

I. STUDII, CERCETĂRI, ARTICOLE

NORWAY AND THE RIGHT TO RESPECT FAMILY LIFE FROM THE PERSPECTIVE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract:

În general Norvegia se află pe primele locuri în clasamentele privind cele mai bune țări pentru creșterea copiilor și este considerată de mulți ca fiind un lider în domeniul drepturilor omului. Nu numai că țara este donator de diverse granturi SEE pentru proiecte destinate copiilor aflați în situații de risc, dar și un partener direct pentru schimbul de bune practici. Pe de cealaltă parte, se pot observa puternice critici internaționale pentru acțiunile serviciului de asistență socială pentru copii, denumit Barnevernet. Acesta este învinovățit pentru îndepărtarea copiilor din familii din motive controversate și pentru neasigurarea unor măsuri suficiente pentru a permite reunificarea familiilor, întrucât părinții beneficiază de drepturi reduse de vizită (de 2 ori câte 2 ore pe an sub supraveghere sau mai puțin). De asemenea există plângeri cu privire la adopția forțată a copiilor de către părinți adoptivi. Autoritatea supremă care decide dacă acestea reprezintă o încălcare a drepturilor omului este Curtea Europeană a Drepturilor Omului (CEDO).

Astfel, prezenta lucrare analizează dacă deciziile CEDO privind Norvegia, în special cazurile privind articolul 8 al Convenției europene a drepturilor omului – dreptul la respectarea vieții private și de familie – și prezintă o analiză calitativă și cantitativă a acestora.

Metode: Analiza a 119 de cauze și hotărâri CEDO din baza de date HUDOC și alte statistici și documente relevante.

Cuvinte cheie: Articolul 8 al Convenției europene a drepturilor omului, Barnevernet, Norvegia, drepturile omului, CEDO, cauza cheie Strand Lobben împotriva Norvegiei

Résumé :

La Norvège se classe régulièrement très haut dans les rapports concernant des meilleurs pays pour élever des enfants et est considérée par beaucoup comme un leader dans le domaine des droits de l'homme. Le pays n'est pas seulement un donateur de subventions de

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l'EEE pour des projets en faveur des enfants à risque, mais aussi un partenaire direct pour le partage de bonnes pratiques. D'un autre côté, il y a une forte critique internationale pour les actions de son service de protection de l'enfance appelé Barnevernet. Il lui est reproché de retirer des enfants aux familles pour des raisons controversées et de ne pas avoir mis en place des mesures suffisantes pour permettre le regroupement des familles, car les parents ont des droits de visite trop faibles (2 fois pendant 2 heures par an sous surveillance, ou moins). Il y a aussi des plaintes concernant l'adoption forcée des enfants par des parents nourriciers. L'autorité suprême qui décide s'il s'agit ou non d'une violation des droits de l'homme est la Cour européenne des droits de l'homme (CEDH).

L'article analyse donc les décisions de la CEDH liées à la Norvège, en particulier les affaires liées à l'article 8 de la Convention européenne des droits de l'homme – droit au respect de la vie privée et familiale – et en propose une analyse qualitative et quantitative.

Méthodes : Analyse de 119 affaires et arrêts de la CEDH dans la base de données HUDOC et d'autres statistiques et documents pertinents.

Mots-clés : Article 8 Convention européenne des droits de l'homme, Barnevernet, Norvège, droits de l'homme, CEDH, affaire phare Strand Lobben c. Norvège

Introduction

Norway is a country situated in northern Europe with a population of 5,421,241 citizens with the median age of 39.8 years and a total land area of 365,268km².¹ After the NGO Human Rights Watch released its World Report in 2007 with the result that the USA can no longer provide credible leadership in human rights, MacDonald stated that it should be Norway who can overtake the position of the world's leading champion in human rights, as the country has already taken the lead in helping the world to achieve the fourth Millennium Development Goal². Hjermand points out that it was Norway, who established an independent human rights institution for children – the Ombudsman for Children – as the world's first country in 1981. Therefore, he considers Norway to be a champion for children³.

Norway also achieved 2nd place in the “raising a family” index by Fergusson, who compared 35 OECD countries in his study and gathered critical statistics from 30 trusted international sources for it⁴. In another study by US News and world reports, Norway was ranked 3rd in the category Best country to raise children in⁵. This report covered perceptions of 73 nations and for that purpose set a list of 65 attributes⁶.

¹ Countries in the world by population. Worldometer 2020

² MacDonald R. Who can lead the world on human rights? The Lancet 2007;vol. 369:1-4.

³ Hjermand R. A Champion for Children. Societies Without Borders 2020;14:1-5.

⁴ Fergusson A, Fergusson L. The best countries for raising a family in 2020. Asher & Lyric Fergusson 2020.

⁵ Best Countries for Raising Kids. U.S. News & World Report L.P. 2020.

⁶ Methodology: How the 2020 Best Countries Were Ranked. U.S. News & World Report L.P. 2020.

On the other hand, Norway also received a lot of international criticism on its child welfare service called Barnevernet. There are not just investigative documentaries by internationally respected media like British BBC, German Deutsche Welle, French Arte or Australian SBS Dataline, but also respected international bodies. There is also a critical report by the Council of Europe's Commissioner for Human Rights⁷, resolution by the Parliamentary Assembly of Council of Europe⁸ or the UN Committee on the Rights of the Child⁹.

The topic of Norwegian child welfare service was also discussed during the 33rd EU – Norway Interparliamentary Meeting¹⁰. It was a reaction on the European Parliament debate over *a resolution on safeguarding the best interests of the child across the EU based on petitions addressed to the European Parliament*¹¹. Many parents from EU countries sent petitions to European Parliament, stating that Norway did not respect the principles of the 1996 Hague convention. The latter stipulates that the country in which the child is habitually resident can take measures for the child's protection. Norway ratified this convention in 2016¹².

The goal

To sum this introduction up, the situation of the child protection field seems to be ambiguous. The supreme authority that can decide whether there is some human rights violation is the ECHR. The goal of this paper, therefore, is to analyse ECHR decisions related to Norway, especially regarding Article 8 of the Convention – the right to respect private and family life. Such an analysis can be helpful mainly towards the fact that Norway is not only a donor of various EEA grants for projects for children at risk, but also a direct partner for sharing a good practice in various European countries.¹³

⁷ Muižnieks N. Norway: people with disabilities and Roma need more attention: Country visit report. Council of Europe: Commissioner for Human Rights 2015.

⁸ Ghilechi V. Striking a balance between the best interest of the child and the need to keep families together. Parliamentary Assembly: Council of Europe 2018.

⁹ Committee on the Rights of the Child. Concluding observations on the combined fifth and sixth periodic reports of Norway: CRC/C/NOR/CO/5-6. United Nations Human Rights: Office of the High Commissioner 2018.

¹⁰ Mrazikova T. 33rd EU – Norway Interparliamentary Meeting: Joint press release. European Parliament 2017.

¹¹ Wikström C. European Parliament resolution on safeguarding the best interests of the child across the EU on the basis of petitions addressed to the European Parliament. European Parliament 2016.

¹² Ministry of Children and Families. Information about the 1996 Hague Convention. Norwegian Government 2019.

¹³ See inter alia projects CZ04 Children and Youth at Risk, LV03-0130 Development of Support System for Foster families, Adoptive parents, Guardians and Host families in Latvia, LT10-0012 State and municipal servants capacity building in the field of de-institutionalization,

Methods

We will present an analysis of ECHR cases and judgements related to Norway and Article 8 of the Convention (the right to respect for private and family life) and other relevant statistics provided by the ECHR. The search of the judgements, decisions and communicated cases will be done via the HUDOC database, where all ECHR cases are publicly available in an anonymised version.

1. More details regarding international reservations

In his report following his visit to Norway between 19 and 23 January 2015, the former Commissioner for Human Rights, Nils Muižnieks, expressed criticism against the conduct of Norwegian authorities in cases of children from the Roma community in Oslo and, in particular, he pointed to extremely frequent placements of Roma children in child welfare services. He also expressed concern about severe restrictions of contacts between Roma children placed in foster care and their natural families (e.g. meetings twice a year) and the appropriateness of foster families with respect to preserving the cultural identity of Roma children¹⁴.

He further stated that there were reports that many Roma mothers-to-be avoid going to Norwegian hospitals for childbirth for fear that their newborn will be immediately taken away by the child protection services¹⁵. In his report, the Commissioner further stated that the Norwegian authorities should review the Roma children's alternative care decisions to ensure that they are in compliance with their human rights and provide Roma parents with the necessary support to enable them to exercise their parental role. He also said that the child's best interests should always be a primary consideration in any decision. The Commissioner reiterated that preventing family separation and preserving family unity are important components of the child protection system as well and that the separation of children from their parents should only take place as a last resort. He emphasised that removing children from parental care at birth should only happen for "extraordinarily compelling reasons" and poverty cannot be a justification for separating a child from their parents¹⁶.

The former Norwegian Minister of Children and Equality, Ms Solveig Horne, was also aware of the criticism of the Norwegian system of care for

based on the good experience of Norway, EE04 Children and youth at risk or RO09-0273 The role of NGOs in alternative care for children at <https://eeagrants.org/> webpage.

¹⁴ Muižnieks N. Norway: people with disabilities and Roma need more attention: Country visit report. Council of Europe: Commissioner for Human Rights 2015.

¹⁵ *Ibidem*.

¹⁶ *Ibidem*.

children and youth. At the same time, the former Minister of Children and Equality repeatedly claimed to have acceded to several reforms of the Norwegian system, e.g., directives for the local authorities acting in cases of child protection were elaborated, according to which in case of children also having another citizenship, the authorities shall consider, prior to adopting a decision on placing the child in foster care, whether the child has any next-of-kin abroad. Further, the commission for the review of the respective legal regulation has been established. Many cases have been submitted concerning the order to place the child to foster care, and immediate measures in this regard were ordered, etc.¹⁷

In 2016, more than 200 Norwegian experts working with children (psychologists, lawyers, social workers etc.) signed the so-called *petition of experts*, which they officially submitted to the Norwegian Government. In the petition, they point to the worrying situation within the Norwegian care system for children and youth. In consequence of incompetence of officials and misuse of powers, several shortcomings occur, resulting in violations of human rights¹⁸.

In his report called *Striking a balance between the best interest of the child and the need to keep families together*, Ghiletschi used the situation in Norway as a case study and pointed out that children have the right to be protected from all types of violence, abuse, and neglect. Still, they also have the right not to be separated from their parents against their will, except when absolutely necessary in the best interests of the child¹⁹. The same author also stressed out that 1,342 children were the subject of an emergency care order in 2017: *“The way emergency orders are implemented is often described as stressful and “frightening” by both children and parents. Reports give account of children being collected at unsuitable times or taken out of class at school, and, in some cases, force and coercion being used with or without the involvement of the police”*²⁰.

The author also describes that during his course of 2015, there were 1,545 children were subject to a care order issued by a County Social Welfare Board.

¹⁷ See e.g. the speech by the former minister Solveig Horne on the meeting with foreign embassies, held on 4 May 2016; published on the official websites of Norway Government: <https://www.regjeringen.no/en/aktuelt/meeting-with-foreign-embassies/id2499336/>; the speech of the former minister Solveig Horne at the conference Children’s Rights in Alternative Care: „Walk the Talk!“, in Paris on 8 November 2016; published on the official websites of Norway Government: <https://www.regjeringen.no/en/aktuelt/childrens-rights-in-alternative-care-walk-the-talk/id2519687/> and see also the article in daily newspaper Dagbladet of 17 October 2016: <http://www.dagbladet.no/nyheter/horne-vil-endre-barnevernets-praksis---jeg-onsker-at-barna-skal-fa-komme-tilbake-til-foreldrene-sine/63963739>.

¹⁸ Salvesen E, Thune G, Nwoso T, Witoszek T. Notice of Concern – The situation within Norwegian Child Protection Services. Avskilda barn – Secluded children 2016.

¹⁹ Ghiletschi V. Striking a balance between the best interest of the child and the need to keep families together. Parliamentary Assembly: Council of Europe 2018.

²⁰ *Ibidem*.

This means the number of new children under the care of the CPS increased by 52% between 2008 and 2012, followed by a reduction of 10% from 2012 to 2015: “A care order issued by a County Social Welfare Board can be appealed to the District Court. [...] In about 90% of cases, the District Courts uphold these decisions. [...] In 2017, decisions for 508 children were handed down following such revocation requests; 173 of the children concerned were returned to their families.”²¹

More recent statistics can be found at Statistics Norway. According to their information, a total of 14,700 children, or about 39% of the 37,900 children registered with measures at the end of 2019, were placed outside of their family home, which was implemented either as a care or an assistance measure; 3 out of 4, or 10,850 children, lived in foster homes²².

The severity of the problem concerning the removal of children without relevant reasons is testified by the fact that the Council of Europe’s bodies have already been dealing for several years with the authorities’ practice in the respective Member States. In this regard, the Member States addressed several recommendations to reach improvement in the field of care of minors and to observe the children’s rights. Several resolutions and recommendations of PACE (Parliamentary Assembly of the Council of Europe).

The PACE, in its Resolution 1908 (2012), adopted on 30 November 2012, expressed concerns about family courts’ functioning in some Member States of the Council of Europe, especially in cases where children are taken away against their parents’ will and in violation of the right to respect family life and the principle of a fair trial²³. It observed that children ought to be separated from their parents only in exceptional circumstances, subject to judicial review and in line with the requirements stemming from the European Convention on Human Rights and the United Nations Convention on the Rights of the Child of 1989, giving priority to the best interests of the child. Member States should provide practical assistance to families in trouble to minimise the number of cases in which a child must be separated from his or her parents and sign and/or ratify the relevant Council of Europe conventions on children’s rights²⁴.

With respect to the persisting nature of the issue, the PACE Committee on Social Affairs, Health, and Sustainable Development unanimously adopted the draft resolution and recommendation *Social services in Europe: legislation*

²¹ *Ibidem*.

²² Dyrhaug T, Grebstad U. Less children received measures from the Child Welfare Services. Statistics Norway 2020.

²³ Human rights and family courts: Resolution 1908. Parliamentary Assembly: Council of Europe 2012.

²⁴ *Ibidem*.

*and practice of the removal of children from their families in Council of Europe Member States*²⁵. They were adopted by the PACE on 22 April 2015. In its Resolution 2049 (2015), the PACE expressed concerns of the violation of the rights of the child and their parents in some countries, where social services take children into care by unwarranted decisions or do not reunify families. It is all the more tragic when the decisions are irreversible, such as in cases of adoption without parental consent. According to the report, which was the groundwork for adopting the resolution, children have the right not to be separated from their parents against their will, except when such separation is necessary in the child's best interests²⁶.

In the absence of risk or imminent risk of suffering serious harm, in particular physical, sexual or psychological abuse, it is not enough to show that a child could be placed in a more beneficial environment for its upbringing and to remove a child from his or her parents and even less to sever family ties completely. The report *inter alia* criticises removing children from parental care at birth. Another criticised point is that in many countries, social services are very decentralised, e.g. at the municipalities' level. When there are no unified nationwide standards establishing criteria for placement in alternative care and regular review of placement decisions of children removed from their families, this can lead to social workers' subjective decisions.

According to the report²⁷, when separation becomes necessary, the decision-makers shall ensure that the child maintains the contact and relations with their parents, siblings, relatives, and persons with whom the child has had strong personal relationships. A comparison of percentages of children separated from their parents and placed with relatives and percentages of children placed in foster care shows a different Member States practice. The percentage of children placed with relatives represents 75% in Portugal and 63% in Latvia, but only 5% in Sweden and the United Kingdom and 3% in Finland. Foster families take 0.5% of children in Portugal and 10% in Estonia, but more than 50% in France and Spain, 69% in Norway, and 75% in the United Kingdom. Adoptions without parents' consent are not possible in France, Greece, Luxembourg, and Spain. On the contrary, adoptions without the parents' consent are possible in Croatia, Estonia, Georgia, Germany, Hungary, Italy, Montenegro, Norway, Poland, Portugal, Slovenia, Sweden, Turkey, and the United Kingdom²⁸.

²⁵ Borzova O. Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States. Parliamentary Assembly: Committee on Social Affairs, Health and Sustainable Development 2015.

²⁶ *Ibidem*.

²⁷ *Ibidem*.

²⁸ *Ibidem*.

In its concluding observations on the combined fifth and sixth periodic reports, the Committee on the Rights of the Child dedicated to Norway a chapter entitled *Children deprived of a family environment* and raised concern about eight topics:

- 1) Reported separations of children from their families that may not have always been in the children's best interests;
- 2) The use of coercion in some cases of separation of children from their families;
- 3) The significant disparities among counties regarding the number of out-of-home placements;
- 4) Siblings being separated when placed in alternative care;
- 5) The insufficient monitoring of the situation of children placed in alternative care;
- 6) Children belonging to minority populations who are placed in alternative care being at risk of losing their connection with their native culture and language;
- 7) Insufficient communication and information exchange between child welfare services and families, in particular migrant families;
- 8) Insufficient support provided to children of incarcerated parents²⁹.

2. More information on Barnevernet

The Norwegian Child Welfare Services (Norwegian: Barnevernet, literally "child protection") is the public agency responsible for child protection in Norway and it is ruled by the Norwegian Child Welfare Act³⁰. They consist of services in each municipality (440+), which are aided and supervised by different governmental bodies of the State as well as at the county level³¹. The Child Welfare Services (CWS) obligation is to ensure that children and youth who live in conditions that may be detrimental to their health and development receive the necessary assistance and care at the right time³².

According to chapter 4 of the Special measures of Norwegian Child Welfare Act, there is a broad scope of powers conducted to local Barnevernets including consideration of the child's best interests, interim orders in emergencies, orders for medical examination and treatment, implementation of care orders, choice of placement in the individual case, follow-up of

²⁹ Committee on the Rights of the Child. Concluding observations on the combined fifth and sixth periodic reports of Norway: CRC/C/NOR/CO/5-6. United Nations Human Rights: Office of the High Commissioner 2018.

³⁰ Ministry of Children and Families. The Child Welfare Act. Norwegian Government 2001.

³¹ *Ibidem*.

³² *Ibidem*.

care orders and relocation of the child, visitation rights, covert address, deprivation of parental responsibility and adoption, placement and retention in an institution without the child's consent or prohibition from taking the child out of Norway³³.

3. Article 8: right to respect for private and family life

Cases concerning parental rights raise issues mainly under Article 8 (right to respect for private and family life) of the Convention, which states:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”³⁴.

In order to determine whether the interference by the authorities with the applicants' private and family life was necessary in a democratic society and a fair balance was struck between the different interests involved, the ECHR examines whether the interference was in accordance with the law, pursued a legitimate aim or aims and was proportionate to the aim(s) pursued.

The case-law of the ECHR is perfectly clear that it primarily protects the biological family. According to the ECHR's constant case-law, where children are involved, their best interests must be taken into account. The ECHR reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see, among other authorities, Case of Neulinger and Shuruk v. Switzerland [GC], 2010). Indeed, the ECHR has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see, for example, Case of Jovanovic v. Sweden, 2015). Any breakdown of a family represents a serious interference with the right to family life and, therefore, must be based on sufficiently weighty reasons motivated by the interests of the child (see, for example, Case of Scozzari and Giunta v. Italy, 2000).

Measures that deprive an applicant of his or her family life with the child are inconsistent with the aim of reuniting them and should “only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests” (see, for instance, Case of Johansen v. Norway, 1996). The ECHR expressed the view

³³ *Ibidem*.

³⁴ European Convention on Human Rights. European Court of Human Rights: Council of Europe 1970.

that it is clear that it is equally in the child's interest for its ties with its family to be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that the interest of the child dictates that family ties may only be severed in very exceptional circumstances. It states that everything must be done to preserve personal relations and, if and when appropriate, to 'rebuild' the family (see Case of Gnahoré v. France, 2000; also Case of Görgülü v. Germany, 2004). In particular, where the decision is explained in terms of a need to protect the child from danger, the existence of such a danger should be actually established (see, *mutatis mutandis*, Case of Haase v. Germany, 2004).

In deciding about a possible removal of a child, a variety of factors may be pertinent, such as whether by virtue of remaining in the care of its parents, the child would suffer abuse or neglect, educational deficiencies and lack of emotional support, or whether the child's placement in public care is necessitated by the state of their physical or mental health (see Case of Wallová and Walla v. the Czech Republic, 2006 and Havelka and Others v. the Czech Republic, 2007). On the other hand, the mere fact that a child could be placed in a more beneficial environment for his or her upbringing does not, on its own, justify a compulsory measure of removal (see, for example, Case of K.A. v. Finland, 2003). Neither can this measure be justified by a mere reference to the parents' precarious situation, which can be addressed by less radical means than the splitting of the family, such as targeted financial assistance and social counselling (see, for example, Case of Moser v. Austria, 2006; Case of Wallová and Walla v. the Czech Republic, 2006; Case of Havelka and Others v. the Czech Republic, 2007, also Case of Saviny v. Ukraine, 18 December 2008).

Simultaneously, taking a child into care should be regarded as a temporary measure, to be discontinued as soon as circumstances allow it. Any measure of implementation should be consistent with the ultimate aim of reuniting the natural parent with his or her child (see, for example, Case of Olsson v. Sweden, 1988; also Case of Pontes v. Portugal, 2012).

As to the decision-making process, what has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions taken, the parents have been sufficiently involved in the decision-making process, seen as a whole, to be provided with the requisite protection of their interests and fully able to present their case. Thus, it is incumbent upon the ECHR to ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and a whole series of factors, particularly those of a factual, emotional, psychological, material, and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child. In practice, there is likely to be a degree of overlap in this respect with

the need for relevant and sufficient reasons to justify a measure in respect of the care of a child (see, *inter alia*, Case of Y.C. v. the United Kingdom, 2012).

4. Results

The ECHR dealt with 104 applications concerning Norway in 2019, of which 99 were declared inadmissible or struck out. It delivered 5 judgments (concerning 5 applications), 4 of which found at least one violation of the European Convention on Human Rights³⁵. See *Figure 1: Applications processed for Norway* below for more detailed statistics of 2019 in comparison to 2018 and part of the year 2020. There was a significant increase in cases communicated to the Government (2 in 2018, 32 in 2019).

Applications processed in	2018	2019	1-7/2020
Applications allocated to a judicial formation	84	102	51
Communicated to the Government	2	32	7
Applications decided:	88	104	45
Declared inadmissible or struck out (Single Judge)	77	97	42
Declared inadmissible or struck out (Committee)	7	1	0
Declared inadmissible or struck out (Chamber)	1	1	1
Decided by judgment	3	5	2

Figure 1: Applications processed for Norway; own adaptation³⁶.

To better understand if there are fewer or more judgements in comparison to other Council of Europe's countries, we can use ECHR statistics on *Violations by Article and by State 1959 – 2020*³⁷. This statistic was initially made for all 47 Council of Europe countries and all articles of the Convention. For purposes of this particular text, 20 countries were chosen (randomly), which will help in orientation – see *Figure 2: General statistics: ECHR cases 1959 – 2020*.

In absolute numbers, Norway's amount of judgements (57) is comparable to another Northern European country – Denmark (54). However, such a comparison would be shallow, as every country has a different number of citizens and more populated countries can expect more complaints. Therefore,

³⁵ Norway: Press country profile. European Court of Human Rights 2020.

³⁶ *Ibidem*.

³⁷ Violations by Article and by State: 1959 – 2019. European Court of Human Rights: Council of Europe 2020.

a column with number of citizens in the country was added to figure 2 and the total number of judgements was divided by it to get a percentage of judgements to citizens. This was arranged by a filter from lowest to highest values. With this result, we can identify countries with lower overall number of judgements more precisely. Countries with the lowest judgments are Spain and Germany (both 0.04 %), Norway has 0.11 %, which is still very low in comparison to Bulgaria with its 1.06 %.

State	Number of citizen	Total number of judgements 2020	Judgements finding at least one violation	Article 8 – right to respect for private and family life	Number of judgements/ citiz.	Article 8 to all violations found
Spain	46754778	181	124	18	0,04%	14,52%
Germany	83783942	356	199	23	0,04%	11,56%
United Kingdom	67886011	556	322	74	0,08%	22,98%
Denmark	5792202	54	18	2	0,09%	11,11%
Norway	5421241	57	38	16	0,11%	42,11%
Sweden	10099265	153	61	9	0,15%	14,75%
France	65273511	1048	759	520,16%	6,85%	
Russia ¹	45934 462	2884	2724	224	0,20%	8,22%
Czechia	10708981	235	191	20	0,22%	10,47%
Belgium	11589623	269	190	13	0,23%	6,84%
Poland	37 846 611	1197	1007	120	0,32%	11,92%
Finland	5540720	191	142	24	0,34%	16,90%
Italy	60461826	2427	1857	172	0,40%	9,26%
Austria	9006398	397	279	20	0,44%	7,17%
Hungary	9660351	581	547	24	0,60%	4,39%
Slovakia	5459 642	386	334	22	0,71%	6,59%
Romania	19237691	1578	1393	106	0,82%	7,61%
Greece	10423054	1047	935	13	1,00%	1,39%
Slovenia	2078938	371	340	12	1,78%	3,53%
Bulgaria	6948445	737	663	86	1,06%	12,97%

Figure 2: General statistics: ECHR cases 1959 – 2020; own adaptation³⁸.

³⁸ Ibidem

Another interesting result from the same table in figure 2 is the percentage of Article 8 judgements to judgements where was confirmed a human rights violation. There are 38 judgements with violation found for Norway, from which 16 are related to Article 8. This means a percentage of 42.11 %, which is the far highest number among other selected countries.

Search in HUDOC database

For a qualitative analysis of the Norwegian cases and judgements, we have used the HUDOC database. The procedure of finding relevant data is described in *figure 3: First HUDOC analysis steps*. We first searched for Norway, whole case law and English language only (381 results), then selected Chamber and Grand chamber decisions, communicated cases and decisions (284 results). Afterwards, it was filtered by Article 8 in place (151 results). All of these were subject of a proper study.

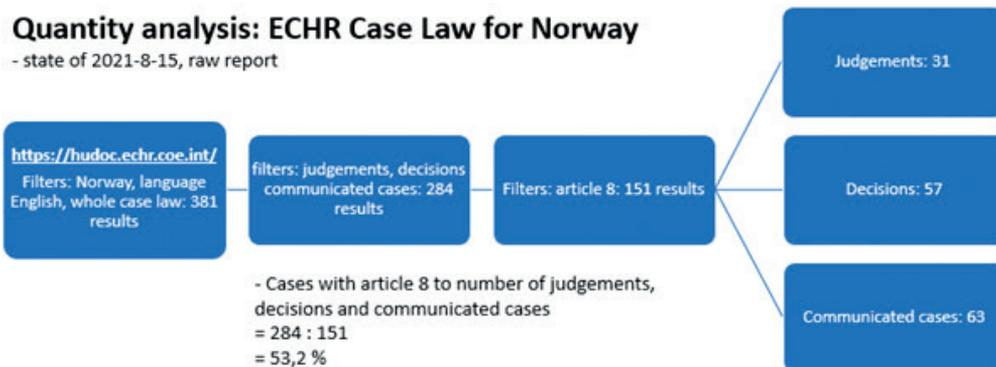


Figure 3: First HUDOC analysis steps; own adaptation.

Among 151 records, 119 unique complaints were found, having only a different status description. These were all read, and according to subject matter we decided whether Barnevernet was involved in the complaint or not – see *figure 4: Following HUDOC analysis steps*. We found 61 of them – 17 judgements (13x violation, 4x no violation), 29 communicated cases and 15 inadmissible cases.

Records for quality analysis: ECHR Case Law for Norway

- state of 2021-8-15

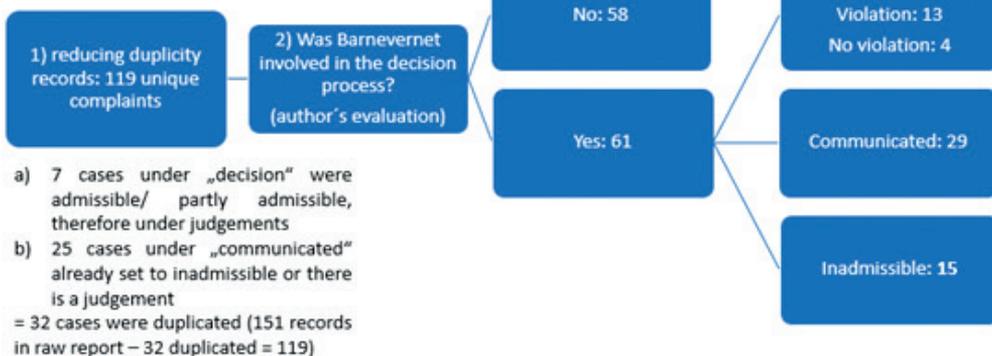


Figure 4: Following HUDOC analysis steps; own adaptation.

The applicants mainly complained in these 61 cases about reduced visitation rights (appeared in 44 cases in total), forced adoption (22x) and the reason why the child was taken into care or not returned (22x). More detailed summary can be found in figure 5: Summary for 61 complaints involving Barnevernet decisions. Other complaints were connected e. g. to prison conditions, expulsion, various violations of privacy or persecution of authorities, which applicants claimed influenced negatively their private and family life.

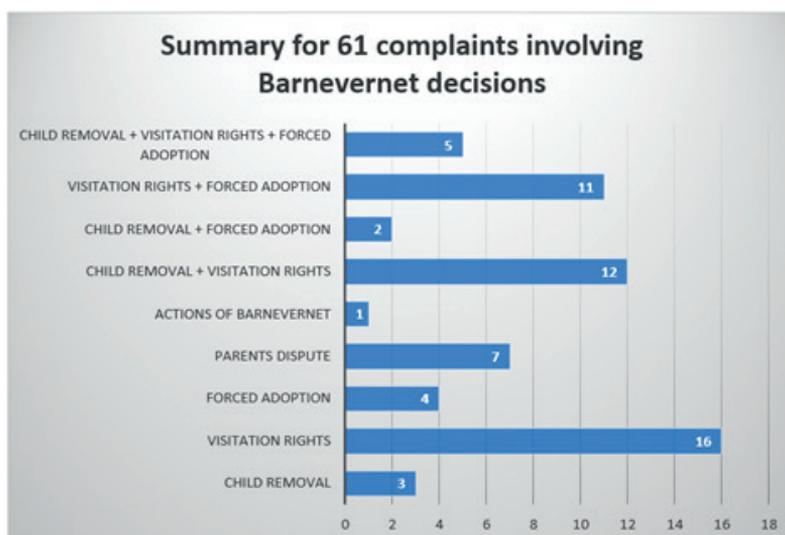


Figure 5: Summary for 61 complaints involving Barnevernet decisions; own adaptation.

We were looking also for the time when applicants sent their complaints to ECHR. In *figure 6: Number of complaints on article 8 for Norway – year when the complaint was sent to ECHR* can be seen a significant increase of complaints connected to Barnevernet in last 5 years.

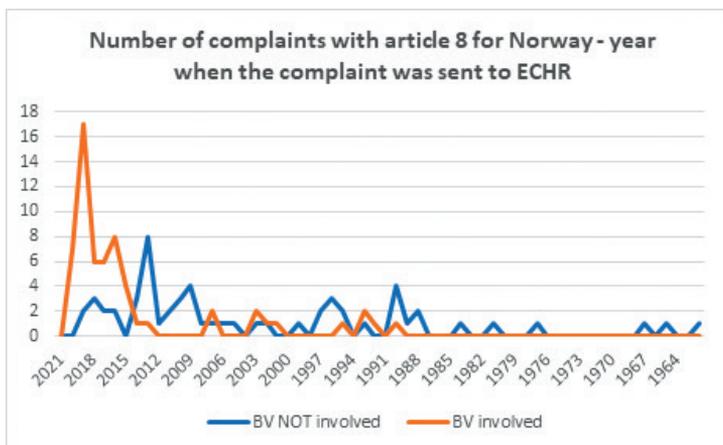


Figure 6: Number of complaints on article 8 for Norway – year when the complaint was sent to ECHR; own adaptation.

5. Discussion

As best source for discussion about Barnevernet practices the case Strand Lobben vs. Norway can be used, which was judged by Grand chamber of ECHR and became a key case for decisions in similar complaints. In this case, 17 judges listened to interventions from various states (Belgium, Bulgaria, Czech Republic, Denmark, Slovak Republic, Italy and the United Kingdom) and other public actors like Alliance Defending Freedom International (ADF), the “Associazione italiana dei magistrati per i minorenni” per la famiglia” (AIMMF) and AIRE Center.

The case concerned the Norwegian authorities’ decision to remove a mother’s parental authority and let foster parents adopt her son. The applicants are T. Strand Lobben, born in 1986, and her son, X. They are Norwegian. X is T. Strand Lobben’s first child. He was born in September 2008. After difficulties when she was pregnant, Ms Strand Lobben turned to the child welfare authorities for guidance and had accepted an offer to stay at a family centre for an evaluation during the first months of the child’s life. However, a month after the birth, she decided to leave the centre. The authorities took the baby into immediate compulsory care and placed him in a foster home on an emergency basis as the centre’s staff had concerns about whether the baby had been receiving enough food to survive. The child remained in foster care for

the next three years until the social welfare authorities authorised the foster parents to adopt him in December 2011.

Concerning the foster care, the domestic courts decided in 2010 that it would not be in the child's best interests to discontinue public care given his special care needs and the fundamental limitations in the mother's parenting skills. In particular, the appeal court took the view that foster care would be long-term, and that contact sessions, which were not intended to pave the way for a return of X to his biological mother, could not take place more than four times a year. In 2011, the County Social Welfare Board, comprised of a jurist, a psychologist, and a layperson, decided to remove the mother's parental authority and authorise adoption. The Board heard 21 witnesses over three days and the mother was present and represented by counsel. The Board concluded that adoption would be in the child's best interest. The mother appealed to the courts and a hearing was held in 2012. She was again present and had legal representation during the three days of witnesses being heard by a professional judge, a psychologist and a layperson. While the courts found that her situation had improved in some areas – she had married and had another child in 2011 – she had not shown an improvement in empathising with or understanding her son.

He was psychologically vulnerable and required a lot of silence, security, and support. The courts notably took account of the three years of contact sessions, during which the child had not bonded psychologically with his biological mother and had even been “inconsolable” afterwards, and the security that his fosters parents, whom he regarded as his parents, could provide in the years ahead.

The applicants complained about the domestic authorities' decision to remove the mother's parental authority and let the child's foster parents adopt him. The Grand Chamber held that there had been a violation of Article 8 (right to respect for private and family life) of the Convention regarding both applicants. In particular, it found that the main reason for the Norwegian authorities' actions had been the mother's inability to care properly for her son, particularly in view of his special needs as a vulnerable child.

However, that reasoning had been based on limited evidence as the contact sessions between mother and son after his placement in foster care had been few and far between and the psychologists' reports out-dated. In addition, a review of his vulnerability had contained barely any analysis and no explanation as to how he could continue to be vulnerable despite having been in care since he was three weeks old. Overall, in the present case the domestic authorities had not attempted to carry out a genuine balancing exercise between the interests of the child and his biological family or taken

into consideration developments in the mother's family life, namely, she had in the meantime married and had a second child.

In this case, in a prior judgment of the Chamber from 30 November 2017, the ECHR found by a vote of four to three that Article 8 of the Convention had not been violated. It stated in its judgment that the adoption decision was justified by the exceptional circumstances of the case. In general, national authorities have faced a difficult and extremely sensitive task of balancing conflicting interests in such a difficult case. However, they were motivated by the best interests of the child, especially in the light of the special care he required. Some authors (McEwan-Strand and Skivenes, 2018) argued that this decision was in line with recent child-centred trends from the ECHR. According to them, *“an underlying current of this development is the modernisation processes throughout democratic states, and them bearing with human rights developments and the recognition of marginalised groups. Children have increasingly become a direct concern of the State. The traditional view on children, that they are the property of the father (pater) or the family, is under pressure and replaced with a notion that children are individuals with their own interests. When the obligations of States are to also secure children's rights, then a direct relationship between children and the State is established and requires a shift in the balancing of parental rights versus children's rights”*³⁹.

However, on 9 April 2018, the panel of five judges of the Grand Chamber of the Court accepted the applicants' request to refer the case to the Grand Chamber. In the proceedings before the Grand Chamber, adoptive parents of X, Belgium, Bulgaria, Czech Republic, Denmark, Slovak Republic, Italy and the United Kingdom, as well as the Alliance Defending Freedom International (ADF), the “Associazione italiana dei magistrati per i minorenni” per la famiglia “(AIMMF) and AIRE Center all intervened in the case.

The Government of the Czech Republic mainly focused in its intervention on the approach of the respective authorities after an emergency or permanent placements of children in foster care. They started immediate active work with the biological families after the placement, as well as the frequency of contact between the children and their biological parents. Those appeared to be crucial factors in maintaining original family ties. They further stressed that when assessing the compliance of authorities with their obligations under Article 8 of the Convention, the situation of all members of the family must be taken into account.

There was a broad consensus, also in international law, that in all decisions concerning children, their best interests must be paramount. However, the

³⁹ McEwan-Strand A, Skivenes M. A Child-Centred Court of Human Rights? Strand Lobben v. Norway. Strasbourg observers 2018.

“best interests” principle was not designed to be a kind of “trump card”. Article 8 covered both the child’s best interests and the right of the parents to be assisted by the State in staying or being reunited with their children. The child welfare systems should not disregard the existence of the biological parents’ rights, which should be duly taken into account and balanced against the child’s best interests, rather than minimised to the point of being ignored. In addition, the Government of the Czech Republic emphasised the importance of contact between biological parents and their child in public care and other measures to reunite the family, *inter alia*, in order to ensure that a taking into care remained a temporary measure: restrictions on contact could be the starting point of the child’s alienation from his or her biological family and, thus, of the impossibility for the family to reunite. For the effort to reunite the family to be serious, contact would have to occur several times a week, even under supervision or with assistance, and an increase in time up to daily visits. If that were the case, it would be possible to talk about a slow establishment of a bond between the child and their biological parents. Speedy procedures were also required. As to adoption, they maintained that the Court must strike a balance between the biological and adoptive parents’ rights. The best interests of the child had to be assessed on an *ad hoc* basis that sometimes conflicted with other interests involved: there were other rights that had to be taken into account when determining whether or not a child should be considered eligible for adoption.

The Government of Slovakia submitted that the Court’s case-law was perfectly clear in that it primarily protected the biological family. Placing a child in foster care was an extreme measure, and domestic authorities were required to adopt other measures if such were able to achieve the pursued aim. In particular, where a decision had been explained in terms of a need to protect the child from danger, the existence of such a danger should be actually established. Simultaneously, taking a child into care should be regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measure of implementation should be consistent with the ultimate aim of reuniting the natural parent with his or her child. The Slovakian Government made further comments on a case in which Slovak citizens had been affected by child welfare measures and on international concern about child welfare measures adopted in the respondent State.

On the contrary, the respondent, Norway, as well the intervening governments of Italy, Denmark and the United Kingdom stated that in such cases the ECHR should not act as a fourth instance court and reassess the facts. The ECHR did so and came to the conclusion that there has been a violation of applicants’ rights⁴⁰.

⁴⁰ Case of Strand Lobben and others v. Norway: Application no. 37283/13. European Court of Human Rights: Council of Europe 2019.

6. Conclusion

There were 57 ECHR judgements for Norway between 1959 and 2020. At least one violation was found in 38 of them. This represents one of the lowest amounts per capita among 20 considered member states of Council of Europe; however, 16 violations were related to Article 8, which is the highest ratio found (42.11 %). From these 16 cases with confirmed violation, 13 are related directly to the actions of Barnevernet and there is a significant increase of complaints to Barnevernet in last 5 years.

The judgements and communicated cases copy the concerns of critics of Barnevernet because it has powers that are usually given only to courts in other European countries. Barnevernet can appeal a court decision and act against the court ruling. The study of the judgements and other sources proved that there are too many emergency orders. Foster care is used as a permanent measure instead of being a temporary solution until family reunification.

In many cases, (there can be regional exceptions as there are 440+ local Barnevernet offices) Barnevernet lacks effort in setting proper visitation rights for the parents, who only get an insufficient time of 2 hours twice a year of strictly supervised contact. This can, in fact, do more harm than good to the psyche of the children. This is later used against the parents to even lower the frequency of the contacts, and it can serve as an argument for forced adoptions.

Authors are aware of some public political statements made by members of the Norwegian government regarding a significantly increased number of cases by ECHR and judgements stating a violation of human rights, however, actions to change the Barnevernet practices are missing. The appeals of Norway in some cases, e. g. confirmed violation in case of Abdi Ibrahim vs. Norway, will be reconsidered by Grand Chamber, while appeals to violation in cases Hernehult vs. Norway and Pedersen vs. Norway were dismissed (“Grand Chamber Panel’s decisions” 2020)

It seems that Norway expresses more disagreement with the Court ruling rather than any deeper reflection, which could be useful mainly for other states, which have already implemented some principles of Norwegian child welfare system into national legislation and procedures as good practice via various EEA grants projects.

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List of figures

- Figure 1: Applications processed for Norway
- Figure 2: General statistics: ECHR cases 1959 – 2020
- Figure 3: First HUDOC analysis steps
- Figure 4: Following HUDOC analysis steps
- Figure 5: Summary for 61 complaints involving Barnevernet decisions
- Figure 6: Number of complaints with article 8 for Norway – year when the complaint was sent to ECHR