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## Praksis

### **Emneord: Dublin, Artikel 12 (Udstedelse af opholdstilladelse eller visa), Dublin - Asylproceduren, Dublin - Modtageforhold**

#### **Land: Polen**

Nævnet stadfæstede i maj 2023 Udlændingestyrelsens afgørelse om overførsel til Polen i medfør af udlændingelovens § 48 a, stk. 1, 1. pkt., jf. § 29 a, stk. 1, jf. Dublinforordningen, vedrørende en familie med et mindreårigt barn, der var meddelt visa til Polen. Sagen blev behandlet på skriftligt grundlag. Advokaten henviste som begrundelse for, at klagerens sag skulle behandles i Danmark, blandt andet til risikoen for frihedsberøvelse samt detentionsforholdene for familier med mindreårige børn i Polen. Efter en gennemgang af sagen, udtalte Flygtningenævnet blandt andet: ” Det fremgår af udlændingelovens § 48 a, stk. 1, 1. pkt., at påberåber en udlænding sig at være omfattet af § 7, træffer Udlændingestyrelsen snarest muligt afgørelse om afvisning eller overførsel efter reglerne i bl.a. kapitel 5 a. Det fremgår af dette kapitel, jf. bestemmelsen i § 29 a, stk. 1, at en udlænding kan afvises eller overføres til en anden medlemsstat efter reglerne i Dublinforordningen. Flygtningenævnet har lagt til grund, at klagerne henholdsvis [i sommeren og efteråret] 2022 har fået udstedt visa i Polen med en gyldighed på 365 dage. På den baggrund og efter sagens oplysninger i øvrigt finder Flygtningenævnet, at Polen som udgangspunkt er forpligtet til at modtage klagerne, jf. Dublinforordningens artikel 12, stk. 2, og at Polen dermed er ansvarlig for at behandle klagerens ansøgning om international beskyttelse. Polen har i overensstemmelse hermed den [i efteråret] 2022 accepteret at modtage klagerne i medfør af den nævnte bestemmelse i Dublinforordningen. Klagerne har navnlig gjort gældende, at deres asylsag skal behandles i Danmark efter Dublinforordningens artikel 17, stk. 1, idet de har et mindreårigt barn og dermed er en særlig sårbar familie, der ved en overførsel til Polen ikke har adgang til passende indkvarteringsforhold. Klagerne har videre gjort gældende, at de i Polen risikerer langvarig frihedsberøvelse under kritisable forhold. Flygtningenævnet finder, at der ikke er grund til at antage, at forholdene på de almindelige modtagecentre i Polen kan anses for behæftet med væsentlige mangler. Af de foreliggende baggrundsoplysninger kan der bl.a. henvises til AIDA’s seneste rapport ”Seeking refuge in Poland: A fact-finding report on access to asylum and reception conditions for asylum seekers” (udgivet den 7. april 2023), side 24f: ”Overcrowding does not appear to be an issue. ... Overall, although some specific aspects could be improved – particularly regarding the provision of more efficient inclusion programmes and better access to medical and psychological services –, reception conditions in Poland appear to have improved in recent years and do not represent a major cause for concern in the country. The centres do not operate at full capacity and many asylum seekers choose to live in the community instead of the centres while receiving financial support. The Polish Supreme Administrative Court has not recently received cases on reception conditions. The national Commissioner for Human Rights has not reported on any major issues affecting the country’s reception system, apart from the centre’s limited preparation for housing people with disabilities and the fact that asylum applicants face problems getting to reception centres after being released from detention. More broadly, however, Polish NGOs report that asylum seekers face problems when trying to find private accommodation as rents have increased markedly over the last few years and the financial allowances they receive are inadequate to pay for life’s necessities.” Flygtningenævnet finder, at det efter baggrundsoplysningerne samtidig må lægges til grund, at der i Polen sker frihedsberøvelse af asylansøgere, der overføres til Polen i medfør af Dublinforordningen, i et stort omfang. Det er dog anført i den ovennævnte rapport fra AIDA fra april 2023, side 29, at der også er indikationer på, at denne praksis fra og med anden halvdel af 2022 er under opblødning. Denne

frihedsberøvelse af Dublin-returnees omfatter også familier med mindreårige børn. Det lægges videre til grund, at baggrundsoplysningerne om forholdene på detentionscentre i Polen for familier med mindreårige børn, der må anses for sårbare personer, peger på en række væsentlige mangler af forskelligartet karakter. Fra baggrundsoplysningerne herom kan navnlig fremhæves AIDA's rapport "Country Report: Poland, 2021 Update" (udgivet i maj 2022), hvoraf bl.a. følgende fremgår side 97f: "... Asylum-seeking children who are with members of their family can be placed in detention centres together with accompanying adults. Families with children are placed in detention centres in Białystok, Czerwony Bór, Biała Podlaska (two detention centres, one was adapted from reception centre), Przemyśl, and Kętrzyn. Families are placed in buildings and containers. The number of containers is insufficient in detention centre in Kętrzyn, which in practice meant that two families could be placed together in one container. ...According to NGOs, the conditions in these centres are not adequate for children: in some detention centres there is no children friendly space as playgrounds or social rooms. In 2021 the number of detained children has increased up to 567 in total, whereas in 2020 only 101 children were deprived of their liberty. As of 1 February 2022, 416 children were placed in detention centres in Poland, out of a total of 1,652 detainees." Om frihedsberøvelse af familier med mindreårige børn samt om forholdene på detentionscentre er der i samme rapport side 99f bl.a. uddybende anført følgende: "In January 2022 the Commissioner for Human Rights in his letter to the Presidents of the Regional Courts (Prezesów Sądów Okręgowych) expressed among other his concerns regarding the detention of families with children. He underlined that none of the detention centres was an appropriate place for children. According to him, detention may have a negative and irreversible impact on development and psychophysical condition of a child, especially with a traumatic migration experience, as these facilities are not suitable places for children. According to the Commissioner Border Guard rarely release children whose mental health deteriorated sharply after being placed in a detention centre and justified the hospitalization. The Commissioner also pointed out that none of the detention centre guarantees the proper implementation of the children's constitutional right to education because the content and the form of the didactic and educational activities do not implement a minimal scope of the teaching program. He also pointed out that in the temporary detention centre in Czerwony Bór there are no common social rooms for foreigners, which forced them to spend most of the day in the staircase. Additionally, there is a lack of appropriate rooms adapted to the needs of children detained in the facility. Ombudsman noted that in a detention centre in Kętrzyn families are placed in containers that do not have sanitary facilities. The sanitary facilities are located several hundred meters away, which due to weather conditions may endanger their health. Moreover, the number of sanitary containers is too small compared to the number of foreigners placed in the detention centre. It was also noted that two families are placed in one container which did not respect their right to privacy and forced the migrants to separate their parts of living space with sheets and blankets....As of 2021 detention decisions still did not consider the best interest of the child or did not consider the individual situation of the child. When placing a child in a guarded centre together with parents, the courts do not mention children in a justification of the detention decision. In addition, the courts place families in guarded centres for a maximum period of time, rather than for the shortest period. Further, courts did not order any further medical or psychological examination in 2020 and did not interview children but instead relied on the documents presented by the Border Guards. Children detention is ordered automatically, without individual assessment of their situation and needs. Furthermore, justifications of the courts' decisions were adapted from the BG application for prolonging the detention. Moreover, some courts treated detention as a form of punishment for crossing the border illegally." I USDOS, Poland 2022 Human Rights Report (udgivet den 20. marts 2023), er generelt anført følgende (side 18): "Authorities placed some asylum seekers in guarded centers for foreigners while they awaited deportation or decisions on their asylum applications. Border guards may place an individual in a guarded center only by court order. According to the Legal Intervention Association and human rights ombudsperson's office, courts automatically approved most legal motions of the border guards, resulting in many vulnerable migrants, including families with children, being placed in guarded centers. According to the association, the courts also automatically extended detention beyond the initial three months, which in practice meant many migrants stayed in guarded detention centers for extended periods of time. Children placed in guarded centers did not have access to public education and could participate only in limited educational activities organized on site. The law prohibits the placement of unaccompanied minors younger than 15 in guarded

centers. Border guards typically sought to confine foreigners who attempted to cross the border illegally, lacked identity documents, or committed a crime during their stay in the country”. I AIDA’s seneste rapport fra april 2023, som er omtalt ovenfor, fremgår endvidere følgende side 28: ”... The problematic detention conditions under which migrant women and children are held in Poland were also highlighted by the UN Special Rapporteur on Women and Girls in the statement released after the visit to the country between 27 February and 9 March 2023. The Rapporteur highlighted the fact that these vulnerable applicants “have inadequate access to health services, including sexual and reproductive health, psycho-social support, translation, and information services as well as education for children. Various stakeholders highlighted the fact that the extensive use of child detention in the country should be considered a cause for particular concern. The situation involves both children who are placed in detention with their family and unaccompanied minors ... The persistence of the problem can be demonstrated by the fact that between 2018 and 2023 five different ECtHR judgements condemned Poland for detaining children for several months in prison-like conditions. Despite the aforementioned judgements, the practice does not appear to have stopped. Recently, a new case from the detention centre in Biała Podlaska was communicated to the Polish Government.” I forlængelse af det anførte i rapporten ovenfor om konkrete sager, hvor Den Europæiske Menneskerettighedsdomstol har fundet, at frihedsberøvelse af mindreårige asylansøgere indebar en krænkelse af EMRK, hvilket bl.a. senest omfatter sagerne Nikoghosyan m.fl. mod Polen, afgjort den 3. marts 2022 (sagsnr. 14743/17) og R.M. m.fl. mod Polen, afgjort den 9. februar 2023 (sagsnr. 11247/18), bemærkes, at der for tiden verserer sagen V.M. m.fl. mod Polen, indledt den 10. januar 2023 (sagsnr. 40002/22), som vedrører en kvinde og hendes to mindreårige børn, som blev frihedsberøvet i forbindelse med deres asylansøgninger. Flygtningenævnet bemærker generelt, at Dublinforordningen er baseret på princippet om gensidig tillid mellem medlemsstaterne, og der gælder således en formodning for, at behandlingen af asylansøgere i hver enkelt medlemsstat er i overensstemmelse med kravene i de internationale konventioner, herunder Den Europæiske Menneskerettighedskonvention og Den Europæiske Unions charter om grundlæggende rettigheder. Uanset baggrundsoplysningerne om risikoen for frihedsberøvelse af og indkvartering i detentionscentre af familier med mindreårige børn, der overføres til Polen i medfør af Dublinforordningen, og om den domstolsprøvelse, der foretages heraf, finder Flygtningenævnet efter en samlet vurdering, at der på det foreliggende grundlag ikke er væsentlige grunde til at antage, at der er sådanne generelle systemfejl i asyloproceduren og i modtage- og indkvarteringsforholdene i Polen, at det kan begrunde, at der generelt ikke kan ske overførsler til Polen i medfør af Dublinforordningen af familier med mindreårige børn. Det er ved denne vurdering tillagt vægt, at de nyeste baggrundsoplysninger peger på en vis opblødning af praksis for frihedsberøvelse af Dublin-returnees, og at de generelle modtage- og indkvarteringsforhold som anført ikke kan anses for behæftet med væsentlige mangler. Flygtningenævnet finder således, at de generelle forhold, som klagerne må forventes at blive mødt med i Polen, ikke er af en sådan karakter, at Danmark er afskåret fra at overføre dem til Polen, jf. Dublinforordningens artikel 3, stk. 2, 2. led. Herefter, og da der heller ikke foreligger oplysninger om konkrete omstændigheder, der kan indebære, at klagerne ikke skal overføres til Polen, jf. Dublinforordningens artikel 17, stk. 1, herunder oplysningerne om klagernes sundhedsproblemer, finder Flygtningenævnet efter en gennemgang af sagen ikke grundlag for at omgøre Udlændingestyrelsens afgørelse om overførsel til Polen, jf. udlændingelovens § 48 a, stk. 1, 1. pkt., jf. § 29 a, stk. 1, jf. Dublinforordningen. Efter de ovennævnte baggrundsoplysninger forudsætter Flygtningenævnet imidlertid, at Hjemrejsestyrelsen forud for en overførsel af klagerne og deres mindreårige barn til Polen indhenter en garanti fra de polske myndigheder om, at klagerne vil blive mødt af en asyloprocedur og modtage- og indkvarteringsforhold, der er i overensstemmelse med landets EU-retlige og øvrige internationale forpligtelser.” Dub-Pole/2023/5/SEAL

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