ACRiSL NETWORK NEWSLETTER

JULY 2023

The ACRiSL project was originally intended to conclude in **August 2023**. However, it is now **planned to continue the ACRiSL Network and newsletter for another year**. This is so that the community of practice that has been developed around child Rights strategic litigation can continue to engage and collaborate. **We will be in touch with future plans** about events and other planned Network activities in **September 2023**.

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PROJECT NEWS

Research

- Aoife Nolan, Ann Skelton, and Karabo Ozah, under the auspices of the **ACRiSL** project, authored 'Child Rights Strategic Litigation: Key Principles for Climate Justice Litigation' (ACRiSL, 2023), a resource aimed at climate justice litigators.

The principles seek to show how child rights are being, and can be, integrated into climate justice strategic litigation practice, with a focus on four key stages of CRSL decision-making: (1) the scoping, planning and design of litigation; (2) the operationalisation of litigation; (3) follow-up to litigation, including implementation and dissemination; and (4) extra-legal advocacy (political advocacy and other campaigning, media work and communications).

The principles and other resources developed by the **ACRiSL** project, including the 'Advancing Child Rights-consistent Strategic Litigation Practice' CRSL practice report, are available here.

- The **ACRiSL** project has produced a series of **four** '**Toolkits for Children and Practitioners**', developed with our Child and Youth Advisory Group (CYAG). The CYAG are children and young people based in the UK and South Africa who have been working with the project

around strategic litigation and barriers to using the law in order to develop tools that might help overcome those barriers.

The toolkits have been **designed for use by children who are involved in or interested in bringing child rights strategic litigation**. They can also be **used by lawyers and others seeking to support children** through the strategic litigation process.

Each of the four toolkits explores one of four key stages in CRSL:

- Toolkit 1: The **Scoping, Planning and Design** of Child Rights Strategic Litigation
- Toolkit 2: **Operationalising** Child Rights Strategic Litigation
- Toolkit 3: **Follow-up** to Child Rights Strategic Litigation
- Toolkit 4**: Extra-Legal Advocacy in Child Rights Strategic Litigation (communications, the media and campaigning**)

Alongside the toolkits, we also created four animated **explainer videos**, each approximately four minutes-long. These animated explainers give some additional information and background to each accompanying toolkit, to explain to children directly the purpose and value of the toolkits. Our hope is that these toolkits can serve as empowerment tools to increase children's engagement in and understanding of strategic litigation, while providing practical tips and ideas for children and practitioners alike.

The toolkits and accompanying animated explainer videos are available here.

Past Events

❖ On 6 June 2023, **ACRiSL** held its end-of-project event: **'Advancing Child Rights Strategic Litigation: Ways Forward'.** Recordings of all the sessions for this event are available here.

The event marked the end of our three-year global research collaboration bringing together partners from advocacy and academia to work on child rights strategic litigation. In addition to **ACRiSL** project partners, the workshop featured a superb line-up of speakers from academia, advocacy and practice across multiple regions. During the workshop, we had sessions focused on key themes addressed by the work done throughout the life of the project:

- Bringing a child rights lens to bear on CRSL Practice – Speakers for this session included:
    - Aoife Nolan - *University of Nottingham, UK / President, European Committee of Social Rights*
    - Bruce Adamson - *Commissioner for Children and Young People Scotland (2017-2023), UK*
    - Bharti Ali - *Executive Director, HAQ: Centre for Child Rights, India*
    - Conor O'Mahony - *Professor of Constitutional Law and Child Law / Director, Child Law Clinic, University College Cork, Ireland*

- Putting children's rights at the heart of climate justice - Speakers for this session included:
    - Karabo Ozah - *Director, Centre for Child Law, University of Pretoria, South Africa)*
    - Tessa Khan - *Executive Director, Uplift, UK*
    - Sejong Youn - *Attorney/Director, Plan1.5, South Korea*
    - Ida Edling (*Aurora, Sweden*) and Anna Rogalska Hedlund (*Lawyer, Sweden*)

- Supporting child participation in child rights strategic litigation - Speakers for this session included:
    - Christina Nomdo - *Western Cape Commissioner for Children, South Africa*
    - *Members of the ACRiSL Child and Youth Advisory Group*, including Johnlee Plaatjies, Keshon Smith, Liyanda Sokuyeka and Vimbai Watambwa

- Pushing the boundaries in CRSL on migration - Speakers for this session included:
    - Chiara Altafin - *Research Manager, Global Campus of Human Rights, Italy*
    - Neha Desai - *Senior Director of Immigration, National Center for Youth Law (NCYL), USA*
    - Delphine Rodrik - *Border Justice section, European Center for Constitutional and Human Rights (ECCHR)*
    - Thandeka Chauke - *Head, Statelessness Project, Refugee and Migrant Rights Programme Lawyers for Human Rights, South Africa*

- Pushing forward a community of practice in CRSL - Speakers for this session included:
    - Cheryl Milne - *Executive Director, David Asper Centre for Constitutional Rights, Faculty of Law, University of Toronto*
    - Pedro Hartung - *Executive Director, Alana Foundation, Brazil*
    - Helen Stalford - *Professor of Law, School of Law and Social Justice, University of Liverpool. Download Slides*

❖ On 28 March 2023, **ACRiSL** held its sixth Network event on, **'Exploring 'Wins' in Child Rights Strategic Litigation.'** A recording of the event is available here.

The event consisted of a public panel discussion in which a panel of experts who have worked on CRSL in different national and legal contexts explored the following questions: (1) What is a 'win' in child rights strategic litigation? How do we define it? How might our understanding of what constitutes a 'win' in a particular case change over the short, middle and long-term?; (2) What kinds of orders/remedies contribute to effective 'wins' in CRSL?; and (3) How do we account for cases that lose in court but succeed in bringing about the desired legal or social change in practice?. Speakers included:

- Benoit van Kiersbilck – *Director, Belgian Section of the Defence for Children / Member, UN Committee on the Rights of the Child*
- Neha Desai – *Senior Director of Immigration, National Center for Youth Law (NCYL)*

- Delphine Rodrik – *Border Justice section, European Center for Constitutional and Human Rights*

The speakers focused on the opportunities and challenges they have experienced in terms of their work around 'wins' (and otherwise) in CRSL. They highlighted some of the key issues and lessons that can be drawn from those experiences, both in terms of litigation strategy and advocacy more broadly. This was followed by a Q&A discussion with participants. Network members then joined a private session where attendees shared experience and discussed opportunities and challenges faced in terms of work around 'wins' (and otherwise) in CRSL.

❖ On 3 March 2023, **ACRiSL**, together with the Children and Young People's Commissioner Scotland (CYPCS), and the European Network for Ombudspersons for Children (ENOC) held a webinar on **'Putting Strategic Litigation into Action for National Human Rights Institutions (NHRIs)'**. A recording of the event is available here.

The webinar marked the formal launch of the CYCPS's Children's Rights Strategic Litigation Toolkit. The Toolkit has been designed to ensure that the CYPCS uses its powers in a way that is consistent with the Commissioner's role to promote and safeguard children's rights, and in compliance with the United Nations Convention on the Rights of the Child (UNCRC). It was authored by Shauneen Lambe (Impact) and Aoife Nolan (Nottingham), drawing on the research of the **ACRiSL** project, and was carried out with the support of an ESRC Impact Acceleration Account grant. This event used the Toolkit as a starting point for a broader discussion of the potential of NHRIs to carry out work on strategic litigation focused on advancing children's rights. Speakers included:

- Salvör Nordal – *Chairperson, ENOC / Ombudsman for Children, Iceland*
- Aoife Nolan – *Co-Director, Human Rights Law Centre, University of Nottingham / ACRiSL project*
- Shauneen Lambe – *Director at Impact Law for Social Justice / ACRiSL project*
- Nick Hobbs – *Head of Advice and Investigations, Office of the Children and Young People's Commissioner Scotland*

Find out about our previous events on CRSL-related issues here.

New additions to the ACRiSL Case-Law Database

A key objective of the project is to map existing CRSL practice. This entails gathering and collating information on who is doing or has done CRSL, on which child rights-related topics, where, and before which bodies.

Some of the cases recently added to the **ACRiSL** Case-Law Database are:

- Baby 'A' (Suing through the Mother E A) & another v. Attorney General & 6 others [2014] eKLR, Petition No. 266 of 2013 – Kenya

Discrimination – right to identity– sex

- Civil Association for Equality and Justice (ACIJ) against Government of the City of Buenos Aires (Ministry of Education) and others, EXP 8849/2019-0 CUIJ – Argentina

  Disability (children with) – right to education – equality & non-discrimination – standing
- Miller v Alabama; Jackson v. Hobbs No. 10–9646 (and No. 10–9647) US Supreme Court 25 June 2012 – United States of America

  criminal justice – death penalty – deprivation of liberty
- Moyo v Attorney General of Malawi [2009] MWHC 83 – Malawi

  Criminal justice – deprivation of liberty – due process rights – prisoners
- Mudzuru & Another v Ministry of Justice, Legal & Parliamentary Affairs (N.O.) & Others (Const. Application No. 79/14, CC 12-15) [2015] ZWCC 12 (20 January2016)CCZ 12/2015 – Zimbabwe

  Child marriage – discrimination – best interests – gender

OTHER CRSL CASES

Argentina

Asociacion Civil por la Igualdad y la Justicia contra GCBA y otros sobre amparo - educación-otros, CUIJ: EXP J-01-00048188-9/2019-0 Actuación Nro: 1554211/2022.

In June 2022, the Court issued judgment declaring unconstitutional the local government's failure to monitor, evaluate, supervise and sanction the discriminatory practice of privately run mainstream schools which denied enrolment to children and adolescents on the basis of their disability. The case concerns a collective complaint brought by the civil association Asociación Civil por la Igualdad y la Justicia (ACIJ) on behalf of children who had been denied enrolment in private schools for presenting some form of disability. Prior to this decision, the Court had already ordered precautionary measures to be taken by the local government at the request of the applicant. In its judgment, the Court directed the City Government to implement positive action measures to effectively counteract the structural inequality experienced by children with disabilities. The City Government should do so in compliance with the constitutional and international law provisions projected in the body of law, in particular the CRC (Articles 3, 23, 29), the CRPD (Article 24) and the General Comment No. 4 on the right to inclusive education.

Read a case note on this decision on the ACRiSL CRSL Caselaw Database here.

Read more on the case (in Spanish) here.

Australia

CRU by next friend CRU2 v. Chief Executive Officer of the Department of Justice [2023] WASC 257

The Supreme Court of Western Australia found three young detainees were subjected to 'solitary confinement on a frequent basis' and were unlawfully locked in their cells at Banksia Hill Detention Centre and Unit 18 (detention centres established under the *Young Offenders Act 1994*) for prolonged periods. The relevant regulations authorise confinement of detainees to their quarters as a way of maintaining good government, good order or security of a detention centre and stipulate that a detainee whose confinement is for 12 hours or longer is entitled to at least one hour of exercise each six hours during 'unlock hours'. These procedures were not followed. The periods of confinement in question were not imposed as punishment for the commissions of detention offences but rather resulted from 'rolling lockdowns', the practice of confining detainees in their cells during those hours when they would otherwise be allowed to leave their cells and engage in educational or recreational activities. Detainees are then released on a unit by unit or cell by cell basis for brief periods only before being confined again. One of the applicants was not allowed out of her cell and denied a shower for nearly two days, which led her to self-harm. The judge also highlighted one example where a boy was confined to his cell for more than 20 hours a day for 23 out of the 31 days in July 2022. The court stated that, 'subjecting young people — children — to solitary confinement on a frequent basis is not only inconsistent with the objectives and principles of the [Young Offenders] Act but also with basic notions of the humane treatment of young people'. The judge granted orders, effectively preventing staff from denying the inmates exercise and confining them without appropriate authorisation.

Read more on the case here.

Canada

Mathur v. His Majesty the King in Right of Ontario, 2023 ONSC 2316

On 14 April 2023, the Ontario Superior Court issued judgement dismissing this case challenging the government of Ontario's climate target for 2030. The plaintiffs, seven young climate leaders backed by lawyers from Ecojustice and Stockwoods LLP, challenged the policy on the grounds that the government's actions will harm young Ontarians and future generations and has violated their Charter rights to life, equality, and security of person. They argued that the weak target will allow more greenhouse gas emissions to be emitted, further contributing to dangerous climate change-related impacts such as heatwaves, infectious diseases, floods, and fires.

Despite the result, this decision has significant positive aspects that provide reason for optimism as this legal challenge continues through the courts. While the application was dismissed, meaning the court did not find that Ontario's target was unconstitutional and did not order the government to set a new science-based target, the decision cleared some major

hurdles to set an important precedent for climate litigation in Canada. Justice Vermette agreed with the applicants on several key points, including:

- **The constitutional challenge brought in this case is justiciable**. This means that Canadian courts can hear and decide Charter-based cases that challenge specific legislation or State action – such as climate targets and plans.
- **Ontario's target 'falls severely short' of what the scientific consensus requires, and this increases the risk to Ontarians' life and health**. This deprives Ontarians of their section 7 rights to life and security of the person under the Charter.
- Justice Vermette **rejected Ontario's arguments that its emissions were globally insignificant**, recognizing that 'every tonne of CO2 emissions adds to global warming and leads to a quantifiable increase in global temperatures that is essentially irreversible on human timescales.'
- The decision follows the trend of using the Supreme Court of Canada's decision in the carbon pricing reference case to summarize the facts on climate change. The judge **endorsed the goal set out in the Paris Agreement to keep warming below 1.5 degrees Celsius**, and the applicants' expert evidence on the impacts of climate change on Ontarians.
- The decision **broadly accepts the science set out in reports by the Intergovernmental Panel on Climate Change (IPCC)**, while **criticizing Ontario's evidence**. In her decision, Justice Vermette stated: 'I find that the IPCC reports are a reliable, comprehensive and authoritative synthesis of existing scientific knowledge about climate change and its impacts. I reject any suggestion to the contrary by Ontario's experts … whose credentials do not measure up to those of the IPCC.'

The case is significant because, for the first time in Canadian history, a court recognized that climate change has the potential to violate Charter rights and gave the youth the greenlight to proceed to a full hearing. The plaintiffs now intend to appeal this decision, taking it to Ontario's Court of Appeal.

Read more on the case here.

Poland

Court of Appeal in Warsaw, judgment of March 1, 2023, II Aka 487/21

The Court awarded compensation to a family of three unlawfully placed in the guarded centre for foreigners for a period of two and a half months. By law, they should not have been detained because they were victims of violence. The Court of Appeal criticised the fact that the first-instance court did not consider the necessity to protect the best interests of the child and that the proceedings were not conducted with due diligence and without undue delay. Moreover, the family was placed in the guarded centre to gather information needed in the asylum proceedings, but for over 2 months only one interview was conducted, and no further activities were even planned. Thus, after this interview, the detention could no longer be said to be needed for gathering information.

Read more on the case here.

United States

Juliana et al. v. United States et al

On 1 June 2023, U.S. District Court Judge Ann Aiken ruled in favour of the youth plaintiffs' request to amend their complaint in the *Juliana* case, allowing their landmark federal constitutional climate claims to proceed to trial. This constitutional climate lawsuit was filed in 2015 by 21 young Americans asserting that, through the government's affirmative actions that cause climate change, it has violated the youngest generation's constitutional rights to life, liberty, and property, as well as failed to protect essential public trust resources. Over eight years after the youth plaintiffs originally filed the case, Judge Aiken's decision paved the way for them to provide evidence in open court of the unconstitutionality of the U.S. government's actions knowingly worsening the climate crisis. The People v. Fossil Fuels coalition submitted a petition to the Department of Justice on 20 June urging Attorney General Garland to end opposition to the *Juliana* case and allow it to finally proceed to trial. The petition was signed by more than 255 organizations and over 50,000 individuals. Despite this outpouring of support, the U.S. Department of Justice filed yet another motion to dismiss the case on 22 June 2023, and that motion is currently pending before the court.

Read more on the case here.

European Court of Human Rights

R.M. and Others v. Poland (Application no 11247/18)

This case concerned a family who had been transferred to Poland from Germany under the Dublin III Regulation. The mother and three children were placed in the guarded centre for foreigners for approximately 7 months. During their stay, the psychophysical condition of one of the children significantly deteriorated, which eventually resulted in the release of the family from detention. The European Court of Human Rights (ECtHR) found violations of Article 5 §1 and §4 of the European Convention on Human Rights (ECHR) in respect of the child applicants (and of Article 5§4 with regard to their mother). The Court noted that alternatives to detention were not scrutinized in this case and that the detention was therefore not a measure of last resort. National authorities should have acted as quickly as possible in order to avoid an unnecessary prolonging of the detention. Moreover, in the court proceedings, the applicant did not receive the Border Guard's motions for the extension of the period of the family's detention, nor could she participate in the hearing, which made it impossible for her to undertake any defence before the first-instance court. According to the ECtHR, in proceedings concerning the extension of detention, foreigners must be informed about its legal basis as well as the legal and actual reasons for the applicants' deprivation of liberty in a way that gives them a fair opportunity to defend themselves before the court. The Court awarded compensation of EUR 20.000.

Read more about the case (in Polish) here.

Updates on CRSL before the courts

Held et. al v. State of Montana et. al (Cause No. CDV-2020-307, Montana First Judicial District Court, Lewis and Clark County

This is the first ever youth-led climate trial in the United States. Over the course of the trial, which took place from 12-20 June 2023, experts explained how Montana's once clean and healthful environment is experiencing unprecedented degradation due to climate change. The young plaintiffs further described how this degradation negatively affects their physical and mental health as well as their cultural identity and dignity. Their accounts were supported by expert testimony from children's health specialists. In addition, the plaintiffs' attorneys presented the court with scientific evidence indicating that in order to secure a stable climate system, thereby ensuring plaintiffs' constitutional rights, the court must declare a judicial standard limiting the atmospheric concentration of carbon dioxide to no more than 350 parts per million by 2100. During closing arguments, plaintiffs' attorney highlighted the stories of the individual youth Plaintiffs before presenting the court with an urgent call to action: 'Today, before you are 16 young Montanans who are relying on this court to grant them necessary, equitable relief. This court can and should declare their equal right to a clean and healthful environment, dignity, health, safety, and happiness. And this Court can and should enjoin any state action or law that violates Plaintiffs' fundamental rights. In this ruling, Plaintiffs find relief and hope in their future in this great state of Montana.'

Read more on the case here.

Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP) Third-Party Intervention in V.M. and Others v. Poland (Application No. 40002/22)

In January 2023, the ECtHR communicated the case of *V.M. and Others v. Poland* which concerns the detention of a pregnant Armenian citizen and her two children in the Guarded Centre for Foreigners in Biata Podlaska. The family spent many months in immigration detention, despite the fact that they are victims of violence, their mental state deteriorated over time, and the pregnant applicant had a miscarriage during detention. In their complaint to the ECtHR, the family alleges that their rights under Article 3 (prohibition of torture, inhuman or degrading treatment or punishment), Article 5 (right to liberty and personal security) and Article 8 (right to respect for family life) ECHR have been violated. The SIP submitted a third-party intervention (TPI) stressing the fact that the case demonstrates the long-standing practice in Poland of detaining victims of violence and families with children for immigration purposes. The TPI highlights conditions of detention in Poland, with a particular focus on detention of children and inadequate access to medical and psychological assistance in detention. SIP also highlight Polish law and practice concerning immigration detention of children and victims of violence.

Read more about the TPI (in Polish) here.

Helsinki Foundation for Human Rights (HFHR) amicus curiae opinion in *V.M. and Others v. Poland (Application No. 40002/22)*

On 19 June 2023, the HFHR submitted an amicus curiae opinion to the ECtHR in the pending case of *V.M. and Others v. Poland*, which concerns the placement of a family with minor children (in this case a mother and two minor children) in a guarded centre for foreigners. In this case, the Foundation presented arguments similar to those it had raised earlier in its position on the enforcement of the *Bistieva* judgment, which, in the Foundation's view, highlights the arbitrary use of detention by the authorities and the frequent disregard of the interests or welfare of the child in cases involving deprivation of liberty. In the Foundation's opinion, an example of the misunderstanding of the interest of the child can be found precisely in the *V.M.* case. In one of the decisions issued in this case at domestic level, the district court found that placing children in a guarded centre with their parent is aimed at 'protecting their rights and interests' and is thus justified by 'the principle of family integrity and the welfare of minors'. According to the HFHR, however, the court overlooked the fact that the application of a non-custodial measure to all family members (an alternative to detention) would also respect the integrity of the family, and only then would the interests and welfare of the minors be duly protected.

M.S.T and Others v. Poland (Application no 40464/22), communicated on 5 April 2023

This recent ECtHR communication concerns a married couple with a three-year-old child who spent almost six months in the guarded centre for foreigners in Ktrzyn. The applicants allege that their detention in Poland was incompatible with domestic law and the ECHR. Most importantly, given the severity of the mother's and child's mental health conditions, they argue that they should never have been placed in the guarded centre. They further argued that such a long period of detention led to the deterioration of their health, in particular that of the child who began to develop anxiety and stomach problems. The hardship of the stay in the guarded centre was intensified by the lack of adequate psychological care for the family, including the refusal to consult an independent external psychologist and the lack of a child psychologist in the centre. The family also complained about the poor conditions of their stay in the guarded centre, including having to live in a room size of less than 4 m2 per person, lack of protection from the summer heat, restriction of outdoor activities, personal inspection upon admission to the centre which violated their dignity, and a failure to provide any privacy to conduct their private and family life.

Read more about the case here.

NETWORK MEMBER PUBLICATIONS

- Members of the European Children's Rights Unit at the University of Liverpool have recently released a report, 'Promoting Children's Rights in the European Court of Human Rights: The Role and Potential of Third-Party Interventions', which examines the nature,

scope and effects of Third-Party Interventions (TPIs) in advancing children's rights in cases that come before the European Court of Human Rights (ECtHR).

The report presents the findings of an 18-month review of existing ECtHR decisions (by the Chamber and Grand Chamber) concerning children with a view to: a) identifying and mapping third party interventions at ECtHR level; b) evaluating the impact or 'added value' of TPIs in advancing children's rights; and c) assessing whether TPIs could be used more effectively and widely as a mechanism to advance children's rights at ECtHR level. The report provides recommendations which support effective and child-focused interventions by NGOs, academics, or other interested groups.

The full report, executive summary and child-friendly version of the report can be accessed here.

- The Helsinki Foundation for Human Rights (HFHR) has submitted a communicationto the Council of Europe Committee of Ministers on the execution of the ECtHR judgment in *Bistieva and Others v. Poland (Application no. 75157/14)*

On 16 June 2023, the HFHR submitted a communication on the execution of the ECtHR judgment in the *Bistieva* case, pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. HFHR is of the view that Poland has so far failed to implement the ECtHR recommendations. In *Bistieva*, the ECtHR held that the detention of woman and her three minor children in a guarded centre for foreigners for more than five months violated the right to respect for family life guaranteed by Article 8 ECHR. The Court held that the child's best interests cannot be limited to confining children with their parents in guarded centres. According to the Court, the Polish authorities must ensure that placing a family with children in a detention centre is always a last resort. The Court found that the Polish authorities had not done everything they should have done to prevent the family from being placed in detention. The authorities did not make an effort to find non-custodial measures which are alternatives to detention that would, on the one hand, secure the migrants' stay in Poland and, on the other hand, protect the best interests of the children and the family, as Poland is obliged to do under international law (including the UN Convention on the Rights of the Child or the EU Charter of Fundamental Rights).

HFHR contends that Poland has still not complied with obligations stemming from this judgment. Detention is still not being applied as a measure of last resort and the best interest of a child is rarely considered by the authorities deciding on detention, which leads to disproportionate interferences with the right to respect for family life. Contrary to its international obligation, Poland does not detain children for the shortest possible period. Moreover, conditions in detention centres need to improve with regard to the special situation of children, particularly when it comes to medical and psychological assistance. HFHR urges the Committee of Ministers to request that Poland: (1) introduce the principle on detention of parents/guardians with children and UAM as a last resort into domestic law; (2)

require border authorities to take into account the interests of the child when considering detention; (3) ensure that vulnerable persons, including children, are promptly and appropriately identified and not deprived of their liberty; and (4) ensure that detainees, in particular children and minors, have access to appropriate healthcare and psychological services adapted to their age and needs.

Read more about the communication (in Polish) here.

- The Association for Legal Intervention (*Stowarzyszenie Interwencji Prawnej*, SIP), together with the Rule of Law Institute (RLI), submitted a communication to the Council of Europe Committee of Ministers on the execution of the ECtHR judgment in *M.K. and Others v. Poland (Application nos. nos. 40503/17, 42902/17 and 43643/17)*

In February 2023, the Association for Legal Intervention (*Stowarzyszenie Interwencji Prawnej*, SIP), together with the Rule of Law Institute (RLI), submitted a communication on the execution of the ECtHR judgment in the case of *M.K. and Others v. Poland*, pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. In *M.K.*, a case involving 8 minor children and their parents the ECtHR held that Poland's refusal of asylum applications and summary removal of asylum seekers to Belarus with no effective remedy available violated Articles 3 and 13 ECHR, and Article 4 of the Protocol no. 4 to the ECHR. These findings have been repeated in multiple subsequent judgment of the ECtHR against Poland. Despite this clear disapproval of the practice of not allowing entry to asylum seekers, including child asylum-seekers, the situation of asylum seekers approaching the official check points located at the Polish-Belarusian border has not improved since the *M.K.* case. Some asylum seekers are still denied entry to Poland, their cases are not individually examined, and they are collectively expulsed to Belarus.

In this submission, SIP and RLI shared the most recent information concerning the situation at the Polish-Belarusian border, highlighting the lack of implementation of the general measures required by the *M..K* judgment, and the humanitarian crisis at the Polish-Belarusian border as a result of pushbacks of third-country nationals from Poland to Belarus. They call on the Committee of Ministers of the Council of Europe to demand full and effective execution of the M.K. judgment, in particular as regards general measures, and urge Polish authorities to refrain from the practice of pushing third-country nationals (including children) back to Belarus, and to respect the principle of non-refoulement at the Polish-Belarusian border, both at the regular and irregular border crossings.

A description of the communication (in Polish) is available here.

Read more about pushbacks at the Polish-Belarusian border here and here.