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Meeting: 1355<sup>th</sup> meeting (September 2019) (DH)

Item reference: Action report (11/06//2019)

Communication from Poland concerning the case Bistieva and Others v. Poland (Application No. 75157/14)

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Réunion : 1355<sup>e</sup> réunion (septembre 2019) (DH)

Référence du point : Bilan d'action

Communication de la Pologne concernant l'affaire Bistieva et autres c. Pologne (Requête n° 75157/14)  
**(anglais uniquement)**

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DGI

11 JUIN 2019

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## ACTION REPORT<sup>1</sup>

Information on measures taken to implement the judgment

in the case of *Bistieva and Others against Poland*

### Case description

*Bistieva and Others v. Poland*, application no. 75157/14, judgment of 10/04/2018, final on 10/07/2018.

The case concerns the authorities' failure to provide sufficient reasons to justify the administrative detention in a secure centre in 2014 for five months and twenty days of the applicant, an asylum seeker from Russia and her 3 minor children, without giving due consideration to possible alternative measures and to the best interests of the children (violation of Article 8).

Ms Bistieva arrived in Poland with her husband and her two children in 2012. The husband applied for asylum for himself and the family but their application was rejected in March 2013 and an expulsion was ordered. The family fled to Germany, where Ms Bistieva had a third child. The German authorities sent her and the children back to Poland in January 2014 and they were placed in the guarded centre for aliens (*Strzeżony Ośrodek dla Cudzoziemców*) in Kętrzyn where they were later joined by her husband. They were released from the centre in June 2014, eventually moving back to Germany.

In its judgment the Court found that even in the light of the risk that the family might abscond, the authorities failed to provide sufficient reasons to justify the detention for five months and twenty days in a guarded centre for aliens, and as a result that there has been a violation of Article 8 of the Convention. The Court, given the reasoning of the domestic authorities' decisions, was not convinced that the Polish authorities had in fact, as they should have, viewed the family's administrative detention as a measure of last resort. Nor had they given due consideration to possible alternative measures, especially in the period of time when the applicants were reunited with their husband and father. The Court also had serious doubts as to whether the authorities had given sufficient consideration to the best interests of the first applicant's three children, in compliance with international obligations.

As concerns the applicants' allegations concerning the violation of Article 5 §§ 1 and 4 of the Convention, the Court rejected the complaints on account of non-exhaustion of domestic remedies. In this context the Court observed that the applicants should have sought redress at domestic level and brought an action for compensation under section 407 of the Aliens Act of 12 December 2013.

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<sup>1</sup> Information submitted by the Polish authorities on 11 June 2019.

## I. Payment of just satisfaction and individual measures

## 1. Details of just satisfaction

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
-	12 000 EUR	-	12 000 EUR
Due on: 10/10/2019			Paid on: 12/09/2018

## 2. Individual measures

On an unspecified date in August 2014 the applicants left for Germany. As submitted by their lawyer, they currently live in Herne (Germany).

*In these circumstances, no other individual measures seem to be necessary.*

## II. General measures

## 1. Legislative changes - introduction of measures alternative to detention into the domestic legal order

On 1 May 2014 a new law concerning foreigners came into force. The new *Aliens Act* of 12 December 2013 replaced the previous *Aliens Act* of 13 June 2003 and amended some other domestic legal acts, including the *Act on granting protection to aliens in the territory of the Republic of Poland* of 13 June 2003 (hereinafter: "the 2003 Act"). The new law introduced into the legal order measures alternative to detention.

According to new legal provisions (Article 88 of the 2003 Act), competent authorities may oblige a foreigner applying for international protection: 1) to report at specified time intervals to a specified Border Guard authority, 2) to deposit a financial guarantee in an amount determined in the decision, 3) to reside at a place assigned in the decision.

Thanks to the specific construction of the legal provisions, in case where there are reasons to detain an alien applying for international protection the Border Guard authority is obliged to assess in the first place whether the application of measures alternative to detention is not sufficient in a given case. According to Article 88a (1) of the 2003 Act, if the application of the measures pointed out in Article 88 (1) is not possible, the applicant or a person on whose behalf the applicant is acting is placed in a guarded centre or detention for aliens.

Current legal provisions respect Article 8 (4) of the *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection*. According to that provision, Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

The implementation of the aforementioned obligation to use an alternative measure is secured by the Border Guard authority which detained the applicant or a person on whose behalf the applicant is acting. The decision concerning alternative measure may be appealed against to a district court having jurisdiction over the Border Guard authority's seat that

issued the decision within 7 days from the delivery of the decision. The court examines the interlocutory appeal within 7 days.

Placement of a foreigner in a guarded centre or detention centre for aliens shall take place merely in cases specifically indicated in the legal provisions and shall be applied as a last resort. The decision concerning the placement of an applicant or a person on whose behalf the applicant acts in a guarded centre or detention centre for aliens shall be adopted by a court at the request of the Border Guard authority that detained them, after the applicant or the person on whose behalf the applicant acts was heard. The domestic court when examining the Border Guard authority's request shall assess the possibility of using alternative measures. The court is also obliged to take into account the best interest of the child. The court shall also notify the applicant or a person on whose behalf the applicant acts in a language they understand about the reasons for the placement in a guarded centre or in a detention centre for aliens and their rights, including the possibility of appealing against the decision and the right to seek help of a lawyer or a legal counsel. Furthermore, pursuant to Article 88a (3) of the 2003 Act, the applicant or a person on whose behalf the applicant acts shall not be placed in guarded centre or detention centre for aliens if the placement could endanger their life or health, their psychophysical state can justify the presumption that they have been subjected to violence, they are unaccompanied minors or people with disabilities.

## 2. Domestic practice

### a. Statistical data

With regard to the above-mentioned legal amendments it should be emphasized that in case of families with children alternative measures are used in the first place.

The following data illustrate the prevalence of the application of alternative measures with respect to foreigners:

	Number of foreigners administratively detained or with respect to whom alternative measure(s) was/were applied	Including		Percentage of the application of alternative measures
		Number of foreigners placed in guarded centres	Number of foreigners with respect to whom alternative measures(s) were applied	
2015	1819 persons	1051 persons	768 persons	42%
2016	2612 persons	1201 persons	1411 persons	54%
2017	3431 persons	1290 persons	2141 persons	62%
2018 (1st half of the year)	1210 persons	582 persons	628 persons	52%

### b. Conditions of stay in guarded centres for aliens

The Government makes every effort to ensure optimal conditions for minors staying in the guarded centres for aliens.

At the beginning of 2013 the Border Guard analysed guarded centres for aliens with respect to the categories of the persons placed therein. On the basis of the analysis of existing living conditions and cooperation possibilities with, for example, school facilities, three guarded centres out of six were chosen as providing condition for placement of children, in particular the guarded centres for aliens in Kętrzyn (families with children and unaccompanied minors), Biała Podlaska (families with children) and Przemyśl (families with children). Those guarded centres for aliens provide for access to education and medical care that includes access to specialists (paediatricians). The children are also given vaccination books.

The infrastructure of guarded centres for aliens with the family profile have been adjusted to the needs of minors. Rooms are equipped with appliances that allow to conduct activities with children (including the youngest ones – for example tables and chairs for children and art supplies for children) and make the way of spending time more attractive. There are playing areas and playgrounds in the walking square.

For each family placed in a guarded centre for aliens a separate living room is designated (the size of the room is suitable for the number of persons placed in it). Between 7 am and 10 pm foreigners can move freely around the entire guarded centre (excluding the administrative rooms) as well as freely use the walking area and recreational facilities installed there.

#### c. Procedures introduced in guarded centres for aliens

In order to standardize the procedures the *Rules of conduct of the Border Guard with respect to foreigners requiring special treatment (Zasady postępowania Straży Granicznej z cudzoziemcami wymagającymi szczególnego traktowania)* were developed and implemented in 2015. The Rules define vulnerable groups that include, among others, children, pregnant women, persons of a different sexual orientation and persons that experienced physical or mental violence. The Rules represent an algorithm for further action when a person with special needs is identified and they establish a system on the basis of which such an identification is carried out. Assistance is provided at various stages, starting with the designation for each foreigner of a social guardian (*opiekun socjalny*) and a return guardian (*opiekun powrotny*) from the first day of their stay. The social guardian is responsible for familiarizing foreigners with the rules governing the guarded centre for aliens and, subsequently, for the direct contact with them and for monitoring the foreigners' state of psychical and mental health. The return guardian is responsible for ongoing and thorough transfer of information to the foreigners about the administrative proceedings conducted in their cases. If necessary, or at the request of the foreigner, psychological assistance (by internal or external psychologists) and specialised medical care shall be provided (including by external specialists and with the possibility of including appropriate therapies)

In 2017 another tool was added to the above Rules in a form of observation sheets in which social guardian, guards and medical staff may include their remarks concerning a foreigner. The goal of the observation sheets is to gather in one place information from different observers that could help in identifying the needs of a foreigner recognised as requiring special treatment.

Furthermore, a policy of protection of children staying in guarded centres from abuse was introduced in cooperation with one of the non-governmental organization. In 2018, in the

framework of that policy the *Intervention procedures in case of hurting children in guarded centres for aliens* were developed and implemented. It is an algorithm of conduct in case of identification of a suspicion of a child abuse in a guarded centre for aliens. Special trainings for the employees of the guarded centres were conducted in connection with the introduction of the above rules. The main goal of those trainings was to make the employees aware of which behaviour should be considered as an abuse and then presenting the developed algorithm.

d. Internal procedures implemented in the Aliens Office (*Urząd do Spraw Cudzoziemców*)

The applications of the applicants placed under detention shall be treated with priority thereby the decision ending the proceedings at issue could be adopted in the shortest time possible. The employees of the Aliens Office prepare weekly reports on cases in which the party is a person deprived of liberty. The reports are submitted to the Head of the Alien Office who may personally monitor the state of proceedings in such cases.

Concluding, the Government wish to underline that that organizational solutions adopted by authorities recognizing the cases of persons in detention (in I and II instance of administrative proceedings) assume that these cases will be prioritized so that their examination time is as short as possible.

3. Translation and dissemination of the judgment

The judgment has been translated into Polish and published on the website of the Ministry of Justice. The translation has been also made available in the HUDOC database.

Moreover, information about the judgment in question has been disseminated among the state authorities dealing with matters relating to foreigners in the context of granting international protection and admitting/denying residence permit. The judgment has been also disseminated among the officials of the Border Guard.

In addition the judgment was disseminated among the employees of the Aliens Office dealing with international protection. They were also familiarized with the content of the judgment and its practical consequences during a training that took place in December 2018.

III. Conclusions of the respondent state

The Government is of the opinion that no further individual measures are necessary in this case and that the general measures adopted are sufficient to conclude that Poland has fulfilled its obligations under Article 46 § 1 of the Convention.