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The recast Reception Conditions Directive, Article 11 foresees additional safeguards and guarantees for vulnerable persons, while minors, particularly unaccompanied ones, should only be detained under exceptional circumstances. UN treaty bodies conduct periodic country reviews and manage individual complaints mechanisms to ensure that detention practices uphold human rights.

In this context, the UN Committee on the Rights of the Child called on Poland to ensure that asylum-seeking children, refugee children, children in situations of migration and families with children are not placed in guarded detention centres.860 The Committee also notified the Polish government (Communication No 3870/2021) about the first case of an unjust placement of foreigners in a guarded centre, which had a direct effect on the deterioration of the parent's health and a negative impact on the condition of the minor children.861

Similarly, the Committee on the Rights of the Child recommended to Switzerland to ensure that authorities in charge of asylum procedures comply with the rights and best interests of the child in all decisions related to the transfer, detention or deportation of any asylum-seeking or refugee child, including by: i) developing a procedure for assessing and determining the best interests of the child in all asylum processes; ii) strengthening coordination between the asylum system and the child protection system and ensuring that child protection professionals are involved in such decisions; and iii) exempting children from the accelerated asylum procedure. It also stressed that all cantons should take measures to prevent the placement of children with adults during police custody, pre-trial detention, administrative detention and youth welfare placement.862

The CPT recommended to Malta to introduce specific measures for vulnerable groups (especially families with children, unaccompanied and separated minors, and women) and called for immediate action to transfer vulnerable people to open centres and out of detention.863

On many occasions, national Ombudspersons continued to stand as the guardians for children in detention. Despite long-standing advocacy by the Ombudsperson in Slovenia and other stakeholders, the National Human Rights Institution (NHRI) highlighted the continued practice of unsuitable accommodation for minors and that practically all minors who are to be returned

were detained in the Postojna detention centre.[864]

The detention of vulnerable applicants was reviewed by the ECtHR in 2021. The court found a violation of the right to liberty as national authorities had not verified that the initial detention was a measure of last resort for which there was no other alternative and they did not consider the minority of the child who was detained with the mother. In addition, the detention of a 4-month-old baby for 11 days was considered as excessive beyond the severity threshold under the ECHR, Article 3.

- 860United Nations, Committee on the Rights of the Child. (2021, December 6). Concluding observations on the combined fifth and sixth periodic reports of Poland. CRC/C/POL/CO/5-6. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%6&Lang=en
- 861Helsinki Foundation for Human Rights | Helsińska Fundacja Praw Człowieka. (2021, February 10). Pierwsza sprawa z Polski dotycząca detencji cudzoziemców przed Komitetem Praw Człowieka ONZ [The first case from Poland concerning the detention of foreigners before the UN Human Rights Committee]. https://www.hfhr.pl/pierwsza-sprawa-z-polski-dotyczaca-detencji-cudzoziemcow-przed-komitetem-praw-czlowieka-onz/; Association for Legal Intervention | Stowarzyszenia Interwencji Prawnej. (2021, March 15). Pierwsza sprawa detencji cudzoziemców przed Komitetem Praw Człowieka [The first case of the detention of foreigners before the Human Rights Committee]. https://interwencjaprawna.pl/pierwsza-sprawa-detencji-cudzoziemcow-przed-komitetem-praw-czlowieka/
- 862United Nations, Committee on the Rights of the Child. (2021, October 22). Concluding observations on the combined fifth and sixth periodic reports of Switzerland. CRC/C/CHE/CO/5-6. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%6&Lang=en
- 863Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2021, March 10). Council of Europe’s anti-torture Committee calls on Malta to improve the treatment of detained migrants. https://www.coe.int/en/web/cpt/-/council-of-europe-s-anti-torture-committee-calls-on-malta-to-improve-the-treatment-of-detained-migrants
- 864European Network of National Human Rights Institutions. (July 2021). National Report on the situation of human rights of migrants at the borders: Slovenia. https://ennhri.org/wp-content/uploads/2021/08/Slovenian-National-Report.pdf

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