SIP files a complaint against the refusal to admit psychologists to guarded centres*, 1 July 2022, available here: <https://interwencjaprawna.pl/en/sip-files-a-complaint-against-the-refusal-to-admit-psychologists-to-guarded-centres/>; ECRE, *Seeking Refuge...*, op. cit., 27-28; Human Rights Commissioner, *Pomoc psychologiczna...*, op. cit.; K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, op. cit., 115-116.

²¹ SIP, *We submit a complaint to the ECtHR against unlawful detention of a family with a child*, 27.09.2022, available here: <https://interwencjaprawna.pl/en/we-submit-a-complaint-to-the-ecthr-against-unlawful-detention-of-a-family-with-a-child/>.

²² Information provided to SIP by the Border Guard Headquarters, 28.02.2023.

²³ *Bistieva and Others*, op. cit.; *Bilalova and Others*, op. cit.; *A.B. and Others*, op. cit.; *Nikoghosyan and Others*, op. cit.; *R.M. and Others*, op. cit.

all), and that the proceedings concerning children were not prompt enough resulting in their protracted detention. Numerous violations of Article 5 or 8 ECHR have been found.²⁴ Many reports show that all those problems remain pertinent in Poland.²⁵

14. In practice, children are deprived of liberty automatically, absent a rigorous scrutiny of their individual situation and needs, or of the psychophysical consequences of detention.²⁶ Child's best interest is often not taken into account, or it is concluded that maintaining family unity in detention is in the best interest of the child.²⁷ It is often not investigated (at all or sufficiently) whether a detention is a measure of last resort or whether alternatives to detention should be applied. According to Polish and EU law, alternatives to detention should have precedence, but in practice its application is insufficient, both for adults and children.²⁸

15. Children are also not being detained for as short a period as possible. Cases of detention of accompanied and unaccompanied minors lasting several months or even over a year are often reported.²⁹ According to the Polish Border Guard, in 2022, on average, children were detained for a period of 99 to 138 days (depending on the detention centre in which they were deprived of liberty, e.g. 131 days in Biała Podlaska).³⁰ However, the RLI indicates that the real duration

²⁴ See e.g. *Nikoghosyan and Others*, op. cit., §§85-89.

²⁵ See also ECRE, *Seeking Refuge...*, op. cit., 28.

²⁶ Contrary to e.g. ECtHR, *Minasian and Others v. Moldova*, no. 26879/17, 17.01.2023, §§32-35, 52.

²⁷ Contrary to e.g. *Nikoghosyan and Others*, op. cit., §84.

²⁸ SIP, *SIP in Action...*, op. cit., 20-21; K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, op. cit., 88, 96; RLI, *Migrants...*, op. cit., 48-50; OHCHR, *End of visit ...*, op. cit., 8-9. See also M. Górczyńska and D. Witko, *Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention*, UNHCR and HFHR, 2017, available here: <https://www.unhcr.org/pl/wp-content/uploads/sites/22/2016/12/HFHR-report-on-the-detention-of-children.pdf>.

²⁹ Human Rights Commissioner, *Sytuacja cudzoziemców...*, op. cit., 17 (over 4 months); SIP, *SIP in Action...*, op. cit., 20-21 (8 months, 1.5 year); SIP, *We submit...*, op.cit. (6 months); SIP, *Zadośćuczynienie za niesłuszną detencję trzysobowej rodziny po przemocy*, 25.04.2023, available here: <https://interwencjaprawna.pl/zadoscuczynienie-za-niesluszna-detencje-trzysobowej-rodziny-po-przemocy/> (4 months). See also RLI, *Migrants...*, op. cit., 55; Amnesty International, *Poland...*, op. cit., 6.

³⁰ Information provided to SIP by the Border Guard Headquarters, 28.02.2023.

is in fact hidden due to the manner in which the statistical information is gathered.³¹

16. By law, detention of victims of violence is prohibited. However, in practice, victims of violence are detained in the guarded centres pending asylum and return proceedings.

17. The identification mechanism applied by the Border Guard is considered ineffective and too restrictive. The internal document guiding the Border Guard in the identification of victims of violence is against the Polish and international law (e.g. the Istanbul Protocol), as indicated for many years by the Human Rights Commissioner.³² Moreover, the UN Special Rapporteur on violence against women and girls, its causes and consequences noticed after her visit in Poland in 2023: 'While survivors of torture/trauma and persons with serious mental health issues can be released after the assessment of a psychologist as per the national legislation, this appears not to be implemented in practice.'³³

18. It also is often reported that third-country nationals are detained despite their clear oral and/or written statements that they suffered violence in their country of origin or on route to safety. The Border Guard initiates detention proceedings or courts order detention despite being informed that a person concerned is a victim of violence. For instance, the Human Rights Commissioner noticed in its 2022 report that in the detention centre in Biała Podlaska a Somalian national was detained who suffered violence in the country of origin. Her oral accounts were confirmed by the visible wounds on her body and her mental state. The analysis of the documents confirmed that the foreigner did inform the Border Guard about the violence, but she was placed in detention despite this fact, and no release was planned by the Border Guard at the time of the Commissioner's visit.³⁴

19. As regards the general grounds for detention of asylum seekers specified in the Polish law, they mostly mirror Article 8(3) of the Reception Directive. Asylum seekers are often detained in order to

³¹ RLI, *Migrants...*, op. cit., 56.

³² Human Rights Commissioner, *Sytuacja cudzoziemców...*, op. cit., 25-31; ECRE, *Seeking Refuge...*, op. cit., 28; SIP, *SIP in Action...*, op. cit., 13; SIP, Lambda Warsaw, Global Detention Project, University of Birmingham, *UPR Submission*, March 2022, available here: <https://interwencjaprawna.pl/wp-content/uploads/2021/01/UPR-Poland-2022-SIP-Lambda-GDP.pdf>, 8; K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, op. cit., 114; RLI, *Migrants...*, op. cit., 58.

³³ UN Special Rapporteur on violence..., op. cit., 11.

³⁴ Human Rights Commissioner, *Sytuacja cudzoziemców...*, op. cit., 26-27.

determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a serious risk of absconding of the applicant. In practice though, the detention on this ground tends to be continued after conducting an interview in asylum proceedings and despite no additional steps being taken to obtain information needed in asylum proceedings.³⁵ This practice is contrary not only to the ECHR,³⁶ but also the EU and Polish law. Recently, SIP supported a family detained for 2.5 months for those reasons. The father was only interviewed with a one-month delay, and no other steps were taken. The individual situation of the family was not scrutinized; the best interests of the child were not analysed. The family was eventually given a compensation of PLN 72.500 for an unlawful detention.³⁷ Despite the ruling, the practice in question has not changed.

IV. CONCLUDING REMARKS

20. Until now, the ECtHR decided on immigration detention in Poland in five cases: *Bistieva and Others*, *Bilalova and Others*, *A.B. and Others*, *Nikoghosyan and Others*, *R.M. and Others*.³⁸ All those cases concerned protracted detention of families with children. In all of those cases a violation of Article 5 or 8 ECHR has been found by the Court. Moreover, in the case *Z.E. and Others v. Poland*, concerning detention of domestic violence victims, a mother with four children, the parties reached a friendly settlement.³⁹ In yet another case, concerning the deprivation of liberty of a wartime rape victim from Burundi, the Polish government acknowledge that the applicant was detained in violation of Article 5 ECHR.⁴⁰

21. Despite the clear and strong indication of the ECtHR that the immigration detention of families with children in Poland is not coherent with the standards established under the ECHR, the situation in Poland has not changed, but worsened, in the recent years.

³⁵ See also RLI, *Migrants...*, op. cit., 57.

³⁶ See e.g. *Nikoghosyan and Others*, op. cit., §§70-72.

³⁷ SIP, *Zadośćuczynienie za niesłuszną detencję trzyosobowej rodziny po przemocy*, 25.04.2023, available here: <https://interwencjaprawna.pl/zadoszczynienie-za-niesluszna-detencje-trzyosobowej-rodziny-po-przemocy/>.

³⁸ See fn 2.

³⁹ ECtHR, *Z.E. and Others v. Poland*, no. 4457/18, dec., 1.07.2021.

⁴⁰ ECtHR, *A.A. v. Poland*, no. 47888/19, dec., 29.09.2020.

22. Conditions of detention deteriorated. Now, only 2 m² are allowed per detainee, while 3 m² are a minimum standard according to the Court's established jurisprudence and 4 m² are desirable by the CPT.⁴¹ NGOs and the Human Rights Commissioner agree that children should not be detained in the guarded centres as conditions therein are not suitable.⁴² Access to medical assistance is seriously hampered. Even particularly vulnerable persons, like pregnant women, struggle with accessing a needed health care.⁴³ Psychological support is hardly available and it has been additionally hindered by not allowing NGOs' psychologists to enter detention centres.⁴⁴

23. Children are deprived of liberty automatically, absent a rigorous scrutiny of their individual situation and needs, or of the psychophysical consequences of detention. Best interest of the child and alternatives to detention are often not scrutinized. Children are also not being detained for as short a period as possible.⁴⁵

24. Victims of violence are detained for immigration purposes – against the national law⁴⁶ – due to the lacking or incorrect identification procedures, or by ignoring the information about the violence by the respective authorities.

25. Taking the abovementioned developments into account, it is clear that immigration detention in Poland remains to be incoherent with the ECHR.

On behalf of the Association for Legal
Intervention
Katarzyna Słubik
President of the Board

⁴¹ ECtHR (GC), *Khlaifia and Others v. Italy*, no. 16483/12, 15.12.2016, §§164-167.

⁴² Following the ECtHR's guidance, see *Nikoghosyan and Others*, op. cit., §86.

⁴³ Cf. ECtHR, *Aden Ahmed v. Malta*, no. 55352/12, 23.07.2013, §§97-99.

⁴⁴ Cf. ECtHR, *R.R. and Others v. Hungary*, no. 36037/17, 2.03.2021, §63.

⁴⁵ Cf. ECtHR, *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, 18.11.2021, §§236-239, 254-259; *Bistieva and Others*, op. cit., §§78, 86; *N.B. and Others v. France*, no. 49775/20, 31.03.2022, §§47-53.

⁴⁶ Cf. *Minasian and Others*, op. cit., §40; ECtHR, *Haghilo v. Cyprus*, no. 47920/12, 26.03.2019, §206.