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Committee on the Rights of the Child**Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 193/2022*,****

<i>Communication submitted by:</i>	Jas.K.B., C.K.B., M.S.B. and J.K.B. (represented by counsels Mr Maroš Matiaško, Ms Zuzana Pavelková and Ms Alexandra Dubová)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Czech Republic
<i>Date of communication:</i>	22 June 2022
<i>Date of views</i>	14 September 2026
<i>Subject matter:</i>	Child held with her parents and older sister in immigration detention centre instead of open reception facility for asylum seekers.
<i>Procedural issue:</i>	Non-substantiation of claims
<i>Substantive issues:</i>	Best interests of the child; deprivation of liberty
<i>Articles of the Convention:</i>	3, 5, 6(2), 12, 16, 37(a) and (b)
<i>Articles of the Optional Protocol:</i>	7 (e) and (f)

* Adopted by the Committee at its one-hundredth session (1-28 September 2026).

** The following members of the Committee participated in the consideration of the communication: Suzanne Aho, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Timothy Ekesa, Bragi Gudbrandsson, Mariana Ianachevici, Philip Jaffe, Sopio Kiladze, Cephass Lumina, Benyam Dawit Mezmur, Aissatou Alassane Sidikou, Juliana Scerri Ferrante, Zeinebou Taleb Moussa, and Benoit Van Keirsbilck.

1. The authors of the communication are Jas.K.B. (first author), born in 2008, her parents, C.K.B. (second author) and M.S.B. (third author), and her older sister J.K.B. (fourth author), born in 2001, all Afghan nationals belonging to the Sikh religion. The authors claim a violation by the State Party of the first and fourth authors' rights under articles 3, 5, 6(2), 12, 16, 37(a) and (b) of the Convention. The authors are represented by counsel. The Optional Protocol entered into force for the State party on 2 March 2016.

Factual background

2.1 In January 2016, the authors fled Afghanistan due to Taliban attacks and threats of forced conversion and of kidnapping against the children. On an unspecified date in January 2016, the family claimed asylum in Austria. Pending their application for asylum, the family was housed in a metal container. Dissatisfied with this situation, the family left Austria to travel to Germany on 16 March 2019, with the help of smugglers. On 17 March 2019, the family arrived in the Czech Republic, where they were kept locked in a cottage located near the German border by the smugglers. On 20 March 2019, the family was found by the Czech police.

2.2 On 21 March 2019, the adult authors were detained on the basis of decisions of the Regional Directorate of the Police of the Ústí Region for 30 days for the purpose of preparing their transfer to Austria, designated as the responsible State to assess their application for asylum under the Dublin III Regulation. The family was not presented with any feasible alternative to detention, or accommodation in the semi-open facility for asylum-seekers. The first author was not formally detained but accommodated in the Bělá-Jezová detention facility with her family.

2.3 The police recorded 1 January as the date of birth of each family member's respective birth year, the effect of which was to recognize the author's sister as having attained the age of majority (born in 2001), and thereby denying the rights guaranteed to her under the Convention.

2.4 On 9 April 2019, the Ministry of Interior issued a decision on the family's return to Austria. The authorities extended the family's detention by an additional 20 days. On 24 April 2019, the family was returned to Austria. Prior to being returned, the authority operating the detention centre extracted partial payment from the family for costs incurred by their detention in the amount of 34 684 CZK (ca. 1 500 USD), with an outstanding debt of 8 228 CZK (ca. 350 USD).

2.5 On 3 April 2019, the authors challenged the detention decisions in a joint action before the Regional Court in Ústí and Labem, arguing that the first author should not have been detained. The authors maintained that their deprivation of personal liberty did not meet the conditions laid down by law, in particular regarding their conduct (there was no serious risk of absconding arising from their conduct as they cooperated with authorities, did not resist transfer and even expressed willingness to return to Austria), the available alternatives to detention (the authorities should have considered less coercive measures such as placement in a reception centre, instead of detention), and the incompatibility of the detention of a family for immigration reasons with the best interests of the child (de facto detention of a child and failure to prioritize child protection). On 15 April 2019, the Regional Court dismissed their action.

2.6 On 7 May 2019, the authors filed an appeal against this decision, supplemented on 7 February 2020. In their appeal (cassation complaint) to the Supreme Administrative Court, the authors reiterated and developed the arguments they had already raised, focusing mainly on family life (interfered with their right to family life, given that it involved a family with children), detention conditions (conditions in the detention facility Bělá-Jezová were inappropriate, especially for children), the suitability of detention (the detention facility was not an appropriate place for a family with a minor child), and the failure to use an alternative – the reception centre Příjímací středisko). The Supreme Administrative Court dismissed the appeal on 17 April 2020 finding that the authors raised general and hypothetical objections about their detention, not substantiating individual harm sufficiently.

2.7 The authors appealed further to the Constitutional Court on 22 June 2020, which dismissed it on 22 June 2021. At this stage of the proceedings, the authors also brought the

specific claim that the older daughter might legally still have been a minor (17 years) at the time of the detention.

The complaint

3.1 The first author maintains that the State party has violated her rights under articles 3, 5, 6(2), 12, 16 and 37(a)–(d) of the Convention by detaining her for 34 days and by failing to consider alternatives to closed detention. She claims that the detention was imposed solely based on the family's migration status and for the purpose of a transfer under the Dublin Regulation, without being motivated by, or compatible with, the best interests of the child. The authorities failed to treat her best interests as a primary consideration, limiting their assessment to detention conditions and the preservation of family unity, without a genuine evaluation of the impact of detention on her physical, psychological and emotional well-being, development, and rights. They further failed to consider non-custodial alternatives, such as voluntary return, financial guarantees or placement in open reception facilities, resorting instead to the most restrictive measure.

3.2 The first author argues that her detention amounted to inhuman and degrading treatment within the meaning of article 37(a), given the inherent harm caused by the deprivation of liberty of children, the length of the detention, and the prison-like environment. She submits that immigration detention of children is *per se* incompatible with the Convention, regardless of accompanying conditions, and that her detention caused her distress, fear and harm exceeding the minimum threshold of severity. She also claims a violation of article 37(b), arguing that her deprivation of liberty was arbitrary, not used as a measure of last resort, excessive in duration, and not carried out with due diligence, particularly given the family's cooperation and willingness to return to Austria. Once no risk of absconding existed, the continued detention amounted to detention in bad faith.

3.3 The first author further claims that she was subjected to violations of her rights to liberty, family life and development, and that her views were never sought, contrary to article 12. The judicial review of her detention was procedurally deficient due to a limited and formalistic assessment of the best interests of the child and the absence of any meaningful opportunity for her to express her views. Detention can also be considered punitive in nature, including due to the costs incurred by the family. Finally, she argues that her case reflects a systemic issue of the routine detention of migrant families with children in the State party.

3.4 The authors also argue a violation of the elder sister's (fourth author's) right to benefit from the guarantees of the Convention. They submit that she was wrongly treated as an adult due to an inadequate and inaccurate age determination process, notwithstanding her proximity to minority and possible minor status. As a result, she was excluded from child-specific safeguards, including the assessment of her best interests and the right to be heard. The authors contend that, given her vulnerability, dependency on her parents, and transitional stage of development, she should have been afforded protection equivalent to that granted to children, and that her detention also gave rise to the same violations of articles 3, 5, 6(2), 12, 16 and 37 of the Convention.

State party's observations on admissibility and merits

4.1 On 2 February 2023, the State party explained that the authors were apprehended in March 2019 on its territory without valid travel documents or residence permits, despite having pending asylum claims in Austria. Their statements confirmed that they had voluntarily left Austria—where they had lived in a reception centre and were receiving schooling and social benefits—intending to travel irregularly to Germany with the help of smugglers. On this basis, the police initiated the Dublin transfer procedure and ordered the detention of the adult family members under the Act on the Residence of Foreign Nationals, citing a well-founded risk of absconding given their previous disregard of asylum-related obligations and their attempts to transit illegally. The authorities found that no less coercive measures (e.g., reporting duties or financial guarantees) could be effectively applied because the family had no place of residence in the Czech Republic and no intention of remaining there. The minor child was not formally detained, but the parents requested her placement with them; therefore, the family was accommodated together in the Bělá-Jezová detention centre, the only closed facility adapted for families with children.

4.2 The Regional Court upheld the detention, finding that the decisions adequately considered the best interests of the child, primarily through preserving family unity, and that the Bělá-Jezová facility offered tailored conditions including access to schooling, medical care, psychological assistance, and reduced security elements. The Regional Court found the reception centre was not a realistic alternative because its use for detained families had been only an emergency response during the migration crisis situation, which no longer existed (therefore the exceptional practice should not continue) and standard detention in Bělá-Jezová was considered sufficient and appropriate. The detention was extended to allow completion of the Dublin transfer procedure and lasted a total of 34 days, after which the family was transferred to Austria, where they were later granted international protection. The State party submits that the authorities acted lawfully, proportionately, and in compliance with the child's best interests as interpreted in international jurisprudence.¹

4.3 As to the Cassation and Constitutional Proceedings, the State party submits that the Supreme Administrative Court rejected the authors' cassation complaint after finding that the authorities had duly established that no less restrictive measure than detention could ensure the family's availability for their Dublin transfer to Austria. Although acknowledging that the minor child had been de facto deprived of liberty, the Court held that this resulted inevitably from the detention of her parents, as no lawful alternative accommodation existed for a child in their situation. The Court endorsed the reasoning that placement in an open reception centre was legally impossible because the family were not asylum applicants in the Czech Republic, and it found the authors' objections regarding the facility's security features unsubstantiated. It upheld that the Bělá-Jezová centre was the only facility adapted for families with children and that the authorities had complied with the strict requirements governing the detention of minors, examining their best interests and concluding that family unity and the lack of viable alternatives justified their placement.²

4.4 The Constitutional Court subsequently dismissed the authors' constitutional appeal as manifestly unfounded, determining that the detention was neither arbitrary nor disproportionate. It affirmed that the serious risk of absconding had been sufficiently demonstrated by the authors' prior conduct—leaving Austria where they had stable reception conditions and attempting to reach Germany irregularly—and that this justified detention as a last resort. The Court accepted that the best interests of the child had been adequately considered, including through maintaining family unity and placing the family in a facility specifically adapted to children. It found no incompatibility with the European Court of Human Rights' case law, distinguishing the present case from precedents where violations were linked to prolonged detention or grossly inadequate conditions and concluding that the relatively short duration and adapted environment at Bělá-Jezová did not meet that threshold.³

4.5 The State Party has provided an overview of the relevant domestic law. Czech law empowers the police to detain foreign nationals who have entered or remained in the country irregularly, though initial police detention cannot exceed 48 hours. The Act on the Residence of Foreign Nationals sets conditions for lawful stay, provides for alternatives to detention (such as reporting duties or financial guarantees), and restricts their use where the individual

¹ See e.g. *A.B. and Others v. France* (CRC/C/90/D/51/2018), paras. 8.3–8.5, where the Committee underscored that detention of children for migration-related purposes is incompatible with their best interests and must be avoided even when aimed at maintaining family unity, and also European Court of Human Rights, *Tarakhel v. Switzerland* (GC, no. 29217/12), paras. 118–122, emphasising the need for individualised assessment of risks to children and adequacy of reception conditions in transfer or detention contexts.

² See, e.g., *CRC, A.M. v. Switzerland* (CRC/C/79/D/26/2017), paras. 10.6–10.10, affirming that deprivation of liberty of children may occur de facto when parents are detained and no alternative exists. See also CRC General Comment No. 6 (2005), paras. 61–63, requiring a demonstration that detention of children is a measure of last resort and that suitable care arrangements have been duly considered.

³ Cf. ECtHR, *Kanagaratnam and Others v. Belgium*, no. 15297/09, paras. 64–69 (2011), distinguishing violations linked to poor conditions, family separation, and extended detention periods. See also ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, paras. 107–110 (2016), emphasising that violations typically arise from either excessive duration or clearly inadequate conditions in facilities unsuited to children.

intends to abscond or cannot provide an address. Detention for Dublin transfers requires a serious risk of absconding, defined with reference to prior conduct, illegal stay, attempts to evade transfer, or incapacity to depart voluntarily; families with children may be detained for up to 90 days. The law also regulates material standards in detention centres, including accommodation, medical care, schooling, and child-specific activities.

4.6 Domestic jurisprudence confirms that minors may exceptionally be detained with their parents in migration contexts when no adequate alternative exists and when family unity and the child's best interests are duly considered. In particular, the Constitutional Court's 2017 judgment upheld the placement of young children at Bělá-Jezová, finding that the facility was adapted for families, conditions did not amount to ill-treatment, and that detention—though not ideal—did not violate constitutional or international prohibitions on degrading treatment in the circumstances.⁴

4.7 The State party maintains that the Convention does not apply to the fourth author as she was already 18 at the time of detention, a fact consistently confirmed by official documents, the authors' own statements, and uncontested domestic proceedings.

4.8 As regards the first author, the State party submits that her 34-day detention complied with article 37 of the Convention: it was lawful, non-arbitrary, strictly necessary to prevent absconding under the Dublin procedure, and imposed only after assessing alternatives, none of which were feasible. The detention took place in a facility specifically adapted for families with children, offering education, health care, leisure activities and reduced security features. The authorities and domestic courts explicitly assessed the best interests of the child, prioritising family unity and limiting detention to the shortest period required. Distinguishing the case from relevant CRC and ECtHR jurisprudence involving younger children, longer detention, substandard conditions or viable alternatives, the State party submits that there was no violation of article 37, read alone or in conjunction with article 3 of the Convention.

4.9 As regards the claims under article 16 of the Convention, the State party first argues that the family-life complaint raises no issue distinct from the Article 37 claims and therefore does not require separate examination. Alternatively, it submits that there was no violation of Article 16. The family remained together throughout the period of detention, was housed in the same accommodation, and family unity was expressly preserved. Even assuming detention constituted an interference with family life, the Government maintains that it was lawful, pursued the legitimate aim of preventing irregular migration and ensuring the Dublin transfer, and was proportionate in light of the conditions and limited duration of detention.

4.10 As regards the claims under Articles 5, 6(2) and 12 of the Convention, the State party submits that these allegations were never raised before the domestic courts, either expressly or in substance. It therefore argues that these parts of the communication should be declared inadmissible for failure to exhaust domestic remedies. In the alternative, it contends that they do not raise any issues separate from those already examined under Articles 3 and 37 or, in any event, disclose no violation.

Authors' comments on the State party's observations on admissibility and the merits

5.1 On 2 December 2024, the authors submitted their comments on the State party's observations regarding the admissibility and merits of the communication.

5.2 The authors emphasise that they cooperated fully with the State party authorities at all stages. The parents consistently expressed regret for leaving Austria, willingness to return immediately, and acceptance of the Dublin transfer, even refraining from appealing the transfer decision. They provided information about the smuggler and offered material assistance to the police. In their view, nothing in their conduct justified a finding of risk of absconding. They also strongly contest the State party's portrayal of Bělá-Jezová as a child-appropriate facility, describing it instead as a remote, prison-like detention centre marked by fencing, razor wire, constant surveillance, restricted movement, confiscation of

⁴ Cf. Constitutional Court, judgment III. ÚS 3289/14 (10 May 2017), paras. 58–60, assessing detention conditions for children at Bělá Jezová and CRC General Comment No. 6 (2005), paras. 61–63, on exceptional circumstances permitting deprivation of liberty of children in migration contexts.

phones and money, limited communication with the outside world, and little privacy. Families with children were not fully separated from other detainees, could not cook independently, and remained subject to strict security regimes, which the authors argue created fear and distress, particularly for children.

5.3 Regarding their own detention, the authors note that during the first days they were held in a building without access to the children's centre or social support, and that the first author then aged 11, did not meaningfully attend school despite compulsory education requirements. Leisure activities outside the centre never occurred, and the possibility of outings was illusory. The family was required to pay for its detention, resulting in significant deductions and ongoing debt, which the authors describe as humiliating. The detention had a serious emotional impact on all family members: both daughters cried frequently, the minor daughter struggled to adapt and showed signs of distress, and the parents—illiterate, traumatised, and unfamiliar with European systems—were unable to support their children adequately. The older daughter assumed an adult role as the family's main communicator, adding further strain. The authors conclude that the detention aggravated pre-existing trauma from Taliban persecution and flight, causing anxiety, fear, and helplessness incompatible with the rights and best interests of children under the Convention.

5.4 The authors argue that international human rights law reflects a clear normative divide with respect to immigration detention of children. While UN treaty bodies – led by the Committee on the Rights of the Child – have consistently affirmed that immigration detention of children is inherently incompatible with the Convention and violates the best interests principle, European frameworks still formally permit child detention in narrowly defined exceptional circumstances.⁵ States frequently rely on this lower threshold to normalize detention and dilute safeguards such as the last-resort principle, the shortest-appropriate-period requirement and genuinely child-friendly conditions.

5.5 Relying on the CRC Committee's General Comments, joint General Comments with the CMW Committee and its recent Views, the authors maintain that immigration detention of children is never permissible, not even as a measure of last resort, and that detention with parents for reasons of family unity remains incompatible with Article 37 of the Convention.⁶ Detention is said to inherently harm children's physical, mental and developmental wellbeing and therefore violates the best interests principle.

5.6 The authors further argue that the Czech Republic knew or ought to have known of this standard well before the events at issue. Since at least 2011, multiple UN treaty bodies have repeatedly called on the State party to end immigration detention of children, prohibit *de facto* detention with parents and ensure non-custodial alternatives.⁷ Despite this, detention of children continues as a routine practice rather than an exceptional measure.

5.7 The authors submit that the elder daughter should be recognised as a victim under the Convention because the Czech authorities failed to properly assess her age and wrongly treated her as an adult during detention. Although her Austrian identification card recorded her date of birth as 1 January 2001, the authors contend that this date was merely indicative. In the absence of precise information and official documentation, the Austrian authorities administratively recorded the date of birth as 1 January, a common practice in asylum procedures that may artificially increase a person's recorded age. Given this context and her

⁵ Committee on the Rights of the Child, Day of General Discussion on the Rights of Children in the Context of International Migration (2012), para. 78 and European Court of Human Rights, *A.M. and Others v. France*, no. 24587/12, judgment of 12 July 2016.

⁶ Committee on the Rights of the Child and Committee on Migrant Workers, Joint General Comment No. 22 / No. 3 (2017), paras. 5 and 11, Committee on the Rights of the Child and Committee on Migrant Workers, Joint General Comment No. 23 / No. 4 (2017), paras. 7–12 and Committee on the Rights of the Child, *E.B. on behalf of E.H. et al. v. Belgium*, communication No. 55/2018, Views of 3 February 2022, paras. 13.9–13.12.

⁷ Committee on the Rights of the Child, Concluding Observations on the Czech Republic (2011), para. 66; Committee against Torture, Concluding Observations on the Czech Republic (2018), paras. 20–21; and Human Rights Committee, Concluding Observations on the Czech Republic (2019), paras. 28–29.

proximity to the age of majority, there was a real possibility that the elder daughter was still a minor at the time of detention, which should have triggered child-specific safeguards.⁸

5.8 The authors contend that the authorities should have conducted an age assessment *ex officio*, particularly in light of strong indications that the recorded date of birth was approximate. By relying uncritically on the Austrian document and making no further inquiries, the authorities failed to apply international standards governing age determination, including the presumption of minority and the benefit of the doubt. This resulted in the fourth author being questioned, searched and detained under adult procedures, thereby depriving her of protection under the Convention.⁹

5.9 In response to the State party's argument that the fourth author confirmed her age and raised the issue only at the constitutional stage, the authors stress their extreme vulnerability as undocumented asylum seekers, their lack of legal awareness, language barriers and limited access to effective legal assistance during earlier proceedings. They submit that the duty to assess age rested with the authorities, particularly in migration-control contexts involving adolescents close to adulthood. By raising the issue before the Constitutional Court, the authors maintain that domestic remedies were sufficiently exhausted, in line with the Committee's case law on the purpose of admissibility requirements.¹⁰

5.10 The authors emphasise that children aged 15–18 are particularly at risk of misidentification and under-protection in migration contexts and that States must ensure prompt, child-friendly and culturally sensitive age-assessment procedures. In situations of residual uncertainty, individuals must be presumed to be minors and treated accordingly.¹¹ The authors conclude that the fourth author was, or should have been presumed, a minor at the time of detention and therefore qualifies as a victim of the alleged violations, rendering her complaints admissible.

5.11 The authors dispute the relevance of the State party's argument that the conditions of detention were suitable for children. They submit, as a matter of principle, that no closed immigration detention centre can ever be appropriate for children, since such facilities are designed to deprive individuals of liberty. In their view, investing in the "humanisation" of detention centres cannot substitute the obligation to develop community based, noncustodial alternatives. In any event, the authors reiterate that the actual conditions of detention and the restrictive regime aggravated the distress suffered by the first and fourth authors, contributing to anxiety, fear and humiliation.

Third-party intervention

6.1 On 5 October 2023, the International Commission of Jurists, the AIRE Centre, the Dutch Council for Refugees, and the European Council on Refugees and Exiles submitted a third-party intervention, following the leave to intervene granted on 15 September 2023.

6.2 The interveners argue that international law establishes an absolute prohibition of immigration detention of children, including when they are accompanied by their families, grounded in Articles 3 and 37 of the Convention. Drawing on Joint General Comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC Committee, they stress that the "last resort" exception in Article 37(b) cannot apply in migration contexts, as detention is inherently

⁸ See Committee on the Rights of the Child, Joint General Comment No. 22 / No. 3 (2017), paras. 5 and 11 (obligation to identify children promptly in migration procedures) and Committee on the Rights of the Child, Joint General Comment No. 23 / No. 4 (2017), para. 3 (risk of diminished protection for children aged 15–18).

⁹ See Committee on the Rights of the Child, General Comment No. 6 (2005), paras. 31 and 33 (duty to identify and protect children in migration contexts) and Committee on the Rights of the Child, General Comment No. 7 (2005), para. 36 (benefit of the doubt and presumption of minority in age assessment).

¹⁰ *Y.M. v. Spain*, (CRC/C/78/D/8/2016), paras. 8.2–8.3 (purpose of admissibility and exhaustion of domestic remedies).

¹¹ See Committee on the Rights of the Child, General Comment No. 14 (2013), paras. 6 and 39 (best interests as a primary consideration, including in procedural decisions) and Committee on the Rights of the Child, Joint General Comment No. 23 / No. 4 (2017), paras. 3 and 10 (age assessment, presumption of childhood, and heightened vulnerability).

incompatible with the child's best interests. This position is reinforced by Committee's jurisprudence in *E.H. et al. v. Belgium* and *R.H. v. Belgium*,¹² where the Committee found violations of Article 37, read alone and in conjunction with Article 3, in cases involving the detention of children with their families.

6.3 The interveners situate this approach within broader international and regional standards, including the findings of the UN Special Rapporteur on Torture¹³ that such detention is never necessary and may amount to ill-treatment, and the consistent jurisprudence of the European Court of Human Rights, which has emphasized the "extreme" vulnerability of child migrants¹⁴ and found that their detention often breaches article 3 European Convention on Human Rights.¹⁵ The Court has further clarified that children's best interests must prevail over migration control objectives and that detention is arbitrary where alternatives are not considered,¹⁶ while family unity cannot justify detention but instead requires non-custodial solutions for the entire family.¹⁷

6.4 In parallel, the interveners emphasize that States are under a positive obligation to implement non-custodial, community-based alternatives to detention, consistent with the Committee's standards, ECHR guarantees (Articles 3, 5 and 8), and EU law requirements on necessity, proportionality, and prior consideration of alternatives, as reflected in the case law of the Court of Justice of the European Union.¹⁸ They also underline the centrality of procedural guarantees, including the child's right to be heard under Article 12 of the Convention, access to information, and legal representation, as essential components of any best interest's determination and migration procedure.

6.5 With respect to age assessment, the interveners submit that it must be strictly regulated, non-routine, and guided by the presumption of minority and the benefit of the doubt, as affirmed in Joint General Comments No. 3 and No. 4 (2017) and Committee's jurisprudence against Spain.¹⁹ They stress that age assessment should be undertaken where serious doubt persists and must follow a holistic, multidisciplinary approach, rather than relying on intrusive and unreliable medical methods with wide margins of error. The ECtHR judgment in *Darboe and Camara v. Italy* (2022) is cited to confirm that the presumption of minority forms an integral part of the protection of private life under Article 8 ECHR and must be accompanied by robust procedural safeguards, including legal assistance and informed participation. Ultimately, the interveners also argue that flawed or unnecessary age assessments risk depriving children of their rights and exposing them to detention and other harms, thereby potentially resulting in violations of Articles 3 and 37 of the Convention.

State Party's observations on the third-party intervention

7.1 The State party rejects the interveners' assertion of an absolute prohibition on immigration detention of children, maintaining instead that Article 37 of the Convention does not impose a categorical ban. It argues that the Committee's own practice demonstrates a case-by-case assessment, taking into account factors such as the child's age, the duration and conditions of detention, the circumstances of the case, and whether alternatives were considered. In the State Party's view, detention may be compatible with the Convention if it is lawful, non-arbitrary, necessary, proportionate, limited in time, and attentive to the child's best interests. This interpretation, it submits, is consistent with broader international and regional law, including the jurisprudence of the ECtHR and EU standards, which also permit detention under strict safeguards rather than prohibiting it outright.

7.2 Regarding alternatives to detention, the State Party accepts that States are obliged to consider non-custodial measures but contends that this obligation was fulfilled in the present case. It emphasizes that domestic courts do assess alternatives and may overturn detention

¹² See CRC/C/89/D/55/2018 and CRC/C/89/D/73/2019.

¹³ See A/HRC/28/68; A/HRC/37/50.

¹⁴ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, *Popov v. France*.

¹⁵ *Muskhadzhiyeva v. Belgium*, *M.D. and A.D. v. France*.

¹⁶ *Rahimi v. Greece*.

¹⁷ *Popov v. France*, paras. 140–141.

¹⁸ e.g. *Al Chodor*, C 528/15.

¹⁹ *N.B.F. v. Spain*, *A.L. v. Spain*, *J.A.B. v. Spain*, *R.K. v. Spain*.

decisions where this has not been done. However, in the authors' situation, the authorities concluded—based on their conduct and risk of absconding—that no less coercive measure would have been effective, and that detention was therefore justified.

7.3 On procedural rights, the State party challenges again the admissibility of the claim under article 12 of the Convention, arguing non-exhaustion of domestic remedies and lack of substantiation. In any event, it submits that the right to be heard was respected: the adult authors were interviewed with interpretation, the minor's interests were represented by her father, the authors were legally represented throughout, and they consented to written court proceedings.

7.4 Finally, on age assessment, the State Party broadly accepts the interveners' general principles—that such procedures should not be routine and should only occur where doubts arise—but argues they are irrelevant on the facts. It maintains that no age assessment was required because the fourth author consistently identified herself as 18, and this was supported by available documentation without contradiction. Since no doubt existed as to her majority, the authorities had no obligation to apply the presumption of minority or conduct further verification. The State party therefore concludes that its approach was consistent with applicable standards and reiterates its position that the communication should be found inadmissible or, alternatively, dismissed on the merits.

Issues and Proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

8.2 The Committee notes the State party's argument that the fourth author cannot be considered a victim within the meaning of the Convention, as she had allegedly reached the age of majority at the time of the events. At the same time, the Committee notes the authors' submission that, in light of the absence of reliable documentation, the identical recording of dates of birth for all family members, and their specific cultural background, the State party should have conducted an ex officio age assessment and applied the presumption of minority. The Committee also observes the authors' argument that, given their vulnerability, language barriers and limited access to legal assistance, the issue of age determination could only be raised effectively at the constitutional stage. In these circumstances, and in the absence of any challenge by the State party to the exhaustion of domestic remedies regarding this part of the complaint, the Committee considers that article 7 (e) does not constitute an obstacle to the admissibility of the authors' claim regarding the fourth author.

8.3 Regarding the authors' claims under article 12 of the Convention relating to the fact that the first author has not been heard, the Committee notes that the authors challenged the detention decisions before the Regional Court, subsequently lodged a cassation complaint before the Supreme Administrative Court, and finally submitted a constitutional appeal before the Constitutional Court, which was dismissed. However, it also notes the State party's contention that the authors have not raised this allegation before the domestic courts, either expressly or in substance. In light of this, the Committee considers that the authors have not exhausted available and effective domestic remedies within the meaning of article 7 (e) of the Optional Protocol regarding this part of the complaint.

8.4 The Committee also notes the authors' claims under articles 5, 6(2) and 16 of the Convention. However, on the basis of the information before it, the Committee considers that the authors have not provided sufficient arguments or evidence to substantiate, for purposes of admissibility, how the facts of the case would give rise to distinct violations of these provisions, beyond the claims already raised under articles 3, 12 and 37 of the Convention. In particular, the Committee observes that the authors have failed to demonstrate how the family's detention for 34 days would have per se violated the first and fourth authors' rights to development and family life. Nor have the authors indicated how this detention would have amounted to a violation of the general provisions contained in article 5 of the Convention regarding the State party's duty to respect the responsibilities, rights and duties

of parents. Accordingly, the Committee declares this part of the communication inadmissible under article 7 (f) of the Optional Protocol for lack of sufficient substantiation.

8.5 However, the Committee considers that the authors' claims under articles 3, and 37(a) and (b) of the Convention, in relation to the de facto detention of the first and fourth authors for reasons related to their migration status and the decisions issued ordering their parents' detention, have been sufficiently substantiated for the purposes of admissibility. Accordingly, it declares these claims admissible and proceeds to their consideration on the merits.

Consideration of merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

9.2 The Committee notes the authors' claims that the first and fourth authors were detained for 34 days in the Bělá-Jezová detention centre because of their and their parents' migration status, in conditions incompatible with their needs and best interests, and that such detention caused them significant psychological harm. It further notes the State party's argument that the detention was lawful, necessary to prevent absconding and carried out in a facility adapted for families with children.

9.3 The Committee recalls its jurisprudence that the detention of a child because of their or their parents' migration status constitutes a violation of children's rights and is contrary to the principle of the best interests of the child, given the harm inherent in any deprivation of liberty and the negative impact that immigration detention can have on children's physical and mental health and on their development. It also recalls that, in the context of immigration, the possibility of deprivation of liberty as a measure of last resort is not applicable, and that such deprivation of liberty is generally disproportionate and therefore arbitrary within the meaning of article 37 (b) of the Convention.²⁰ In this light, the Committee has affirmed that "children should never be detained for reasons related to their or their parents' migration status and States should expeditiously and completely cease or eradicate the immigration detention of children." and that "any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice."²¹

9.4 In the present case, the Committee observes that the detention of the first and fourth authors was de facto imposed on them for the purpose of their transfer under the Dublin procedure and was thus based solely on their migration status. The Committee notes that, while the first author was not herself subjected to a formal detention order, she and the fourth author were placed in a closed detention center and faced the same restrictions as adults held in the centre, including restrictions on their movement. It further observes that their detention lasted 34 days and that the authors had expressed their willingness to return voluntarily to Austria. The Committee notes that the assessment conducted by the domestic authorities focused primarily on the preservation of family unity and the alleged suitability of detention conditions. However, the Committee recalls that, where the best interests of the child require maintaining family unity, this does not justify the detention of the child but rather requires the adoption of non-custodial solutions applicable to the family as a whole.²²

9.5 The Committee notes that the authorities' assessment of the best interests of the child was limited and did not address the inherent harm of detention on children or meaningfully consider non-custodial measures that could also preserve the family unity, nor did it demonstrate how the children's interests were weighed against other considerations, as required under article 3 of the Convention. 9.6 In these circumstances, the Committee finds that the children's deprivation of liberty amounted to arbitrary detention in violation of

²⁰ Committee on the Rights of the Child, *E.H. on behalf of E.H. et al. v. Belgium*, (CRC/C/89/D/55/2018), paras. 13.9–13.12; *K.K. and R.H. on behalf of A.M.K. and S.K. v. Belgium*, (CRC/C/89/D/73/2019), paras. 10.9–10.11.

²¹ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, (CMW/C/GC/4-CRC/C/GC/23), para.5.

²² See CMW/C/GC/4-CRC/C/GC/23, para. 11.

article 37 (b) of the Convention, read alone and in conjunction with article 3. Taking into account the harm inherent in the deprivation of liberty of children and its negative impact on their physical and mental well-being and development, the Committee further considers that such detention, in the circumstances of the present case, is incompatible with article 37 (a) of the Convention.

9.7 The Committee further notes the authors' claim that the State party failed to properly assess the age of the fourth author, treating her as an adult without conducting an age assessment procedure despite indications that she may have been a child given that her date of birth was approximate. It recalls that States parties have an obligation to promptly identify children in migration contexts and to ensure that, where there is reasonable doubt as to age, the individual is afforded the benefit of the doubt and treated as a minor pending appropriate assessment. The Committee observes that the entire family's dates of birth were recorded identically and that no additional steps were taken to verify the age of the fourth author. It considers that such circumstances should have prompted the authorities to conduct a more thorough and culturally sensitive age assessment. By failing to do so and by not applying the presumption of minority, the State party deprived the fourth author of the protection measures guaranteed to children under the Convention, including safeguards related to deprivation of liberty and the assessment of her best interests. The Committee therefore concludes that the State party violated the rights of the fourth author under article 3 of the Convention, read in conjunction with article 37 of the Convention.

9.8 The Committee, acting under article 10 (5) of the Optional Protocol on a communications procedure, is of the view that the facts before it disclose a violation of the rights of the first and fourth authors enshrined in articles 3 and 37 (a) and (b) of the Convention.

10. Consequently, the State party should provide the first and fourth authors with adequate compensation for the violations of their rights and reimbursement of the costs of their detention. The State party should also take all necessary measures to prevent similar violations in the future. In particular, it should ensure that children are not deprived of their liberty due to their or their parents' migration status and that non-custodial solutions are available to preserve family unity. The State party should further ensure that, when there is reasonable doubt about a person's age, a prompt, child-sensitive, and culturally appropriate age assessment is conducted, with the benefit of the doubt and the presumption of minority applied pending its outcome.

11. Pursuant to article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the measures it has taken to give effect to the Committee's Views. The State party is also requested to include information about such steps in its reports to the Committee under article 44 of the Convention. Lastly, the State party is requested to publish these Views and to disseminate them widely.