

## **Estonia, Tallinn Circuit Court, Case no. 3-15-2379, Judgement of 23 December 2015**

### Deciding bodies and decisions

- Tallinn Circuit Court (Tallinna Ringkonnakohus), Case no. 3-15-2379, Judgement of 23 December 2015

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### Area of law

Asylum and Immigration Law

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### Subject matter

Asylum – right to liberty and security – possibility of keeping a third-country national in detention after an application for asylum has been made – the rights of a child – detention of vulnerable persons

The case concerned issues of detaining an asylum seeker who travelled with her family to Estonia. The court had to decide whether it was proportionate to detain her and her children with his husband and other persons who travelled with them in the detention centre. In the appeal applicant claimed that the detention centre is not suitable place for under-aged children and the whole family needs to be placed in the open environment. The Applicant referred to the practice of ECtHR (Popov v France, Appl. 39472/07, 19 January 2012; Muskhadzhiyeva and Others v Belgium, Appl. 41442/07, 19 October 2010), where ECtHR established the violation of Art 3 of ECHR in the detention of minors. Also the applicant referred to ECtHR case where the ECtHR stated that the fact that person is refusing to leave the country (in this case the applicant claimed that she do not want to return to his country of origin and wants to stay in Estonia) is not a basis for detaining a person and is a violation of the Art. 5 of ECHR (ECtHR Abdi v United Kingdom, Appl. 27770/08, 9 April 2013).

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### Summary Facts Of The Case

The applicant is an Armenian national (woman, born in 1983) who came to Estonia from Russia in a group consisting of his husband, three under-aged children and two other under-aged persons. The ordinary court granted the Police and Border Guard Board the permit to detain the entire group in the detention centre. In the time of being detained in the detention centre she gave birth to her fourth child. Two months after detaining the group the Police and Border Guard Board applied for the extension of the detention of these persons. In present case administrative court extended the period of detaining the woman born in 1983 and his two under-aged children and

granted a permit to detain his child who was born in the detention centre. In other administrative matters the court also extended the period of detaining his husband and two other under-aged persons who travelled with them.

The Court first interpreted the Art. 36<sup>1</sup>(2)(5) of VRKS according to which an asylum seeker may be detained if it is unavoidably necessary because of a reason to believe that the person has submitted the application for asylum to postpone the obligation to leave or prevent expulsion. The Court found that this Article has to be interpreted in accordance with the Art. 8 (3)(d) of the Directive 2013/33/EU according to which there has to be instituted a proceeding of expulsion which was disrupted by the application for asylum. In this case there was no expulsion proceedings initiated and the presuppositions for applying Art. 36<sup>1</sup>(2)(5) were not completed.

Court cited the Art. 11(2) of the Directive 2013/33 and indicated that the detention of a minor has to be justified only by extraordinary circumstances, for example a serious threat to the public order (suspicion of terrorism, complete impossibility to stay separately from a person who has to be unavoidably detained). Taken into consideration the circumstances of the case there cannot be a considerable risk of absconding. It is not likely that a group who wants to stay together and consists of two adults and six minors (one of them pregnant), continues its journey and starts to hide from authorities. Kept in mind their own wish and the best interests of the children the best solution is not to separate the group. It is not proportionate to keep the group in the detention centre. Even if the family starts to hide themselves and leaves the country the need to protect the Schengen system does not outweigh the little children's and pregnant minor's right to a fostering by the state. Fact that the detention of the minors could be easier for a state cannot be the justification for taking the liberty of a person.

The court decided to release an applicant with her four under-aged children from the detention centre and indicated that the other members of the same group will also be released from the detention centre (in other cases of the same court).

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## Relation to the scope of the Charter

- Art. 6 EU Charter - Right to liberty and security (not explicitly)
- Art. 24(2) EU Charter - The rights of a child (not explicitly)

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## Sources - EU and national law

### EU Law:

- Directive 2013/33/EU Art 8(3), Art 11(2)

### National Law:

- Act on Granting International Protection to Aliens (Välismaalasele rahvusvahelise kaitse andmise seadus, VRKS) of 2005, Art. 36<sup>1</sup>(1),(2)(5), Art. 36<sup>2</sup>(2), Art. 29(1)
  - Child Protection Act (Lastekaitseseadus) of 2002 (void from 01.01.2016), Art. 67(1), Art. 3
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## Sources - ECHR

- Art. 3 ECHR - Prohibition of torture, inhuman and degrading treatment
  - Art. 5 ECHR - Right to liberty and security
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