Children's rights pitted against children?

The legal framework and practice of Barnevernet Functioning in the perspective of international legal standards

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INSTITUTE FOR LEGAL CULTURE ORDO IURIS

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To all friends without whom this report would have never been published. To Jan-Aage Torp, Arthur Kubik, Sławomir Kowalski, Kamila Gryn, Marianne H. Skanland, Valeriu Ghiletchi, Steven Bennett, Rune Fardal, Einar C. Salvesen, Marius Reikeras, Leo van Doesburg, Ben Oni Ardelean, Silje Garmo and most of all Polish and Norwegian families whose separation, suffering and struggle against family life violations by Barnevernet where the inspiration and research material for our team.

Tymoteusz Zych, PhD
Jerzy Kwaśniewski
Bartosz Zalewski"

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ABBREVIATIONS

BVL	*Lov om barneverntjenester (barnevernloven)*, LOV-1992-07-17-100
CRC	Convention on the Rights of the Child of 20 November 1989, UNTS vol. 1577, New York 1999, No. 27531 (1990), pp. 3-178
ECHR	Convention of the Council of Europe of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, ETS No.005
ECtHR	European Court of Human Rights
ETS	European Treaty Series
LBF	*Lov om behandlingsmåten i forvaltningssaker (forvaltningsloven)*, LOV-1967-02-10
LD	*Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*, LOV-2017-06-16-51
LLDD	*Lov om Likestillings- og diskrimineringsombudet og Diskrimineringsnemnda (diskrimineringsombudsloven)*, LOV-2005-06-10-40
LMR	*Lov om mekling og rettergang i sivile tvister (tvisteloven)*, LOV-2005-06-17-90
PACE	Parliamentary Assembly of the Council of Europe
UNTC	United Nations Treaty Collection
UNTS	United Nations Treaty Series

Main theses of the report

1. In the Barnevernloven regulations, the Norwegian legislature specified four conditions which justify placing a child in foster care: i) the occurrence of serious neglect regarding the child's daily care or insufficient personal contact with the child and failure to provide a sense of security; ii) failure on the part of the parents to meet the needs of a disabled child or other special needs of their child; iii) sexual abuse or maltreatment of the child by the parents; and iv) a high probability of serious risk to the child's health or development due to the parents' inability to take sufficient responsibility for the child.

2. In line with international human rights standards, the Norwegian legal system calls for both a strict interpretation of the above-indicated conditions and intervention in family life commensurate with any detected dysfunctions. In this regard, the most serious type of intervention regarding family life, i.e., taking a child away from his or her parents, should be resorted to only in exceptional cases.

3. It follows from official Norwegian documents that Barnevernet employees do not use the information they possess to adjust their means of assistance to the dysfunctions detected in family life. This, in turn, leads to the institution arbitrarily deciding to deprive parents of custody over their children. Consequently, such interventions often amount to a disproportionate interference in family life.

4. As part of its activities, Barnevernet repeatedly deprives parents of their custody over their children on the basis of trivial occurrences or serious but unconfirmed accusations.

5. Employees of Barnevernet consider depriving parents of custody over their child "a measure in and of itself" without connecting it with a need to improve the functioning of a given family. The contact between parents and children is seriously limited and closely monitored. In practice, parents completely lose their ability to strengthen their bond with their child.

6. Contact between parents and the child taken away from them is typically limited to two or three sessions lasting several dozen minutes per year. Unfortunately, this situation is commonly accepted by the Norwegian courts. This amounts to a violation of a fundamental human right

guaranteed in the European Convention for the Protection of Human Rights and Fundamental Freedoms, i.e., the right to respect for private and family life (Article 8).

7. In practice, steps taken by Barnevernet very often contribute nothing to solving problems faced by a given family. Situations when parents who have been deprived of custody over their child manage to completely stabilize their lives on their own (by means of finding a permanent job or overcoming their addictions) are ignored.

8. Also, when choosing a foster family for the child, no preference is given to the child's biological relatives (grandparents, siblings, or cousins of the child's biological parents). The child usually ends up in the care of complete strangers.

9. Norwegian courts and social service authorities typically consider the principle of the child's best interests narrowly and make one criterion – choosing an environment favorable for the child's development – their top priority at the expense of not taking biological relations between the child and his/her extended family members into account. Thus, the interests of the family are largely ignored.

10. Contact with the child usually takes place in the form of two to four sessions of several hours per year under the close supervision of social workers and the foster family.

11. It is also disconcerting that Barnevernet, the county council for social welfare and the courts consider themselves competent to make decisions in cases involving people who leave Norway and apply for asylum elsewhere.

12. The Barnevernet engages in the abusive practice of depriving parents of custody over their children on the basis of temporary rulings which have to be approved after the fact by a county council for social welfare. In 2015, the number of emergency care orders was greater than the overall number of decisions to deprive parents of custody over their children (including decisions approving emergency orders and those issued in normal proceedings). Interventions – which now seem to be considered standard procedure – should be used as a last resort and applied only in exceptional circumstances.

13. During interventions, police officers assisting social workers tend to disproportionately use coercive measures.

14. The fact that minutes are not taken at meetings and that administrative decisions are not properly justified raises doubts as to whether or not the parents' right to a fair trial is protected and makes judicial control over decisions of county councils for social welfare illusory.

15. There have also been omissions regarding the medical examination of children who were allegedly subjected to physical violence when a medical examination should have been performed

immediately, on the first possible day after taking the child away. Children are also interrogated by means of repeating leading questions suggesting the desired answer.

16. Information acquired during a research visit in Oslo suggests that there is a strong tendency towards being selective in taking the child's opinion about pending proceedings into account, particularly regarding requests for more frequent contact with the child's biological parents.

17. Under Norwegian law, it is possible for the same judge to examine a case in courts of different instances, which may also result in violations of Article 6(1) of the European Convention on Human Rights.

18. In addition, the deadlines for Barnevernet to submit motions to deprive parents of child custody are too long, arguably violating the parents' right to have their case examined in a reasonable time.

19. Under Norwegian law, courts are allowed to reduce the remuneration of the court-appointed representative providing legal assistance to parents, which is not possible in the case of Barnevernet's attorney and thus constitutes a violation of the principle of the equality of parties to proceedings.

20. Many immigrants are justifiably afraid of Barnevernet taking their children away, a fear which is supported by scientific studies. There has indeed been an intensification of Barnevernet's activity regarding immigrant families whose children were born in Norway. Such children form as little as 3% of the entire population of Norway, yet they are placed in foster care in as many as 9.9% of all cases.

21. Norwegian legislation includes no proper and sufficient solutions aimed at protecting ethnic and religious minorities against discrimination. In spite of well-developed anti-discrimination laws, there are still no proper procedures making it possible to appeal a decision placing a child in foster care with a family incapable of ensuring the protection of the child's ethnic, religious, cultural, or linguistic identity.

22. The fact that court proceedings take a long time puts minority children at risk of actually losing their ethnic, religious, linguistic, and cultural identity, which often also leads to a disruption of their bonds with their biological parents.

23. Norwegian courts also deserve criticism as, by approving limited contact between a child and his/her biological parents, they contribute to those children losing their sense of belonging to a family-based ethnic or religious community.

24. There is an evident tendency to ignore the religious needs of children placed in foster care. They are prevented from engaging in religious practices, including community-based and individual ones, a situation that is unacceptable.

25. International standards are also violated if children are prevented from keeping their linguistic identity, particularly in a situation where maintaining such identity would not involve serious difficulties or financial strain for the foster family.

26. Barnevernet is widely criticized by both Norwegian and international media and the observations regarding its functioning are usually similar. The media point out that the problems faced by Barnevernet could easily be solved by means of administrative restructuring and by increasing the number of and resources available to social workers. Improper intervention often leads to family tragedy, but the proposed changes will lead to only partial improvement of the situation of families living in Norway.

27. The current situation can only be changed by amendments to Norwegian law, especially by eliminating ambiguous provisions that can be interpreted arbitrarily and used as grounds for placing a family under state custody.

28. It is necessary to introduce mechanisms which would oblige Barnevernet to thoroughly examine all circumstances which might justify an intervention regarding family life, to verify notifications concerning irregularities in the functioning of families, and to select means of assistance and means related to depriving parents of custody over their child only after confirming the existence of a dysfunctional family with the full participation of parents and children.

29. However, an essential and necessary element of changing the current situation is a material alteration of the axiological basis of the Norwegian child protection system by means of discarding the principle of the state's omnipotence and putting more emphasis on the principle of family autonomy and the state as a potential source of assistance for families. This should be emphasized when training social workers. Norway should also start complying with the standards created by international law, in particular the decisions of the European Court of Human Rights.

Chapter 1. Introduction to the study

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Introduction to the study

1.1. Object of the study

1.1.1. Barnevernet - historical background

Norway has had statutory regulations on child protection for more than a hundred years.[1] In the Constitution of the Kingdom of Norway of 1814[2], which is still in force today, the current wording of Article 104, which relates to the protection of children, was, however, only included in 2014. The first law exclusively dedicated to regulating the system for the protection of children, called Barnevernet (Child Welfare Services), *the Lov om barnevern*, entered into force in 1953.[3] Norway was the first country in the world to have an Ombudsman for Children (*Barneombodet*), who has been acting there since 1981.[4] Moreover, in 1987 Norway became the third country in the world to ban corporal punishment.[5] Norway's commitment to the legal protection of children remains unwavering. There are currently a number of legal acts in force to ensure the protection of children[6], including the

1 G. Hagen, *Barnevernets historie – om makt og avmakt i det 20. arhundret*, Oslo 2001, *passim*. A significant weakness of this study is the complete omission of abuses committed by Barnevernet against children and their families. However, Hagen's monograph gives an overview of the historical development of the institution in the context of social and economic changes. More on this subject in the review of the Hagen's book: J. Tranøy *Forfalskningen av barnevernets historie*, „Dagsavisen" (1 September 2005) – available at: http://www.barnasrett.no/joar_tranoy/forfalskningen_av_barnevernets.htm (access: 24 February 2019).

2 The Constitution, as amended, is still in force today. *Kongeriket Norges Grunnlov* (LOV-1814-05-17). In 2014, profound changes were made to the Norwegian Constitution, enriching its content with a catalogue of human rights, following the example of other modern constitutions, see: J. Jacobsen, *Constitutions and Criminal Law Reform*, "Bergen Journal of Criminal Law and Criminal Justice" 5/1 (2017), pp. 18-19.

3 *Lov om barnevern* (LOV-1953-07-17-14). Before 1953, the provisions of the 1896 Act *Lov om behandling af forsømte børn (Vergerådsloven)*, which came into force on 9 June 1900, were binding. See: Statens forvaltningstjeneste (Government Administration), Informasjonsforvaltning, *Norges offentlige utredninger 2000: 12 Barnevernet i Norge Tilstandsvurderinger, nye perspektiver og forslag til reformer. Utredning fra utvalg oppnevnt ved kgl. res 29 januar 1999. Avgitt til Barne- og familiedepartementet mai 2000*, Oslo 2000, p. 4.

4 Act governing the institution of the Children's Ombudsman in Norway: Lov om barneombud (barneombudsloven) (LOV-1981-03-06-5); See more: W. Nowiak, D. Narożna, R.L. Muriaas, *Nordycki model wspierania rodzin niewydolnych w opiece nad dzieckiem. Analiza sytuacji Polaków oraz ich rodzin w Norwegii*, „Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" 456 (2016), p. 119.

5 This was first introduced by Sweden (1979), followed by Finland (1983), Norway (1987), Austria (1989), Cyprus (1994), Denmark (1997), Latvia (1998), Croatia (1999), Germany (2000), Israel (2000), Iceland (2003), Ukraine (2004), Romania (2004), Hungary (2005), Greece (2006), the Netherlands (2007), New Zealand (2007), Portugal (2007), Uruguay (2007), Venezuela (2007), Spain (2007), Moldova (2008), Costa Rica (2008), Luxembourg (2009), and Liechtenstein (2010). Cf. M. Płatek, *Ochrona dzieci przed przemocą w rodzinie na tle najnowszych rozwiązań prawnych w Polsce*, „Studia Iuridica" XLVI/2006, p. 234.

6 Specifically, the following acts should be mentioned: *Lov om barn og foreldre (barnelova)* LOV-1981-04-08-7; *Lov om barneverntjenester (barnevernloven)* LOV-1992-07-17-100; *Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven)* LOV-1999-05-21-30; *Lov om adopsjon (adopsjonsloven)* LOV-2017-06-16-48. It is worth noting that the Ministry for

Act on the Strengthening of Human Rights in Norwegian Law (Human Rights Act), *Lov om styrking av menneskerettighetenes stilling i norsk rett* (*menneskerettsloven*)[7], which introduces international human rights instruments[8] into the Norwegian legal system, including the Convention on the Rights of the Child[9] and the European Convention on Human Rights.[10] Paragraph 3 of the Human Rights Act gives precedence to the application of international law regulations over domestic law, which means that when Norwegian law conflicts with ratified international law, the rights established by the latter take precedence over Norwegian law.[11]

However, behind the facade of well-established legal institutions and pioneering solutions is the drama of thousands of children and parents. The gap between enacting regulations that at least nominally benefit children and the actual practice of Norwegian public services was noticeable even before Barnevernet was established in its present form. Information about terrible conditions under which juvenile boys who committed criminal acts were detained[12] is commonly known. The fate of mentally ill children was similar.[13] Boarding schools, such as those for girls, *Bjerketun behandlingshjem og skole*[14], were also infamous for the treatment of their wards.

The currently binding law, *Lov om barneverntjenester (barnevernloven)*[15], was adopted on 17 July 1992. It comprehensively regulates the legal situation and conduct with regard to children living in conditions that pose a threat to their life, health or psychological and social development. This law also

Children, Equality and Social Inclusion also issues guidelines on the application of child protection law, such as: the Guidelines of 06.06.2011 concerning the interpretation of immigration regulations § 8.10, fourth subparagraph, letter e - Exceptions from maintenance if the applicant is a child under 15 years of age without guardians in his/her homeland - interpretation of the term „guardians". - *Instruks om tolkning av utlendingsforskriften § 10-8 fjerde ledd bokstav e - Unntak fra underholdskravet når søkeren er barn under 15 år uten omsorgspersoner i hjemlandet - Tolkning av begrepet „omsorgspersoner"* (GI-08/2011); Guidelines of 15.12.2015 on the treatment of cases concerning children which are related to other countries - *Retningslinjer om behandlingen av barnevernsaker der barn har tilknytning til andre land* (Q-42/2015); Guidelines of 25.06.2018 concerning amendments to immigration regulations, Section 17-6 (Notification obligation to the child welfare service) - *Orientering om endring i utlendingsforskriften § 17-6 (varslingsplikt til barneverntjenesten)* (25.06.2018-JD); Guidelines of 3.07.2015 concerning the role of diplomatic posts in matters concerning the protection of children's rights - consular assistance - Utenriksstasjoners rolle i barnevernsaker - consulær bistand.

7 LOV-1999-05-21-30.

8 It introduced five legal acts (with additional protocols): 1) the Council of Europe Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, 2) the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, 3) the International Covenant on Civil and Political Rights of 16 December 1966, 4) the Convention on the Rights of the Child of 20 November 1989, and 5) the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979.

9 UNTS vol. 1577, New York 1999, No. 27531 (1990), pp. 3-178. Convention on the Rights of the Child of 20 November 1989 containing the following additional protocols: (a) Optional Protocol of 25 May 2000 on the sale of children, child prostitution and child pornography, and b) Optional Protocol of 25 May 2000 on children and armed conflict.

10 ETS No. 0005. Convention of the Council of Europe of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, amended by the Protocol of 11 May 1994 and by the Protocol of 13 May 2004, with the following additional protocols: a) the Protocol of 20 March 1952; b) the Fourth Protocol of 16 September 1963. c) the Sixth Protocol of 28 April 1983 on the abolition of the death penalty; d) the Seventh Protocol of 22 November 1984; e) the Thirteenth Protocol of 3 May 2002 on the abolition of the death penalty in all circumstances.

11 § 3 LOV-1999-05-21-30.

12 I. Hydle, *Youth Justice and Restorative Justice in Norway*, [in:] *Restorative Justice Today. Practical Applications*, [eds.] K.S. van Wormer, L. Walker, Los Angeles 2013, pp. 64-65.

13 The tragic conditions in which mentally ill children were held were documented and publicized by Norwegian journalist and lawyer Gerd Benneche, who paid special attention to children's rights. This resulted in her publications on the subject: *Rettssikkerheten i barnevernet*, Oslo 1967; *eadem, Barnevernet i Norge*, Oslo 1983;

14 The conditions prevailing in boarding schools were described by the psychologist employed there, Gori Gunvald: *Bjerketun. Psykologens beretning om ti år (1952 -1962) på en offentlig verneskole for unge piker*, Oslo 1967.

15 LOV-1992-07-17-100.

covers basic issues related to foster care, procedures for intervention in families and the structure of the organization of social services to perform the tasks provided for in its provisions. The Barnevernet - operating on the basis of this Act provisions - is a system of social welfare units dedicated to children with various administrative and executive units at the state, county and municipal level. The units with most direct contact with the general public are the local Barnevern offices, one in each municipality or part of a municipality such as city administrative districts.

The Barnevernet is a system of social welfare units dedicated to children with various administrative and executive units at the state, county and municipal level.

The beginning of the 1990s was a special period in the history of the Norwegian childcare system. On one hand, in 1991 Norway ratified the Convention on the Rights of the Child[16], and, on the other hand, the drama of Adele Johansen took place then. In 1989, Johansen's children, a 12-year-old son and a daughter only a few days old, were taken away from her. At the end of May 1991, the Johansen case was referred to the Norwegian Supreme Court[17], only to be finally resolved in 1996 by the European Court of Human Rights in Strasbourg.[18] In the early 1990s, there were also numerous publications critical of social services, which were supposed to provide childcare services.[19] The malfunctioning of the child welfare system was also of interest to the Conservative-Libertarian political party *Fremskrittspartiet*, which won 10 seats in the 1993 Norwegian Parliament elections (*Stortinget*).[20] The main originator was John Alvheim.

The year 1996 was particularly important in the history of the Barnevernet – it was then that the disturbing signals that had been observed before were confirmed. This was also when the *Fremskrittspartiet* party proposed a thorough debate on the education of social workers and the functioning of Barnevernet[21], and the European Court of Human Rights ruled in the case of Adele Johansen.[22]

The authors of the document which was the basis for the debate proposed by *Fremskrittspartiet* were MPs Carl I. Hagen and John Alvheim. They pointed out that the system, which in its present form had been in operation for only a few years in 1996, was the subject of growing criticism.[23] They also stressed the fundamental right of parents to raise their children and their obligation to provide

16 UNTS vol. 1577, New York 1999, No. 27531 (1990), s. 3-178. Informacje na temat ratyfikacji KPD przez poszczególne państwa: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (access: 21 February 2019).

17 See: information on: http://www.barnefjern.org/case-of-johansen-v-norway-1996/ (access: 20 February 1990).

18 See: judgment of the European Court of Human Rights of 7 August 1996, *Johansen v Norway*, application no. 17383/90.

19 For example: M. Wang, *Det store barnevernspøkelset*, Bergen 1992.

20 The party won 6.3% of the total number of votes, see information available at: http://archive.ipu.org/parline-e/reports/arc/2239_93.htm (22 February 2019).

21 Document no. 8:17 (1995-1996): *Forslag fra stortingsrepresentantene Carl I. Hagen og John Alvheim om tiltak for å gjenopprette tilliten til et barnevern i tillitskrise* (hereinafter: Document no. 8:17).

22 See: judgment of the European Court of Human Rights of 7 August 1996, *Johansen v Norway*, application no. 17383/90.

23 Document no. 8:17, item 1.1.

them with conditions that meet their material, psychological and social needs.[24] The document pointed out the inadequate education level of social workers[25], as well as the erroneous priorities in the Barnevernet's policy.[26]

At the same time, in an atmosphere of growing political dispute, the European Court of Human Rights in Strasbourg partly shared Adele Johansen's arguments, stating that the decision to deny her contact with her daughter and to deprive her of parental rights violated Article 8 ECHR, which provides for the protection of family life.[27] At the same time, no breach of the other provisions of the Convention referred to by the applicant - Articles 6 and 13 ECHR - was found.[28]

The Johansen judgment was delivered on 7 August 1996. Several months later, on 10 October 1996, the Norwegian Parliament debated the condition of Barnevernet. Although the Johansen case was based on the provisions of the 1953 Act, there were arguments in the debate related to the decision made in Strasbourg.[29] It was also pointed out that support for change was expressed by a group of experts from both Norway and other Nordic countries.[30] However, the Parliament decided not to introduce any far-reaching legislative changes at that time.

The reason for this may have been lack of sufficient pressure from the international community, which, apart from the Johansen judgment, had no reason to believe that any human rights standards could be violated in Norway. Moreover, Adele Johansen was a Norwegian citizen and her case was therefore not of particular interest to the international media.

The year 2015 - when the children of the Romanian-Norwegian Bodnariu family were taken away from their parents - can undoubtedly be regarded as a breakthrough from the point of view of public awareness of the scope of Barnevernet's activities and all the abuses committed by this institution.

A breakthrough came only after scandalous cases of unjustified interference by Barnevernet in the family life of citizens of other countries living in Norway. This was especially the case of the Indian couple Sagarika Chakraborty and Anurup Bhattacharya, Czech citizen Eva Michalakova and the Bodnariu family, whose stories were publicized and caused diplomatic tensions between Norway, India, the Czech Republic and Romania. The conflict climaxed in 2015, which can undoubtedly be

24 *Ibid*, item 1.2.
25 *Ibid*, item 2.2. In particular, criticism was addressed to the works of K. Killén (based on conclusions from her study: *Omsorgssvikt og barnemishandling – En kasusstudie og etterundersøkelse av barn i omsorgssviktsituasjoner*, Oslo 1988) – see. ibid, item 3.1-2.
26 *Ibid*, item 2.3.
27 Judgment of the European Court of Human Rights of 7 August 1996 *Johansen v Norway*, application no. 17383/90, paragraph 84.
28 *Ibidem*, paragraph 89 and 91.
29 Transcript of the Stortinget sitting - *Møte tirsdag den 22. oktober kl. 10 1996*, Sak no.. 7, statements by: H. Berg and L. Sponheim.
30 *Ibidem*, statements by R.N. Wetterstad and C.I. Hagen.

regarded as a breakthrough year from the point of view of public awareness of the scope of Barnevernet's activities and all the abuses committed by it.

The case of Sagarika Chakraborty and Anurup Bhattacharya was the best example of the Barnevernet's employees' ignorance of cultural differences. Parents were deprived of custody of their children because of an "abusive situation" and sleeping together with children (which is normal in Indian culture).[31] There were also a number of procedural violations.[32] In January of 2013, Sagarika Chakraborty and her children were legally reunited in India by the order of the Kolkata High Court.[33]

Eva Michalakova and her husband at the time (both Czech citizens) were deprived of the custody of their sons, Denis and David, as a result of allegations of physical and sexual abuse.[34] Although the circumstances that justified Barnevernet's intervention were not confirmed in the conviction or even in the indictment, the boys were sent to two different foster families.[35] Czech authorities came to the defence of Ms. Michalakova whose right to have contact with her sons was constantly restricted. The president of the Czech Republic, Miloš Zeman, sent a letter to the king of Norway and the Czech MEP, Tomáš Zdechovský, was also involved in the matter and called for the Norwegian Ambassador to Prague to be deemed a *persona non grata*, which ultimately did not happen.[36] Ms. Michalakova was also supported by some Norwegian citizens, such as Jan Simonsen and Rune Fardal.[37]

The case of the Norwegian-Romanian Bodnariu family aroused no less emotion. In 2015, five children were taken away from parents formally accused of violence. The youngest of the children was only a few months old. The children were then placed in three different foster families. In fact, however, it is suspected that it was the religious upbringing of children by Pentecostal parents which raised the Barnevernet's concerns. When the case was publicized by the Romanian media, protests in defense of the Bodnarius began. Romanian politicians and diplomats, such as Prof. Ben-Oni Ardelean, became involved. In the end, Barnevernet agreed to settle the case and return the children to their parents, who immediately left Norway and moved to Romania.[38]

The Bodnariu family case was so important that it aroused the interest of the Council of Europe, which commissioned Valeriu Ghiletchi, a Moldovan MP, to prepare a report and a motion for a resolution on the respect of children's rights by social services in various European countries, with particular reference to Norway. On 6 June 2018, Mr. Ghiletchi presented the report entitled *Striking*

31 Further details: S. Bennett, *Stolen Childhood*, Emira Press 2019, p. 73 et seq.

32 *Ibidem*, pp. 81-83.

33 *Ibidem*, p. 81.

34 See: information available at: http://www.humanrightsnorway.com/czech-foreign-minister-expresses-indignation-to-deputy-norwegian-ambassador/ (access: 24 February 2019).

35 *Ibid.*

36 *Ibid.* See also: S. Bennett, *op. cit.*, pp. 38-39.

37 See: press articles in Dagbladet: A. Hansen ,T.P. Krokfjord Torgeir, J. Færseth, *Rune (58) har jobbet mot barnevernet i over ti år: - Det er fem til seks hovedmiljøer i Norge. Vi møtes ganske ofte* – available at: https://www.dagbladet.no/nyheter/rune-58-har-jobbet-mot-barnevernet-i-over-ti-ar---det-er-fem-til-seks-hovedmiljoer-i-norge-vi-motes-ganske-ofte/67366999 (access: 24 February 2019).

38 For a detailed description of the Bodnariu family, see: S. Bennett, *op. cit.*, p. 41 et seq.

a balance between the best interests of the child and the need to keep families together, which formed the basis for the adoption of Resolution 2232 (2018) of the Parliamentary Assembly of the Council of Europe under the same title[39] on 28 June 2018. The report confirmed that there had been violations of children's rights in Norway as a result of unjustifiably depriving parents of custody of their children.

The obligation of public authorities to ensure that children have contact with their biological parents has been the subject of detailed analysis by the European Court of Human Rights. On 6 June 2018, the ECtHR issued a judgment in the case of Blondina Jansen, a Norwegian national of Roma origin, in which it explicitly confirmed that preventing biological parents from having contact with their child in the care of a foster family is contrary to the aim of foster care, namely, a gradual return of the child to his/her biological parents, and therefore constitutes a violation of the right to respect for family life, which is protected under Article 8 of the ECHR.[40]

During the *Human Dimension Implementation Meetings* held in Warsaw on 18 September 2018, experts of the Ordo Iuris Institute presented to representatives of the international community an analysis of Barnevernet's activities taking into account both the content of Resolution 2232 (2018) and the judgment of the European Court of Human Rights in the Jansen case. In December of the same year, as a result of activities undertaken within the framework of the Ordo Iuris Process Intervention Programme, the Polish Ministry of Foreign Affairs issued a decision on granting asylum to Norwegian mother, Silje Garmo, whose daughter was unjustifiably taken away by Barnevernet. Ms. Garmo, who was accused of misuse of medicines, left Norway and came to Poland in order to prevent her younger daughter from suffering a similar fate. It is worth mentioning that, despite the fact that Ms. Garmo had previously asked for help from organizations such as Amnesty International, no real support was given to her.

In her New Year's speech in 2019, Norwegian Prime Minister Erna Solberg, despite international criticism of Barnevernet's activities, pointed out the necessity of emphasizing the cases of depriving parents of custody which were successful.[41] Shortly afterwards, Norway deemed the Polish consul, Sławomir Kowalski, PhD, who was involved in defending the rights of Polish children taken away from their parents by Barnevernet, as a persona non grata.[42]

On 10 September 2019, the European Human Rights Court in Strasbourg issued a ruling stating that the Kingdom of Norway had violated the right to respect of family life, which is protected by Article

39 PACE, *Striking a balance between the best interest of the child and the need to keep families together*, Doc. 14568 Report; Resolution 2232 (2018) of the Parliamentary Assembly of the Council of Europe *Striking a balance between the best interest of the child and the need to keep families together* – the material is available in whole at: http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=25014&lang=EN (access: 24 February 2019).

40 See: judgment of the European Court of Human Rights of 6 September 2018 in the case *Jansen v. Norway*, application no 2822/16.

41 See: J. Simonsen, *Prime Minister Erna Solberg's whitewashing of the CPS Barnevernet*, trans. M.H. Skanland, available at: http://www.mhskanland.net/page120/page557/page557.html (access: 30 April 2019).

42 See: materials available at: https://ordoiuris.pl/rodzina-i-malzenstwo/ordo-iuris-i-norweska-polonia-w-obronie-polskich-rodzin-oraz-konsula-rp (access: 30 April 2019).

8 of the European Convention on Human Rights.[43] The case concerns a Norwegian woman, Trude Strand Lobben, and her son. The ECtHR pointed out that "...in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible."[44] Recently the ECtHR accepted applications for the review of sixteen further cases against Norway regarding children being taken away from their biological parents.

Simultaneously with proceedings before the Grand Chamber, the Norwegian authorities were developing a draft of a new law on the protection of children. However, it was criticized by Norwegian journalist organizations, which drafted a legal opinion containing multiple objections connected with the lack of transparency in the operations of the Norwegian Child Protection Office.[45] The Ordo Iuris Institute also prepared its own analysis of the draft law.[46]

Recent events allow us to conclude that the Norwegian political class lacks the will to change the state of affairs that has existed for years. National civil society organizations are still unable to get their message across to the most important media and therefore do not reach the majority of the population. Only pressure from international circles can lead to a reform of the Norwegian system for the protection of children's rights, which in fact violates these rights.

1.1.2. The scale of the deprivation of parents' custody over their children in Norway

The scale of the phenomenon described in the presented study is difficult to grasp. First of all, from the information provided by the Norwegian authorities themselves, it appears that they do not keep statistics that show the specific number of children that are transferred to foster families or care institutions in a given year. The Norwegian authorities only indicate that, in 2017, 1342 interim (emergency) orders were issued on deprivation of custody of children and 2596 decisions issued by county councils for social welfare. Each interim order must be confirmed by a decision because otherwise it expires.[47] The number of decisions, however, is insufficient to draw irrefutable conclusions on the number of children in foster care (for example, more than one decision may be issued per child in a given year).

On the other hand, placing a child in foster care only on weekends, which is allowed in the Norwegian system, or depriving parents of custody on the basis of a settlement, obscures the reality of the

43 The judgment of the European Court of Human Rights of 6 September 2018 in the case *Strand Lobben and Others v. Norway*, application no 37283/13, § 226.

44 *Ibidem*, § 205.

45 An English version of this opinion (trans.: D. Bøhn) is available on-line: https://ordoiuris.pl/pliki/dokumenty/Press_Assoc_Norway%20_-%20_hearing.pdf (access: 16 September 2019).

46 B. Zalewski, *Commentary to the proposal of new law on rights of children in Norway* - available on-line: http://en.ordoiuris.pl/commentary-proposal-new-law-rights-children-norway (access: 26 September 2019).

47 Information on the number of provisional orders and decisions comes from a letter from the Ministry of Children and Equality of 28 February 2019, which responds to the request of the Ordo Iuris Institute on 16 July 2018.

situation.[48] Information on the number of children remaining in foster care (foster family or institution) at the end of each year is also unreliable because their situation can be very dynamic.[49]

For these reasons, the research team decided not to indicate the specific number of children who are annually taken away from their parents.

1.2. Sources and literature on the subject

Among numerous analyzed sources, the most important is the currently binding *Lov om barneverntjenester (barnevernloven)*, a law specifying the reasons for depriving parents of child custody, specifying the mode and procedures applicable to Barnevernet and the key issues related to foster care. In addition, other acts of Norwegian law, including above all the Norwegian Constitution, were used as subsidiary sources. Determination of the functioning practice required familiarity with Norwegian case law, with particular reference to the case law of the Norwegian Supreme Court. During the query, the most frequently quoted judgments, especially from the last 10 years, were found in the Library of the Faculty of Law at the University of Oslo. Meetings held in Oslo, during which long conversations were held with victims, as well as with experts and social activists, were also helpful.

A reliable assessment of the regulations in force in Norway required the use of not only case law, but also local jurisprudence. The commentary on *Barnevernloven* by Kari Ofstad and Randi Skar[50] remains the basic source in this context. Numerous reports concerning various aspects of Barnevernet's functioning have been used to a large extent, with a focus on the most recent studies.[51] S. Hofman's work[52] was useful for the evaluation of the relationship between Barnevernet and families belonging to national, ethnic and religious minorities. Publications by other authors, such as O. Christiansen[53], K. Križ and M. Skivenes[54], R. Bjørknes, M.K. Fylkesnes, A. Iversen and R. Nygrena[55],

48 In a given case, a settlement may be reached under which the parties - Barnevernet and the parents - assume certain obligations. For example, Barnevernet may commit to „returning" children to parents if they agree to undertake specific therapies, stay in a family facility, etc. Such a settlement was made even in the case of the Bodnariu family. For the legal basis, see section 4-5 *Lov om mekling og rettergang i sivile tvister (tvisteloven)*, LOV-2005-06-17-90.

49 This is due to the constant „rotation" of children remaining in foster care. Some of them reach adulthood, some return to their parents, others change from institutional custody to foster families or from foster family to institution - that is not so uncommon, because the children are unruly in the foster home, want to go home to their parents, etc, so foster families cannot cope.

50 K. Ofstad, R. Skar, *Barnevernloven med kommentarer*, Oslo 2015.

51 For example: E. Clausen, L. B. Kristofersen, *Barnevernsklienter i Norge 1990–2005: En longitudinell studie*, NOVA-Raport 3/2008), Oslo 2008; Fylkesnemndene for barnevern og sosiale saker – Årsrapport 2017; Bufdir, *Barn med minoritetsbakgrunn i fosterhjem*, Rapport 2017-03; Statistisk sentralbyrå, *Innvandrere i Norge 2017*, [ed.] T. Sandnes, Oslo 2017; Barne-, ungdoms- og familiedirektoratet, *Handlingsplan for å bedre tillit mellom etniske minoritetsmiljøer og barnevern 2016-2021*, Oslo 2017; M.F. Aarest, A. Bredal *Omsorgsovertakelser og etniske minoriteter En gjennomgang av saker i fylkesnemnda*, NOVA Rapport 5/2018; Statens Helsetilsyn, *Gjennomgang av 106 barnevernssaker*, Oslo 2019.

52 S. Hofman, *Hensyn til kultur - til barnets beste? En analyse av 17 barnevernssaker om omsorgsovertakelse og plassering av minoritetsbarn*, Oslo 2010.

53 O. Christiansen, *Hjelpetiltak i barnevernet – en kunnskapsstatus*, Bergen 2015.

54 K. Križ, M. Skivenes, *Challenges for marginalized minority parents in different welfare systems: Child welfare workers' perspective*, „International Social Work" 58/1 (2015).

55 R. Bjørknes, M.K. Fylkesnes, A. Iversen, R. Nygrena, *Frykten for Barnevernet. En undersøkelse av etniske minoritetsforeldres oppfatninger*, „Norges Barnevern" 92/2 (2015).

B. H. Kojan and H. Fauske[56], or E. Marthinsen[57] were also included. Literature related to the negative effects for children of being deprived of the care of their biological parents was also incorporated.[58]

An international standard of human rights was established based on, above all, the Convention on the Rights of the Child [59], International Covenant on Civil and Political Rights[60] and the European Convention for the Protection of Human Rights and Fundamental Freedoms.[61] A proper reconstruction of the rights and obligations set out in these acts required an analysis of the jurisprudence of the European Court of Human Rights. The aforementioned report by Valeriu Ghiletchi, commissioned by the Parliamentary Assembly of the Council of Europe[62], was also of great importance. Its author had the possibility to use data which would be extremely difficult or even impossible to obtain by representatives of a non-governmental organization.

The specificity of this report also determined the use of statistical data provided by Bufdir and the Norwegian Statistical Office (*Statistisk sentralbyrå*). Some data were obtained pursuant to the Norwegian Act regulating the provision of public information - *Lov om rett til innsyn i dokument i offentleg verksemd (offentleglova)*.[63] Unfortunately, it has to be noted that it was not easy, and for many months Bufdir - the management body of the agency responsible for the operation of local Barnevernet units and foster care provided by public and private institutions - did not respond to our requests. Our first request for documents with specific data in July 2018 was rejected because "the questions do not identify any specific case or documents", but a reply with information concerning Ordo Iuris' questions was to be sent, "most likely in early autumn, due to the summer holidays in Norway." The request we formulated and sent by e-mail on 4 September 2018 was not answered until 29 November 2018, while the request sent by e-mail on 7 January 2019 was not answered until 6 May 2019 and only after journalistic intervention. Unfortunately, in this regard Norway's behavior failed to meet the standards expected from a state which is considered a "model of the rule of law." Only the Norwegian Embassy in Warsaw responded quickly and efficiently, but only in a general way referring to the questions asked.

Furthermore, media information was also used and was analyzed separately.

56 B. H. Kojan, H. Fauske, *Et klasseperspektiv på barnevernets familier*, "Tidsskrift for velferdsforskning", no. 14 (2011).

57 E. Marthinsen, *En radikal analyse av barnevernet*, „Norges Barnevern", nr 2 (2004).

58 For example: T. Egelund, M. Lausten, *Prevalence of mental health problems among children placed in out-of-home care in Denmark*, „Child & Family Social Work", 14/2 (2009); T. Heino, M. Johnson, *Huostassa olleet lapset nuorina aikuisina* [in:] U. Hämäläinen, O. Kangas, Perhepiirissä, Helsinki 2010; L. Kestilä, A. Väisänen, R. Paananen, T. Heino, M. Gissler, *Kodin ulkopuolelle sijoitetut nuorina aikuisina. Rekisteripohjainen seurantatutkimus Suomessa vuonna 1987 syntyneistä*, „Yhteiskuntapolitiikka", 77/6 (2012); M. Berlin, B. Vinnerljung, A. Hjern, *School performance in primary school and psychosocial problems in young adulthood among care leavers from long term foster care*, „Children and Youth Services Review", 33/12 (2011); B. Vinnerljung, M. Öman, T. Gunnarson, *Educational attainments of former child welfare clients — A Swedish national cohort study*, "International Journal of Social Welfare", 14/4 (2005); B. Vinnerljung, A. Hjern, *Cognitive, educational and self-support outcomes of long-term foster care versus adoption. A Swedish national cohort study*, „Children and Youth Services Review", 33/10 (2011); B. Vinnerljung, A. Hjern, F. Lindblad, *Suicide attempts and severe psychiatric morbidity among former child welfare clients: A national cohort study*, "Journal of Child Psychology and Psychiatry", 47/7 (2006); B. Vinnerljung, A. Hjern, *Consumption of psychotropic drugs among adults who were in societal care during their childhood — A Swedish national cohort study*, "Nordic Journal of Psychiatry", 68/8 (2014); Vinnerljung, L. Brännström,, A. Hjern, *Disability pension among adult former child welfare clients: A Swedish national cohort study*, "Children and Youth Services Review", 56 (2015).

59 UNTC, vol. 1577, New York 1999, No. 27531 (1990).

60 UNTS, vol. 999, New York 1983, No. 14668 (1976).

61 ETS, no. 005.

62 PACE, *Striking a balance..., passim*.

63 LOV-1970-06-19-69 as amended.

1.3. Methods and structure of the work

The specificity of the subject matter necessitated the use of various research methods. The legal-dogmatic method was used to analyze Norwegian legislation and to reconstruct international standards. The achievements of other disciplines of social studies, especially sociology, were also applied, using the direct interview method and analyzing available or acquired statistical data.

The presented study consists of five essential chapters. Chapter II deals with the material reasons for depriving parents of custody of their children. In this respect, the normative content of § 4-12 BVL was analyzed based on Norwegian jurisprudence and the views of representatives of the legal doctrine. Moreover, cases of particular abuses in the field of interpretation of this provision, which led to unauthorized removal of children from their parents, are described. Chapter III focuses on the issue of foster care in light of the aims attached to this institution in the European Court of Human Rights' case law. The discussed issues are related not only to the analysis of relevant provisions of Norwegian law and particularly important cases, but also to a description of the evolution of the child welfare principle in the Norwegian system and a short overview of the negative effects for children remaining outside their biological family.

Chapter IV deals with the procedures applied during Barnevernet proceedings and features of the means of redress, and presents an analysis of the data concerning the number and nature of cases dealt with. Chapter V focuses on the situation of families from national, ethnic and religious minorities who for various reasons are particularly vulnerable to unjustified interference by Barnevernet. That chapter contains an analysis of the available statistical data and a discussion of the issues concerning the representatives of minorities. Chapter VI of the report, which analyzes the media coverage of Barnevernet and its image in Norwegian and foreign media, is innovative in nature. It contains a concise description of some social organizations which bring together supporters of the reform of the Norwegian system for the protection of children's rights.

The report also includes three appendices. The first appendix is a transcript from the meeting of experts, journalists, social activists and politicians involved in human rights activities in Norway. The meeting was organized by the Ordo Iuris Institute on 9 January 2019 in Oslo. The second appendix is a brief collection of definitions for better understanding the organization of the Norwegian child protection system. The third appendix are Ordo Iuris Institute Written Observations for European Court of Human Rights of 4th November 2019 submitted in '16 Norvegian cases' - M.L. v. Norway (no 64639/16), K.F. and A.F. v. Norway (no 39769/17), E.M. and Others v. Norway (no 53471/17), E.M. and T.A. v. Norway (no 56271/17), O.S. v. Norway (no 63295/17), D.R. v. Norway (no63307/17), F.Z. v. Norway (no64789/17), S.E. and Others v. Norway (no9167/18), A.L. and Others v. Norway (no45889/18), M.A. and M.A. v. Norway (no48372/18), R.O. v. Norway (no49452/18), C.E. v. Norway (no50286/18), K.E. and A.K. v. Norway (no57678/18), M.F. v. Norway (no5947/19), S.S. and J.H. v. Norway (no15784/19), S.A. v. Norway (no26727/19).

Chapter 2. Substantive conditions for depriving parents of custody over their child in Barnevernloven

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Families are the best and most natural place for the development of a child, which means that parents are both obliged and entitled to raise their children. Similarly, each child has the right to be raised in his/her biological family, receiving from his/her parents all the measures necessary for physical, mental and social development. Therefore, the family should enjoy autonomy allowing it to independently make decisions resulting from the above rights and obligations. National institutions may interfere in family autonomy exclusively in the case of dysfunctions preventing the family from the fulfillment of its fundamental role. The main purpose of this chapter is thus the theoretical and practical study of conditions allowing the Norwegian authorities to deprive parents of the right of custody of their children.

2.1. International legal standard

Pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms, everybody has the right to respect for his/her private and family life, home and correspondence (Article 8(1)). Public authorities cannot interfere in the exercise of this right, except for the cases provided for in the act and as necessary for the functioning of a democratic society due to national or public security, national prosperity, law enforcement, crime prevention, health, morality, and the protection of rights and freedoms (Article 8(2)).

According to the European Court of Human Rights, the main purpose of the above principle is to protect individual privacy against interference from the public authorities, especially in such delicate matters as family relationships. However, this does not mean that apart from the public authorities' obligation to refrain from interfering in citizens' private lives the Convention does not impose any positive obligations on these authorities. As the ECtHR indicated in the *Bărbulescu v. Romania case*, pursuant to the European Convention the state has the obligation to develop a legislative framework

that secures individual privacy, taking into account the necessity to protect different interests[64], also parents' rights and views concerning the exercise of their parental responsibility over their children.[65] The ECtHR indicates that one of such positive obligations is that the national authorities must take measures allowing parents to be reunited with their children, thus ensuring their fundamental right to "enjoy their family life."[66] In this regard, the key issue encountered by the ECtHR while applying Article 8 is the definition of "private life."

In the European Court of Human Rights' jurisprudence one of the positive obligations of the state is that national authorities must take measures allowing the reunion of parents with their children in a situation of temporary separation.

The existing case law of the European Court of Human Rights has developed a concept pursuant to which personal "privacy" is understood in a very broad sense[67] covering a person' physical and mental integrity and, to some extent, the right to establish and develop relationships with other people. The ECtHR emphasizes that in some cases this concept may cover aspects of the person's physical and social identity, the right to "personal development" or the right to self-determination and such elements as sexual identity, orientation and life, which also fall within the personal sphere protected by Article 8 of the Convention.[68] Currently, the ECtHR – following the broad concept of privacy – assumes that this right may be infringed even as a result of activities that may not seem to be directly aimed at violating a given person's privacy. In this context, it should be mentioned that acts such as polluting the environment[69], or an employer's recording an employee in the workplace or tarnishing an employee's reputation constitute violations of this right.[70]

At the same time, Article 8 of the Convention clearly states that the nature of the right to privacy is not unlimited, although it may be restricted only by way of an act of law. In practice, this means that public authorities do not have the right to interfere in the privacy of citizens on the basis of causes and activities without statutory empowerment. Due to the significance of the limited right, the statutory conditions must be interpreted in a strict way. On the other hand, these conditions cannot be freely

64 See judgment of the Grand Chamber of the European Court of Human Right of 5 September 2017 in the case of *Bărbulescu vs. Romania*, application no. 61496/08, point 52; judgment of the European Court of Human Rights of 22 November 2016 in the case of *Grebneva i Alisimchik vs. Russia*, application no. 8918/05, point 43-55.

65 Judgment of the European Court of Human Rights of 8 January 2013 in the case of A.K. i L. vs. *Croatia*, application no. 37956/11, point 62-63.

66 Judgment of the European Court of Human Rights of 28 June 2016 in the case of *Malec vs. Poland*, application no. 28623/12, point 66.

67 Decision of the European Court of Human Rights of 7 February 2017 in the case of *Pihl vs. Sweden,* application no. 74742/14, point 23.

68 Judgment of the European Court of Human Rights of 25 July 2017 in the case of *Carvalho Pinto de Sousa Morais vs. Portual*, application no. 17484/15, point 35.

69 Judgment of the European Court of Human Rights of 13 July 2017 in the case of *Jugheli and others vs. Georgia*, application no. 38342/05, point 63.

70 Decision of the European Court of Human Rights of 2 May 2017 in the case of *Haupt vs. Austria*, application no. 55537/10, point 36; cf. J. Hołda, Z. Hołda, D. Ostrowska, J.A. Rybczyńska, *Prawa człowieka. Zarys wykładu*, Warsaw 2011, pp. 119-125.

determined by law but they have to be necessary in a democratic society due to national or public security, national prosperity, law enforcement, crime prevention, health, morality, and the protection of rights and freedoms.

Interference is considered "necessary in a democratic society" for achieving a legitimate objective if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons cited by the national authorities to justify it are "relevant and sufficient." At the same time, the assessment of the relevance of guarantees against abuses depends on all the circumstances of a given case. To determine whether public interference in individual privacy, including family life, is legitimate, the analysis should include an examination of the substance, scope and period of the application of given measures, the circumstances required for their application, the authorities responsible for their approval, performance and supervision, as well as the types of means of appeal available in the national law.[71]

At the same time, it is significant that the ECtHR states that, leaving states a margin of discretion, and, as a result, the freedom to define specific solutions protecting privacy, it should be taken into account that this discretion changes depending on the conventional law, its meaning for individual people, the nature of restricted activities and the nature of the purpose of these restrictions. The discretion is more restricted when a given law is crucial for a person to effectively exercise important or fundamental rights.[72] Such rights unquestionably include the right to an undisturbed family life and parental contact with and the right to raise one's own children.

In 1988, the Court confirmed that in fact exercising parental rights constitutes a fundamental element of family life, by which it also expressed that parents' right to exercise parental authority over their children, with due regard for obligations corresponding to this authority, is acknowledged and protected by the Convention, in particular by its Article 8.

In this perspective, the Court sees the need for a more in-depth inspection of all national restrictions on parents' rights to contacts with their children and, in the case of all legal guarantees aimed at ensuring effective protection of parents' and children's rights, to respect for their family life.[73] In 1988, the Court confirmed that in fact exercising parental rights constitutes a fundamental element of family life, by which it also expressed that parents' right to exercise parental responsibility over their children, with due regard for obligations corresponding to this responsibility, is acknowledged

71 Judgment of the European Court of Human Rights of 30 May 2017 in the case of *Trabajo Rueda vs. Spain*, application no. 32600/12, point 38-49.

72 Judgment of the European Court of Human Rights of 23 March 2017 in the case of *A.-M.V. vs. Finland*, application no. 53251/13, point 83.

73 Judgment of the European Court of Human Rights of 29 March 2016 in the case of *Kocherov i Sergeyevaprzeciwko vs. Russia*, application no. 16899/13, point 94.

and protected by the Convention, in particular by its Article 8.[74] Therefore, it is beyond doubt that the maintenance of mutual contacts between parents and children constitutes a basic element of family life, and national measures limiting such contacts are equivalent to interference in the right to privacy. Such interference constitutes a violation of this provision unless it is consistent with law, serves the achievement of legitimate objectives mentioned in Article 8(2) ECHR and may be considered as "necessary in a democratic society." Therefore, when assessing a given case, it should be determined whether, taking into account particular circumstances of the case and especially the importance of decisions made, the plaintiffs took part in the decision-making process, treated as a whole, to the extent sufficient for ensuring the required protection of their interests.[75] At the same time, the Court has emphasized in its case law that "the respect for family life" requires the predominance of the biological and social reality over a legal presumption which is contrary to both facts determined in the case and wishes of the interested parties and brings no benefits.[76]

Therefore, while assessing the legal measures provided in a country's domestic law concerning family relationships, especially the limitation of parental rights, these provisions should be formed with sufficient precision to allow individuals – if necessary with appropriate (legal) support – to foresee to a reasonable extent in the given circumstances the consequences which may result from a given activity. A law which gives some discretion is not contrary to the above requirements provided that the scope of the discretion and the manner of its application are indicated with sufficient transparency, taking into account a specific and legally justified purpose to provide an individual with appropriate protection against arbitrary interference.[77]

At both the international level of their protection and in the legal systems of many countries, children have a fundamental right to live and be brought up in their biological family.

In this context, it should be remembered that one of the fundamental rights of children[78] – at both the international level of their protection and in the legal systems of many countries – is their right to live and be brought up in their biological family. In the preamble of the Convention on the Rights of the Child – to which Norway is also a party – it is clearly stated that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment" which is "the

74 Judgment of the European Court of Human Rights of 28 November 1988 in the case of *Nielsen vs. Denmark*, application no. 10929/84, point 61.

75 Decision of the European Court of Human Rights of 8 January 2002 in the case of *A. Schultz and M. Schultz vs. Poland*, application no. 50510/99, point 1.

76 Judgment of the European Court of Human Rights of 27 October 1994 in the case of *Kroon and others vs. the Netherlands*, application no. 18535/91, point 40.

77 Judgment of the European Court of Human Rights of 25 February 1992 in the case of *M. and R. Andersson vs. Sweden*, application no. 12963/87, point 24-25.

78 See S.L. Stadniczeńko, *Prawo dziecka do wychowania w rodzinie, in: Konwencja o prawach dziecka. Wybór zagadnień (artykuły i komentarze)*, compilation: Office of the Children's Ombudsman, Warsaw 2015, pp. 85-118; P. Wójcicka, Prawo dziecka do wychowania w rodzinie. Wybrane aspekty, in: *Prawa dziecka w prawie międzynarodowym*, ed. E. Karska, Warsaw 2014, p. 25.

fundamental group of society and the natural environment for the growth and well-being of all its members." In the same Convention, the parties thereto undertook that children cannot be separated from their parents against their will. Such type of interference is admissible only if competent public authorities, subject to judicial supervision, decide – pursuant to the applicable law and appropriate procedure – that such separation is necessary for the best interests of the child.

Therefore, it is clear that a child may be taken from his parents only after the relevant authorities carry out the appropriate procedure under judicial supervision and exclusively in order to protect the interests of the child. From this perspective, it is obvious that national legislatures have the obligation to establish rules of procedure that, on the one hand, protect children and, on the other hand, prevent public authorities from making arbitrary or hasty decisions on the application of legal measures. This interpretation is supported by other provisions of the Convention, especially Article 5, pursuant to which state parties are obliged to respect parents' responsibility, right and obligation to raise their children, and Article 18, which states that this right is granted to both parents.

The Parliamentary Assembly of the Council of Europe shares the same opinion declared, for example, in 2018, when the Assembly stated that depriving parents of custody over their children and placing them in institutional care should be limited to a minimum and applied exclusively in urgent cases.[79] Additionally, in September 1991 the Committee of Ministers of the Council of Europe recommended adopting the principle that special protection must be provided to children whose welfare is in serious danger due to neglect or any other physical or mental abuse or who have been or may be improperly removed from a person entitled to custody.[80] The Council of Europe states clearly that only in exceptional cases should children be placed outside their family should, mainly to protect the child's welfare and their successful social integration or reintegration within the shortest possible time. Moreover, it must be guaranteed that children's fundamental rights are not violated when they are removed from their biological family.[81]

International human rights standards assume that public authorities interfering in family life, especially the provision of childcare by parents, are obliged to comply with two basic rules: on the one hand, the authorities should protect a child's welfare and, on the other hand, they should apply the least intrusive means of interference.

Therefore, international human rights standards assume that public authorities interfering in family life, especially the provision of childcare by parents, are obliged to comply with two basic rules: on

79 PACE, Resolution 2232(2018), *Striking a balance between the best interest of the child and the need to keep families together*, point 5.5.

80 Recommendation no. R (91) 9 of the Committee of Ministers on emergency measures in family matters, Principle 1, see: P.J. Jaros, *Prawa Dziecka. Dokumenty Rady Europy*, Warsaw 2012, pp. 355-357.

81 Recommendation REC(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions. Appendix to Recommendation REC(2005)5, see: P.J. Jaros, *op. cit.*, pp. 364-369.

the one hand, the authorities should protect a child's welfare and, on the other hand, they should apply the least intrusive means of interference. The application of radical solutions, in particular taking a child away from his or her biological parents, is admissible only in exceptional and urgent cases in which there are no other possibilities to protect the rights of the child. At the same time, each case of institutional interference in family life must be preceded by an appropriate procedure which guarantees the rights of all the parties involved are respected and the possibility to appeal to an independent court. This standard must become the basis for the assessment of national solutions in the matter in question, including those applicable in Norway.

2.2. Conditions of placing a child under state custody in Norwegian law

Pursuant to § 4-1 BVL, when exercising its powers to interfere (in practice very forcefully) in family life Barnevernet is obliged to apply measures aimed at protecting the best interests of a child in the best possible way, especially in the scope of ensuring the child good and stable relationships with adults and continuity of care. At the same time, the applied measures should contribute to changes in the functioning of the child and the family (§ 4-4 BVL), always in a way ensuring the correct fulfillment of its natural tasks. Therefore, after identifying the need for institutional support for a family Barnevernet is obliged to prepare a long-term assistance plan subject to regular assessment, paying special attention to the need to apply specific measures as well as parental behavior (§4-5 BVL). This is a basic type of activity for supporting parents in the exercise of their rights and the performance of their obligations Each subsequent interference in family life, including regulating contacts between parents and their children, must be justified appropriately and proportionately to the scale of the problem.

Therefore, the application of "emergency measures" is possible only if parents are not able to take care of their child, e.g., due to illness (nevertheless, these measures cannot be maintained in this case against the parents' will) or if leaving the child at home may have harmful effects on the child. In each of these cases, it is unacceptable to take the child away from his parents and deprive the parents of the opportunity to solve the problems that caused such a decision, and therefore to be unable to maintain contact with their child (see § 4-5 of the BVL).

The Norwegian legislature indicated four main reasons authorizing public authorities to issue an order to deprive parents of custody over their child.

At the same time, the Norwegian legislature indicated four main reasons authorizing public authorities to issue an order to deprive parents of custody over their child. The first reason concerns the

occurrence of insufficient daily care for the child or insufficient personal contact and failure to ensure the child a sense of security. The occurrence of this condition is assessed taking into account the child's age and level of development (§ 4-12a BVL). The second reason concerns an ill or disabled child and a child "with other special needs" whose parents do not provide the appropriate care (especially the proper treatment) for the child's dysfunction or needs (§ 4-12b BVL). The Norwegian legislature also decided to give Barnevernet the right to intervene when a child is abused or subject to other serious forms of violence (§ 4-12c BVL) and in the case when it is highly probable that the child's health or development may be negatively affected by the parents' inability to take sufficient responsibility for the child (§ 4-12d BVL). Pursuant to § 4-14 of the *Barnevernloven*, the above conditions may become the basis for placing the child – depending on his/her needs – in a foster family, public institution, training or healthcare institution, or youth facility.

The European Court of Human Rights has developed in its case law the view that breaking family ties means "cutting the child off from his or her roots", which may only be justified in highly exceptional circumstances.

If Norwegian public authorities find conditions authorizing them to interfere in the way of raising and caring for children, it may have extremely severe effects on the family, including the destruction of the family by taking a child away from its parents. Therefore, such types of interference in a state functioning under the rule of law should be carried out under strictly determined conditions not subject to broad interpretation or abuse. The European Court of Human Rights has the same understanding of the possibility of removing a child from his or her parents and placing the child in institutional care. Pursuant to the case law of the European Court of Human Rights, severing family ties means "cutting a child off from his or her roots", which may be justified only in highly exceptional circumstances. Therefore, the decision must be based on sufficiently convincing and important considerations resulting from the necessity to ensure the best interests of the child.[82] Moreover, as the ECtHR indicates, all measures connected with the application of temporary child custody should be compliant with the ultimate purpose of reuniting parents with their children.[83]Therefore, the interpretation of the above mentioned conditions is of fundamental importance for the assessment of the activities of the Norwegian authorities, especially their application in specific cases. Only by making such analysis is it possible to assess the problem in question from the point of view of international human rights standards.

82 Judgment of the European Court of Human Rights of 18 December 2008 in the case of *Saviny vs. Ukraine*, application no. 39948/06, point 47-51.

83 Judgment of the European Court of Human Rights of 8 April 2004 in the case of *Haase vs. Germany*, application no. 11057/02.

2.3. Normative significance of conditions for depriving parents of custody over their child in Norwegian legislation

Commentators on the *Barnvernloven* admit that taking a child away from his/her parents constitutes substantial limitation of parental authority, which equals the limitation of parents' fundamental right to raise their children. Therefore, public authorities should first and foremost strive to help families solve their problems and not immediately deprive parents of custody over and contact with their child. At the same time, children should only be separated from their parents when they actually live in conditions unfavorable for their development[84], and the parents do nothing to change the situation. Hence, only a determination of negligence in the performance of parental duties leading to the destruction of the family and risk to the child's correct development justifies the Barnevernet's interference.[85]

The Norwegian Supreme Court, however, emphasizes that in such type of cases it is not necessary to carry out advanced evidence proceedings, but to present enough arguments in favor of the necessity of undertaking institutional custody over the child.

The Norwegian Supreme Court, however, emphasizes that in such type of cases it is not necessary to carry out advanced evidence proceedings, but to present enough arguments in favor of the necessity of undertaking institutional custody over the child.[86] This means that Barnevernet officials are given the possibility to make arbitrary decisions on the necessity to interfere in family life. Therefore, as they do not have to carry out "advanced evidence proceedings" as to the existence of statutory conditions to place children under institutional custody, it opens the possibility to deprive parents of custody over their children and children of their right to be brought up by their parents on the basis of unsubstantiated information or without an appropriate determination of the real necessity to implement legal measures. It is emphasized in Norwegian legislation that if there is a "very probable" risk to a child's interests, public authorities only need to take the actions specified by law.[87] Yet, their application in the case of insignificant problems which can be easily eliminated by measures not considerably interfering in the functioning of a family is unjustified.

According to the Norwegian jurisprudence, the first of the indicated conditions for public interference – meaning serious negligence in taking care of a child and ensuring him or her a sense of security – may be applied only after assessing the child's situation. At the same time, even at the stage of legislative works it was argued that "serious insufficiencies" both in taking care of a child, contacting

84 Ø. Christiansen, *op. cit.*, p. 23.
85 K. Ofstad, R. Skar, *op. cit.*, p.142.
86 Decision of the Norwegian Supreme Court of 15 April 2011, HRHR-2011-00843-A, case no. 2010/2115, point 66.
87 Decision of the Norwegian Supreme Court of 19 December 2006, HR-2006-2123-A - Rt-2006-1672, case no. 2006/953.

him or her and ensuring the child a sense of security cannot be interpreted in a way leading to the child being placed under state custody in the case of every minor incident of parental negligence concerning this type of obligation. Unfortunately, despite the reasonableness of this line of argumentation, the Norwegian legislature used extremely vague expressions that are open to diverse interpretations. Taking into account the above indicated highly liberal approach of Norwegian courts to the issue of the application of the *Barnevernloven*, one can reasonably argue that at the legislative level the Norwegian legislature granted public authorities far-reaching and highly arbitrary rights to interfere in family life. This thesis is supported by the fact that in practice the Barnevernet officials base their actions most frequently just on this prerequisite.

The historic interpretation of the discussed regulation leads to the conclusion that the concept of "care" as understood by the Norwegian legislature means parents' appropriate efforts aimed at ensuring the fulfillment of their child's material and spiritual needs, mainly in the scope of ensuring a safe home, clothes, food and proper care for their children's health and education. Moreover, the relevant legislative documents note that the expressions "contact" and "safety" used in the provision often refer to the same situation. Hence, serious negligence in this scope includes, for example, the use of violence in the family, both towards children and between other family members.[88] Even if violence is not directed specifically against the child, it may in fact have a negative impact on the child's sense of security. Children can also be placed in foster care if parents reject their children emotionally, or – due to their own mental problems – they cannot provide them with appropriate care.[89] Therefore, it is justified to conclude that serious insufficiencies in taking care of a child or in parental contact with a child constitute situations in which parents – due to their own dysfunctions – are not able to fulfill their role in a way ensuring proper conditions for a child's normal development. At the same time, it is not possible to remove these causes quickly and easily. The recovery process takes time.

As already indicated, the second condition for placing a child in institutional custody is parental negligence of a disabled child's needs, especially in the scope of ensuring that the child receives the proper healthcare and rehabilitation. It is obvious that the Norwegian legislature extends the application of this norm to both physically and mentally disabled children. However, it should be emphasized that the simple fact that a child has a disability does not necessitate state intervention, which is justified only when parents are negligent in providing the care appropriate for a given type of disability, which in turn requires the establishment of the manner in which the care for the child should be performed.

Problems in child-rearing may justify state interference only when they become significantly exacerbated leading to serious social dysfunctions in the form of repeatedly committed offenses or offenses that are particularly harmful.

88 Ø. Christiansen, *op. cit.*, p. 24.
89 K. Ofstad, R. Skar, *op. cit.*, p. 147.

The term "other special needs" of the child, used in § 4-12b BVL, can be interpreted in even more diversified ways. Commentators emphasize, including by means of reference to this provision's historic interpretation, that children that have problems with correct behavior, for example by repeatedly committing acts prohibited by law, should be included in the category of children placed in foster care. According to the Norwegian legal doctrine, one can assume in such situations that the child is being neglected or is receiving insufficient care.[90] Taking into account the fact that in the discussed provision the legislature did not clearly distinguish disabled children from children with "other needs", this interpretation seems to be justified. Nevertheless, even by conventional standards problems with childrearing may justify interference by the state only in extreme cases that lead to serious social dysfunction in the form of repeatedly committed offenses or offenses that are particularly harmful. Only in such a situation is it justified to assume that parents lack the ability to provide their children with the proper care. In such cases, parents should be able to seek assistance from specialized state institutions. Such interference in minor cases would prevent the state from providing support to parents, who have the primary and natural right to raise their children, despite the many problems inherently connected with raising children.

In Norway, children are very rarely (in only about 1-2% of all cases) placed in foster care because of physical, psychological, sexual or other kinds of abuse, which are harmful to a child's development.

As the commentators note, the last two conditions for placing a child under state custody refer mainly to cases of physical, psychological, sexual or other kinds of abuse which are harmful to a child's development. It should be mentioned that in practice these conditions are extremely rare, appearing in approx. only 1-2 % of all cases when children are placed in foster care.[91] It is stated in the doctrine that in the case of this kind of family dysfunction the other conditions for the state's interference also occur. Therefore, it should also be strictly interpreted. As K. Ofstad and R. Skar note, firmly requiring a child, even against his will, to comply with rules of conduct determined by parents cannot be treated as physical or psychological abuse. Children obviously do not have their parents' life experience, especially the emotional and social maturity of adults, and consequently need their parents' guidance. Therefore, the determination by parents of rules of conduct and forcing their children to follow them is an element of parental care that is also essential from the perspective of the society's best interests. At the same time, Barnevernet and other public authorities do not have the right to interfere in childcare when the abuser does not live with the family or pose a threat to it.[92]

The provision of § 4-12d of the BVL also authorizes public authorities to interfere in the upbringing of children in cases when their health or development may suffer severely as a result of their parents'

90 Ø. Christiansen, *op. cit*, pp. 20-21.

91 *Barn og unge som får hjelp fra Barnevernet*, https://www.bufdir.no/Statistikk_og_analyse/Barnevern/Barn_og_unge_med_tiltak_fra_barnevernet/#heading13546 (accessed on 13 March2019).

92 K. Ofstad, R. Skar, *op. cit*., p. 149.

inability to assume "sufficient responsibility" for them. It was argued at the stage of legislative works that this provision should be applied in relation to parents with mental problems or serious mental disorders.[93] At the same time, it was emphasized that sometimes in such situations, especially in the case of a small child, those parents are still able to provide the proper care. Problems may arise as the child grows, and their psychological and physical needs gradually increase. It is stated in the legal doctrine that the application of these norms is justified also in the case of parents addicted to alcohol or drugs. Obviously, as in the previous case, in these situations there are circumstances justifying the placement of the child under state custody. Nevertheless, both the doctrine and the case law state that the provision of § 4-12d should be applied with great caution and, importantly, only after conducting more thorough evidentiary proceedings.[94]

Table 2.1. Justification of taking actions by Barnevernet in 2013-2017

	2013	2014	2015	2016	2017
The child is subjected to neglect	45	39	41	74	23
The child is subjected to mental abuse	51	41	37	138	37
Parents' criminality	69	70	61	111	74
The child is the victim of sexual abuse/incest	77	71	90	137	102
The child has disabilities	166	135	144	186	129
The child's relationship difficulties	174	208	178	406	169
The child's substance abuse	202	182	139	127	171
The child is subjected to physical abuse	256	229	244	404	204
The child has no one to care for him / her	163	202	216	438	241
Parents' somatic illness	410	557	555	343	618
The child's behaviour / criminality	646	583	551	908	635
The child's mental health problems	527	534	579	784	642
Other aspects of the child's situation	921	1035	907	1765	876
Domestic violence / the child is witness to domestic violence	943	958	1062	1505	984
Parent's substance abuse	1402	1499	1500	1372	1494
Other aspects of the parents / family	2272	1969	1776	2303	1612
High degree of conflict at home	1780	2045	2089	2290	2245
Parents' mental health problems	2841	3216	3253	1839	3112
Parent's lack of parenting skills	4170	4782	5399	4768	6743
Unknown	20931	22661	25280	26728	28124
Total	38046	41016	44101	46626	48235

Source: Statistic Norway, https://www.ssb.no/statbank/table/10782/

93 Ø. Christiansen, *op. cit.*, p. 22.
94 *Ibidem*, pp. 15-151.

One can conclude based on the above data that most frequently Barnevernet justifies its interference in a highly unspecified manner, referring to "lack of parents' basic care skills", their "mental disorders" or "other situations." Such general justifications can be applied to an enormous variety of cases and thus state interference depends to a great extent on the officials' arbitrary decision. Moreover, it should be noted that the Norwegian authorities state that the above-indicated circumstances cannot be the basis for Barnevernet activities[95], whereas Statistics Norway lists such reasons in its compilations of data as the basis of the Barnevernet's activities.

Most frequently, Barnevernet justifies its interference in a highly unspecified manner, referring to "lack of parents' basic care skills", their "mental disorders" or "other situations." Such justifications can be applied to an enormous variety of cases and thus state interference depends to a great extent on the officials' arbitrary decision.

Table 2.2. The use of particular conditions by Barnevernet in 2017

	Boys	Girls
4-12a	540	484
4-12b	3	2
4-12c	19	37
4-12d	41	46

Source: information from Bufdir

Therefore, unfortunately, the doctrinal interpretation of the Barnevernloven does not translate into the work of the Barnevernet. As a matter of fact, the available data concerning the justifications of Barnevernet activities are incomplete. Nevertheless, the analysis performed by B.H. Kojan shows that in 2008 Barnevernet based its interference in family life on similar justifications. Thus, one can argue that between 2009 and 2013 there was no significant change and this instead represents a permanent tendency.

Table 2.3. Justification of taking action by Barnevernet in 2008

Content of the justification	Percentage of application
Housing conditions	50.3
Other reasons	17.0
Child's personality problems	14.8

95 Letter of the Royal Norwegian Ministry of Children and Equality of 28 February 2019, ref. no.: 18/2681-6, obtained from research.

Parents' mental diseases	8.5
Parents' inability to take care of their child	7.0
Drug use by parents	5.9
Domestic violence	4.1
Child's psychological problems	3.2
Unknown reasons	2.0
Parents' physical violence towards their child	1.8
Drug abuse by the child	1.4
Parents' somatic diseases	1.2
Child's disability	1.1
Parents' psychological violence towards their child	0.7
Child negligence	0.6
Child sexual abuse	0.6
Parents' Heath	0.5
Committing a crime by parents	0.4

Source: B.H. Kojan, *Norwegian Child Welfare Services: A Successful Program for Protecting and Supporting Vulnerable Children and Parents*, "Australian Social Work", 4(2011), p. 448.

The data presented above suggest that in many cases social workers take children away from their parents on the basis of unverified information, without giving parents the opportunity to defend themselves and, in the case of immigrant families, depriving them of the right to use the support of a Norwegian language interpreter or preventing them from obtaining consular service support.[96] Therefore, in order to determine the actual meaning of the provisions of the *Barnevernloven*, it is necessary to analyze examples of Barnevernet's activities.

2.4. Analysis of cases of Barnevernet activities raising serious doubts

It has already been emphasized that the norms of Norwegian law create possibilities for public authorities to interfere to a great extent in the parental exercise of custody over their children. It should be remembered that parents can only be validly deprived of the custody of their children if it is necessary due to the child's situation at the time an official decision is made. Past events in a given family are in most cases irrelevant unless crisis situations have not been solved. Moreover, depriving parents of the custody of their children is justified only in the situation where other, less restrictive

96 Information obtained during a research visit in Oslo on 3 January 2019.

measures do not produce the expected results, or it is obvious that only radical measures will bring about the desired effect.

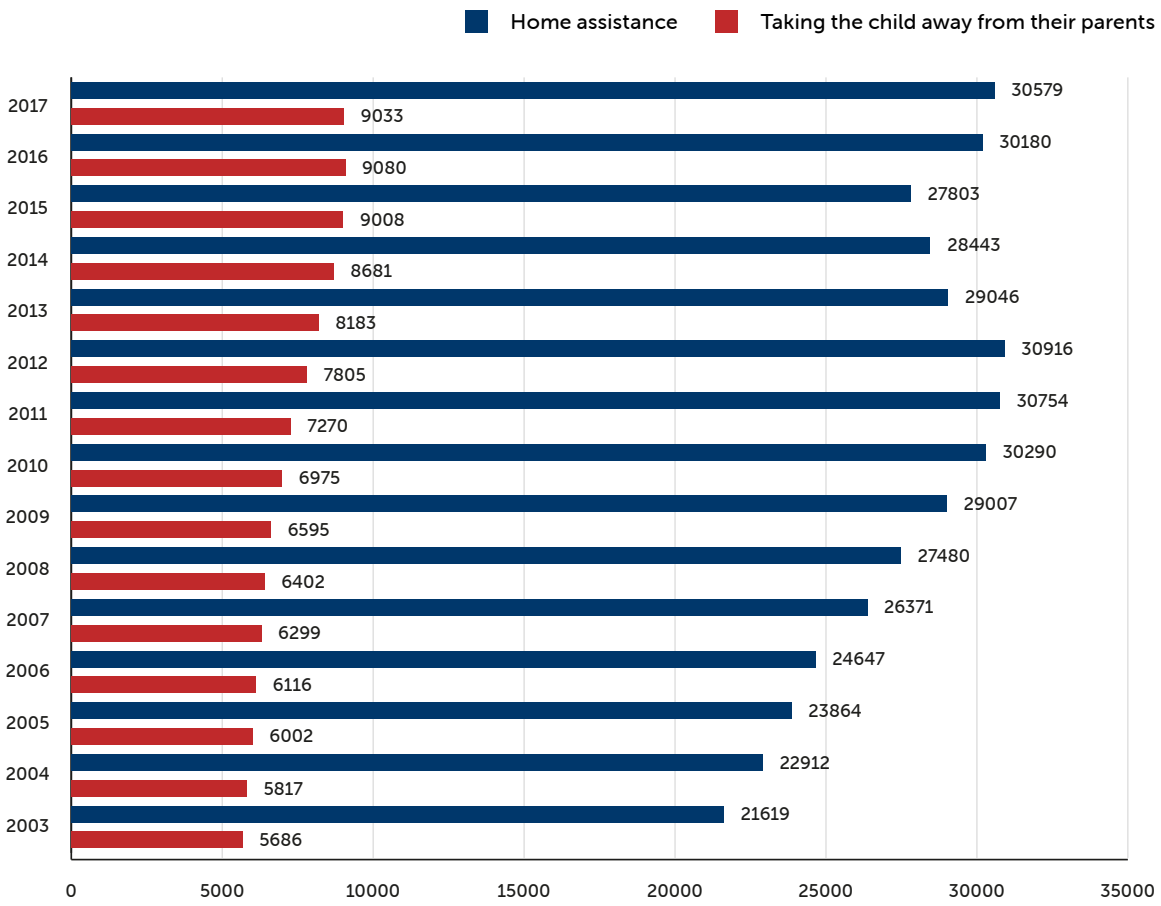
Moreover, taking a child away from his or her parents is intended to ensure the child better conditions (both psychological and physical) than in his/her biological family. Therefore, if public institutions are not able to ensure the child better conditions, they should strive to solve problems "inside" the family.[97] Taking into account the fact that the biological family is the best environment for a child's development, it may be assumed that only in absolutely exceptional and serious situations can an institutional entity create better conditions for a child's care and development. Meanwhile, during a research visit in Oslo, parents placed with children in childcare facilities (in order to "monitor" their parenting skills) indicated that there are difficult housing and hygienic conditions (e.g., an inadequate number of beds appropriate for the children's age).[98] Another problem with centers run jointly by public institutions and private entrepreneurs is the insufficient number of properly trained employees, especially psychological staff. In addition, when children are placed in foster families, they are frequently given to families without the relevant childcare experience.[99]

According to the report "DET Å REISE VASKER ØYNENE. Gjennomgang av 106 barnevernsaker" prepared in January 2019 at the request of the Norwegian Ministry of Health, the suicide rate of children under institutional custody in 1990-2002 was eight times higher than in the case of children brought up in their biological families.

The inefficiency of institutional care offered by Barnevernet is confirmed by data collected and published by Norwegian authorities. The report prepared in January 2019 at the request of the Norwegian Ministry of Health constitutes a good example.[100] It indicates that the suicide rate of children under institutional custody in 1990-2002 was eight times higher than in the case of children brought up in their biological families.[101] Moreover, Barnevernet activities are not properly supported, mainly due to the lack of appropriately prepared staff and poor housing and sanitary conditions in houses in which the children taken from their families are placed. Norwegian services do not use the information they have to determine the given child's individual needs and the best way to help[102], which leads to the arbitrary application of legal measures. The most frequent legal measure applied is taking a child away from his parents – according to the Norwegian media, on average Barnevernet applies this measure to five children a day[103].

97 See Ø. Christiansen, *op. cit.*, p. 22.
98 Information obtained during a research visit in Oslo on 3 January 2019.
99 Information obtained at the meeting on 3 January 2019 during a research visit in Oslo.
100 Statens helsetilsynet, *Gjennomgang av 106 barnevernssaker*, Oslo 2019.
101 See *Høy dødelighet hos barnevernsbarn*, https://www.aftenposten.no/norge/i/LljMV/Hoy-dodelighet-hos-barnevernsbarn, (accessed on 13/02/2018).
102 S. Majid, *Tilsynssvikten: Dette svarer kommunene*, https://www.vg.no/nyheter/innenriks/i/p64Jn6/tilsynssvikten-dette-svarer-kommunene?utm_content=recirculation-matrix&utm_source=VReWA4, (accessed on 13/02/2019).
103 B. Andersen, O. Helness, *«Kjære barnevernet – jeg vil hjem til mi ekte mor»*, https://www.nrk.no/nordland/xl/fem-barn-akuttplasseres-hver-dag-i-norge-1.14082733, (accessed on 11/03/2019).

Chart 2.1. Measures taken by Barnevernet in 2003-2017



Source: Statistic Norway, https://www.ssb.no/statbank/table/04443/

Legal norms become relevant at the stage of their application. Consequently, the study of the application of legal measures is the fundamental issue when assessing different types of normative solutions. The situation is similar in the case of practices of the Norwegian Barnevernet, whose decisions in some situations attract public attention and arouse controversy, especially in terms of violating human rights.[104] It should be emphasized that, when assessing the protection of children's rights in Norway, the United Nations noted several alarming signs, including, but not limited to, Norway's tendency to place children (especially of specific ethnic origin) very quickly under institutional custody and the lack of an independent appellate body to examine the issues of child custody.[105] It is worth noting that the Barnevernet's controversial activities have attracted the attention of a wide range of researchers – lawyers, psychologists, doctors and other healthcare professionals. Their concern was

104 *En menneskerettslig diagnose!*, http://www.sfm.no/galt-barnevernet-menneskerettslig-diagnose/, (accessed on 13/08/2018).

105 G.K. Andersland, *Norge bryter fortsatt barnekonvensjonen. Fem områder hvor det svikter*, https://www.aftenposten.no/meninger/debatt/i/5Vq60W/Norge-bryter-fortsatt-barnekonvensjonen-Fem-omrader-hvor-det-svikter--Geir-Kjell-Andersland (accessed on: 18/08/2018).

expressed in an open letter addressed in June 2015 to the Ministry of Children, Equality and Social Inclusion functioning at that time in Norway. The signatories pointed out Norway's harmful practice of in taking children away from their families too hastily and arbitrarily, which constitutes a violation of their basic rights. The most alarming irregularities include gathering insufficient evidence to justify taking a child away from his or her parents, selecting experts who are partial and the unreliability of their opinions as well as depriving parents of their right to submit their arguments in proceedings concerning their relationships with their children.[106] As examples, below we present some of the most shocking events.

Barnevernet's controversial activities have attracted the attention of a wide range of researchers – lawyers, psychologists, doctors and other healthcare professionals. Their concern was expressed in an open letter addressed in June 2015 to the Ministry of Children, Equality and Social Inclusion functioning at that time in Norway.

In 2011, Barnevernet – referring to alleged sexual abuse and negligence – took two children away from the Czech citizen Eva Michaláková, who has been staying in Norway since 2003. The case began in March 2011, when the staff of the kindergarten which her children attended notified state services about their suspicion that the children were being beaten and sexually abused. One and a half months after this notification, the authorities decided to take the children away from their mother and place them in a foster family. Initially, the mother was granted the right to visit her children every week, but after some time the boys were separated and given to different families. In 2015, Ms. Michaláková's right to contact her sons was reduced to two 15-minute meetings per year. The Norwegian authorities consistently justified their decision by the need to protect the children against the destructive influence of meetings with their mother. Incredibly, although proceedings were conducted, charges have never been brought against the parents and the opinions drawn up for the purposes of the proceedings before Barnevernet were prepared by two psychologists who were living together. In December 2016, Eva Michaláková was definitively deprived of her parental rights. It is worth emphasizing that the president of the Czech Republic, as well as many other politicians, including members of the European Parliament and the Czech government, have asked the king of Norway to intervene in this case.[107]

The case of another Czech citizen, Daniela Lode, whose daughter was taken away from her by Barnevernet after she firmly told her 7-year-old daughter to put on a winter hat, is similar to the above case. This situation, which took place in front of Ms. Lode's house, was seen by one of her neighbors, who notified the social services. After claiming that the girl was being abused, social services took the girl

106 *The National Notice of Concern about «Barnevernet», signed by 260 Professionals*, https://christiancoalition.world/news/read2/national-notice-of-concern-barnevernet (accessed on 11/08/2018).

107 S. Bennet, *op. cit.*, p. 15 et seq.

away from her mother, which was witnessed by one of her neighbors who notified the social services. Ms. Lode could see her daughter only in the designated place and time and was forbidden to talk to her in the Czech language.[108]

The analysis of the case law of the Supreme Court of Norway reveals that it is completely acceptable in Norway to limit parents' right to have contact with their children to only a few short meetings a year.

The analysis of the case law of the Supreme Court of Norway leads to a clear conclusion that the limitation of parents' right to have contact with their children for only a few short meetings a year is fully accepted in Norway. In a judgment of 7 February 2019, for example, referring to the prerequisite of serious insufficiencies in the daily care of a child or in the maintenance of personal contact and care of their sense of security (§ 4-12a of the Barnevernet Act), the Supreme Court of Norway deprived parents of custody over their child, who was placed in a foster home. The parents are allowed to see their child only four times a year for two hours in the place designated by the Barnevernet staff and in their presence.[109] Similarly, in the decision of 16 May 2018 it was deemed admissible to limit the mother's contact with her children to four three-hour meetings (under the supervision of a Barnevernet employee) and to six twenty-minute calls a year. Contacts with her children through social media are also forbidden.[110] It is worth mentioning that sometimes the Norwegian authorities differentiate biological parents' possibilities of contact with their children. An example of such situation is the case resolved by the Supreme Court of Norway by the judgment of 26 June 2018, in which the mother was allowed to have four two-hour meetings with her daughter and the father was allowed to have two one-hour meetings. In the case of both parents, their meetings with their daughter can only take place under Barnevernet's supervision.[111]

In 2013, Barnevernet deprived the American citizen, Amy Jakobsen, of custody over her 19-month-old baby. In July 2013, the employees of this office arrived at Amy Jakobsen's house accompanied by the police, informing her that her child must be immediately taken to the hospital for an examination. For several months preceding these events, worrying about her son's health problems Amy Jakobsen took him several times for medical examinations, which did not detect any abnormalities or alarming symptoms. After taking the child to the hospital, the doctor stated that he was a little underweight (instead of the textbook norm of 10 kg, he weighed 9.6 kg) and had a vitamin B12 deficiency. The doctor also criticized Ms. Jakobsen for still breastfeeding her son. On this basis, the Barnevernet employees decided to take the child immediately away from his mother, although the father, who came to the hospital, vigorously protested. After an argument between him and the staff,

108 *Europoslanec jedná v Norsku o navrácení českých dětí matce*, https://www.tyden.cz/rubriky/domaci/europoslanec-jedna-v-norsku-o-navraceni-ceskych-deti-matce_330511.html (accessed on 31/07/2018).
109 Decision of the Norway Supreme Court of 7 February 2019, HR-2019-239-U, case no. 19-017484.
110 Decision of the Norway Supreme Court of 16 May 2018, HR-2018-922-U, case no. 18-064997.
111 Decision of the Norway Supreme Court of 26 June 2018, HR-2018-1252-U, case no. 18-092145.

he was thrown out of the hospital building. The next day, he returned dressed up as a doctor and carried his son out of the hospital. After being chased and stopped by the police, his son was taken away and placed under Barnevernet custody. Initially, the parents were allowed to see their son once a week at the police station, but after a year the meetings were forbidden. In order to conceal the child's identity, the Norwegian authorities changed his first and last name several times and his biological mother saw him for the last time in September 2014.[112]

In November 2015, Barnevernet decided to take custody of five children of a Romanian IT specialist, Marius Bodnariu, and his Norwegian wife, Ruth Bodnariu. The case was initiated after the headmaster of the school which their older children attended filed a complaint. Barnevernet had never published official information about the real reasons for its decision, but the media reported that its reason was physical abuse of the Bodnariu children and religious indoctrination of the children by their Pentecostal parents. The Romanian government got involved in the case, after which the Norwegian ambassador to Romania issued a special statement asserting that in Norway children can only be taken away from their parents if they are seriously neglected, maltreated or abused. In the Romanian case, the children were placed in three foster families, and their biological parents indicated that Barnevernet considers them to be "Christian fundamentalists." Moreover, the parents emphasized that occasionally they used corporal punishment, but their children were not maltreated.[113] After seven months of proceedings, the children returned to their biological parents.

In 2013, the Norwegian authorities limited the parental rights of John Blessing, a Nigerian, and Emmy Mansaray, a Liberian. According to the parents, Barnevernet referred to the necessity to check whether the mother was able to cope with her tasks and upbringing of the child. E. Mansaray together with her son P. Okocha were placed for three months in a special center for mothers and their children. After this period – despite determining that the mother had no dysfunctions – the authorities extended her stay for another month, and then decided to take her child away from her as the baby was "stressed out" and needed help.[114]

In practice, Barnevernet deprives parents of their rights to custody over their children also if they use corporal punishment. A good example of such situations is the case of a 40-year-old resident of Nord-Trøndelag who in December 2015 was sentenced to 8 months in prison for disciplining his children. At the same time, Barnevernet, due to misunderstandings between the parents concerning the manner of exercising parental authority, decided to place the children in foster families.[115]

112 *Breastfeeding not allowed? The case of Amy J.*, https://stepup4childrensrights.com/breastfeeding-not-allowed-the-case-of-amy-j/?fbclid=IwAR2kIF84Q4aB2hrgrd8w2LUlGQ6-uS3lN1pwIxSynMmXtnxrYQRqeABd7XA (access: 25 October 2018). It is worth adding that human right defenders from different countries associated in the *Step up 4 Children's Rights* organization got involved into this case.

113 M. Chiriac, *Romanians Condemn Norway over Child Welfare Controversy*, http://www.balkaninsight.com/en/article/norway-decision-over-romanian-family-spurs-protests-01-12-2016 (access: 31 July 2018).

114 *5 month baby of Nigerian/Liberian couple taken by Norwegian Child Welfare*, http://www.barnefjern.org/5-month-baby-of-nigerianliberia-couple-taken-by-norwegian-child-welfare/ (access: 16 August 2018).

115 J. Bjørkli, *Dømt til åtte måneders fengsel for vold mot barna. Slo og dasket barna sine som et ledd i oppdragelsen*, https://www.adressa.no/nyheter/nordtrondelag/2015/12/26/D%C3%B8mt-til-%C3%A5tte-m%C3%A5neders-fengsel-for-vold-mot-barna-11965528.ece, (access: 10 February2019).

Unfortunately, the use of discretionary power and the practice of taking children away from their families without a clear basis constitute a shameful standard in Barnevernet's activities. Barnevernet often justifies its refusal to return child of minority parents back to their parents based on a policy of "Norwegisation", which means the loss of national identity by children in foster care.[116] It is worth noting that the Supreme Court of Norway recognizes that a child's establishment of a relationship with his/her foster family creates an obstacle to the child's return to his or her biological parents, even if the causes justifying Barnevernet intervention cease to exist[117] or, indeed, are later shown never to have existed. This means that even if parents change their allegedly bad behavior, they still may not be able to regain custody of their children. Sometimes biological parents are denied contact with their children or are permitted only limited contact. A good example is the case of Barnevernet's taking custody of a 7-week-old boy. Only when he was 3.5 years old were his parents were allowed to see him for one hour once a year under Barnevernet's supervision and in the presence of the foster parents.[118] This practice was also confirmed by different families during a research visit in Oslo.

Unfortunately, the Norwegian authorities do not take into account a child's requests for being returned to his parents, although if the child expresses a desire to remain with a foster family and not return to his/her family, that fact is used to justify the deprivation of the parents' of custody of their child. At the same time, the Barnevernet employees often persuade parents to admit to the charges they are accused of, and, if the child is placed under institutional custody, their contacts with the child are limited to a minimum.[119]

2.5. Assessment of Barnevernet's activities from the point of view of international standards

Assessing the way in which the provisions of the Barnevernloven were formulated and their application by the Barnevernet, it should be stated that they do not comply with conventional standards. First of all – as confirmed in a study of specific cases – the provisions entitling this authority to interfere in family life and especially to take children away from their parents, are interpreted in a highly arbitrary way without ensuring strict compliance with the conditions for the limitation of one of the fundamental human rights. The characteristic manifestation of Barnevernet activities – and, at the same time, a gross violation of the above-mentioned international standards – is taking children away from their parents only on the basis of assumptions of Barnevernet employees without a thorough investigation of the nature of reported violations of children's rights by their parents.

116 Information obtained during the research visit in Oslo on 3 January 2019.
117 Decision of the Norwegian Supreme Court of 18 April 2018, HR-2018-720-U, case no. 18-046996.
118 Decision of the Norwegian Supreme Court of 23 October 2017, HR-2017-2015-A, case no. 2017/614.
119 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

An example of such situations can be the case of E. Michaláková, who was initially deprived of the right to custody over her children, and, as a consequence, her parental responsibility, when she accused her husband of sexually abusing their children and acting negligently in caring for them. These accusations have never been confirmed, however. In many cases, Barnevernet employees do not try to verify a child's claims when removing children from their parents despite the lack of traces of any injuries. Instead, they base their decision on the child's statement at school about being beaten at home.[120] In the case of the Bodnariu family, the Barnevernet's actions were aimed at proving at any cost the correctness of the charges concerning the parents' alleged abuse of their children. Throughout the proceedings, the parents were denied access to evidence proving their innocence, which was concealed, and the parents were interrogated numerous times.[121] Moreover, it should be noted that the Barnevernet's understanding of "abuse" significantly differs from its common sense meaning or, moreover, its normal legal interpretation. This problem is well illustrated by the case of Daniela Lode, whose daughter was taken away from her due to alleged "abuse" consisting of Ms. Lode telling her daughter to put on a winter hat.

The Barnevernet's activities are clearly excessive since in most cases involving a risk to a child it is sufficient to apply minimally intrusive means of assisting the family, whereas the Barnevernet's modus operandi is to first take the child away from his parents and place him in a childcare facility or a foster family. There is no attempt to restore the normal family life by returning children to their biological parents. Quite the contrary, parents are prevented from having free and natural contact with their children necessary to preserve family ties. The Barnevernet seems entirely opposed to the idea of family support and makes no effort to assist families in coping with problems and dysfunctions that hinder or prevent proper childcare.

Summary

1. In the *Barnvernloven* the Norwegian legislature provided for four conditions which justify the state placing a child under institutional custody: i) the occurrence of serious deficiencies in everyday care of the child or in the maintenance of personal contact with the child and ensuring his/her a sense of security; ii) parents' failure to meet the requirements for caring for a disabled child or a child with other special needs; iii) child sexual abuse or other abuse by parents; or iv) a high probability of serious risk to the child's health or development due to the parents' inability to take sufficient responsibility for the child.

2. The Norwegian legal doctrine, following the international human rights standards, calls for strict interpretation of the above conditions and state interference in family life in a manner proportionate to the detected dysfunctions.

120 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.
121 *Our story*, http://bodnariufamily.org/our-story/ (accessed on 02/02/2019).

3. In this perspective, taking a child away from his parents, as the most serious form of interference in family life, may be used only in absolutely exceptional cases.

4. Official Norwegian documents show that the Barnevernet employees do not use the information they possess to adjust their means of assistance to the dysfunctions detected in a given family. Instead, they make arbitrary decisions to deprive parents of custody over their children.

5. Barnevernet employees have established a standard policy of depriving parents of their right to have custody of own children based on insignificant events or serious but unconfirmed accusations.

6. Indeed, it seems that the Barnevernet's main goal is to remove children from their families rather than to assist families. Parents completely deprived of the possibility to have contact with their children lose the opportunity to maintain emotional bonds with them or to rectify the situation which is the basis for depriving them of custody of their children.

7. Parents whose children are taken away from them are limited to two or three short meetings a year with their children, a situation which is unfortunately commonly accepted by the Norwegian courts.

8. Such attitude of the Norwegian authorities is a violation of one of the fundamental human rights guaranteed in the European Convention for the Protection of Human Rights and Fundamental Freedoms, i.e., the right to respect for private and family life (Article 8).

9. This situation can only be changed by amendments to Norwegian law, especially by the elimination of unclear terms which may be easily interpreted in an arbitrary manner and constitute the conditions for placing children in state custody.

10. Furthermore, it is necessary to introduce mechanisms which would oblige Barnevernet to examine thoroughly all cases of placing children in state custody, to verify notifications concerning family problems and to select proper means of assistance after diagnosing a problem with the full participation of parents and their children.

Chapter 3. Defectiveness of foster care in the Norwegian system of child protection – Juridical and practical aspects

Chapter 3.

Defectiveness of foster care in the Norwegian system of child protection – Juridical and practical aspects

3.1. Rules on foster care and adoption

In the Norwegian legal system, childcare is regulated by the *Lov om barneverntjenester (barnevernloven)* and *Lov om adopsjon (adopsjonsloven)*.[122] The first act contains detailed provisions concerning Norwegian authorities and social welfare services and their role in implementing foster care or adoption decisions in the event that the child's parents fail to fulfill their parental duties. The second act contains important definitions relating to the family and regulations concerning the adoption procedure if the child is not under parental responsibility or if the parents themselves agree to the adoption considering that it will be in the best interests of their child.[123]

3.2. Government and local government authorities and foster care

The Ministry for Children, Equality and Social Inclusion (since 2019: Ministry of Children and Families) is the government authority responsible for implementing the law on children's rights in Norway.[124] The agency reporting to the Ministry for Children, Equality and Social Inclusion is the Office for Children, Youth and Family (*Barne-, ungdoms- og familieetaten - Bufetat*).[125] The Bufetat has

122 LOV-2017-06-16-48 (hereinafter referred to as: LA).

123 In this chapter, "parents" means the legal guardians whose child has been taken away from them by the authorities.

124 The Ministry was established by royal decree on 22 December 1989 and the original name was the Ministry of Family and Consumer Affairs. The name of this ministry has been changed several times.

125 Bufetat https://www.bufdir.no/Kontakt/Om_Bufdir_og_Bufetat/Om_Bufdir/Bufetat/ (accessed: 17.08.2018r.) (hereinafter: Bufetat).

five regional agencies and an executive body, the Directorate for Children, Youth and Family (*Bufdir*). The Bufetat and Bufdir are responsible for matters relating to state-funded child support services, family counselling and adoption.[126] Bufetat agencies are responsible, among other things, for dealing with adoption cases in their region. Bufdir is responsible for the management and operation of child welfare and family counselling services, including adoption services. It has joint responsibility with *Helsetilsynet*,[127] which is organized under the Ministry of Health and Care Services.[128]

Barnevernet deals with direct issues related to foster care, such as the removal of a child, placement in a foster family and the return of a child to his parents' custody.

Departments of the Child Protection Service (Barnevernet) provide childcare services at the local level. The presence of Barnevernet in each of the 422 Norwegian municipalities is mandatory and regulated by law (§ 2-1 LB). [129] Barnevernet deals with issues directly related to foster care, such as the removal of a child, placement in a foster family and the return of a child to his parents' custody. Administrative supervision of the legality of Barnevernet's activities is carried out by the county governor (*Fylkesmann*)[130] and quasi-judicial supervision is carried out by the county councils for social welfare (*Fylkesnemndene for barnevern og sosiale saker - Fylkesnemnda*).[131] The councils are court-like government agencies that make decisions within the framework of the BVL and report to the Ministry for Children and Families.[132] Most cases are dealt with at a council meeting where the parties present their views and evidence and witnesses are heard. *Fylkesnemnda* decisions can be appealed to the common courts. For further procedural details, see chapter IV.

3.3. General outline of the procedure for removal of a child from biological parents

There are two procedures for removing a child from his parents: extraordinary and ordinary. In this chapter, the extraordinary procedure will be presented only generally. Detailed comments on both procedures are included later in the report. The extraordinary procedure is regulated in § 4-6 of

126 *Ibidem*.
127 https://www.helsetilsynet.no, https://www.helsetilsynet.no/en/
128 https://www.regjeringen.no/en/dep/hod/id421/
129 Norway is divided into 5 regions (*landsdeler*), 18 counties (fylker) and 422 municipalities (kommuner). https://www.kartverket.no/kunnskap/fakta-om-norge/Fylker-og-kommuner/Tabell/ [accessed: 17.08.2018r.]. Exceptional areas are Svalbard (together with Jan Mayen) and Bouvet Island, which constitute a demilitarized area and maritime territory, respectively. https://www.kartverket.no/Kunnskap/Fakta-om-Norge/Arealstatistikk/Arealstatistikk-Norge/ [accessed: 17.08.2018r.]. https://www.fylkesnemndene.no/en/about-the-boards/organisationalchart/ [accessed: 17.07.2019r.].
130 https://www.fylkesmannen.no/en/About-us/
131 These councils were established in 1993 - https://www.fylkesnemndene.no/ [accessed: 17.08.2018r.] (hereinafter also as: *Fylkesnemnda*).
132 *Ibidem*.

the BVL, "Interim orders in emergency situations" (*Midlertidige vedtak i akuttsituasjoner*). The order to temporarily remove a child is made by a leader of the *Barnevernet* office[133] or the police (§ 4-6, subparagraph 2, BVL), even if both parents, one parent or the child do not consent to it. As a general rule, administrative decisions should be notified in advance since a party has the right to such information, but administrative authorities are exempted from doing so if the notification would cause an interim order to fail.[134] In urgent cases, the notification may be given "orally or otherwise"[135], which is why parents are often surprised by the visit of officials and police officers to their home[136] during which they do not receive any interim order in writing at the time of removal of the child, but only an oral notification of the order. This order may be issued when it is established that a positive condition referred to in the second subparagraph of §§ 4-6 of the BVL is met, i.e., a serious risk that a child will be injured (harmed) because of a dangerous situation at home.[137] The order should indicate specifically what is considered to be urgent in a given situation and the fact that justifies the existence of a threat to the well-being of the child.[138]

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The child is immediately taken to the Emergency Service for Barnevernet (Barnevernvakt). The interim order is sent to the county council for social welfare immediately after its execution. The president of the county council for social welfare approves the interim order within 48 hours (§ 7-22 BVL). Parents may appeal an interim order approved by the Barnevernet leader by filing an appeal with the county council for social welfare. The appeal is considered within one week by the same county council for social welfare president who confirmed the decision to take the child away.[139] He or she summons the parties to a hearing at which they present their arguments and evidence approved by the president (§ 7-23 BVL). If the appeal is unsuccessful, the interim order and thus the assistance measures remain in force until the council decides whether Barnevernet will take custody of the child (§ 4-6, paragraph 6, in conjunction with § 4-12 in conjunction with § 4-14 BVL).[140]

Such a decision by the county council for social welfare is only issued at the request of Barnevernet (§ 7-10, paragraph 1 BVL) to the county council for social welfare not later than within six weeks of

133 https://www.fylkesnemndene.no/en/procedures/
134 Article 16(3)(a) of *Lov om behandlingsmåten i forvaltningssaker (forvaltningsloven)*, LOV-1967-02-10.
135 Article 27 of *Forvaltningsloven*.
136 However, as the authors of the commentary on the BVL point out, a specific assessment must be carried out in all cases. K. Ofstad, R. Skar, *op. cit.*, p. 114.
137 *Ibidem*, p. 112.
138 *Ibidem*, p. 116.
139 Pursuant to § 6-6 BVL, an appeal against any element of the decision may also be considered by the county governor.
140 L. Løvdal, *Jurk. Juridisk rådgivning for kvinner. Foreldres ansvar overfor barn En innføring i norske regler Del 1: Barneoppdragelse og barnevern*, Oslo 2013, p. 41-42.

the approval of the interim order. If the application is not sent within the statutory deadline, the interim order expires and the child is returned to the parents (§ 4-6, subparagraphs 4-5 BVL). Together with the application, *Barnevernet* sends a draft of the custody decision (§ 7-11, paragraph 1 BVL). The county council for social welfare assesses the grounds for the decision by verifying whether the positive conditions listed in § 4-12 of the BVL are met (see chapter II).

According to § 7-11, subparagraph 3 of the BVL, the application and the draft decision are sent by the county council for social welfare to the parents, who can respond in writing to the application within 10 days. The case is considered by the council at a meeting called a "negotiation meeting" by law, in which both parties - the representatives of Barnevernet and the parents of the child - can participate. Parents can present their opinions and witness statements, while the position of the representatives of Barnevernet is much better as, apart from presenting the collected material, testimonies and opinions of experts, they also present the course of the case, which may raise doubts about the lack of objectivity of officials as a party in the case. Barnevernet's practice of interviewing witnesses prior to the meeting of the council raises additional questions. Barnevernet calls witnesses for mandatory discussion under § 24-1 of the Act on Mediation and Settlement of Disputes in Civil Matters (*Lov om mekling og rettergang i sivile tvister - tvisteloven*).[141]

Parents can present their opinions and witness statements, while the position of the representatives of Barnevernet is much better as, apart from presenting the collected material, testimonies and opinions of experts, they also present the course of the case, which may raise doubts about the lack of objectivity of officials as a party in the case.

Once the decision on custody has been made, it replaces the interim order.[142] The child can then be placed in a foster family[143], a care facility (e.g. a childcare facility)[144], a development aid centre, a therapeutic center[145] or a juvenile care center[146] (§ 4-14 BVL).[147] However, if it is in the best interests of the child, the child should be placed with other relatives. This will not be possible, however, if the leader of the local Barnevernet, bearing in mind the child's welfare, decides to hide the address at which the child will be staying from the parents (§ 4-19 BVL).

141 LOV-2005-06-17-90.

142 Interestingly, some say that keeping the provisional decision in force is a typical consequence of the proceedings of the case, although the authors of the Commentary do not share this view. K. Ofstad, R. Skar, *op. cit.*, p. 118.

143 § 4-22 BVL. Under Norwegian law, a foster family is: 1. the family to which a child was referred by a decision of the officials or 2. the family to which the parents referred their child and the family was approved by the officials.

144 § 5-8 BVL. There are private and public institutions and care centers in Norway, and children can only be directed to those that have been approved by the Children, Youth and Family Services at the regional level.

145 § 4-14 BVL. When a child is disabled.

146 See more at § 5A BVL.

147 According to the commentary to the *Barnevernloven*, § 4-14 BVL will apply. K. Ofstad, R. Skar, op. cit., p. 116.

While the child is not in the custody of his/her parents, Barnevernet is obliged to monitor the situation and follow the development of the child and its parents. It should continuously assess whether there is a need to change the means of assistance or additional measures applied to the child (§ 4-6, paragraph 6, BVL). Shortly after the interim order, Barnevernet contacts the parents of the child in order to provide them with suggestions for advice and further action. If the parents wish, Barnevernet can involve other support institutions in the follow-up (§ 4-6, paragraph 6 BVL).

In principle, immediate removal of the child from the parents is a temporary measure, but in monitoring the situation Barnevernet may decide that long-term placement outside of parental custody according to § 4-12 BVL or in a juvenile detention centre according to § 4-24 BVL would be more beneficial to the child. The subsequent steps then follow the normal procedure.

3.4. The Barnevernloven vs. the Convention of the Rights of the Child (CRC)

In 1990, Norway acceded to the Convention on the Rights of the Child (CRC).[148] Pursuant to Article 40 of the CRC, the provisions of the Convention in no way affect local law provisions, which are more conducive than those contained in the Convention to protecting children's rights. According to that article, national provisions providing for better protection of children than those required by the Convention take precedence over the latter. Publications commenting on the provisions of the *Barnevernloven* state that *the Barnevernloven* provides more guarantees for child protection and guardianship than the CRC.[149] In this context, Article 3 of the CRC states that "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her." However, according to § 4-1 BVL, the well-being of the child is always paramount, without taking into account the rights of the parents.

Article 3 of the CRC states that "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her." However, according to § 4-1 BVL, the well-being of the child is always paramount, without taking into account the rights of the parents.

148 The CRC was signed in 1990 and ratified in 1991. http://indicators.ohchr.org [accessed 16.08.2018].

149 L. Løvdal, *op. cit*, p. 33. It is worth mentioning that the publication of this brochure was financed by the Central Office for Integration and Multiculturalism in Norway.

The second point raised in this context is that the Barnevernloven extends the guarantee of being heard. Article 12(2) of the CRC provides that the child has "the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body", without ensuring the child's direct participation in the case concerning him or her, and leaving the detailed regulation to the States Parties. According to § 6-3, subparagraph 1, of the *Barnevernloven*, a child aged 7 years or younger who is able to express his or her own views has the possibility to express his or her opinion on a matter which concerns him or her. Older children under the age of 15 may act as parties to the case with the consent of the county council for social welfare. However, a child with behavioral disorders or at risk of a criminal offense of trafficking in human beings and a child over the age of 15 who understands the case concerning him or her is always considered a party to the case (§ 6-3, subparagraph 2 BVL). Children today have a high status in Norway[150], but despite the fact that the provisions of *Barnevernloven* contain broad guarantees, they are considered in need of change and are widely criticised[151], particularly with regard to the implementation of international obligations. Remarks on the Barnevernloven were presented in the Official Norwegian Report by the Committee established by the Ministry for Children, Equality and Social Inclusion, entitled *New Child Welfare Act. Securing the child's right to care and protection (Ny barnevernslov Sikring av barnets rett til omsorg og beskyttelse)*.[152]

The authors recommend changes in the area of implementation of Norway's obligations under international law, paying particular attention to the regulations concerning the right of a child to have contact with his parents after separation from them, since the regulations provide a wide range of interpretations and would require clarification. As scholars explain, abuse is determined by practice, i.e., by the manner in which regulations are applied.[153] The Norwegian Supreme Court in its judgment of 2012 indicated that in situations where a child is taken away from his/her parents, the contact is usually set for 4 to 6 meetings a year[154], while in a judgment from 2015 it stated that "the mother's contact with the child four times a year for three hours does not meet the requirements of § 4-19 BVL", which it called "very limited contact."[155]

150 *Ibidem*, p. 6.

151 According to the Norwegian daily *Dagbladet*, demonstrations against Barnevernet took place in 20 countries in 2016. See more: https://www.dagbladet.no/nyheter/slik-endte-barnevern-demonstrasjonene-verden-over/60454062 [accessed: 19.08.2018r.]. In addition, in 2012 Russians organized a campaign to send faxes and e-mails to the Minister for Children, Equality and Social Inclusion Audun Lysbakken, disclosing his fax number (4722249515) and e-mail address (postmottak@bld.dep.no); Olav Sylte, a Norwegian lawyer, also writes about demonstrations in many countries: http://www.mhskanland.net/page45/page375/page375.html; Читайте больше на https://www.pravda.ru/society/family/pbringing/09-02-2012/1107475-Norway-0/ [accessed: 19.07.2019].

152 Ministry for Children, Equality and Social Inclusion, *Ny barnevernslov Sikring av barnets rett til omsorg og beskyttelse*, Oslo 2016 (NOU 2016:16) (hereinafter: Report of the Ministry for Children, Equality and Social Inclusion 2016): //www.regjeringen.no/contentassets/53164b1e70954231b2a09d3fdec1888b/no/pdfs/nou201620160016000dddpdfs.pdf [accessed: 19.08.2018].

153 W. Nowiak, D. Narożna, R.L. Muriaas, *op. cit.*, p. 118.

154 In this judgment, the Supreme Court referred to another judgment from 2006, which concerned the case of parents for whom 6 meetings with their child were arranged annually. The parents wanted to meet the child individually and the time was divided as follows: the mother - 4 meetings of 4 hours each, the father - 2 meetings of 2 hours each. Judgment of the Norwegian Supreme Court: Rt. 2012 p. 1832, sections 36 and 39. Quote from: Report of the Ministry for Children, Equality and Social Inclusion 2016, p. 185; See more: K. Lindboe, *Barnevernrett*, Oslo 2012, p. 112.

155 Decision of the Norwegian Supreme Court - quote from: "Report of the Ministry for Children, Equality and Social Inclusion 2016", p. 185.

3.5. The practice of Barnevernet and district (county) councils for social welfare (fylkesnemnder)

Jurisprudence of the Norwegian Supreme Court leads to the conclusion that the actions of Barnevernet and county councils for social welfare differ from many of the legal guidelines. Priority should be given to keeping children in the custody of the parents, and in the event of immediate separation, it should be applied only temporarily. In practice, however, this is not the case. The number of meetings that are set after removal of the child is frighteningly low. A typical example is the case of a family from Myanmar, where four of the five children were taken away from their parents immediately on 24 May 2013, and less than a month later, on 17 June 2013, Barnevernet applied to the county council for social welfare for custody and care. Five months later, on 12 November 2013, the county council for social welfare issued a decision on the assumption of custody by Barnevernet and the placement of the children in foster families as soon as they are appointed. In addition, council decisions establish the rule that parents and children are entitled to six meetings per year, each of three hours, and these meetings should be supervised.[156] In another case, the county council for social welfare, in its decision of 14 October 2008, set nine meetings per year of two hours each for the mother and 12 meetings per year of two hours each for the father[157] with a year-and-a-half old daughter. Another example is the council's decision of 15 July 2010, according to which the mother could meet her three-year-old daughter four times a year for two hours and the father once for two hours.[158] In a subsequent case, under the council decision of 22 December 2010, parents could see their daughters (then three months and three years old) four times a year for four hours, only under supervision.[159] On the basis of another decision of 30 January 2014, the council decided that the mother could see her daughters, a four-year-old twice a year for two hours and a six-year-old four times a year for two hours.[160] The aim of these contacts is not considered to be retention of an emotional bond with the biological parents, but the child's right to knowledge about his or her origin.[161]

In Norwegian practice, the purpose of contact of a biological parent with a child who remains in foster care is not considered to be retention of an emotional bond with the biological parents, but the child's right to knowledge about his or her origin.

The practice of *Barnevernet* and the county council for social welfare leads to a constantly growing number of children placed in foster care and other institutions. The table below presents the total number of children placed in foster care or institutions each year for the years 2003 - 2017.[162]

156 See decision of the Norwegian Supreme Court of 3 November 2014, HR-2014-02129-U, (case no. 2014/1881).
157 See decision of the Norwegian Supreme Court of 17 March 2011, HR-2011-570-A (Rt-2011-377).
158 See decision of the Norwegian Supreme Court of 6 December 2012, HR-2012-2309-A (Rt-2012-1832).
159 See decision of the Norwegian Supreme Court of 2 July 2014, HR-2014-01392-U, (case no. 2014/1185).
160 Ibidem.
161 A. Picot, *Out-of-Home Placements and Notions of Family in Norway and in France*, "Sosiologi i Dag", no. 3- 4 (2012), pp. 13-35.
162 Information obtained on the principle of public access to information.

Table 3.1. Total number of children placed in foster care or institutions by the end of the year (2003 - 2017)

Year	In a foster care	In other care institutions
2003	5693	2170
2004	5825	2173
2005	6006	2094
2006	6120	2386
2007	6300	2512
2008	6406	2588
2009	6603	2726
2010	6980	3080
2011	7270	3116
2012	7805	3074
2013	8106	3184
2014	8569	3087
2015	8924	2965
2016	9080	3511
2017	9033	3270

Source: Statistics of Norway

Data in the table indicate that in recent years in Norway children go to foster families three times more often than to institutional care. By the end of 2017, 9033 children were in foster families. This indicates a high frequency of taking children away from their biological parents - against legal guarantees, according to which taking children away from their parents constitutes a measure of last resort. It's worth mentioning that, added to the number of children in care on 31 December, there will be some more who came into care in that particular year (or in some previous year) and have been in care for part of the year but who have been let out again before 31 December. Therefore, the total number of children and young in care in the course of a particular year is larger than the number in care on 31 December (or on any other date).

3.6. Case of Jansen vs. Norway

The removal of children from parental custody, as a consequence of which children only meet their parents a few times a year, has been recognized by the ECtHR as a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. This is confirmed, for example, in the ECtHR judgment of 6 September 2018 in the case of Jansen vs. Norway (application no. 2822/16), where in paragraph 105 the Court explicitly stated that "there has been a violation of Article

8 of the Convention." Article 8 of the Convention concerns respect for private and family life.[163] The Court specified that the purpose of Article 8 of the Convention is to protect the individual against arbitrary action by public authorities. In that judgment, the Court considered whether the measures taken against the applicant, Mrs. Blondina Baloma Jansen, were "necessary in a democratic society", relevant and sufficient. The Court found that intervention by the Norwegian authorities was not necessary. Following the reasoning of the Court, it must therefore be understood that the intervention of the Norwegian authorities did not respond to an urgent social need nor was it proportionate to a legitimate aim (see paragraph 89).

Each state decides on its own, without the intervention of external institutions, on the appropriate measures to be taken. Only the decisions it makes can be reviewed by the Court. States have a certain margin of discretion, which depends on the given situation. In this case, the state had to balance two interests: the protection of the child in a situation threatening his or her health and development, and the reunification of the family as soon as circumstances allowed (paragraph 90). On the one hand, the best interests of the child dictate that the child's ties with his or her family must be maintained, and, on the other hand, it is clearly also in the child's interests to ensure his or her development in a safe environment (paragraph 92).

In the Jansen vs. Norway case, the state had to balance two interests: the protection of the child in a situation threatening his or her health and development, and the reunification of the family as soon as circumstances allowed.

The Court stressed that there was 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. Therefore, in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (paragraph 91). The Court stressed the need for stricter scrutiny in respect of any limitations, such as restrictions on the right of parents to communicate with their children and the right to respect for family life for both parents and children. Restricting these rights may result in limited contacts and lost family ties (cf. paragraph 90). The Court pointed out that measures leading to the loss of family ties which do not lead to family reunification must be applied only in exceptional circumstances. The sole justification for their application can only be the best interests of the child (paragraph 93).

The Court referred to the case of *Gnahore vs. France*, where it had previously held that it was in the child's interest to maintain the child's family ties (except where the family was particularly

163 Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms: "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 is 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."

dysfunctional), since cutting a child off from his family meant cutting him off from his roots. Therefore, family ties should not be broken at all, and, if they are, every effort should be made to ensure that the child's family ties are maintained and, if possible, that the child is returned to the family.

Family ties should not be broken at all, and, if they are, every effort should be made to ensure that the child's family ties are maintained and, if possible, that the child is returned to the family.

The Court examined whether the national courts had carried out a balanced and reasonable assessment of the individual interests of each person, that is to say, of both the parents and children, consistently bearing in mind the best interests of the child. Article 3 of the Convention on the Rights of the Child states that States Parties "undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures." In Norway, however, the issue of parents' rights is not taken into account. As indicated in the Norwegian legal discourse, Norwegian law provides "broader guarantees" for the protection of the interests of the child than the Convention on the Rights of the Child itself, because according to § 4-1 BVL, the best interests of the child are always paramount, without taking into account the best interests of the parents.[164]

The Court stressed that, when assessing the appropriateness of family assistance measures (here: separation of the child from the parents), it takes account of the state's existing traditions relating to the role of the family and state intervention in family matters, and of the availability of resources devoted to public activities. However, the welfare of the child is always decisive (paragraph 95).

The Court considered whether the reasons for which the applicant was prevented from having contact with her daughter justified such a measure, despite the danger of losing the child's bond with her mother (paragraph 96). In the course of the proceedings, the Court found, on the basis of evidence provided by the Norwegian courts, that there was a real risk of the daughter being abducted by her grandfather (paragraph 97), which would have had negative consequences for her. Based on the documents from the Norwegian courts, the Court found that the national authorities had direct contact with all the interested parties in the case (paragraph 98).

The ECtHR noted that, following the decision of the county council for social welfare to take custody of the girl in December 2012, the case was heard once by the District Court, twice by the Court of Appeals and once by the Supreme Court. Nonetheless, the Court failed to notice procedural irregularities and found that the applicant's rights of defense had not been violated (paragraph 100). The Court therefore considered whether the final decision of the Norwegian Supreme Court in the

164 L. Løvdal, *op. cit.*, p. 33.

case did indeed refer to the interpretation and application of the concept of the best interests of the child in accordance with the Court's jurisprudence, pursuant to which foster care should be ordered only as a temporary measure, to be discontinued as soon as circumstances permit. The state has a positive obligation to take measures to facilitate family reunification as soon as possible (paragraph 101).

In the case of Jansen vs. Norway the Court found that, while the national procedure was guided by the best interests of the child, the potential negative long-term consequences of losing contact with her mother for Blondina Jansen's daughter and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible were not sufficiently balanced.

In addition, the Court pointed out that the measures adopted entail the risk of permanently weakening family ties between the child and the mother. Significantly, the Supreme Court's ruling did not aim at reuniting the family. It also did not envisage taking any action to prepare the mother for reunification with her daughter in the near future. The judgment focused exclusively on the protection of the child from kidnapping and its consequences. Hence, there was a risk that the daughter might lose contact with her mother completely. The Supreme Court did not take into account the effects of long-term separation of the child from the mother, which, according to the previous case law of the Court, is necessary, all the more so because in this case separation from the mother simultaneously means separation of the child from her national identity, since the mother of the child is Roma and the girl was placed in the care of Norwegians (paragraph 103).

In considering the case, the Court found that, while the national procedure was guided by the best interests of the child, the potential negative long-term consequences of losing contact with her mother for Blondina Jansen's daughter and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible were not sufficiently balanced (paragraph 104).

The Court therefore ruled that Norway had violated Article 8 of the Convention.

3.7. Case of Strand Lobben and Others vs. Norway

Another important judgment of the European Court of Human Rights which concerned the Norwegian childcare system is the judgment of the Grand Chamber of the ECtHR of 10 September 2019 in the case of *Strand Lobben and Others vs. Norway* (application no. 37283/13). However, the Court's ruling was not unanimous and was decided by a majority of thirteen votes to four. Importantly, judges from the Nordic countries, i.e., Denmark, Finland and Norway, as well as a judge from Slovakia, did not find any infringement of Art. 8 of the ECHR.

Trude Strand Lobben's first encounter with the Norwegian social assistance system occurred when she wanted to have a late abortion in the sixth month of her pregnancy (point 11). However, when the child was born in 2008, Ms. Strand Lobben, who was temporarily living at her parents' home at that time, agreed to stay in a parent-child institution (point 17). Three weeks later she decided to leave the institution, in response to which the Barnevernet issued an interim order depriving her of custody of her son, which was confirmed by the decision of the county council for social welfare. The reason for this decision was Ms. Strand Lobben's alleged lack of parenting skills and her child was subsequently placed in a foster family (see point 24). In 2011, the county council for social welfare declared that Ms. Strand Lobben's parental responsibilities should definitely be withdrawn. Afterwards, Ms. Strand Lobben consented to the adoption of her child by foster parents (see point 81 and subsequent). Her mother appealed the decision of the county council for social welfare in court; however, both the district and regional court, as well as the Norwegian Supreme Court, all upheld this decision.

In the case of Strand Lobben and Others vs. Norway, the ECtHR indicated that: "regard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8."

Ms. Strand Lobben then decided to file a complaint with the European Court of Human Rights in Strasbourg, in which she accused the Norwegian authorities of infringing Art. 8 of the European Convention on Human Rights by violating her right and that of her son and her daughter, who was born in 2011 and was still under her parents' custody, to respect for family life, as well as violating the right to respect for the family life of the children's grandparents who were also parties in the case. On 30 November 2017, the Chamber of the Court, composed of 7 judges, concluded by a majority of 4 to 3 votes that there had been no violation of Art. 8 of the ECHR. Furthermore, it was unanimously accepted that the allegations made by all plaintiffs apart from Ms. Strand Lobben herself and her son were inadmissible.

Acting pursuant to Art. 43, paragraph 1 of the ECHR, Ms. Strand Lobben requested that the case be referred to the Grand Chamber of the European Court of Human Rights. The Grand Chamber of the ECtHR discovered a number of violations regarding the proceedings before the Norwegian courts and stated that the Norwegian authorities had failed to consider the interests of the child's biological family, which should also be taken into account in such cases.

The ECtHR emphasised that: "Generally, the best interests of the child dictate, on the one hand, that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit (...). It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to 'rebuild'

the family. On the other hand, it is clearly also in the child's interest to ensure its development in a safe environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development."

As noted by the Court, Art. 8 of the Convention guarantees everyone the right to respect for family life and the mutual enjoyment by parents and children of each other's company constitutes a fundamental element of family life (point 202). The Court reiterated 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 when settling matters regarding childcare and restrictions on contact between children and their parents (point 204). At the same time, the ECtHR noted that regard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8 (point 205).

The ECtHR emphasized that the best interests of the child dictate, on the one hand, that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit since severing those ties means cutting a child off from his/her roots. It follows that family ties may only be severed in very exceptional circumstances and that everything necessary must be done in order to preserve personal relations and "rebuild" the family as soon as possible. On the other hand, it is clearly also in the child's interest to ensure his/her development in a healthy environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development. The Court also pointed out that children should not be separated from their parents against their will, except when the competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (point 207).

The Court emphasized that: "As regards to replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicants' legal ties with the child are definitively severed, it is to be reiterated that 'such measures 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.'"

The ECtHR made it clear that the second guiding principle, apart from the "child's best interest" rule, is that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit (point 208). The court emphasized that replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorization of adoption should only be applied in exceptional circumstances and are only justified if such actions are motivated by an overriding requirement pertaining to the child's best interests (point 209).

The Court has consistently pointed out in its decisions that, although national authorities enjoy a wide margin of discretion in assessing the necessity of taking custody of a child, this discretion is not unlimited. For example, when assessing the actual circumstances, the Court has in certain instances attached weight to whether the authorities, before taking a child into public care, first attempted to take less drastic measures, such as supportive or preventive ones, and whether these had proved unsuccessful. Stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on the parental right of access to their children. Such further limitations entail the danger that the family relations between parents and a young child are effectively curtailed (point 211). Therefore, parents should be provided with procedural guarantees that enable them to actively participate in the proceedings related to decisions concerning their relationship with their children, which the Court devoted a lot of attention to as well (point 212-213).

In the Strand Lobben case, the Court was asked to determine whether the measures applied in the case of the applicants, Trude Strand Lobben and her son, were "necessary in a democratic society" (point 214). When analyzing this issue, the ECtHR noted a number of procedural violations, which ultimately manifested themselves in the fact the domestic authorities did not attempt to perform a genuine balancing exercise between the interests of the child and his biological family, but focused on the child's interests instead of trying to combine both sets of interests, and moreover did not seriously contemplate any possibility of the child's reunification with his biological mother. In particular, the Norwegian authorities did not take into account the fact that the applicant went through substantial changes in her life: she married and had a second child, and her parental competence in regard to her second child was not questioned (point 220). In other words, the Norwegian authorities completely ignored the fact that the applicant's living situation had stabilized and she was fully capable of providing her child with adequate developmental conditions.

In light of all these factors, the Court concluded that there was a violation of Article 8 of the Convention in respect of the applicant and her son (point 226).

3.8. Best interests of the child in the Norwegian meaning of the term

The Norwegian scientific discourse points out that the concept of the best interest of the child has evolved from protecting against child abuse to "indulging" children during childhood.[165] The so-called "poverty problem", which no longer concerns important resources such as housing, food and clothing, but means access to resources that are considered attractive and necessary for people living in a "modern society,"[166] is considered to be the most important issue for the well-being of a child.

165 E. Marthinsen, *op. cit.*, p. 3.
166 *Ibidem*.

According to the NOU report (2012:5), contacts of biological parents with a child in foster care should be more and more limited over time in order to create space for establishing a primary relationship between the child and the foster parents.[167] The child's best interests should be based on assessment of the development benefits that may stem from a stable relationship of the child with various caregivers, whereas there are no presumed developmental benefits related to the child staying in the care of his or her biological parents.[168]

In Norwegian practice, it is assumed that the child's best interests should be based on assessment of the development benefits that may stem from a stable relationship of the child with various caregivers, whereas there are no presumed developmental benefits related to the child staying in the care of his or her biological parents.

This finding results from the current interpretation of the existing provisions of the *Barnevernloven*, which is indicated by the Norwegian Public Report Bedre *beskyttelse av barns utvikling — Ekspertutvalgets utredning om det biologiske prinsipp i barnevernet.*[169] In the presented opinion of government experts, the value of the principle of biological kinship (*biologiske prinsipp*) was limited to the value stemming from the bond and the strong relationship between the child and his or her biological parents. If this relationship was ended, that would lead to a loss of importance of the biological kinship between parents and children in connection with determining the best interest of the child. As a consequence, the Report, as well as the common practice of the office for child protection, argues that the primary principle should be "the principle of the developmentally most beneficial relationship" (*Utviklingsfremmende tilknytning*).[170]

The understanding of the "best interests of the child" principle in seemingly objective categories of well-being and "developmentally most beneficial relationship" is not without a social dimension. It can also be seen in the perspective of the omnipotence of the state, which ignores the subsidiarity principle and leaves no space for family autonomy. The former Minister of the Norwegian Government, Audun Lysbakken, pointed out that "parents should not assume that this is their private life. Otherwise, how should a society that aims to protect children be informed about irregularities?"[171] As Norwegian social worker Håvard Aaslund notes, Barnevernet is guided by class prejudices.[172] Seven out of ten children in Barnevernet have working-class or unemployed parents.[173] Adequate care can

167 Report *Norges offentlige utredninger* NOU (2012:5), published 17.01.2012 r., "Bedre beskyttelse av barns utvikling— Ekspertutvalgets utredning om det biologiske prinsipp i barnevernet", Oslo 2012, pp. 111-112. https://www.regjeringen.no/no/dokumenter/nou-2012-5/id671400/sec1 (hereafter: NOU (2012:5)).

168 Chapter 2.2.2. NOU (2012:5) [accessed: 15.06.2019].

169 NOU (2012:5).

170 J. Kwaśniewski, *Rejection of protection of natural (biological) family as a source of systemic violations of international guarantees of the respect for family life in the practice of Norwegian childcare law (Lov om barneverntjenester)*, published 19.09.2017, https://ordoiuris.pl/sites/default/files/inline-files/Odejście_od_biologiske_prinsipp_EN.pdf [accessed: 15.06.2019].

171 See press materials: https://www.pravda.ru/society/family/pbringing/09-02-2012/1107475-Norway-0/ (accessed: 17.06.2019).

172 See press materials: http://fonteneforskning.no/debatt/den-klasselose-sosialarbeideren-6.19.303723.a794c2c804 (accessed: 17.06.2019).

173 B. H. Kojan, H. Fauske, *op. cit.*, pp. 95-109.

therefore be understood in different ways, either as welfare or as the provision of basic needs for the child. "The social worker is obliged to intervene and place the child in a foster family (...) if there is a risk that the parents are unable to provide adequate care for the child."[174] What constitutes a situation where a parent does not provide "adequate care for the child" depends on the understanding of the term by those applying the law.

3.9. Negative effects of the child's stay outside the biological family

The scientific literature emphasizes that, according to Norwegian legislation, the removal of a child from its biological family is a measure of last resort which should only be applied when all other measures fail or are impossible to apply, and the main principle of the childcare system is to prioritize parental care by supporting parents when they find themselves in a difficult situation and leaving children with their parents even in the case of unfavorable living conditions.[175] However, statistics show that Nordic countries, such as Denmark, Norway, Finland and Sweden, are much more likely to use non-parental care[176] than other countries in the world.[177] Since 2013, the increase in the number of children removed from the custody of their parents in Norway has been steadily increasing, and Norway is the Nordic country that resorts to foster care the most often.[178]

Statistics show that Nordic countries, such as Denmark, Norway, Finland and Sweden, are much more likely to use non-parental care than other countries in the world. Norway most often applies foster care.

It appears that children being cared for outside their family home are more exposed to various problems in childhood and later in adulthood. There are many studies carried out in the Nordic countries that directly point to this. It should be noted that the authors of research analyses state that the results of research carried out in the Nordic countries is valid for each of them because these countries are socially, culturally and institutionally similar, and the results of research carried out in the countries of this region, quoted in this chapter, have also shown consistency.[179] According to research, people

174 *Ibidem*.

175 T. Pösö, M. Skivenes, A. D. Hestbæk, *Child protection systems within the Danish, Finnish and Norwegian welfare states — Time for a child centric approach?*, "European Journal of Social Work", vol. 17, no. 4 (2014), 475–490.

176 Living away from home here refers to all forms of extra-parental care, such as institutions and foster families. A. Kääriälä, H. Hiilamo, *Children in out-of-home care as young adults: A systematic review of outcomes in the Nordic countries*, "Children and Youth Services Review", no. 9 (2017), p. 108

177 N. Gilbert, N. Parton, M. Skivenes, *Child protection systems: International trends and orientations*, New York 2011.

178 Nordic Social Statistical Committee Nososco, *Social protection in the Nordic countries 2013/2014 — Scope, expenditure and financing*, Copenhagen 2015. http://norden.divaportal.org/smash/get/diva2:882555/FULLTEXT01.pdf.

179 *Ibidem*, p. 113.

placed in non-parental care are exposed to a range of problems, including behavioral disorders[180], increased risk of educational failure[181], use of social services in adulthood[182], mental health problems[183], higher mortality rates in youth, including suicide[184], and more frequent criminal behavior.[185]

According to research, people placed in non-parental care are exposed to a range of problems, including behavioral disorders, increased risk of educational failure, use of social services in adulthood, mental health problems, higher mortality rates in youth, including suicide, and more frequent criminal behavior.

In addition, studies have shown that children placed in long-term foster care before the age of 12 are at risk of increased alcohol and drug use in adulthood.[186] Scientists conclude that the identified increased risk of children being exposed to different categories of problems and becoming "clients of social welfare services"[187] as adults leads to the conclusion that the Nordic model has failed[188] despite the fact that the Nordic countries are officially among the leaders in the field of child welfare.[189]

180 T. Egelund, T., M. Lausten, *Prevalence of mental health problems among children placed in out-of-home care in Denmark* [in:] „Child & Family Social Work", vol.14, no. 2 (2009), pp. 156–165.

181 R. F. Olsen, T. Egelund, M. Lausten, *Tidligere anbragte som unge voksne*, Copenhagen, Denmark - Report prepared in 2011 by the National Centre for Welfare Research https://pure.sfi.dk/ws/files/236772/1135_Tidligere_anbragte_som_unge.pdf; T. Heino, T., T., M. Johnson, M. (2010). *Huostassa olleet lapset nuorina aikuisina* [in:] U. Hämäläinen, O. Kangas, *Perhepiirissä*, Finnish Social Insurance Institution (Kela) Helsinki, Finland; L. Kestilä, A. Väisänen, R. Paananen, T. Heino, M. Gissler, op. cit., 599-620; S.E. Clausen, L.B. Kristofersen, *Barnevernsklienter i Norge 1990-2005: En longitudinell studie*, NOVA-Raport 3/2008, Oslo, Report of the Norwegian Institute for Research on Growth, Welfare and Aging „NOVA" - Norsk institutt for forskning om oppvekst, velferd og aldring NOVA www.hioa.no/content/download/47063/682820/file/3236_1.pdf; M. Berlin, B. Vinnerljung, A. Hjern, *School performance...*, p. 2489-2497; B. Vinnerljung, M. Berlin, A. Hjern, *Skolbetyg, utbildning och risker för ogynnsam utveckling hos barn* [in:] *Social Report 2010, Socialstyrelsen* - Social Report of the National Health and Social Welfare Council, Stockholm 2010, pp. 228-266; B. Vinnerljung, A. Hjern, *Cognitive, educational and self-support outcomes...*, pp. 1902-1910; B. Vinnerljung, M. Öman, T. Gunnarson, *Educational attainments of former child welfare clients - A Swedish national cohort study*, „International Journal of Social Welfare", vol. 14, no. 4 (2005), pp. 265-276.

182 L. Kestilä, A. Väisänen, R. Paananen, T. Heino, M. Gissler, *op. cit.*; M. Berlin, B. Vinnerljung, A. Hjern, *op. cit.*, pp. 2489-2497; B. Vinnerljung, A. Hjern, *op. cit.*, p. 1902-1910.

183 B. Vinnerljung, A. Hjern, F. Lindblad, *Suicide attempts...*, pp. 723-733; B. Vinnerljung, A. Hjern, *Consumption of psychotropic drugs among adults who were in societal care during their childhood — A Swedish national cohort study*, „Nordic Journal of Psychiatry", vol. 68, no. 8 (2014), pp. 611-619; B. Vinnerljung, L. Brännström,, A. Hjern, *Disability pension...*, pp. 169-176; R. F. Olsen, T. Egelund, M. Lausten, op. cit., pp. 93-99; K. Kataja, T. Ristikari, R. Paananen, T. Heino, M. Merikukka, M. Gissler, *Huono-osaisuuden ylisukupolviset jatkumot eri perustein kodin ulkopuolelle sijoitettujen lasten elämässä*, „Yhteiskuntapolitiikka", vol. 79, no. 1 (2014), pp. 38–54.

184 M. Kalland, T. H. Pensola, J. Meriläinen, J. Sinkkonen, *Mortality in children registered in the Finnish child welfare registry*, „Population based study. BMJ", vol. 323, no. 7306 (2001), pp. 207-208; B. Vinnerljung, M. Ribe, *Mortality after care among young adult foster children in Sweden*, "International Journal of Social Welfare", vol. 10, no. 3 (2001), pp. 164-173; A. Hjern, B. Vinnerljung, F. Lindblad, *Avoidable mortality among child welfare recipients and intercountry adoptees: A national cohort study*, "Journal of Epidemiology and Community Health", vol. 58, no. 5 (2004), pp. 412-417; M. Manninen, M. Pankakoski, M. Gissler, J. Suvisaari, *Adolescents in a residential school for behavior disorders have an elevated mortality risk in young adulthood*, "Child and Adolescent Psychiatry and Mental Health", vol. 9, no. 46 (2015).

185 B. Vinnerljung, M. Berlin, A. Hjern, op. cit.; A. von Borczyskowski, B. Vinnerljung, A. Hjern, *Alcohol and drug abuse among young adults who grew up in substitute care - Findings from a Swedish national cohort study*, "Children and Youth Services Review", vol. 35, no. 12 (2013), pp. 1954-1961; B. Vinnerljung, L. Brännström,, A. Hjern, op. cit.; M. Berlin, B. Vinnerljung, A. Hjern, op. cit.; R.F. Olsen, T. Egelund, M. Lausten, *op. cit.*, pp. 93-99.

186 A. von Borczyskowski, B. Vinnerljung, A. Hjern, *op. cit.*

187 E. Backe-Hansen, I. Højer, Y. Sjöblom, J. Storø, *Out of home care in Norway and Sweden—Similar and different*, „Psychosocial Intervention", vol. 22, no. 3 (2013), pp. 193–202.

188 A. Kääriälä, H. Hiilamo, *op. cit.*, p. 107.

189 According to the UNICEF Report 2013, Norway is the second richest country in the world in terms of child welfare, UNICEF Office of Research 2013 – *Innocenti. Child well-being in rich countries: A comparative overview*, Florence 2013.

Summary

In conclusion, there are many worrying issues that point to the defectiveness of foster care in Norway for children taken away from their parents. Particularly noteworthy are the following:

1. Norwegian authorities' behavior not aimed at solving family problems. Even children who have been taken away only temporarily tend to remain in foster care permanently with the family receiving no concrete help for its problems.

2. Abuse of the procedure for the immediate removal of children.

3. Failure to comply with the principle of placing children in kinship care - children are most often placed in the care of strangers.

4. The inviolable primacy of the best interests of the child – understood in a way incompatible with the ECtHR jurisprudence - over the interest of the whole family. Maintaining a relationship with parents is not considered to be in the best interests of the child.

5. Frequently applied practice of setting very few meetings a year for contact between parents and their child, which, as stated by the Norwegian Supreme Court itself, is not in compliance with the *Barnevernloven*.

6. Imprecise BVL provisions regarding the right of the child to maintain contact with parents require clarification - in their current form they are criticized even by experts working on behalf of the Norwegian government

7. Questions relating to the emergency procedure which are most controversial:

    a. an appeal by parents against the decision of the county council for social welfare to remove a child in an emergency procedure should be heard by the same chairperson of the council who approved the decision;

    b. the chairperson of the council, receiving the parents' appeal of the decision, invites the parties to a meeting of the County Council for Social Welfare at which the representatives of Barnevernet are in a better position to present the case;

    c. prior to a meeting of the County Council for Social Welfare, Barnevernet interviews witnesses who then testify at the meeting of the County Council for Social Welfare (Barnevernet refers here to the Law on Mediation and Settlement of Disputes in Civil Matters).

Chapter 4. Procedural issues connected with the performance of Barnevernet tasks versus international law standards

- 4.1. International legal standard regarding procedures connected with the interference of the state authorities in family life
- 4.2. General remarks on procedures applied by Barnevernet
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- Summary

Chapter 4.

Procedural issues connected with the performance of Barnevernet tasks versus international law standards

4.1. International legal standard regarding procedures connected with the interference of the state authorities in family life

International legal standards which must be observed during the determination of procedures connected with the interference of the state in family life as regards the relationship between parents and children are set forth in three main groups of documents:

a. Convention on the Rights of the Child (CRC);

b. European Convention for the Protection of Human Rights and Fundamental Freedoms together with the Protocols thereto, and case law of the European Court of Human Rights (ECtHR); and

c. documents of the Council of Europe (mainly of the Parliamentary Assembly), which are included in the so-called *soft law*.

Pursuant to Article 9(1) of the CRC: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence." Pursuant to Article 9(2) of the CRC: "In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known." This provision

is closely linked to Article 12(2) of the CRC, which states that a child capable of forming his or her own views should be guaranteed the right to be heard in any judicial or administrative proceedings relating to him or her. The child's right to express an opinion may be exercised personally or through a representative or a competent authority. Emphasis is also placed on giving the child the opportunity to express his/her own views on matters that have a direct impact on him/her if, of course, the child is capable of forming such views.

It should also be noted that, pursuant to Article 19(1) of the CRC, "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." In order to provide the protection referred to in this provision, appropriate procedures, including judicial intervention, should be introduced.

The analysis of the CRC provisions relating to procedural guarantees leads to the conclusion that judicial control over administrative authorities (organizational entities providing social assistance) must be ensured.

Irrespective of standards set by the CRC, separate protection is ensured by the provisions of the European Convention on Human Rights, in particular its Article 6(1), which stipulates: "In the determination of their civil rights and obligations or of any criminal charge against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." If rights under the convention have been violated, and a final court decision has been issued, individuals may seek legal protection from the ECtHR, which determines the special role of the case law of this Court.

So far, the ECtHR has resolved only a few cases concerning Barnevernet interference with the right to the family life of individuals, strictly connected with procedural issues. The available case law indicates that procedural issues, such as the right to a fair trial on family matters, were the main focus of the Court's attention in only two cases. One of them concerned the violation of the right to respect for private life of the claimant by including a suggestion concerning alleged sexual abuse, thus seriously affecting the applicant's reputation, but without the court making any effort to have the allegation verified or disproved.[190] In the second decision, the Court determined the admissibility of another Barnevernet intervention in the case of further notification concerning the children's situation.[191]

190 The judgment of the European Court of Human Rights in the case of *Sanchez Cardenas against Norway* of 4 October 2007, application no. 12148/03.

191 The judgment of the European Court of Human Rights in the case of *K.T. against Norway* of 25 September 2008, application no. 26664/03.

In cases before the ECtHR which have not yet been decided, there are complaints about the excessive length of proceedings and the inequality between the parties.[192] Parents also object to the Court's failure to give parents the opportunity to participate in the proceedings[193] or to explain the facts of the case sufficiently due to defective evidentiary hearings.[194] The ECtHR's settlement of these cases may contribute to significant modifications in the content of the presented procedures.

The Barnevernet's activities have also become a subject of special attention of the Parliamentary Assembly of the Council of Europe (PACE), expressed in Resolution no. 2232 (2018) – Striking a balance between the best interest of the child and the need to keep families together.

The Barnevernet's activities have also become a subject of special attention of the Parliamentary Assembly of the Council of Europe (PACE), expressed in Resolution no. 2232 (2018) – *Striking a balance between the best interest of the child and the need to keep families together* (hereinafter referred to as the "**Resolution**").[195] The draft resolution was prepared by Valeriu Ghileţchi, a member of the European People's Party and vice-president of the Parliament of Moldova, in connection with the "*Striking a balance between the best interest of the child and the need to keep families together*" report drawn up at the request of the Committee on Social Affairs, Health and Sustainable Development, acting as a PACE body. The report refers directly to Barnevernet's activities.[196] The resolution includes recommendations related to detailed procedural guarantees beneficial for parents and their children, in particular:

a) the child should have an ensured opportunity to participate fully in the proceedings concerning their relationships with their parents so that their opinions will not only be heard, but will also be taken into account.[197] The authorities competent in family matters should employ appropriately qualified personnel for interviewing children;

b) the decision to remove a child from his family should be made on the basis of reliable and verified evidence indicating a real risk of the occurrence of serious harm to the child at the moment the decision is made;

192 See the decision contested in case *Hernehult against Norway*, complaint to the ECHR no. 14652/16 (case in progress), available at: https://hudoc.echr.coe.int/eng#{„itemid":[„001-168652"]} (accessed: 6 July 2018).

193 See the decision contested in case *Pedersen against Norway*, complaint to the ECHR no. 39710/15 (case in progress), available at: https://hudoc.echr.coe.int/eng#{„itemid":[„001-166768"]} (accessed: 6 July 2018).

194 The plea was filed in connection with the refusal to recognize grandparents of the child taken away as the foster family due to their allegedly too advanced age. See the description of facts and the decision contested in case *M.L. against Norway*, complaint to the ECHR no. 43701/14 (case in progress), available at: https://hudoc.echr.coe.int/eng#{„itemid":[„001-163130"]} (accessed: 6 July 2018).

195 The English text of the Resolution is available at the website address of the Parliamentary Assembly of the Council of Europe: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25014&lang=en (accessed: 01 July 2018).

196 See PACE, *Striking a balance between the best interest of the child and the need to keep families together*, Doc. 14568 Report (report prepared by Valeriu Ghiletchi at the request of the Committee on Social Affairs, Health and Sustainable Development, acting as the body of the PACE), p. 6 et seq.

197 This issue was also the subject of comments made by the UN Committee on the Rights of the Child, which recommended that the Norwegian authorities increase efforts in order to ensure children their right to be heard. The Committee pointed out that this concerns in particular disabled children, younger children and children who seek asylum in Norway, are refugees or immigrants – the 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, 2018, point 14 a.

c) the law should provide for judicial review of decisions to remove a child from his family;

d) the decision on removal should be justified (outline the circumstances that led to the determination and provide reasons for the removal) and delivered to parents, and explained to the child in an understandable manner;

e) the social protection system should be shaped on the basis of the principle of checks and balances, including the establishment of pertinent supervisory bodies and ensuring parliamentary control.

Moreover, the Resolution sets guidelines concerning the conditions under which children should be placed in foster care (the principle of keeping siblings together and the obligation to take into account a child's religious, cultural and ethnic identity).

4.2. General remarks on procedures applied by Barnevernet

The procedures connected with the performance of Barnevernet's tasks are highly diversified. They include measures which do not entail considerable interference in family life (some of the so-called assistance measures), as well as issues that are very crucial and sensitive for family integrity and respect for family life such as depriving parents of their right to custody of their child, depriving them of their parental rights (parental responsibility) and forced adoptions. Further analysis will focus on procedures connected with depriving parents of custody of their children.

The procedures followed by Barnevernet are established in the *Lov om barneverntjenester (barnevernloven)* and the *Lov om behandlingsmåten i forvaltningssaker (forvaltningsloven)*.[198] This results directly from the content of Article 6-1 of the BVL, which specifies that the provisions of the Forvaltningsloven are applied together with the specific provisions included in the BVL. Appeals filed with a district court are conducted as civil proceedings.

4.3. National jurisdiction

The BVL provisions apply to all persons habitually residing in the Kingdom of Norway, irrespective of their citizenship, and, therefore, also to stateless persons and refugees (Articles 1-2 BVL). This provision – in its previous wording – did not specify the nature of the stay (permanent or temporary), which raised doubts from the point of view of the provisions of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility

198 LOV-1967-02-10.

and Measures for the Protection of Children, ratified by Norway in 2015 (hereinafter referred to as the "**Hague Convention**"). Pursuant to Article 5(1) of the Hague Convention: "Administrative and judicial authorities of the Contracting State of the child's habitual residence are competent to take measures for the protection of the person or property of the child." Although the Hague Convention does not define the concept of "habitual residence"[199], the analysis of its provisions leads to the conclusion that the place of habitual residence should be distinguished from the place in which the child is living at a given time, i.e., not permanently, in which case it is admissible to apply necessary protection measures, but only "in emergency situations" (see Article 11(1) of the Hague Convention). Pursuant to the decision of the Supreme Court of Norway of 3 November 2016, the degree of a child's attachment to a given country, which prevails over the child's attachment to his parents, was considered as the main factor for determining a child's habitual residence.[200] Based on the Supreme Court's arguments included in the indicated decision, one can conclude that the evaluation of a child's attachment to a given country is objective and results from the length and nature of the child's stay on the territory of the specific country[201], whereas the place of birth is less significant.[202]

Articles 1-2 of the BVL in its previous wording seemed to be also incompatible with Article 10(1) of the Hague Convention, which specifies that: "Without prejudice to the provisions of Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed at the protection of the person or property of such child if:

a. at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child; and

b. the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child."

The practice applied by Barnevernet, which is considered to be competent also in situations where persons subject to proceedings conducted by it have already left the Kingdom of Norway and filed an asylum application in another state, may give rise to concerns.

199 As indicated in the Practical Handbook on the Hague Convention: "The concept of «habitual residence», the common primary connecting factor in all of the modern Hague Children's Conventions, is not defined in the Convention but has to be determined by the relevant authorities in each case on the basis of factual elements. It is an autonomous concept and should be interpreted in light of the objectives of the Convention rather than under domestic law constraints" - Hague Conference on Private International Law, *Practical Handbook on the operation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, Hague 2014, p. 40.

200 Decision of the Norwegian Supreme Court of 3 November 2016, HR-2016-02262-A, case no. 2016/1016, point 44.

201 *Ibidem*, points 45-46.

202 *Ibidem*.

Therefore, the BVL provisions were adjusted to principles determined in the Hague Convention. Nevertheless, it should be noted that, pursuant to the Practical Handbook on the Hague Convention, the state exclusively competent in this scope according to its provisions is the state in which the request for asylum was filed.[203] In this context, the practice applied by Barnevernet, which is considered to be competent also in situations where persons subject to proceedings conducted by it have already left the Kingdom of Norway and filed an asylum application in another state, may give rise to concerns. Such a situation took place in the case of Silije Garmo and her little daughter, who have received asylum in Poland.[204] It should be mentioned that it clearly results from the analyzed case files that Ms. Garmo was deprived the of custody of her child due to her health condition, which – according to Barnevernet – supposedly entailed the abuse of medicines (paracetamol) and could affect the mother's ability to care for her child.[205] In practice, it also happens that when a parent leaves Norway together with a child, Barnevernet employees induce the other parent to testify that the child was abducted, in order to circumvent in a way the provisions of the Hague Convention.[206]

The review of the BVL provisions in the scope in which they determine the Barnevernet's national jurisdiction should be positively assessed. However, it is still concerning that the procedure of taking children away (determined in Article 4-6 of the BVL) **may be still applied to every person residing in Norway, irrespective of whether it is the place of their habitual residence**. This means this controversial legal situation still exists.[207]

4.4. Legal protection bodies – their structure and powers

There are two steps to the entire procedure. The first takes place before the competent Barnevernet organizational units at the municipal level (see Article 2-1(b) and Article 3-1 of the BVL), and then, if there's an appeal, before the local government administration body (governor - *Fylkesmannen* – see Article 6-5 of the BVL). However, cases concerning the deprivation of child custody are resolved by county social welfare councils (*Fylkesnemnda for barnevern og sosiale saker*) appointed for each county (*fylker*).[208] Pursuant to Article 7-1 of the BVL, the government (from 2016 to January 2019 the Ministry of Children, Equality and Social Inclusion - *barne- og likestillingsdepartementet*; currently the Ministry of Children and Family Affairs - *Barne- og familiedepartementet*) can decide about

203 Hague Conference on Private International Law, *Practical Handbook...*, p. 42.

204 See press materials made available in online edition of "Nasz Dziennik", available at: https://naszdziennik.pl/polska-kraj/191665,norwegia-lamie-postanowienia-konwencji-haskiej.html (accessed: 6 July 2018).

205 Decision of the County Council for Social Welfare for Oslo and Akershus of 28 May 2015, no. 15/471.

206 M. Czarnecki, Dzieci Norwegii. *O państwie (nad)opiekuńczym*, Wołowiec 2016, p. 182.

207 The Supreme Court in Norway also noticed this continuity in its decision of 3 November 2016, HR-2016-02262-A, case no. /2016/1016, points 41-42.

208 Norway is divided into 5 regions (*landsdeler*) and 19 counties (*fylker*) of different sizes and population density. Counties are divided into municipalities..

the competence of such a council for several counties; there are currently twelve county councils for social welfare in Norway.[209] Pursuant to Article 7-1 of the BVL, councils process cases filed by municipal bodies (*Kommunen*) and the proceedings end with the issuance of an administrative decision.

Pursuant to Article 7-24 of the BVL, **decisions issued by the county council may be reviewed by a district court** taking into account the general principles of Norwegian civil procedure. District court proceedings are initiated by the parties, but always with the participation of the relevant municipality. Decisions can be appealed within one month from the day on which a party was informed about the decision.[210]

A county council for social welfare is composed of at least one member that is a professional judge as well as experts and ordinary members (Article 7-2 of the BVL). In general, the adjudicating panel is composed of a chairperson who is a professional judge, an expert and an ordinary member (lay judge or assessor). In complicated cases, the chairperson may decide that the adjudicating panel will consist of two experts and two assessors (Article 7-5(1) of the BVL). The parties may also consent to having their case resolved by one person (Article 7-5(2) of the BVL). Significantly, pursuant to Article 7-6 of the BVL, the participation of the judge in earlier stages of a case does not constitute grounds for the judge's exclusion or an allegation of judicial prejudice. From the perspective of international legal standards, this situation is problematic as, pursuant to Article 6(1) of the European Convention on Human Rights, the court hearing a case should be impartial, which may be violated if the same judge hears the case at different levels.[211]

Pursuant to Article 7-6 of the BVL, a judge's participation in earlier stages of a case does not constitute grounds for the judge's exclusion or an allegation of judicial prejudice.

It should also be noted that parties to proceedings that are private entities are entitled to free legal assistance from the court (Article 7-8 of the BVL). However, it is financed from the budget of Barnevernet, which makes decisions on establishing and maintaining cooperation with law firms, thus raising serious doubts concerning the reliability and diligence of legal counsel representing a party ex officio. It must be mentioned that the remuneration of the counsel representing parents may be lowered by the judge at the stage of the judicial review of the decision issued by the county council for social welfare, whereas that is not possible for the counsel representing Barnevernet.[212] The county council may also appoint a special spokesperson for a child, who also takes part in the proceedings (Article 7-9 of the BVL).

209 Information placed on the following website: https://www.fylkesnemndene.no/en/what-does-fylkesnemndene-do/ (accessed: 25 June 2018).

210 K. Ofstad, R. Skar, *op. cit.*, p. 431.

211 See judgement of the European Court of Human Rights in the case of *Korzeniak against Poland* of 10 April 2017, application no. 56134/08.

212 PACE, *Striking a balance ...*, Doc. 14568 Report, p. 8 footnote 14.

4.5. Rules of conduct

The rules of conduct before the county council for social welfare are determined in Article 7-3 of the BVL, which requires quick and smooth settlement of a case. In order to fulfill this requirement, the following rules of conduct have been adopted:[213]

a. the rule of gathering evidence in the scope sufficient for making a decision,

b. the rule of direct oral testimony of the parties representing their positions,

c. the rule of hearing both parties to the proceedings (*audiatur et altera pars*),

d. the rule of equal treatment of the parties to the proceedings and providing them with adequate explanations,

e. the rule of the county council for social welfare making decisions with complete independence and on the basis of a fair assessment of the circumstances of the case,

f. the rule of providing justifications for issued decisions.

The chairperson of the adjudicating panel is obliged to ensure compliance with the above rules. The rule regarding oral testimony referred to in point b is troubling due to the fact that there are **no trial transcripts**.[214] This is a violation of international law regarding the scope of access to the court since the ability to formulate an appeal against a decision based on possible errors in the facts is significantly impeded. Generally, the appealing party can only depend on findings included in the content of the justification of the decision, whereas pursuant to Article 6(1) of the European Convention on Human Rights: "In the determination of their civil rights and obligations or of any criminal charge against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The lack of trial transcripts constitutes, in fact, a violation of international law in the scope of access to the courts as the formulation of an appeal against a decision based on possible errors in the facts is significantly impeded.

In this context, it should be stated that **the judicial review of decisions issued by an administrative authority is in fact illusory**, which raises questions about the Norwegian authorities' compliance with

213 As the Norwegian literature indicates, they are "general" rules of proceedings. They are discussed in detail by K. Ofstad and R. Skar: *op. cit.*, p. 366.

214 It was confirmed by Norwegian Ministry of Children and Equality in letter of 28 February 2019, No. 18/2681-6 with response for Ordo Iuris request for information of 16 July 2018.

the standards set by the case law of the European Court of Human Rights, pursuant to which, if the body making a decision does not meet the criteria ensuring a court's impartiality, its decisions must be subject to judicial review.[215] All courts in their case law strongly emphasize the importance of the principle of direct examination of evidence[216], but this fact does not constitute grounds to justify the complete abandonment of trial transcripts. Transcripts are essential for parties deprived of their rights in proceedings before a county council for social welfare to pursue a remedy. In this regard, it should be noted that Article 6(1) of the European Convention on Human Rights fully applies to depriving parents of the right to custody of their children, which is confirmed in the ECtHR case law.[217]

4.6. Course of proceedings

The proceedings before local Barnevernet authorities are initiated ex officio, including on the basis of an **anonymous** notification.[218] Such a notification can be submitted by a **private person or an institution** (school, hospitals, police services).[219] Pursuant to the case law of the ECtHR, social workers are entitled to interfere many times on the basis of such notifications due to the changing facts of a given case (e.g., deteriorating living conditions).[220] There are two main procedures of Barnevernet operations: the ordinary procedure and the procedure applied in situations requiring immediate action (Article 4-6 of the BVL).Pursuant to Article 4-17 of the BVL, Barnevernet local authorities can decide to relocate a child if it is justified by changing circumstances or the child's best interests. As a result of such a decision, a child that already resides outside the family home (see Article 4-15 of the BVL) is transferred to another foster family or care institution.[221]

Pursuant to the case law of the ECtHR, social workers are entitled to interfere many times on the basis of such notifications due to the changing facts of a given case.

The proceedings at the first stage – before the local Barnevernet authorities – are typical **inquisition proceedings** in which the authority **undertakes actions ex officio**. These proceedings are, therefore, similar to administrative proceedings or preparatory proceedings in a criminal trial. Local Barnevernet authorities "host the proceedings" and assess the facts autocratically.

215 The judgment of the European Court of Human Rights in the case of *Albert and Le Compte against Belgium* of 10 February 1983, A. 58, Art. 29.

216 See judgment of the European Court of Human Rights in the case of *Lazu against Moldova* of 5 July 2016, application no. 46182/08.

217 See judgments of the European Court of Human Rights in the cases of: *Olsson against Sweden* (no. 1) of 24 March 1988, A. 130; *W. against Great Britain* of 8 July 1987, A. 121; *Eriksson against Sweden* of 22 June 1989, A. 156.

218 W. Nowiak, D. Narożna, R.L. *Muriaas*, op. cit., p. 120. In practice, an anonymous letter or e-mail is sufficient for this purpose- PACE, *Striking a balance...*, Doc. 14568 Report, p. 7 footnote 9.

219 PACE, *Striking a balance...*, Doc. 14568 Report, p. 7.

220 See the judgment of the European Court of Human Rights in the case of *K.T. against Norway* of 25 September 2008, application no. 26664/03.

221 K. Ofstad, R. Skar, *op. cit.*, p. 169.

It is worth mentioning that during the entire proceedings Barnevernet employees may decide on the application of different measures such as referring parents to alcoholism addiction treatment or commissioning visits at mental health facilities. They also supervise parents' meetings with children, and sometimes summon parents for interviews. In some cases, parents' meetings with their children are scheduled without taking into account the parents' professional duties. As a consequence, the same social workers who set up such meetings hypocritically then criticize parents for having a poor work ethic, which sometimes prevents parents from getting their children back. Moreover, Barnevernet authorities sometimes ignore parents' repeated requests for the assignment of their case to a different social worker.[222]

4.6.1. Ordinary procedure

Pursuant to Article 4-2 of the BVL, within one week of being notified Barnevernet should verify the notification and decide on whether or not to commence proceedings. The proceedings should not exceed their purpose (Article 4-3(2) of the BVL). The first activity that should be performed by Barnevernet in light of the provisions of the BVL is to carry out community interviews. Parents or other persons in whose custody the child remains cannot object to these interviews, which are carried out in the form of visits to the child's home (Article 4-3(3) of the BVL). At this stage of the proceedings, it is possible to involve experts who conduct the interview together with Barnevernet employees (however, the participation of experts is not obligatory – Article 4-3(4) of the BVL). Persons conducting the interviews may request to talk with the child in private in a different room, and, if they believe the child has been abused, they can take the child to a hospital or some other place for medical examination (Article 4-3(4) of the BVL).

Barnevernet may provide financial or housing assistance, organize after-school activities, or appoint a foster family for weekends.

Generally, in the course of further proceedings a plan for improving the family situation should be developed and implemented under Barnevernet's constant monitoring (Article 4-5 of the BVL). However, if necessary, the county councils for social welfare may decide to place the child in a kindergarten or other child daycare center (Article 4-4 of the BVL). Barnevernet may provide financial or housing assistance, organize after-school activities, or appoint a foster family for weekends.[223] Such decisions may be made against the child's will (Article 4-4(3) of the BVL). If Barnevernet finds that, due to conditions at home or for other reasons the child needs particular help, actions aimed at supporting the child and the family are undertaken (Article 4-4(2) of the BVL). Article 4-4(2) of the BVL contains a general clause which is implemented on the basis of Article 4-4(4) of the BVL. It states

222 M. Czarnecki, *Dzieci Norwegii...*, p. 155.
223 W. Nowiak, D. Narożna, R.L. Muriaas, *op. cit.*, p. 121.

that if this clause is applied and other measures do not contribute to achieving the pursued goals, Barnevernet may remove the child from the home and place him/her in a foster family or an educational care facility. **In general, this measure is voluntary, but if it is found that parents are not able to provide their child with appropriate care for a longer time, the child may be taken away and the parents may be deprived of custody under Article 4-12 of the BVL**. Pursuant to this provision, **the county council for social welfare** makes such a decision at the request of the Barnevernet municipality branch if one of the following conditions is met:

1. if there are serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development;

2. if the parents fail to ensure that a child who is ill, disabled or has special needs receives the required treatment or rehabilitation;

3. if the child is mistreated or subjected to other serious abuses at home; or

4. if it is highly probable that the child's health or development may be seriously harmed because the parents are unable to take adequate responsibility for the child.

In the Norwegian case law, it is also stressed that even if the conditions determined in Article 4-12 of the BVL are met, that is insufficient to make a decision about depriving parents of custody over their child. Instead, such a decision must be made for the best interests of the child (Article 4-1 of the BVL – positive conditions), and at the same time it is impossible to create appropriate conditions for their development by the application of aid measures determined in Article 4-4 of the BVL or measures referred to in Articles 4-10 and 4-11 of the BVL.[224]

According to data presented in documents of the Parliamentary Assembly of the Council of Europe (PACE), in 2015 there were 1,545 decisions subject to this procedure. For comparison, the number of decisions (interim orders) about removing a child under the emergency procedure was higher (although only slightly) – 1,555 decisions.[225] Such a situation obviously raises concerns about the procedural correctness of Barnevernet's activity.

Table 4.1. Statistics on care orders issued on the basis of the individual premises set out in section 4-12 barnevernloven - years 2008-2015

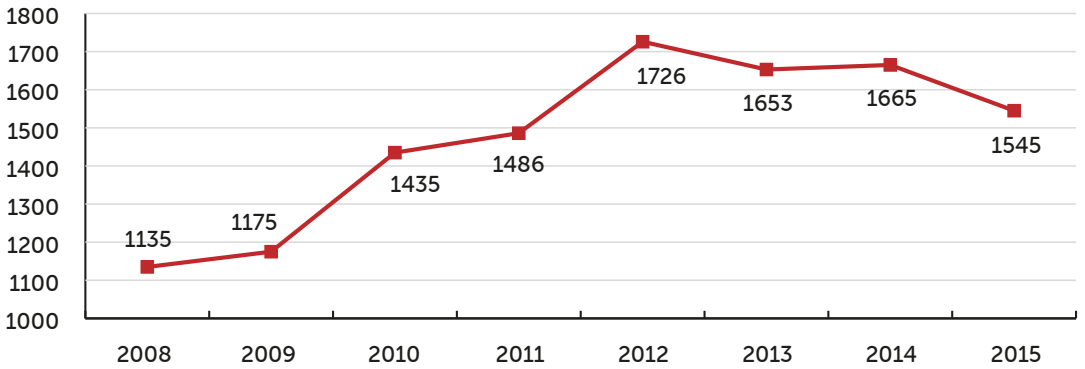
Number of new children with a care order §4-12 and §4-8							
2008	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
1135	1175	1435	1486	1726	1653	1665	1545

Source: information from Bufdir

224 Decision of the Norwegian Supreme Court of 19 December 2006, HR-2006-2123-A - Rt-2006-1672, case no. 2006/953, point 39.
225 PACE, *Striking a balance...*, Doc. 14568 Report, p. 10.

Chart 4.1. Statistics on care orders issued on the basis of the individual premises set out in section 4-12 barnevernloven - years 2008-2015.

Number of new children with a care order §4-12 and §4-8



Source: own work on the basis of information from Bufdir

4.6.2. Emergency procedure (applied in the case of necessity to undertake immediate actions)

The procedure under which children are taken from their parents on the basis of an interim order (*midlertidige vedtak*) is regulated in Article 4-6 of the BVL. Depending on the situation, a child may be placed in the custody of third parties or public institutions under this procedure with or without the parents' consent. Parental consent is necessary if a parent is unable to care for the child due to illness or other reasons. In such a case, the temporary measure also cannot be applied if a child over the age of 15 is opposed.[226] While this measure, which may constitute necessary support for single parents without any other family members (such as some immigrants), **depriving parents of the custody of their children against their will when there is a risk of material damage**, which under Norwegian law means **both personal injury to the child and harm to his/her emotional and social development**, is definitely more concerning from the point of view of complying with international legal standards.[227] Although a temporary order should be issued in an emergency, even the Norwegian legal literature on the subject provides for the possibility to take a child away only after some time if the risk of personal injury to the child persists.[228]

The interim order referred to in Article 4-6(2) of the BVL may also be applied in situations which were only outlined in Article 4-24 of the BVL. This concerns the case when the child has committed a serious crime or several crimes, taken drugs or committed other similar offenses. Pursuant to Article 4-25(2)(2) of the BVL, in such situations the manager of the Barnevernet municipal branch or the prosecutor may issue an interim order.

226 K. Ofstad, R. Skar, *op. cit.*, pp. 110-111.

227 See the description of facts in the case *K.O. and M.V. against Norway*, complaint to the ECHR no. 64808/16 (case in progress), available at: https://hudoc.echr.coe.int/eng#{„itemid":[„001-174201"]} (accessed on 4 July 2018).

228 K. Ofstad, R. Skar, *op. cit.*, p. 112.

An interim order is issued by the Barnevernet manager in the given municipality or an authority empowered to act as a public prosecutor. The Barnevernet manager may also decide to prevent parents from having contact with their children as referred to in Article 4-19 of the BVL.

Unlike decisions issued in administrative cases, an interim order does not have to be preceded by prior notification on the intention to issue it submitted to the relevant party (see Article 16 of LBF).[229] The literature on the subject also indicates that parents deprived of custody of their children under Article 4-6(2) of the BVL are not entitled to request the suspension of enforcement of an interim order until they are granted legal aid ex officio, despite the fact that pursuant to Article 12(1) of the LBF parties to administrative proceedings are entitled to legal aid at each stage of the proceedings.[230]

An interim order is issued by the Barnevernet manager in the given municipality or an authority empowered to act as a public prosecutor (påtalemyndigheten). The Barnevernet manager may also decide to prevent parents from having contact with their children as referred to in Article 4-19 of the BVL. Such decisions are temporary.

Interim orders should basically be made in writing, although deviation from this rule is permitted on the basis of Article 24 of the LBF. In such a case, an order issued orally must subsequently be drawn up in writing as soon as possible.[231] This rule may be legally objectionable, however, since it may be difficult for parents and children, especially from immigrant families, to understand the whole situation. It is impossible to verify whether they have been informed of their rights. Interim orders are sent to the county council for social welfare immediately after being issued. The chairperson of the council should approve such orders within no more than 48 hours (Article 7-22 of the BVL).

An interim order should basically be made in writing, although deviation from this rule is permitted on the basis of Article 24 of the LBF. In such a case, oral orders must subsequently be drawn up in writing as soon as possible. This is objectionable, however, since it may be difficult for parents and children, especially from immigrant families, to understand the whole situation.

If taking a child away involves not only placing the child outside the family home temporarily, but also depriving parents of their right to custody of their child, the Barnevernet municipal branch prepares an appropriate request, which should be immediately, but no later than within six weeks, submitted

229 *Ibidem*, p. 114.
230 *Ibidem*, p. 115.
231 *Ibidem*, pp. 115-116.

to the county council for social welfare.[232] If the circumstances specified in Article 4-24 of the BVL exist, such as the child committing offenses or taking drugs, the request should be submitted to the council no later than within two weeks. If those deadlines aren't met, the order will no longer be binding (Article 4-6(4) and (5) of the BVL).

It should be noted that at this stage of the proceedings there are often different kinds of negligence. Despite frequent allegations of child abuse (sometimes very brutal and regular), children are not subject to medical examinations which could confirm the allegations.[233] The way in which children are interviewed, including the use of repeatedly asked leading questions which suggest answers, is dubious.[234] When taking children away under the emergency procedure, Barnevernet also sometimes does not contact both parents if the main reason for removing a child away is only one parent. The analysis of proceedings files shows that sometimes the parent that did not commit acts which would justify depriving him or her of custody is informed when contacting the school or kindergarten that the child has been taken away.

Sometimes this information is passed on by the family member who, at the time the child was taken away, was taking care of him (for example, while the parents were at work).[235]

Despite frequent allegations of child abuse (sometimes very brutal and regular), children are not subject to medical examinations which could confirm allegations.

The situation of foreign children residing in the Kingdom of Norway is unique. As has already been mentioned, the provisions of the BVL apply to all persons permanently living in Norway, irrespective of their citizenship (Article 1-2 of the BVL). However, only certain provisions, including Article 4-6 of the BVL, apply to foreigners only temporarily residing in Norway (see Article 1-2(2) *in fine* BVL). This means that Article 4-6 of the BVL only generally applies to children residing in Norway. If Barnevernet undertakes actions resulting in the removal of the child from his or her parents, the temporary limits provided for in Article 4-6(4) of the BVL do not apply unless within the same time periods (6 or 2 weeks):

a. request is filed to the state of the child's permanent residence for undertaking the necessary actions, although the act does not specify the kind of actions, but it should be understood that they mean maintaining the state of affairs resulting from the Barnevernet interference (i.e., maintaining the child's separation from their parents), or

232 For comparison, in light of Article 12a(4) of the Polish Anti-Domestic Violence Act of 29 July 2005 (consolidated text: Journal of Laws of 2015, item 1390), the social worker should, within 24 hours, inform the guardianship court about the forcible removal of a child whose life or health is directly threatened. After being informed that the child was placed in foster custody without a decision of the guardianship court pursuant to Article 579[1] § 1 of the Polish Code of Civil Procedure of 17 November 1964 (Journal of Laws of 2018, item 155), th court immediately initiates guardianship proceedings.

233 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

234 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

235 M. Czarnecki, *Dzieci Norwegii...*, p. 8; pp. 188-189.

b. authorization to exercise jurisdiction was requested under the procedure determined in Article 8 or 9 of the Hague Convention.

After taking a child from his parents, Barnevernet is obliged to monitor both the child's and the parents' situation. At the parents' request, other aid institutions may also be involved in such actions (Article 4-6 in fine BVL). In this period (i.e., until the county social welfare council considers the case), the decision on the child's contacts with his parents is made by the Barnevernet manager in the given municipality. **Parents have the right to contact their child only if nothing else results from this decision** (Article 4-6(3) in connection with Article 4-19 of the BVL). **The decision may also indicate the frequency and place of the parent's meetings with their child**. Such a decision may require **that the child's location must be kept secret** (Article 4-6(3) in connection with Article 4-19(2) *in fine* BVL).

It is important to remember that, pursuant to Article 4-19 of the BVL, the child's relatives or persons with whom the child has been in a close relationship may demand contact with the child:

a. in the case of death of one or both parents,

b. if the parents are banned from contacting their child or that contact is significantly limited.

A request for contact should be submitted to the county council for social welfare. Requests by the abovementioned persons for contact with the child cannot be resubmitted if such a request was processed by the county council for social welfare or the district court during the preceding twelve months (Article 4-19(5) of the BVL).

In the case of an emergency procedure, pursuant to Article 7-23 of the BVL it is possible to **file an oral or written appeal against an interim order**.[236] Appeals must be filed directly to the competent local county council for social welfare.[237] They are processed by the chairperson of the council on his/her own, i.e., by the same person that pursuant to Article 7-22 of the BVL has the competence to approve such requests. In such a situation, the case should be examined within one week (Article 7-23(3) of the BVL). Within this procedure, there is a meeting during which the parties may present their positions and evidence as admitted by the chairperson (Article 7-23(2) of the BVL).

Between 2008 and 2013, the number of children taken away from their parents increased by approx. 70%, whereas between 2013 and 2017 there was an approx. 30% decrease. However, this does not change the fact that the frequent application of a legal instrument intended for use in extraordinary circumstances has far-reaching implications extending beyond Norway's borders.

236 K. Ofstad, R. Skar, *op. cit.*, p. 429.
237 *Ibidem*, p. 430.

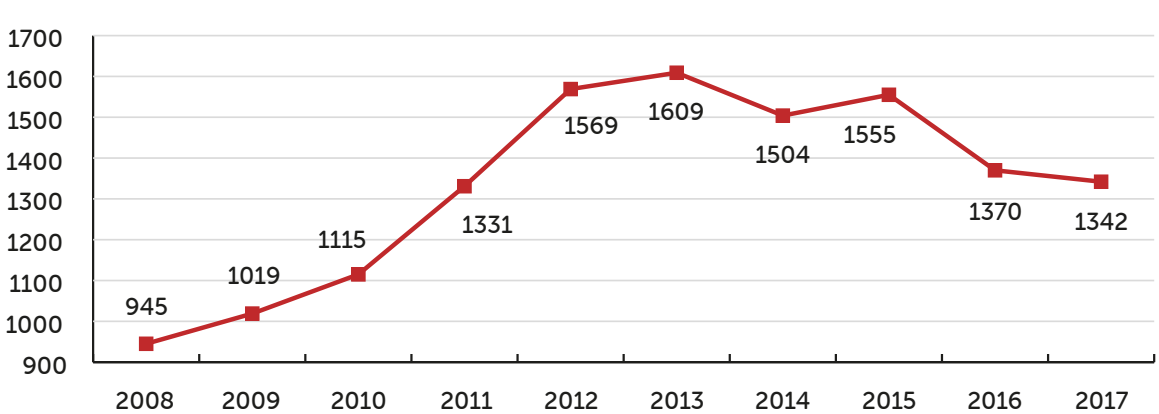
According to data present by the PACE, in 2017 under the described procedure 1,342 children were taken away from their parents.[238] Between 2008 and 2013, the number of children taken away from their parents increased by approx. 70%, whereas between 2013 and 2017 there was an approx. 30% decrease.[239] This does not change the fact, however, that the frequent application of a legal instrument intended for use in extraordinary circumstances has far-reaching implications (in 2018 – slightly more than 5.3 million residents, including approx. 1,113,000 children under the age of 18, constituting 21.1% of Norwegian society[240]). Concerns about the abuse of interim orders confirm the numerical ratio of interim orders issued to decisions based on § 4-12 BVL (to –be effective, interim orders must be confirmed by a decision).

Table 4.2.Statistics on the number of care orders issued under sections 4-6 Lov om barneverntjenester (barnevernloven) - years 2008-2017.

Number of children with emergency placement after a emergency order §4-6 Barnevernloven									
2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
945	1019	1115	1331	1569	1609	1504	1555	1370	1342

Source: information from Bufdir

Chart 4.2. Statistics on the number of care orders issued under sections 4-6 *Lov om barneverntjenester (barnevernloven)* - years 2008-2017.



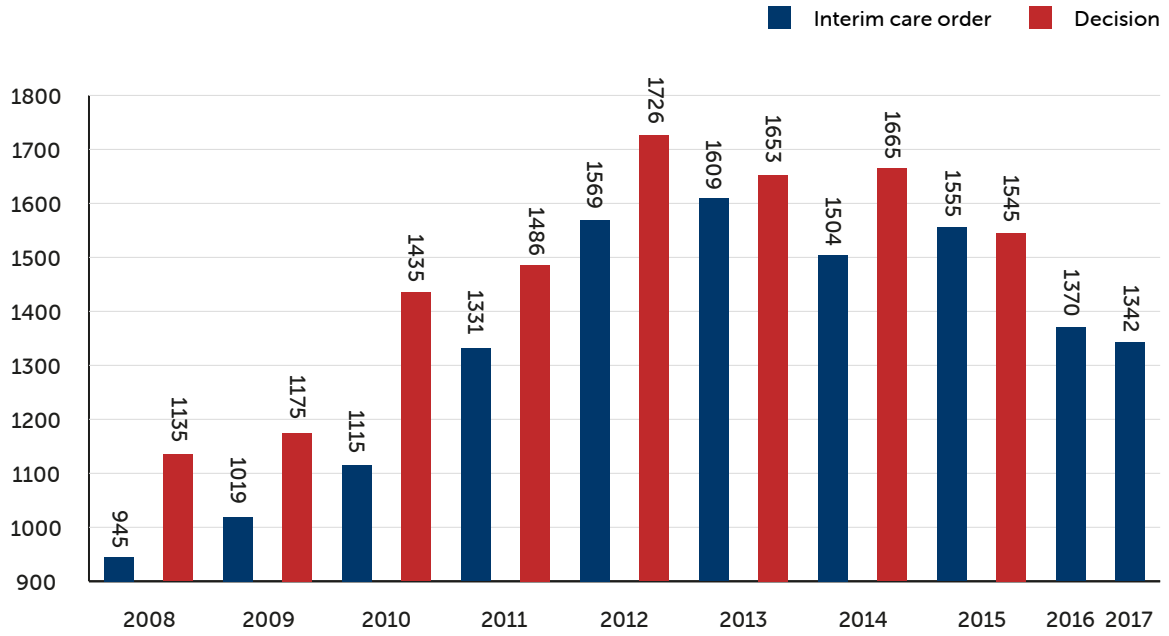
Source: own work on the basis of information from Bufdir

238 These data were directly confirmed by Bufdir, which made them available to the Ordo Iuris Institute under the public access to information procedure.

239 PACE, *Striking a balance...*, Doc. 14568 Report, p. 10.

240 Data coming from *Statistisk sentralbyrå*, the official government agency, are available at the following address: https://www.ssb.no/en/befolkning/statistikker/folkemengde and https://www.ssb.no/en/befolkning/statistikker/familie (accessed: 22 January 2019).

Chart 4.3. Comparison of the number of interim (emergency) care orders issued on the basis of § 4-6 BVL and decisions issued under § 4-12 and 4-8 of the BVL in 2008-2018.



Source: own work on the basis of information from Bufdir

4.6.3. Proceedings before county councils for social welfare

The proceedings before county councils for social welfare are initiated at the request of local Barnevernet branches for the application of aid measures, including proceedings to remove a child from his parents' custody under Article 4-12 of the BVL (Article 7-10 of the BVL). At this stage of the proceedings, the local Barnevernet branch becomes a party to the proceedings, losing the status of the body examining the case, and thus does not "host the proceedings", which take on characteristics of adversarial disputes. The proceedings before the county social council for welfare may also be initiated as a result of an appeal against an interim order as referred to in Article 7-23 of the BVL discussed in the previous point. It is well known that these proceedings are characterized by certain features distinguishing them from the mode described below.

Private persons (in most cases parents) may submit a response to the Barnevernet request in which they address the circumstances indicated in the request, presenting evidence concerning their own position. They should be given a deadline **not exceeding 10 days** to respond to the Barnevernet's request (Article 7-11 *in fine* BVL). The deadline may be shorter than 10 days, but no longer than 10 days.

The proceedings are initiated by the council's preparatory activities, which are mainly of an organizational nature (Article 7-12(1) of the BVL). The adjudicating panel becomes acquainted with the

Barnevernet request and at this stage, if the circumstances of the case are unclear, it may demand the preparation of a description structured chronologically or in a different way (Article 7-12(2) of the BVL). There is also an initial meeting during which the parties present their positions.

According to official Norwegian data, in 2017 the average length of proceedings during which negotiation meetings were held before the county council for social welfare was 47 days.

As a rule, before issuing a decision, there is also a negotiation meeting. It should be held not later than within four weeks from the council's receipt of the Barnevernet request (Article 7-14 of the BVL). According to official Norwegian data, in 2017 **the average length of proceedings** during which negotiation meetings were held before the county council for social welfare was **47 days**.[241]

Pursuant to Article 7-16 of the BVL, the meetings before the county council for social welfare are, as a rule, **closed to the public**. The adjudicating panel may decide to allow the public to participate in all or part of the meeting at the request or upon the consent of the parties. The adjudicating panel can also allow selected persons to participate in generally closed session. **Making sound and visual recordings without the consent of the adjudicating panel is prohibited**. Due to the **lack of meeting trial transcripts**, the reliability of these cases is dubious. Since any procedural errors or the panel's bias towards certain witnesses' testimony may only be recorded in the content of the justification of the decision, it is effectively to impossible to point out the adjudicating panel's errors and to formulate proper objections in an appeal. This also leads to the total elimination (or at least significant limitation) of any social control over the settlement of cases that are of high importance for both individual families and the entire nation, cases which are very sensitive and where witness testimony plays a key evidentiary role in addition to expert opinions.

Pursuant to Article 7-16 of the BVL, meetings before the county council for social welfare are, as a rule, non-public (i.e., are closed to the public). Making sound and visual recordings without the consent of the adjudicating panel is prohibited.

The burden of proving the true nature of circumstances justifying a decision to deprive parents of custody over their child is borne by the Barnevernet authorities. At the same time, these circumstances do not have to be proved. It is sufficient **to show that there is a greater likelihood of abuse than a lack of abuse** (see Article 4-8(2); Article 4-12(d) of the BVL)[242], which seems to be completely

241 Fylkesnemndene for barnevern og sosiale saker – Årsrapport 2017, p. 8.

242 See also decision of the Norwegian Supreme Court of 19 December 2006, HR-2006-2123-A - Rt-2006-1672, case no. 2006/953, point 9.

disproportionate to the importance of the decisions made, including in particular decisions to deprive parents of custody over their child.

The burden of proving the true nature of circumstances justifying the decision to deprive parents of custody over their child is borne by the Barnevernet authorities. At the same time, these circumstances do not have to be proved. It is sufficient to show that there is a greater likelihood of abuse than a lack of abuse.

Pursuant to Article 7-3(a) of the BVL, in the proceedings before the county social welfare council, the council should make sure that the presented evidence constitutes an adequate basis for issuing a decision. In general, the evidence gathered at the earlier stage and the list of witnesses and experts should be attached to the request for assistance (including in the form of depriving parents of custody over the child or depriving them of guardianship rights) by county council for social welfare. The indicated provisions governing civil proceedings (Article 7-17 of the BVL) apply to the remaining scope of the evidentiary proceedings before county council for social welfare.

In the course of the proceedings, the biological parents of the child are not guaranteed adequate access to evidence. They are only given copies of reports which are prepared by social workers or even by employees of private care centers. The medical examination of children is often performed a long time after their supposed abuse by their parents, which makes it impossible to verify objectively whether the parents committed the alleged abuse.

It should also be noted that in the course of the proceedings the biological parents of the child are not guaranteed adequate access to evidence. They are only given copies of reports which are prepared by social workers or even by employees of private care centers.[243] The medical examination of children is often performed a long time after their supposed abuse by their parents, which makes it impossible to verify objectively whether the parents committed the alleged abuse.[244] The analysis of files carried out during our research also indicates that there is a selective approach towards evidence. For example, in the case of Silje Garmo, both before the county council for social welfare and in the court proceedings, evidence presented by the mother was ignored, whereas evidence presented by the father was treated favorably. Such a situation usually takes place in the case of a conflict between parents and is taken advantage of by Barnevernet.

243 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

244 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo. M. Czarnecki describes them in: *Dzieci Norwegii...*, pp. 8-9.

Findings made by experts, especially by certified psychologists, are relevant for decisions made by county council for social welfare. In this respect, it should be stressed that there are situations when such opinions – constituting the actual basis for issuing a decision – are prepared by persons that for different reasons should be excluded from the proceedings.

Findings made by experts, especially by certified psychologists, are relevant for decisions made by county councils for social welfare. In this respect, it should be stressed that there are situations when such opinions – constituting the actual basis for issuing a decision – are prepared by persons that for different reasons should be excluded from the proceedings.[245] Sometimes experts have little time to prepare their opinions.[246] These problems occur at different stages: both before county council for social welfare and in appeal proceedings. Moreover, a lot of further research as well as public discourse contests the research methodology of experts, which later constitutes a basis for the formulation of theses contained in the opinions submitted to public authorities. This mainly concerns building on the attachment theory, whose author was a psychiatrist and advocate of psychoanalysis, John Bowlby.[247] Putting too much emphasis on eye contact between mother and child by social workers and certified psychologists has received the most criticism. A research visit in Oslo and interviews carried out with families who were Barnevernet victims indicate that this theory is greatly overused as a basis for far-reaching statements (mainly about the lack of emotional bonds between children and their mothers).[248]

The entire proceedings before the county council for social welfare are finalized by an administrative decision. Such a decision should include a justification. Nevertheless, in practice the performance of the obligation to draw up objective and sufficient justifications – at least in cases of decisions issued by county council for social welfare – has raised the concerns of the Parliamentary Assembly of the Council of Europe.[249] It should be added that the decision of county councils for social welfare should take into account the facts at the time of its issuance. Analysis of the files of proceedings before county councils for social welfare indicates that this requirement is not respected and, even when the facts change obviating the need to remove a child from his parents' custody county councils for social welfare continue to issue decisions ordering a child's removal. These conclusions were also confirmed during our research visit in Oslo. In one case, a mother legally deprived of custody over her child, despite a radical change in her lifestyle and commencing the treatment recommended by Barnevernet, not only did not regain custody over her child, but the Barnevernet even tried to limit her contacts with her child.[250]

245 Decision of the Norway Supreme Court of 22 March 2017, HR-2017-596-U, point 4.

246 *Ibidem*, point 19.

247 See P. Marchwicki, *Teoria przywiązania J. Bowbly'ego*, "Seminare. Poszukiwania naukowe" 23 (2006), p. 365. For comprehensive critic, see: H. R. Schaffer, *Making decisions about children*, Oxford 1998; J. Paris, *Myths of childhood*, Philadelphia 2000.

248 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

249 PACE, Resolution 2232 [2018] *Striking a balance between the best interest of the child and the need to keep families together*, point 5.6.2.

250 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

Despite a change in the facts obviating the need to remove a child from his parents, county councils for social welfare continue to issue decisions ordering a child's removal.

A decision depriving parents of their right to custody of their child (which should not be confused with depriving them of their parental responsibility) may be cancelled if the county council for social welfare states that the parents are able to ensure their child the appropriate care. However, the decision will not be cancelled if, on the basis of a general assessment, the council **states that the child has attached itself to a new environment and removing the child from that environment would be detrimental to him or her** (Article 4-21 of the BVL). The act also specifies that in order to make "such a decision" the council must also hear foster parents (Article 4-21(1) *in fine* BVL).

In 2017, county councils for social welfare received 4,908 cases, 2,103 of which resulted in a decision to deprive parents of custody over their child (or refusal to deprive them of custody over their child), and another 493 concerned appeals against interim orders.[251] A total of 747 cases were closed without a decision due to the withdrawal of the appeal or its rejection for formal reasons.[252] Other cases did not concern depriving parents of custody over their children.

4.6.4. Judicial review of decisions issued by county councils for social welfare

Generally, appeals in cases handled by Barnevernet organizational units are heard by the County Governor (*Fylkesmannen* – Article 6-5 of the BVL). Cases are referred to the *Fylkesmannen* pursuant to the rules included in the provisions of the LBF, which govern administrative proceedings. The deadline for filing an appeal is 3 weeks from the date of delivery of a decision (Article 29 of the LBF).

In ordinary proceedings to deprive parents of the right to custody over their child, decisions are made by the county council for social welfare and can be appealed to the courts. Emergency proceedings to remove a child from his parents are similar and end with the issuance of a decision depriving parents of custody (Article 4-12 of the BVL).

Judicial review of decisions issued by the county council for social welfare is carried out pursuant to the rules specified in the provisions of the *Lov om mekling og rettergang i sivile tvister (tvisteloven)*[253] of 2005. As civil cases, they must be brought within 2 months. The proceedings are initiated orally or in writing (Article 9-2 of the LMR). The civil court (district court - *tingretten*), consisting of a professional judge, assessor and psychologist, examines the case again (Article 36-4 of the LMR). Parents and Barnevernet employees are the parties to the proceedings. Children over the age of 7 and able to

251 Fylkesnemndene for barnevern og sosiale saker – Årsrapport 2017, p. 7.
252 *Ibidem*.
253 LOV-2005-06-17-90.

express an opinion should be informed about the proceedings (Article 6-3 of the BVL in connection with Article 7-23 of the BVL). The court should allow such a child to be heard during the proceedings. Children over the age of 15 can be a party to the proceedings in their own name. It should be noted that doubts concerning the practical application of a child's right to express his own opinion have been raised by both the Parliamentary Assembly of the Council of Europe[254] and the UN Committee on the Rights of the Child.[255] Our research revealed that there are situations in which the child's opinion is taken into account only if the child is unwilling to be placed in the custody of his parents again, whereas the child's request for more frequent meetings with his biological parents is ignored.[256]

There are situations in which the child's opinion is taken into account only if the child is unwilling to be placed in the custody of his parents again, whereas the child's request for more frequent meetings with his biological parents is ignored.

Cases should be settled by the issuance of a judgment. Pursuant to Article 1-1(1) of the LMR, only judgments issued in more important cases must be justified (*viktige avgjørelser begrunnes*). Those include cases concerning the deprivation of parental custody of their children[257], which can be appealed to a regional court (*lagmannsretten*) under the rules determined in Articles 29-1 et seq. of the LMR. Particularly important are the regulations included in Article 36-1 of this act, which refer to the judicial review of administrative decisions concerning social assistance and health care.[258] Some cases may even be settled by the Norwegian Supreme Court (*Høyesterett* – see Article 30-1 et seq. of the LMR), whose decisions are final under Norwegian law.

Pursuant to Article 36-10 of the LMR, the decision of a district court on matters concerning an appeal of a decision of a county council for social welfare can be appealed if:

a. the case concerns novel issues whose importance goes beyond the scope of the matter in question;

b. new circumstances have appeared;

c. the decision of the district court or the procedure itself before the district court was grossly flawed;

d. the decision of the district court included enforcement measures which were absent from the decision of the county council for social welfare.

254 PACE, Resolution 2232 [2018] *Striking a balance between the best interest of the child and the need to keep families together,* point 5.1.

255 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, 2018, point 14 a.

256 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

257 Decision of the Norwegian Supreme Court of 4 March 2010, HR-2010-405-A – Rt-2010-284, case no. 2009/1001, points 11-15.

258 See decision of the Norwegian Supreme Court of 31 October 2008, HR-2008-1900-U - Rt-2008-1456, case no. 2008/1627, point 19.

It should be added that, pursuant to Article 36-1(2), an appeal cannot be filed if the administrative decision that is the subject of the review was overturned. This rule is also applied when an administrative decision is overturned after the appeal was filed. Pursuant to the case law of the Norwegian Supreme Court, such a result will not occur when a child is returned to his parents' custody without repealing the decision of the county council for social welfare.[259]

In appellate proceedings, courts can perform a comprehensive assessment of the decisions of a county council for social welfare, taking into account the facts existing when the decision was made.[260]

In 2017, 351 cases concerning judicial review of decisions issued by county councils for social welfare on assistance measures were examined by district courts (*tingretten*), of which in 134 cases the decisions were upheld, in 48 cases the decisions were reversed and in 167 cases the appeal was withdrawn resulting in the validity of the decision issued by the county council for social welfare. In two cases, the request for judicial review was rejected for formal reasons.[261] In addition, there were 163 cases in which the judicial review concerned decisions issued by the county council for social welfare for enforcing an interim order. In 36 cases, the decisions were upheld, in 11 cases the decisions were reversed, and in 114 cases the appeal was withdrawn, making the decision issued by the county council for social welfare enforceable. Again, in two cases the request for judicial review was rejected for formal reasons.[262]

The same year, the regional courts (*lagmannsretten*) examined 20 cases concerning appeals of decisions of district courts regarding the review of decisions of county councils for social welfare on the application of temporary assistance. In four cases, the decision of the court of first instance was upheld, whereas in 16 cases the regional court rejected the appeal.[263] Only in four cases were the rulings of district courts concerning the decision of the county council for social welfare upholding an interim order appealed, of which in one case the party withdrew the appeal, and in the other three cases the appeal was rejected. None of the cases was examined on the merits.[264]

In 2017, six cases were examined by Norwegian Supreme Court as a result of filing appeals of last resort, four of which were rejected and two were declared inadmissible.[265]

As indicated, in 2017, county councils for social welfare received 4,908 cases, of which 2,103 cases resulted in a decision to deprive the parents of custody of the child (or refusal to deprive the custodians of the custody of the child), and another 493 cases related to appeals of a provisional order and they also ended with a decision.[266] A total of 747 cases were closed without a decision due to

259 Decision of the Norwegian Supreme Court of 19 June 2012, HR-2012-1262-A – Rt-2012-967, case no. 2012/379, points 30-31.
260 Decision of the Norwegian Supreme Court of 19 December 2006, HR-2006-2123-A - Rt-2006-1672, case no. 2006/953, point 40.
261 Fylkesnemndene for barnevern og sosiale saker – Årsrapport 2017, p. 59.
262 *Ibidem*.
263 *Ibidem*.
264 *Ibidem*.
265 *Ibidem*.
266 Fylkesnemndene for barnevern og sosiale saker – Årsrapport 2017, p. 7: I 2017 *mottok Fylkesnemndene for barnevern og sosiale saker totalt 4908 saker. Det ble behandlet 2103 hovedsaker med eller uten forhandlingsmøte. 1538 saker gjaldt behandling av akuttvedtak og 493 saker var klager over akuttvedtak. 747 saker ble trukket, hevet eller avvist, og dermed avsluttet uten vedtak*.

the withdrawal of the remedy (appeal) or its rejection for formal reasons.[267] In all cases terminated by a decision, which totaled 2,596 (the sum of 2,103 and 493), an appeal was filed in 1,159 cases[268], but only 514 of those concerned the essence of the decision (placing the child in foster care),[269] thus in 19.79% of cases. The district court decision was changed in only 59 cases, which constitutes 2.27% of all cases before a county council for social welfare that finished with a decision.

The ratio of cases in which appeals were withdrawn is surprisingly high, occurring in 281 cases. Of all cases filed with district courts as appeals of a decision of a county council for social welfare, the appeal was withdrawn in more than 54.66% of cases, and in cases in which the object of the review was an interim order, up to 69.93% of cases. It is reasonable to seek an explanation for this phenomenon because it is very disturbing when a person confronted with a bureaucratic apparatus which has coercive measures (the possibility to use the police) resigns from the protection of a court.

Table 4.3. Number of cases concerning the review of decisions issued by county social welfare boards examined in Norwegian courts, taking into account the character of the decision

The table shows only re-examination and results of main claims in decisions

Court	Object of the review	Maintenance of the decision	Change of the decision	Withdrawal of the appeal by the party	Rejection of the appeal	Declaration of the appeal as inadmissible	Total number of cases
District courts (tingretten)	Decision (Hovedsak)	134	48	167	2	-	351
	Interim order	36	11	114	2	-	163
Regional courts (lagmannsretten)	Decision (Hovedsak)	4	-	-	-	16	20
	Interim order	-	-	1	-	3	4
Supreme Court (Høyesterett)	Decision (Hovedsak)	4	-	-	-	2	6
	Interim order	-	-	-	-	-	-

Source: Fylkesnemndene for barnevern og sosiale saker – Årsrapport 2017, p. 59.

267 *Ibidem*.

268 *Ibidem*, s. 13. This information was confirmed in a letter from the Norwegian Ministry for Children and Families of February 28, 2019, responding to the request of Ordo Iuris of July 16, 2018.

269 Fylkesnemndene for barnevern og sosiale saker – Årsrapport 2017, p. 59.

Summary

Assessing the Norwegian procedures applied in the course of depriving parents of the right to custody over their children from the point of view of international law, it should be stated that the following issues are highly concerning:

1. in cases concerning persons who left Norway – Norway's recognizing its own competence to examine cases in the situation when these persons have requested asylum in another state;

2. lack of minutes from meetings and improper justifications of administrative decisions call into question the parents' right to a fair trial and make the judicial control over decisions of county councils for social welfare illusory;

3. omission of medical examinations of children that were alleged to have been subjected to physical abuse – a medical examination should be carried out immediately, on the first possible day after taking the child away;

4. methods of interviewing children by asking repeated questions including suggested answers;

5. taking into account children's opinions on the object of the proceedings only selectively, especially their requests for more frequent contacts with their biological parents;

6. allowing the same judge to examine the same case at different stages of the proceedings, which also may result in violations of Article 6(1) of the European Convention on Human Rights;

7. excessive deadlines for the Barnevernet municipality branches to submit a request to deprive parents of the right to custody of their children, which raises doubts from the point of view of a party's right to have his case examined within a reasonable deadline;

8. allowing the court to reduce the remuneration of the representative providing ex officio legal advice to parents, whereas that is impossible in the case of a Barnevernet representative, which constitutes a violation of the principle of equality of the parties before the court;

9. overuse of the emergency procedure of taking a child away on the basis of an interim order, which should be used only as the final measure in a situation of direct threat to the child's life or health.

Chapter 5. Barnevernet activities in the area of depriving parents of custody of their child versus minorities' rights

Chapter 5.

Barnevernet activities in the area of depriving parents of custody of their child versus minorities' rights

5.1. Introductory remarks

The issue of Barnevernet activities concerning national, ethnic, religious and linguistic minorities, including a large number of Polish immigrants (in 2017, more than 97,000 people)[270], mostly Catholics, must cover three general areas. In the first place, it is necessary to discuss the common accusation that Barnevernet relatively frequent interferes in the family life of immigrants, especially those who are seen as deeply religious.[271] This problem has attracted the interest of public opinion worldwide, for example in the context of the well-known case of the Norwegian-Romanian Bodnariu family.[272] The Norwegian childcare system has been subjected to numerous analyses carried out by publicists, politicians, scientists and international organizations.[273] The Norwegian authorities have also made efforts to present their own position concerning the relationship between Barnevernet and minorities living in the Kingdom of Norway. It is important to keep in mind that in 2017 the number of people up to 19 years of age comprising immigrants or Norwegian-born children of immigrant parents in 2017 exceeded 89,400; therefore, this is not a marginal problem.[274]

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270 The number of Polish immigrants determined on the basis of: Statistisk sentralbyrå, *Innvandrere i Norge 2017...*, p. 20. More on the dynamic development of Polonia in Norway can be found in A. Łobodzińska, *Polacy w Norwegii - wybrane cechy społeczno-demograficzne*, [in:] *Człowiek – Społeczeństwo – Przestrzeń*, volume II, [ed.] A. Zborowski Myczkowce – Kraków, pp. 25–40; idem, *Polki w Norwegii – decyzje i plany prokreacyjne*, "Studia Demograficzne" 1/169 (2016), pp. 39-63.

271 See for example: W. Nowiak, D. Narożna, R.L. Muriaas, op. cit., p. 125 et seq.

272 See, for example, BBC press materials concerning the case of the Bodnariu family available at: https://www.bbc.com/news/magazine-36026458 (accessed: 9 August 2018). Bodnariu also runs its own website: http://bodnariufamily.org (accessed: 9 August 2018).

273 See point below

274 Determined on the basis of data included in: Statistisk sentralbyrå, *Innvandrere...*, p. 20 (Table 2.2).

The second problem which must be discussed concerns the reasons why children are taken away from immigrant families. This issue raises extremely strong emotions frequently resulting in far-reaching statements occurring in public discourse. Barnevernet is frequently compared to the Nazi system, or at least a system based on Nazi models. Such opinions are sometimes expressed by people in high political positions, for example the president of the Czech Republic, Miloš Zeman.[275] This situation leads to cultural misunderstandings since, on the one hand, immigrants often do not understand the Norwegian model for raising children and, on the other hand, social workers lack appropriate competence connected with knowledge of the child-rearing models of immigrants from other cultures. This is combined with other weaknesses of the Barnevernet practices regarding Norwegian citizens and immigrants equally, especially the free interpretation of the prerequisites for depriving parents of custody over their child, determined in Article 4-12 of the BVL (see Chapter II), or improper verification of information submitted to Barnevernet resulting in the hasty initiation of proceedings, which can have dramatic consequences.[276]

There are no publicly available statistics which would answer the question whether Norwegian authorities are able to guarantee the preservation of the identity of children from national, ethnic and religious minorities placed in foster families.

The third problem, remaining at the periphery of scientific and journalistic considerations, is the issue of preserving ethnic, religious, cultural and linguistic identity of children placed in foster care. In this respect, there are no publicly available statistics which would answer the question whether Norwegian authorities are able to guarantee the preservation of the identity of children from national, ethnic and religious minorities placed in foster families. Attempts to obtain such data, undertaken also by Polish consular representatives in Norway, ended up in failure due to the lack of a response from Norway. The issue of the preservation of ethnic and cultural identity and the knowledge of their native language among children in foster care as well as their possibility to practice their religion is relevant for the assessment of the functioning of foster custody in Norway. Its numerous flaws, primarily the infrequent contacts between children and their biological parents, are also analyzed in another part of this report. That is why only a brief description is presented here.

275 See T. Whewell, *Norway's Barnevernet: They took our four children... then the baby*, BBC News (2016) – press material available at: https://www.bbc.com/news/magazine-36026458 (accessed: 5 February 2019); L. Wilkinson, *Norway's Government-Abducted Children, And Ramifications For Europe*, Forbes (2017) - press material available at: https://www.forbes.com/sites/realspin/2017/02/27/norways-government-abducted-children-and-ramifications-for-europe/#5d653c814f73 (accessed: 05 February 2019).

276 The victim of a malicious denunciation which resulted in the initiation of unjustified proceedings was the Polish Iwańscy family. The children, who were taken away as a result of a nurse's denunciation, finally came back to their parents, but the entire family decided to leave Norway. This shows the dramatic consequences of the too hasty initiation of proceedings. This case is described in detail in press materials available at: https://www.pch24.pl/byle-tylko-odebrac-dziecko--warto-rozmawiac-o-kulisach-dzialan-norweskiego-barnevernet,65792,i.html (accessed: 02 February 2019).

5.2. International legal standards concerning the protection of children's national, ethnic, cultural, religious and linguistic identity

5.2.1. Provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms

Barnevernet's approach towards ethnic and religious minorities are governed, among others, by Articles 8, 9 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Pursuant to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: "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 is 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." Problems connected with Barnevernet's treatment of ethnic and religious minorities concern two rights that can be derived from Article 8(1) of the European Convention on Human Rights, i.e., the right to respect for family life and the right to respect for private life.

The literature on the subject indicates that the expression "right to respect " used in the quoted provision imposes on public authorities two kinds of obligations – negative obligations understood as the prohibition against interfering in an individual's privacy and family life, evaluated generally from the point of view of the limitation clause included in Article 8(2), and positive obligations concerning, for example, authorities' activities aimed at reuniting parents and children and making that easier.[277] As underlined in the ECtHR case law, taking a child away from his parent's custody should be treated as a temporary measure that should be abandoned immediately when circumstances allow, always keeping in mind the primary goal of reuniting biological parents with their children.[278] Authorities should make every effort to facilitate the achievement of this goal.[279] In some cases, a child's maintenance of his or her ethnic, cultural, religious and linguistic identity may require the preservation of mutual bonds between parents and children. If a child loses his ethnic or religious identity and that identity is important for the parents, the bonds between the parents and the child may be broken and some of the parents' specific behaviors will become incomprehensible (for example, religious practices or observing religious commandments). In this

277 M.A. Nowicki, *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka*, Warsaw 2017, p. 647-649.

278 See the European Court of Human Rights judgment in the case of *Olsson against Sweden (*no. 1) of 24 March 1988, application no. 10465/83, § 81; the European Court of Human Rights judgment in the case of *Johansen against Norway* of 7 August 1996, application no. 17383/90, § 78.

279 The European Court of Human Rights judgment in the case of *Johansen against Norway* of 7 August 1996, application no. 17383/90, § 64.

context, children have a right to be placed in a foster family that will allow them to preserve their ethnic, religious, cultural and linguistic identity.[280] Honoring this right shows respect for the child's private life[281] and, moreover, contributes to the fulfillment of the main purpose of foster custody, which is to reunite the family.

A child's maintenance of his or her ethnic, cultural, religious and linguistic identity may require the preservation of mutual bonds between parents and children.

Pursuant to Article 9 of the European Convention on Human Rights: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." In relation to children from religious minorities, the right to freedom of religion is threatened mainly in the area of practicing religious acts, especially in a group (such as children's participation in Holy Mass). In the case of the youngest children, it may also concern the impossibility to perform individual religious practices like praying. Access to religious teaching and participation in a religious community is also threatened. This kind of situation was described by M.F. Aarest and A. Bredal in a report concerning cases of national, ethnic and religious minorities conducted by Barnevernet.[282] In their analysis of individual cases, the authors cite the situation in which children from a Catholic family, despite their biological parents' requests, do not participate in religious practices (Holy Mass on Sunday) or pray at home because of the decision of their foster family.[283] There are also cases in which a child participates in religious (Protestant) community life despite not being baptized.[284] In one case pending before the ECtHR, the child's mother, a Muslim, alleges a violation of the right to freedom of religion guaranteed by Article 9 of the European Convention on Human Rights because the Court agreed to the adoption of her child by a Christian family that will baptize the child and give the child a Christian name.[285]

Article 14 of the European Convention on Human Rights contains a general prohibition on discrimination against people who exercise their rights listed in the provisions of the European Convention

280 As S. Hofman noted, it is essential for the child's proper development - S. Hofman, *Hensyn til kultur...*, p. 72.
281 See M.A. Nowicki, *op. cit.*, p. 662.
282 M.F. Aarest, A. Bredal *Omsorgsovertakelser og etniske minoriteter...*, NOVA Rapport 5/2018.
283 Ibidem, p. 138.
284 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.
285 See information included in the description of complaint no. 15379/16 in the case of Maryia Abdi Ibrahim against Norway, available at: https://hudoc.echr.coe.int/eng#{„itemid":[„001-167625"]} (accessed: 5 February 2019).

on Human Rights: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." This provision was significantly expanded as a result of the adoption of Protocol no. 12 to the European Convention on Human Rights, which in Article 1 stipulates: "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1." The content of Article 1, sections 1 and 2 of Protocol no. 12 determines the existence of a general prohibition on discrimination by public authorities, which relates not only to exercising rights guaranteed in the national legal system, but also to carrying out any other activities.[286]

In the case of activities concerning ethnic and religious minorities, Barnevernet's activities may give the appearance of discrimination, especially taking into account the disproportionately high frequency of the use of measures connected with depriving parents of custody over their child in the case of immigrant families whose children were born in Norway.

Activities undertaken by Barnevernet connected with depriving biological parents of custody over their children may, in particular cases, violate both rights guaranteed by the European Convention on Human Rights, including especially the right to respect for family life (Article 8(1)) and rights determined in the Norwegian national system, in particular those resulting from § 102 of the Norwegian Constitution[287], whose content is comparable to Article 8(1) of the European Convention on Human Rights. In the case of activities concerning ethnic and religious minorities, Barnevernet's activities may give the appearance of discrimination, especially taking into account the disproportionately high frequency of the use of measures connected with depriving parents of custody over their child in the case of immigrant families whose children were born in Norway.

The practice of not taking into account the foster family's ability to ensure the child's ethnic, religious, cultural and linguistic identity may also be considered as discrimination. There are no statistics which would allow verification of to what extent the group of foster families reflects the current social structure and takes into account ethnic and religious diversity of the population in Norway.[288]

286 *See Explanatory Report to Protocol no. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, CETS 177 (2000), § 22.

287 § 102: "Everyone has the right to the respect of their privacy and family life, their home and their communication. Search of private homes shall not be made except in criminal cases. The authorities of the state shall ensure the protection of personal integrity."

288 Information confirmed in a letter from the Norwegian Ministry of Children and Family of February 28, 2019, responding to the request of the Ordo Iuris Institute for disclosure of public information from October 2, 2018.

5.2.2. Provisions of the Convention on the Rights of the Child (CRC)

Among the CRC provisions which should constitute a model for assessing the solutions adopted in Norway, it is necessary to indicate Article 2(1) of the CRC, which includes a prohibition on discrimination against a child that exercises rights listed in the CRC and Article 2(2) of the CRC, pursuant to which: "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members." Doubts about whether Barnevernet respects the above provision may arise especially in the case of the Bodnariu family. However, the most troubling problem in this case is the Barnevernet interference in this family's religious activities, which should not be the object of social workers' interest.

Of key importance for the assessment of the Barnevernet practice of not taking into account the foster family's abilities to ensure the child the possibility to preserve his or her ethnic, religious, cultural and linguistic identity are Article 20(3) and Article 30 of the CRC, and, regarding religious identity, also Article 14(1) of the CRC. Pursuant to Article 20 of the CRC: "1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include*, inter alia*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." This provision should be interpreted in connection with Article 30 of the CRC, which stipulates: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language." Thus, children from ethnic or religious minorities placed in foster care should have the possibility to exercise their right to contact their parents and ethnic or religious community to which they belong, as well as to learn their native language.[289]

Children from ethnic or religious minorities placed in foster care should have the possibility to exercise their right to contact their parents and ethnic or religious community to which they belong, as well as to learn their native language.

The necessity to ensure that children in foster care have the possibility to preserve their ethnic, religious, linguistic and cultural identity is also stressed by the UN Committee on the Rights of the Child,

289 *Implementation Handbook for the Convention on the Rights of the Child*, Geneva 2007, p. 289.

which has stated: "Children feel better in their own environment and this should be taken into consideration when they are placed into out-of-home care. The basic premise is that children should be kept in their own distinctive communities. For instance, indigenous communities often have a very close family system and the child protection system should take into consideration both indigenous culture, values and the child's right to indigenous identity."[290] However, it is important to remember that, since the Committee's positions and opinions are not binding, they cannot modify in any way the rights and obligations of countries which have ratified the Convention on the Rights of the Child.

5.2.3. Resolution 2232 (2018) of the Parliamentary Assembly of the Council of Europe

Pursuant to Resolution 2232 (2018) of the Parliamentary Assembly of the Council of Europe, when deciding to deprive biological parents of custody over their child and place the child in a foster family, it is obligatory to take into account the preservation of the child's religious, ethnic and cultural identity (point 5.6.9). The resolution is not binding, but constitutes an important guideline when state authorities decide to place a child in foster care.

5.3. Analysis of Norwegian legislation

5.3.1. Regulations of the Norwegian Constitution

Pursuant to the current wording of § 92 of the Constitution of the Kingdom of Norway (*Kongeriget Norges Grundlov*) of 1814, established in 2014[291], public authorities must respect and ensure the respect of human rights in the wording determined in the Constitution and international agreements concerning human rights that are binding on Norway. Pursuant to § 98 of the basic law, all people are equal before the law. Nobody can be treated unequally or be discriminated against. Hence, the Norwegian constitutional legislature determined broadly the principle of equality before the law and the prohibition on unequal or discriminatory treatment as it covers not only Norwegian citizens, but also every other person residing in Norway. The addressees of § 98 are not only public authorities. The obligation to respect the principle of equality and the prohibition on discrimination concerns all people. The right to respect for private and family life determined in § 102 of the Constitution was formed in a similar way.

Pursuant to § 104 of the Constitution, children have the right to their own dignity. They should be consulted in matters pertaining to them, and their will should be taken into account in accordance

290 Committee on the Rights of the Child, *Report on the fortieth session*, September 2005, CRC/C/153, § 673.

291 In 2014, the Norwegian basic law was thoroughly amended by the introduction of a catalogue of human rights similarly to other modern constitutions – see J. Jacobsen, *op. cit.*, pp. 18-19.

with their age and maturity. In light of the Norwegian basic law, the child's best interests should be taken as the basis for actions and decisions concerning the child. The important issue from the point of view of legal protection for children from ethnic and religious minorities, pursuant to the discussed provision, is to ensure that the personal integrity of every child is respected. Public authorities should create conditions facilitating a child's development, in particular by ensuring economic, social and health security, with a preference for the child's family environment.

The indicated provisions were introduced into the Norwegian Constitution as late as in 2014, which accounts for the lack of well-established practices. Nevertheless, they correspond to standards of international law and contemporary trends in constitutions of European states.[292]

5.3.2. Anti-discrimination provisions

The issue of anti-discrimination actions in Norway is governed by a separate act, the *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*[293], effective as of 1 January 2018. Its purpose, determined in § 1 of the LD, is to promote equality and to prevent discrimination on the grounds of such circumstances as gender, disability, ethnic origin or religion. In § 24 the LD stipulates that public authorities are obliged to undertake active, purposeful and systematic efforts aimed at achieving the purpose determined in § 1 of the LD. The Norwegian legislature provided for a wide subjective and objective scope of the application of the LD provisions[294],which pursuant to its § 2 apply to all social sectors, except for discrimination against employees on grounds of age as that issue is governed by separate provisions.[295]

Pursuant to § 6 of the LD, it is prohibited to discriminate against anybody on the grounds of gender, pregnancy, maternity or adoption leave, ethnic origin, religion or beliefs, disability, sexual orientation, gender identity (*kjønnsidentitet*), gender expression (*kjønnsuttrykk*), age or the occurrence of several of the above circumstances. The legislature specifies that "ethnic origin" (*etnisitet*) means national or social origin (*avstamning*), skin color or a person's language.

The provisions of the LD primarily concern measures applied to combat discrimination of employees (§§ 29-34), bullying or sexual harassment (§ 13) and physical construction of houses and streets taking into account the need for easy access and movement for persons with reduced mobility (§§ 17-23), as well as priorities of women and men in public institutions (§ 28).

292 A. Bårdsen, *Interpreting the Norwegian Bill of Rights. Annual Seminar on Comparative Constitutionalism 21-22 November 2016 Faculty of Law, University of Oslo*, p. 3, nb. 8 – text of the paper available at: http://www.venice.coe.int/CoCentre/Bardsen_Arnfinn_Interpreting_the_NOR_bill_of_rights.pdf (accessed: 02 August 2018).

293 LOV-2017-06-16-51.

294 The geographical application of the LD is also wide, covering the entire territory of Norway, together with Svalbard, Jan Mayen and all Norwegian posts (such as drilling platforms) as well as ships or aircraft - § 3 LD.

295 Anti-discrimination measures applied at the workplace – except for the provisions of the LD – are regulated in a separate act: *Lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven)*, LOV-1977-02-04-4 as amended.

The content of the LD also includes criminal provisions. Pursuant to § 39, fines or imprisonment for up to three years apply to anyone who, together with at least two other persons, commits a serious violation of the prohibition on discrimination on grounds of ethnic origin, religion or beliefs determined in § 6 of the LD or other prohibitions concerning circumstances determined in §§ 13-15 of the LD (such as sexual harassment).

Pursuant to the second subparagraph of § 39 of the LD, the assessment whether a given violation is serious has to take into account the degree of the perpetrator's fault, their racist motivation, combined with the violation of the victim's physical or psychological integrity, committing an act against a person under the age of 18 years and circumstances indicating the persistent nature of the perpetrator's actions (harassment). The application of the provision constitutes a kind of final argument, and therefore it should be applied only when protection measures applied in civil proceedings are not sufficient.

The Lov om Likestillings- og diskrimineringsombudet og Diskrimineringsnemnda (diskrimineringsombudsloven)[296] is strictly connected with regulations included in the LD. This act sets up a separate Anti-Discrimination Tribunal (Diskrimineringsnemnda) competent to solve cases connected with discrimination. Moreover, it introduces the institution of an Equality and Anti-Discrimination Ombudsman *(Likestillings- og diskrimineringsombudet)*, separate from other ombudsmen in the Norwegian legal system (including the Children's Ombudsman - *Barneombudet*). The provisions of the LLDD regulate the status and organization of the above mentioned bodies, and in the case of the Anti-Discrimination Tribunal also its functional jurisdiction and relationship to the justice system.

Pursuant to § 14 of the LLDD, the Anti-Discrimination Tribunal is not entitled to resolve cases concerning the violation of anti-discrimination provisions in an administrative decision issued in individual cases by other public authorities unless the violation concerns employees' rights and obligations.

5.3.3. Anti-discrimination regulations included in Barnevernloven

In general, the *Lov om barneverntjenester (barnevernloven)* lacks provisions which would protect people against discrimination on ethnic or religious grounds. The only provision which refers directly to the issue of respect for a child's national, religious and cultural integrity is § 4-15 of the BVL. In the scope concerning the issues discussed herein, this provision stipulates that while choosing a foster family or an institution in which a child taken from its parents is to be placed, the entity responsible for the child should take into account the purpose of the continuity of the child's upbringing as well as ethnic, religious, cultural and linguistic origin. The Norwegian literature on the subject stresses that § 4-15 of the BVL constitutes the transposition of Articles 20(3) and 30 of the CRC into the national legislation[297], which was to contribute to better application of the CRC provi-

296 LOV-2005-06-10-40.
297 S. Hofman, *op. cit.*, p. 13.

sions in practice.[298] Barnevernet municipal branches are responsible for providing children with the conditions described in § 4-15 of the BVL[299], but it is not carried out by means of an individual administrative decision, which would be subject to a separate complaint.[300]

In general, the Lov om barneverntjenester (barnevernloven) in general lacks provisions which would protect people against discrimination on ethnic or religious grounds. The only provision which refers directly to the issue of respect for a child's national, religious and cultural integrity is § 4-15 of the BVL.

Pursuant to the guidelines of the Ministry of Children, Equality and Social Inclusion *(Barne- og likestillingsdepartementet,* since 2019 - *Barne- og familiedepartementet)* of 2006, in the case of immigrant families, depriving parents of custody over their children should take place in a planned way and be preceded by a meeting with the children and the parents.[301] Before placing a child in a particular foster family, Barnevernet is obliged to determine whether the family will be able to bring up the child in an environment appropriate for the child's ethnic, cultural and religious origin and native language.[302] After a child is placed in a foster family, the biological parents should have an influence on basic issues connected with the child's development, concerning the choice of school, further education and religious issues.[303]

The analysis of cases pending before the ECtHR indicates that biological parents have brought charges against the Norwegian authorities concerning the possibility to influence their children's religious upbringing (and even practicing their religion).

The practical implementation of these guidelines raises serious concerns. The analysis of cases pending before the ECtHR indicates that biological parents have brought charges against the Norwegian authorities concerning the possibility to influence children's religious upbringing (and even practicing their religion).[304] As a consequence, it can be difficult to reassign the custody over their child to his/her biological parents due to weakened bonds between them and the child.[305]

298 *Ibidem*, p. 70.
299 Bufdir, *Rutinehåndbok for kommunenes arbeid med fosterhjem*, 2006, p. 41.
300 S. Hofman, *op. cit.*, p. 71.
301 Bufdir, *Rutinehåndbok...*, p. 42.
302 *Ibidem*, p. 18.
303 *Ibidem*, p. 26.
304 See the description of facts and the object of the complaint in case *M. Abdi Ibrahim against Norway,* complaint to the ECHR no. 15379/16 (case pending before the court), available at: https://hudoc.echr.coe.int/eng#{„itemid":[„001-167625"]} (accessed: 08 August 2018).
305 S. Hofman, *Hensyn til kultur...*, p. 67.

Worrying trends are also noticed in the case law of the Norwegian Supreme Court. In the decision of 30 January 2015, the Court stated that the child's continued contact with his biological parents through designated visits (in this case, the child had only two visitations with its parents yearly, each of which lasted two hours!) was enough to preserve the child's ethnic origin.[306] Therefore, in practice the obligation to guarantee children conditions allowing them to maintain their ethnic, cultural and religious identity as well as native language, is fulfilled only in appearance.

5.4. Frequency of taking immigrant children away in the light of available statistics

Immigrant communities most often accuse Barnevernet of taking immigrant children away more frequently than children coming from Norwegian families. Pursuant to data submitted by Bufdir, the executive body of the government agency dealing with issues connected with the Barnevernet's activities, to the Parliamentary Assembly of the Council of Europe in 2015, 25% of all decisions on depriving parents of custody over their child concerned children whose mothers were not born in Norway.[307] If young adults (up to the age of 22 years) are included, this percentage is even higher, i.e., 26%.[308]

Bufdir also makes statistical data available to the public.[309] Contrary to declarations about updating data concerning Barnevernet activities directed against different types of minorities[310], the latest data published by Bufdir in English (which in the case of immigrants constitutes an essential issue) come from 2014, and describe the situation in 2012. According to that data, per each:

a. 1000 Norwegian children, there were 6.9 children in foster care;

b. 1000 immigrant children, there were 8.8 children in foster care;

c. 1000 children born in Norway to immigrant parents, there were 5.5 children in foster care.[311]

On the other hand, according to other publicly available data of Statistisk sentralbyrå relating to 2015, the number of children in foster care increased in each of the indicated categories. Specifically, per each:

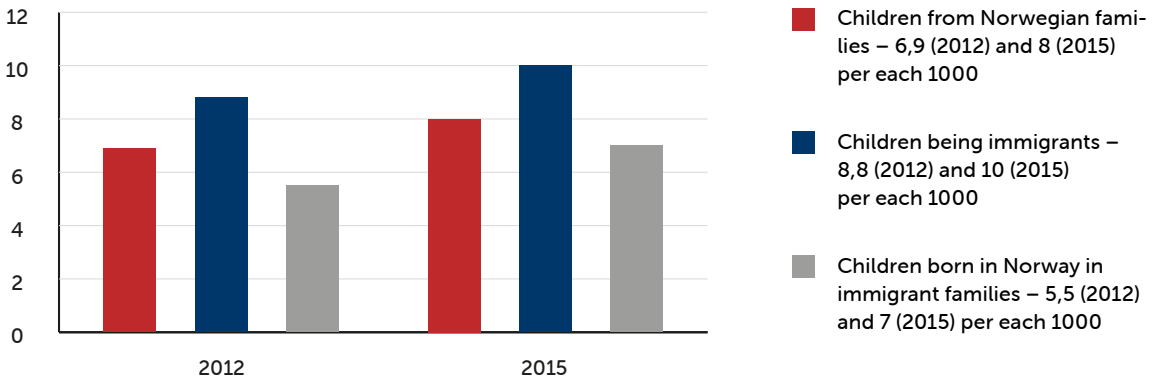
306 Decision of the Norwegian Supreme Court of 30 January 2015, HR-2015-00209-A, case no. 2014/1631, point 65.
307 See PACE, *Striking a balance...*, p. 8 footnote 13. As indicated in the Report, fears of having children taken away by Barnevernet are particularly high among parents who are not of Norwegian origin.
308 T. Dyrhaug, *Kvart fjerde barn i barnevernet har innvandrarbakgrunn*, article published on the official website of Statistisk sentralbyrå: 03 February 2019).
309 Bufdir statistics are only partially based on commonly available Statistisk sentralbyrå. In the remaining scope, they come from county councils for social welfare. They are available at: https://www.bufdir.no/en/English_start_page/Child_welfare_services_for_children_with_a_minority_background/ (accessed: 06 August 2018).
310 Bufdir, *Handlingsplan for å bedre tillit mellom etniske minoritetsmiljøer og barnevern 2016-2021*, Oslo 2017, p. 13.
311 *Ibidem.*

a. 1000 Norwegian children, there were 8 children in foster care;

b. 1000 immigrant children, there were 10 children in foster care;

c. 1000 children born in Norway to immigrant parents, there were 7 children in foster care.[312]

Chart 5.1. Number of children under foster care per each one thousand children depending on their origin



Source: own work based on Bufdir data concerning 2012 and Statistisk sentralbyrå concerning 2015.

The above demonstrates that between 2012 and 2015 the number of children in foster care increased. In many cases, the custody of the foster family is intended to be long term and sometimes, it is contrary to the purpose of foster care resulting from the ECtHR case law – the custody of the foster family is permanent and there are no plans to return the child to his biological parents.[313] The presented statistical data confirm the accusation formed by immigrant communities that children coming from countries other than Norway stay in foster care more frequently than Norwegian children. This is particularly noticeable in the case of immigrant children (in 2015, 10 children per every thousand of immigrant children were in foster care), but even taking into account immigrant children born in Norway, this average is slightly higher and amounts up to 8.5 children per every thousand. Among Norwegian children in 2015, 8 children per every thousand was in foster care.

Between 2012 and 2015, the number of children in foster care increased. In many cases, the custody of the foster family is intended to be long term, and sometimes it is contrary to the purpose of foster care resulting from the ECtHR case law – the custody of the foster family is permanent and there are no plans to return the child to his biological parents.

312 T. Dyrhaug, *op. cit.*

313 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

Based on the breakdown of data into individual countries, the highest number of children in foster care were from Nigeria (44 children per each 1000), whereas the smallest number were children from Lithuania (2 children per each 1000). In absolute terms – by way of example only – we note that in 2014, there were 35 Polish children, 31 Russian children, 12 Romanian children, and 91 Iraqi children (without distinguishing between Iraqi and Kurdish children) in foster care.[314]

Data of the Statistisk sentralbyrå, a government agency until 2017, indicate that the measures provided for in the provisions of the BVL were applied to 55,697 children, 10,169 of whom had been taken away from their parents.[315] In the group of children taken away from their parents, 253 children (2.49%) were from member states of the European Union or the EEA, Switzerland, the USA, Canada, Australia or New Zealand. Another 1,579 children (15.53%) were from other countries. Of the rest, 8,297 (81.59%) were of Norwegian origin (i.e., they are not first or second generation immigrants) and 22 children were of unknown origin (0.21%). This means that in 18.02% of cases, the children taken away from their parents came from immigrant families (were children born outside Norway or immigrant children born in Norway).[316]

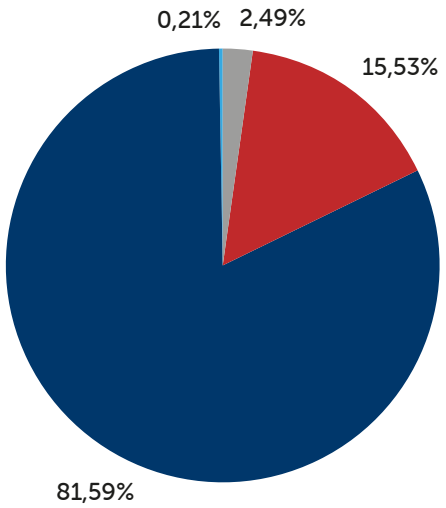


Chart 5.2. Measures applied by Barnevernet towards immigrants in the breakdown into first and second generation immigrants – up to 2017

- Care measures - children form EU, EEA, Switzerland, USA, Canada, Australia, New Zeland - 2,49%
- Care measures - children form another countries than mentioned above - 15,53%
- Care measures - Norwegian children - 81,59%
- Care measures - children of unknown origin - 0,21%

Source: own work based on Statistisk sentralbyrå data.

For comparison, according to data from 2017, 16.8% of the total Norwegian population were immigrants born in Norway.[317] The number of children coming from immigrant families in the 0-19 age group in 2017 was 89,423[318], whereas Barnevernet deprived parents of custody of their children

314 Data available on the Bufdir website: https://www.bufdir.no/en/English_start_page/Child_welfare_services_for_children_with_a_minority_background/ (access 06 August 2018).

315 Data available on the Statistisk sentralbyrå website: https://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/barnevern#definisjoner_av_viktige_begrep_og_variabler (accessed: 03 August 2018). Nevertheless, due to the methodology adopted by the Statistisk sentralbyrå, the indicated number (presented in the source in table 6) does not include all children under foster custody, which as at 31 December 2017 was as high as 11,812 children (table 5).

316 The distinction between children born outside Norway and immigrant children born in Norway can be found in other research studies concerning Barnevernet activities towards minorities – see O. Christiansen, *op. cit.*, p. 130.

317 Statistisk sentralbyrå, *Innvandrere i Norge 2017...* , p. 12.

318 The number established on the basis of: *ibidem*, p. 20, table 2.2.

1,850 times. However, with regard to immigrant parents whose children were born in Norway the number is 1,007 (9.9%), whereas the percentage of people born to immigrant parents in relation to the entire population is just 3%.[319] This means that Barnevernet removed children from their families in cases where the children were second-generation immigrants three times as often compared to cases involving the rest of the population.

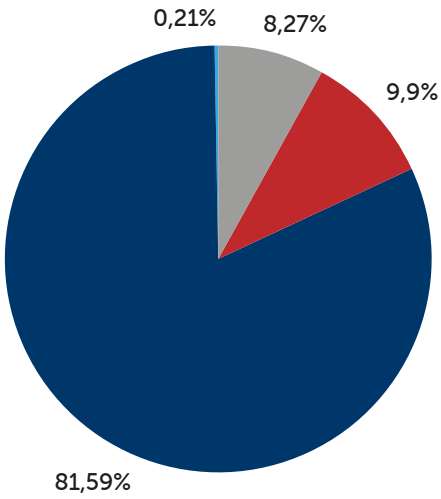


Chart 5.3. Measures applied by Barnevernet towards immigrants (in the breakdown into first- and second-generation immigrants) – 2017

- Measures applied towards immigrant-children born outside Norway - 8.27%
- Measures applied towards children born in Norway from parents-immigrants - 9.9%
- Measures applied towards Norwegian children – 81.59%
- Measures applied towards children of unknown origin - 0.21%

Source: own work based on Statistisk sentralbyrå data.

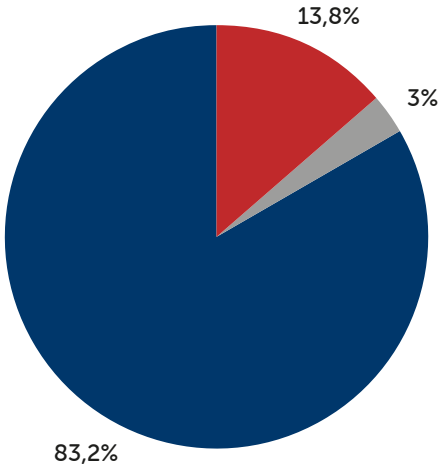


Chart 5.4. Norwegian population, taking into account immigrants and people born in Norway to immigrant parents – 2017

- First generation immigrants – 13.8%
- People born in Norway from parents-immigrants – 3%
- People of Norwegian origin – 83.2%

Source: own work based on Statistisk sentralbyrå data.

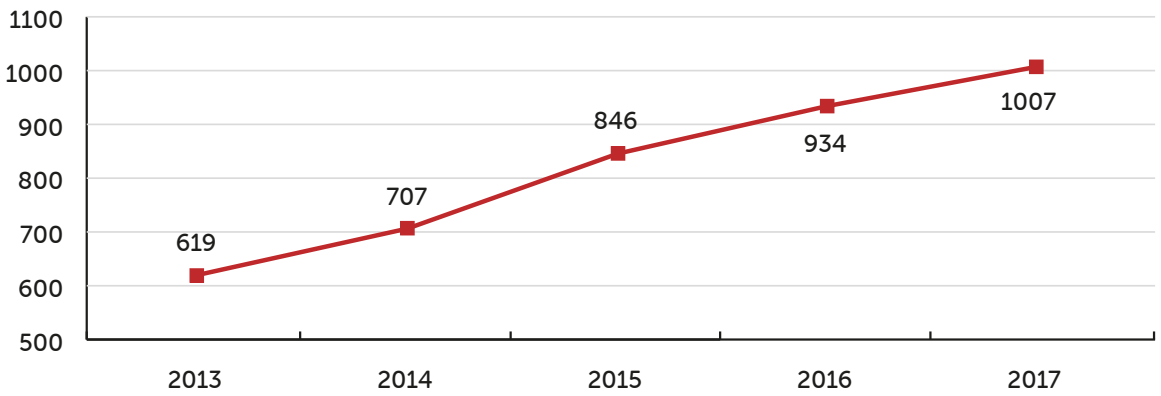
Data concerning measures applied by Barnevernet towards immigrants could be compared not with the Norwegian population in general, but taking into account the percentage of immigrant children in the child population in general. According to the Innvandrere i Norge 2017 report, which is the

319 *Ibidem*, p. 12.

only available source, the number of immigrant children in Norway amounted to 89,423 in 2017.[320] However, this number includes children up to the age of 5 (11,259), in the 6-to-15 age range (51,038) and in the 16-to-19 age range (27,126). In the same year, the total number of children in Norway up to the age of 17 was 1,114,268.[321] To compare these two numbers, it would be useful to determine, at least approximately, the number of immigrant children up to the age of 17. Taking into account data included in the *Innvandrere i Norge 2017* report, there were approx. 75,857 immigrant children (the sum of the number of children in younger groups supplemented by half of the number of children from the 16-to-19 age range), meaning that immigrant children constitute approx. 6.8% of the entire population of children (up to the age of 17) in Norway. As is known, in 2017 8.27% of the cases where the Barnevernet took action involved children born outside Norway. It is important to remember that in the *Statistisk sentralbyrå* data, the term "children being immigrants" includes only children born outside Norway whose parents and grandparents were not Norwegian.[322]

Over five years (from 2013 to 2017), the number of care measures connected with depriving immigrant parents of custody over their children born in Norway increased from 619 to 1007. It should be noted that since 2015 such measures have been applied more often towards children born in Norway to immigrant parents than towards immigrant children born outside Norway, despite the fact that this category also includes refugees and children that came to Norway without guardians.

Chart 5.5. Application by Barnevernet of care measures connected with depriving immigrant parents of custody over their child born in Norway



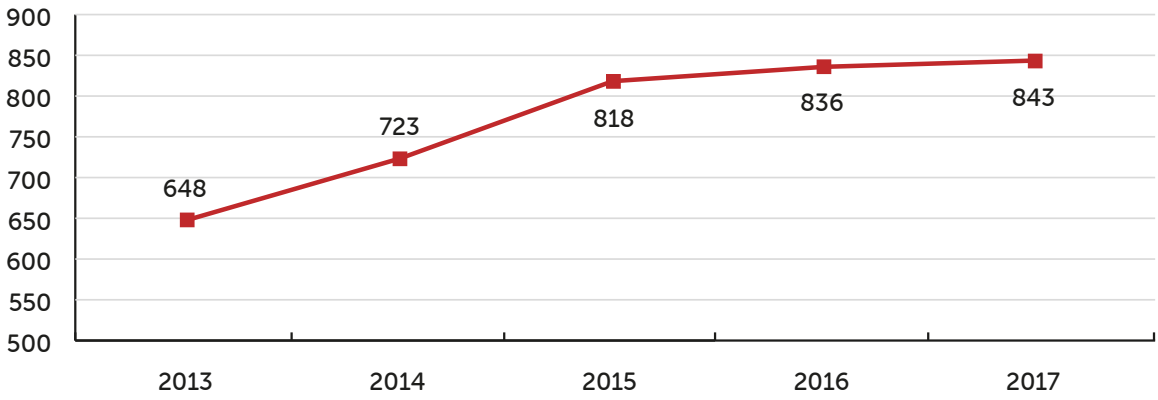
Source: own work based on Statistisk sentralbyrå data.

320 *Ibidem.*

321 The number determined on the basis of: https://www.ssb.no/en/statbank/table/10987/tableViewLayout1/ (accessed: 18 February 2019).

322 Statistisk sentralbyrå, *Innvandrere i Norge 2017...*, p. 16.

Chart 5.6. Application by Barnevernet of care measures connected with depriving parents of custody over their child towards immigrant children



Source: own work based on Statistisk sentralbyrå data.

5.5. Causes of depriving parents coming from ethnic, national, religious and linguistic minorities of custody over their children

The issue connected with the reasons for which parents coming from ethnic, national, religious and linguistic minorities are deprived of custody is to a great extent correlated with the issue of the prerequisites determined in § 4-12 of the BVL, although that provision has a specific nature. In this case, the risk of misunderstanding on the cultural level increases significantly. One example is the well-known case of a Hindu family whose behavior such as feeding the child with their hands or sleeping in one bed, which in Hindu culture are considered normal behavior, were interpreted as child abuse (including possible sexual abuse).[323] Finally, following the intervention of Indian authorities, the children were placed in custody of their biological father's brother in the country of their origin and then, as a result of the decision issued by the court in Calcutta, they were placed back in their mother's custody.[324]

This problem is also noticed by specialists who analyze issues connected with the Barnevernet's activity. In 2015, E. Salvesen and others submitted an open letter to the Norwegian government concerning problems connected with the Barnevernet's functioning.[325] In relation to issues concerning the

323 L. Wilkinson, *op. cit.*

324 See press materials available at: https://saveyourchildren.in/the-confiscation-of-the-bhattacharya-children-in-norway-a-case-study/ https://saveyourchildren.in/wp-content/uploads/2017/09/Case-Study-Final-.pdf http://www.mhskanland.net/page10/page128/page128.html (accessed: 05 February 2019).

325 The full content of the letter in English is available at: https://christiancoalition.world/news/read2/national-notice-of-concern-barnevernet (accessed: 07 August 2018).

violation of minorities' rights, the signatories to the letter pointed to the fact that immigrant families are particularly exposed to Barnevernet's unjustified interventions. They frequently do not understand the Norwegian concept of childrearing. In particular, the circumstances of using a so-called educational slap or corporal punishment applied in good faith and in accordance with the culture of the immigrants' country of origin, as a reason to deprive parents of custody over their children may be incomprehensible for immigrant families that – in the opinion of the signatories – consider using corporal punishment as a useful measure for teaching children.

According to the signatories to the letter, cultural differences require special trust, mutual respect and dialogue between Barnevernet employees and immigrant families that should be informed about the total prohibition on corporal punishment under Norwegian law. Otherwise, mistrust between Norwegian social services and immigrants will increase. The signatories call on Barnevernet to exercise greater self-criticism and closer analysis of ways in which people express emotional attachment and the form of caring for children in different cultures.

The key problem is a lack of Barnevernet officials' trust towards minority families, not cultural misunderstandings. They sometimes assume in advance that a child's parents are uneducated, even before the birth of the child, which took place in the case of a Polish mother who was told before childbirth that her child would be taken away.

This problem was also noticed in the report of the Norwegian Board of Health Supervision (*Statens helsetilsyn*).[326] The authors of the report stated that parents from different minorities avoid contact with Barnevernet officials, which makes it impossible to offer the appropriate "support."[327] In general, however, they reached the conclusion that cultural issues do not constitute an important element for the majority of decisions connected with depriving minority parents of custody of their children.[328] The key problem is the lack of Barnevernet officials' trust towards minority families, not cultural misunderstandings. They sometimes assume in advance that a child's parents are uneducated, even before the birth of the child, which took place in the case of a Polish mother who was told before childbirth that her child would be taken away.[329] The main problem, however, is that the Barnevernet's free interpretation of the prerequisites for depriving parents of custody over their children, determined in § 4-12 of the BVL. Thus, it is not surprising that minorities avoid contact with Barnevernet. For people from national and ethnic minorities, the Barnevernet's practices constitutes unjustified and traumatic intervention in their family lives.

326 Statens helsetilsyn, *Gjennomgang av...*, p. 21-22.
327 *Ibidem.*
328 *Ibidem.*
329 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

A separate issue includes the reasons for depriving parents of custody over their children due to alleged "religious indoctrination." Barnevernet made such accusations especially in the case of the Bodnariu family, which is remembered as a symbol of the struggle for parents' right to bring up their children pursuant to their own beliefs.

A separate issue includes the reasons for depriving parents of custody over their children due to alleged "religious indoctrination." Barnevernet made such accusations especially in the case of the Bodnariu family, which is remembered as a symbol of the struggle for parents' right to bring up their children pursuant to their own beliefs.[330] The Bodnariu children - two elder daughters (born in 2006 and 2008) and three younger sons (born in 2011, 2013 and 2015 – the youngest son was just 3 months old when Barnevernet intervened) - were taken away from their parents as a result of the notification sent to the Barnevernet local branch by the directors of the school the older girls attended. The school's directors indicated that, on the basis of their talk with the girls which took place after a fight between the youngest girl and a boy on the school bus, it was established that the girls' parents sometimes give them a so-called educational slap. The girls were also claimed to have said that they did not get "pocket money." The head teacher of the school doubted that on the basis of her knowledge about the Bodnariu family and the girls' lively imagination, vigor, intelligence and creativity. The girls had never been afraid of going home. The parents were known to provide their children with good health care. Some other children attending the same school informed the head teacher that the Bodnariu family were devout Christians (they are Pentecostals), who "believe that God punishes sins." The reasons why the school directors listened to other children in connection with the Bodnariu family are unknown. It is also unknown why during the conversation the issue of the Bodnariu family's religious commitment was brought up. The notification submitted to Barnevernet was said to indicate that the use of violence was doubtful, but the religious commitment and beliefs of the parents and grandmother "hinder the development of the children."[331]

Scholars have been studying the reasons for taking children away from families belonging to different minorities, in particular immigrant families. As research carried out between 2008 and 2010 by K. Križ and M. Skivenes shows, in the opinion of Norwegian social workers, the main problems of immigrant families are difficulties with their cultural adaptation in the new environment.[332] The problem of poverty among immigrant families and racial prejudice of Norwegian society is, on the other hand, limited.[333] However, the research studies carried out by Križ and Skivenes are unreliable due to the narrow group of social workers (only 23) with whom they conducted interviews.[334] Another problem is that the research was carried out approximately ten years ago. However, as O. Christiansen

330 L. Wilkinson, *op. cit.*

331 A detailed description of the case is included in the text written by P. Costea*: A Norway Gone Berserk,* available at: http://costea-parlamentuleuropean.ro/content/a%20norway%20gone%20berserk.pdf (accessed: 05 February 2019).

332 K. Križ, M. Skivenes, op. cit., pp. 81-82. All respondents indicated the problem with the cultural adaptation of immigrant families.

333 Ibidem, p. 80.

334 Ibidem, p. 77.

indicated, the Križ and Skivenes' research proves that there is a real need to carry out additional training for social workers on cooperation with immigrant families.[335]

The same method was applied in research carried out by R. Bjørknes, M.K. Fylkesnes, A. Iversen and R. Nygrena, which concerned how immigrants perceive Barnevernet.[336] Formulating their fears of Barnevernet activities, the respondents indicated mainly circumstances in which children were taken away by this institution, the difficulties in communication with social workers and discrimination.[337] Especially fear of having their children taken away was common among immigrants[338], which was confirmed in the PACE report.[339] The respondents indicated the weakest points of the social assistance system in Norway, as they saw it, in particular lack of training for immigrants concerning educational methods approved by Norwegian law and lack of foster families that would ensure the child was raised taking into account the child's cultural identity.[340]

5.6. Rights of children from national, ethnic, linguistic and religious minorities under foster care

The issue of discrimination on grounds of religion and indifference to cultural, linguistic and religious needs of children placed in foster families is marginalized in statistics and research carried out in Norway. It was analyzed in a wider scope only by S. Hofman[341] and recently by M.F. Aarest and A. Bredal.[342] In 2017, Bufdir also published a report concerning these issues.[343] However, it seems that the largest problem diagnosed so far in the case of Barnevernet activities concerning ethnic and religious minorities is the marginalization of the importance of cultural, linguistic and religious needs of children placed in foster families. In this context, S. Hofman paid attention mainly to the fact that county councils for social welfare rarely specify living conditions for the child and courts do not have the possibility to verify such decisions.[344] The placing of a child in a specific foster family is not perceived as a separate challengeable decision against which individuals can appeal.[345] According to Hofman, the child's desire is seldom taken into account and they are not asked for their opinion concerning their cultural preferences, religious practices and native language.[346] It is assumed that

335 O. Christiansen, op. cit., p. 129.
336 R. Bjørknes, M.K. Fylkesnes, A. Iversen, R. Nygrena, op. cit., pp. 80-96.
337 *Ibidem,* p. 87.
338 *Ibidem.*
339 PACE, *Striking a balance...*, p. 8.
340 R. Bjørknes, M.K. Fylkesnes, A. Iversen, R. Nygrena*, op. cit.*, p. 92.
341 S. Hofman, *op. cit., passim.*
342 M.F. Aarest, A. *op. cit.*, p. 129.
343 Bufdir, *Barn med minoritetsbakgrunn i fosterhjem*, Rapport 2017-03.
344 S. Hofman, *op. cit.,* p. 201.
345 *Ibidem.*
346 *Ibidem*, p. 202.

the child should adjust to the lifestyle of the foster parents.[347] As S. Hofman indicates, the biological parents' right to object to their child being placed in a specific foster family, for example, for religious reasons, should be respected.[348]

In the case law, the practice of county councils for social welfare and the courts, the necessity to preserve the child's own identity is considered a circumstance of less importance than the struggle to ensure them the optimal conditions for their development.

The issue connected with respecting the right to maintain the national, ethnic, cultural, religious and linguistic identity of a child placed in foster care was also analyzed by M.F. Aarest and A. Bredal, who highlighted the difficulties in ensuring appropriate number of foster families capable of ensuring that a child's identity is maintained.[349] The authors indicate the fact that in the case law practice of county councils for social welfare and the courts, the necessity to preserve a child's cultural identity is considered a circumstance of less importance than the struggle to ensure the optimal conditions for a child's development.[350] The county councils for social welfare and courts automatically consider members of a given ethnic group (specifically the Roma) as unable to meet the requirements which must be fulfilled by foster families on the cultural level.[351] The study of M.F. Aarest and A. Bredal also confirms that both foster families and social workers ignore children's religious needs, preventing them from performing religious acts (in a community or individually).[352] This confirms theses formulated by S. Hofman.

It also happens that county councils for social welfare and courts automatically assume that members of a given ethnic group are unable to meet the requirements which must be fulfilled by foster families on the cultural level.

A significant problem is also ignorance of the child's linguistic identity. There was a well-known case of a child staying in a foster family who, despite the direct proximity of a school offering free-of-charge lessons in their native language on Saturdays, did not have the possibility to attend such classes. The decision of the foster parents was against the biological parents' and the child's will.[353] As a consequence, despite the fact that the youngest children placed in foster families had started communicating

347 *Ibidem*.
348 *Ibidem*, p. 73.
349 M.F. Aarest and A. Bredal, *op. cit.*, p. 145.
350 *Ibidem*, p. 146.
351 *Ibidem*, pp. 146-147.
352 *Ibidem*, pp. 138-139.
353 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

in their native language, they have now forgotten it completely.[354] Children also cannot talk in their native language during meetings with their biological parents, and the lack of an interpreter (in cases where the biological parents do not know Norwegian) is often used to cancel meetings.[355]

In most cases, the loss of national, ethnic, cultural, linguistic and religious identity results in the destruction of bonds between children and biological parents. It also means the violation of the children's rights determined in international legal standards.

In most cases, the loss of national, ethnic, cultural, linguistic and religious identity results in the destruction of bonds between children and biological parents. It also means the violation of the children's rights determined in international legal standards. However, despite the literal wording of § 4-15 of the BVL, the above described practices seem to be sanctioned by the Norwegian case law as seen in the case of the Pedersen family.[356] Merlita Roxas Pedersen was from the Philippines. She arrived in Norway in 2006 after meeting her current husband Terje Pedersen. In September 2008, she gave a birth to a son. At the beginning of December 2008, Barnevernet was informed by the medical staff taking care of Merlita R. Pedersen that, due to the mental illness of both parents, they were not able to look after their child. The mother suffered from postpartum depression, whereas the father suffered from depression and anxiety. Despite the fact that the mother's poor psychological condition was temporary, Barnevernet decided to deprive the parents of custody over their child on the basis of a temporary order.

The above decision was contested before the Supreme Court (Høyesterett). The Supreme Court reversed the judgment of the Court of Appeals and upheld the judgment of the district court. **In the justification, the Supreme Court stated that the scope of contacts determined by the district court (two visits for two hours per year) is sufficient for maintaining the child's ethnic identity.**[357] The Pedersens filed a complaint with the ECtHR alleging a violation of Article 8 of the European Convention on Human Rights. The complaint has not been resolved so far.

The issue of the obligation to provide children with the possibility to preserve their national, ethnic, cultural and linguistic identity also occurs in cases concerning forced adoptions in which a child is adopted without the biological parents' consent (see § 4-20 of the BVL). This happened, for example, in the case of a family that came to Norway from Sudan. The parents were deprived of the custody of their three young children (the eldest was 3 years old, the youngest was one) under the emergency procedure. After some time, the foster family filed a request for adoption of the youngest child, for

354 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

355 Information obtained at the meeting on 3 January 2019 during the research visit in Oslo.

356 The comprehensive description of the case includes: the decision of the Norwegian Supreme Court of 30 January 2015, HR-2015-00209-A, case no. 2014/1631 and the description of the case of Pedersen against Norway, case no. 39710/15, available at: https://hudoc.echr.coe.int/eng#{„itemid":[„001-166768"]} (accessed: 05 February 2019).

357 Decision of the Norwegian Supreme Court of 30 January 2015, HR-2015-00209-A, case no. 2014/1631, point 65.

which it obtained the consent of the county council for social welfare. The decision of the council was contested by the parents, but they lost the case in court. The regional court (*lagmannsrett*) that considered the parents' appeal of the district court's decision agreed to the forced adoption; however, the ruling was not unanimous. Two out of the five judges pointed out the risk that the child would lose his national, cultural and religious identity. The majority of the court disagreed with this argument, however.[358]

Summary

The analysis of the Norwegian legislative system, publicly available statistics and results of scientific studies as well as the case law of selected cases of depriving parents from ethnic and religious minorities of custody over their children leads to the following conclusions:

1. Immigrants' common fear of having their children taken away by Barnevernet[359], as indicated by scientific studies, is not unjustified. The Barnevernet's increased activities towards immigrant families whose children were born in Norway can be clearly noticed. These children constitute only 3% of the entire Norwegian population, but they were placed in foster care in 9.9% of all cases.

2. It should also be noted that Norwegian law does not include appropriate and sufficient solutions protecting ethnic and religious minorities against discrimination. Despite the extensive anti-discrimination legislation, there is still a lack of appropriate procedures which would allow at least contesting decisions on placing children in a foster family that is not able to guarantee the preservation of their ethnic, religious, cultural and linguistic identity.

3. Moreover, the length of court proceedings (where the issue is brought up only marginally as a kind of "additional argument") contributes to the loss of this identity, which often means the loss of mutual bonds between children and their biological parents.

4. There is also a problem of interpretation of the relevant provisions. In particular, both the Barnevernet organizational units and county councils for social welfare, as well as Norwegian courts automatically assume that some ethnic groups are unable to fulfill the conditions for serving as foster families.

5. The Norwegian courts also deserve criticism because of their approval of practices that limit contacts between biological parents and their children to only a few times per year, which results in the child's loss of connection to his or her ethnic or religious community.

358 Decision of the Regional Court in Gulating [court having jurisdiction over western Norway] of 7 February 2019, LG-201895302 (18-095302ASD-GULA/AVD2).

359 R. Bjørknes, M.K. Fylkesnes, A. Iversen, R. Nygrena, *op. cit.*, p. 87.

6. Norway also violates international law by ignoring the religious needs of children under foster care who are prevented from practicing their religion in a community and individually.

7. International standards are also violated when children are prevented from preserving their linguistic identity, especially in situations where it does not entail serious difficulties and financial burden.

Chapter 6. Barnevernet in foreign and domestic media discourse. Barnevernet and freedom of speech

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6.1. Introductory remarks

The first and often only source of information about the activities of the Norwegian Child Welfare Services (Barnevernet) is the broadly understood media. The Barnevernet's activities have been reported in the media for years, raising a number of doubts as to the legitimacy of its decisions. The mechanisms of action and dubious interventions of this body are of great interest to the media all over the world. On the basis of the extensive media coverage, it can be argued that Barnevernet not only does not sufficiently protect children's rights, but, even worse, it grossly abuses the rights of children and their families, especially in legal terms. Its most common modus operandi is the failure to make a reliable assessment of the family situation and, as a result, it brutally removes children from their biological family.

The growing number of media reports of unjustified interference of Barnevernet in family life clearly indicates the need to verify the regulatory framework concerning this area.

The growing number of media reports of unjustified interference of Barnevernet in family life clearly indicates the need to verify the regulatory framework concerning this area. The introduction of specific procedural changes parallel to the application of international law standards seems essential for the proper functioning of the Norwegian system for the protection of children and their rights. This is also indicated by the broad media interest in matters closely related to Barnevernet's interventions. The areas of interest include the financing of the service, statements of former employees and researchers, the health consequences for children and their families, and the efforts of the Norwegian government to prevent news of the Barnevernet's abuse from entering the public domain.

The purpose of this chapter is therefore to provide a comprehensive overview of the characteristics of the operation of the Barnevernet and to draw attention to other worrying developments in the social welfare sector, based on the available media materials from Norway and around the world.

6.2 Criticism of Barnevernet's activities in local media

Although the Norwegian authorities make every effort to ensure that public opinion remains convinced of the high standards of Barnevernet and of the invaluable help provided by that institution to families, the institution has not been able to avoid being criticized by the domestic media. Controversial decisions and procedures of the Norwegian government have gained media attention abroad, which has significantly boosted interest in this subject among Norwegian journalists.

The too hasty and insufficiently justified actions of this institution are usually the beginning of family dramas, which as a result easily enter into the public domain, attracting national and often even global attention.

After an initial glance at the image of Barnevernet on the Norwegian Internet one can conclude that the most common topic discussed is the immediate removal of a child (§ 4-6 of the BVL). The too hasty and insufficiently justified actions of this institution are usually the beginning of family dramas, which as a result easily enter into the public domain, attracting national and often even global attention. In an article published on *barnefjern.org*, one can read in detail the story of a boy who was placed in foster care because of a problem with one of his parent's addiction.[360] Unfortunately, during the four years of his life in Barnevernet's care, he has had to change foster families as many as fifteen times. This is obviously detrimental to the boy, especially in view of the need to provide him with the necessary conditions for proper growth and development. According to *barnefjern.org*, it is estimated that in the United States between 50 and 60% of cases where children are taken away from their parents are related to situations where at least one of the parents is addicted to drugs.[361] That article states that: "Evidence that placing children in long-term foster care may exert long-term impact on their development is not unequivocal; nevertheless, some of it gives grounds for negative assessment of the feeling of destabilisation resulting from being removed from one's biological family. Therefore, there are more and more proponents of interventions aimed at improvement of the situation of the family and keeping it together."[362] Research quoted in the article shows that even

360 *Jeg ble flyttet 15 ganger i barnevernets omsorg. Er det god omsorg?* – press release available at http://www.barnefjern.org/jeg-ble-flyttet-15-ganger-i-barnevernet/ [access: 12.12.2018].
361 *Ibidem.*
362 *Ibidem.*

a child who has been exposed to contact with addicted parents develops better than a child who has been taken away by an institution and placed in a foster family. The difficult decision to take a child away from his or her biological parents and then place him or her in a care facility should necessarily be preceded each time by the application of all possible measures leading to improvement of the situation of the natural family because it is this family that constitutes the basic cell in which the child can develop properly. Barnevernet is obliged to do so both by Norwegian domestic law, as well as international law.

The difficult decision to take a child away from his or her biological parents and then place him or her in a care facility should necessarily be preceded each time by application of all possible measures leading to improvement of the situation of the natural family because it is this family that constitutes the basic cell in which the child can develop properly.

Another article published on *barnefjern.org* concerns the resignation of a Barnevernet childcare consultant.[363] who resigned because she believed that the functioning of the childcare system is incompatible with the Childcare Act and the Convention on the Rights of the Child.[364] As the main person in the article, Åshild Sande, described: "there are many positive decisions made by the child welfare workers. However, we have not proved ourselves in implementing the provisions of the Childcare Act because the Act was imposed from above. Instead of helping, we deprived parents of their children for no particular reason. The decisions were made with a lot of uncertainty, even though we were convinced that it was the best we could do for the child."[365] Åshild Sande concluded: "If the welfare of the child were the highest priority in this profession, I wouldn't give up my job."[366] Such opinions clearly indicate the existence of serious problems in the structures of Barnevernet. The fact that they have been noticed by employees of the Norwegian Services is also telling.

The BVL rules do not impose an obligation to review the methods and tools used by experts and the skills they possess. In practice, professional experience is therefore often insufficient to make a comprehensive and professional assessment of family situations.

The Norwegian newspaper *Aftenposten*, which is the largest in terms of circulation, also reports on the activities of Barnevernet. In an interview published on the Aftenposten website, the head of the

363 *"Barnevernskonsulent sier opp i protest"* – press release available at http://www.barnefjern.org/barnevernskonsulent-sier-opp-i-protest/ access: 12.12.2018.
364 *Ibidem.*
365 *Ibidem.*
366 *Ibidem.*

Barnerettsgruppen at the Oslo District Court, Judge Hanne Signe Nymoen, pointed out specific difficulties that judges face on a daily basis in clarifying cases covered by the Childcare Act.[367] The problem is largely related to the duties performed by some of the staff of the Child Welfare Services. Doubts and fears among judges are caused in particular by the quality of work performed and the qualifications of experts employed, which negatively affect the quality of assistance provided to children and their families. Consequently, the Oslo District Court sent letters to the Ministry of Justice and the Ministry of Children, Equality and Social Inclusion regarding the problems judges face on a daily basis in resolving child welfare cases. In the opinion of Nymoen and the other judges who signed this letter, after graduation and relevant training programs the experts are not provided with any form of continuation of their education in order to improve their qualifications and the quality of their work. In view of the decisions made by the Norwegian authorities, particularly with regard to violations of human rights standards, the concern of judges about the qualifications of experts seems to be entirely justified. Interference in the sphere of family life of an individual requires from experts, above all, a thorough analysis of the situation, and this should always be based on the current state of psychological knowledge. The BVL rules do not impose an obligation to review the methods and tools used by experts and the skills they possess. In practice, professional experience is therefore often insufficient to make a comprehensive and professional assessment of family situations. This in turn adversely affects the decisions of judges, who are not sure whether the opinion in a particular case is exhaustive and fair.[368] Judge Nymoen also drew attention to the need for expertise and specialized knowledge in specific areas, such as violence, abuse and contact with the youngest children. Although expert opinions are not binding on judges, in many situations they can contribute to the right decision and prevent a family tragedy.[369]

In this context, the media reports about a psychologist employed by Barnevernet who has been in the possession of child pornographic materials for many years seem to be outrageous. According to information on *barnefjern.org*, in 20 years the man has collected hundreds of thousands of photographs and films depicting brutal sexual abuse of children.[370] At the same time, he was working for several years in the Expert Commission on Children, appointed by the Minister for Children, Equality and Social Inclusion as one of 14 specialists. In court, he stated that at the age of 13-14 he began to feel attraction to teenage boys, using this as an explanation for the collection of pornographic material. The man has two children, a son and a daughter, that were born by a surrogate mother of Indian descent. It is also known that he underwent treatment with a psychologist and a sexologist, but without any results. This matter is particularly worrying and puts the Barnevernet's functioning in a very negative light. Someone allowed a psychologist who owns child pornography to make important decisions in matters requiring particular sensitivity to the child's best interests.

367 L. Skogstrøm, *Ofte er de mest anerkjente sakkyndige psykologene opptatt. Da må man finne andre på listen.* – press release available at https://www.aftenposten.no/amagasinet/i/gPBRz9/Ofte-er-de-mest-anerkjente-sakkyndige-psykologene-opptatt-Da-ma-man-finne-andre-pa-listen?spid_rel= access: 12.12.2018.

368 *Ofte er de mest anerkjente sakkyndige psykologene opptatt. Da må man finne andre på listen.* – press release available at https://www.aftenposten.no/amagasinet/i/gPBRz9/Ofte-er-de-mest-anerkjente-sakkyndige-psykologene-opptatt-Da-ma-man-finne-andre-pa-listen?spid_rel=2 [access: 12.12.2018].

369 *Ibidem.*

370 *Psykolog tatt for nedlasting av barneporno* – press release available at http://www.barnefjern.org/psykolog-tatt-for-nedlasting-av-barneporno/ [access: 12.12.2018].

This problem attracted broad media interest, which in turn caused significant concern in Norwegian society, in particular among the victims of the Norwegian Services. Numerous speculations and doubts about the validity of trials conducted by Barnevernet with the participation of the accused appeared in the media. According to many of the victims, due to his serious psychological disorder, the accused could not reliably perform his duties, and hence they are of the opinion that verification, and in many cases even invalidation, of these trials is necessary. According to the information provided by the Norwegian daily *Dagbladet*, the accused strongly denies this and, when asked by the court how he assesses the situation, answers that, in his opinion, he is not and never has been a physical threat to children.[371] In addition, experts in court have testified that people who enjoy child pornography do not necessarily sexually abuse children, whether their own or others. There has not been any willingness on the part of the authorities to re-examine the cases in which the psychologist, Mr. Brøyn, was an expert witness or in which he reviewed the expert opinions of others as a member of the Expert Commission on Children. Other experts who were consulted concerning Mr. Brøyn also said that there was nothing to indicate that he had not performed his work in a fully competent manner.

Family psychologist Einar Salvesen, who worked with Barnevernet in the past, has criticized the Norwegian authorities in the Aftenposten, calling attention above all to the abuse of legal regulations in situations where a child is immediately removed from the custody of his/her parents.

Family psychologist Einar Salvesen, who worked with Barnevernet in the past, has criticized the Norwegian authorities in *Aftenposten*,[372] calling attention above all to the abuse of legal regulations in situations where a child is immediately removed from the custody of his/her parents. In his opinion, such action is always accompanied by a lack of a reliable assessment of the family situation, misunderstood violence as well as the subjective views of Barnevernet employees. Moreover, E. Salvesen stated that sudden decisions in this area do not in any way benefit children or parents. Quite the contrary, as Mr. Salvesen pointed out, there are negative effects of placing a child in foster care, including the rupturing of ties with the biological family, traumatic experiences, stress and distrust of others. According to Mr. Salvesen, the law in this case is interpreted directly and without any reference to the human factor, with serious consequences for the overall development and functioning of the child. Mr. Salvesen, a psychologist, is of the opinion that it is necessary to establish a separate, independent commission whose task would be to conduct a thorough and reliable observation of whether in a given situation separation from the biological family is really necessary.[373] In light of the growing doubts about the Barnevernet's operations, this solution seems to be more than advisable.

371 Ø. Andersen, *Psykiater i retten: - Min seksuelle legning har ført meg opp i denne situasjonen* – press release available at https://www.dagbladet.no/nyheter/psykiater-i-retten---min-seksuelle-legning-har-fort-meg-opp-i-denne-situasjonen/69696382 [access: 12.12.2018].

372 E.C. Salvesen, *Propaganda eller realiteter om norsk barnevern?* – press release available at https://www.aftenposten.no/meninger/debatt/i/l1y3VL/Propaganda-eller-realiteter-om-norsk-barnevern--Einar-C-Salvesen [access: 07.03.2019].

373 *Ibidem.*

In the years 1990-2002, the Ministry for Children and Family Affairs and the Norwegian Research Council analyzed the health of children and adolescents in the Norwegian foster care system. Studies show that the mortality rates of these children are much higher than among children permanently residing with their biological families.

The high mortality rate among children taken away from their biological parents is another worrying aspect of the Norwegian Service's activities, as highlighted by the Aftenposten Internet portal. The Norwegian Institute for Urban and Regional Research commissioned by the Ministry for Children and Family Affairs and the Norwegian Research Council conducted analysis in the years 1990-2002 on the health of children and adolescents in the Norwegian foster care system.[374] In 1990-2001, the suicide rate was eight times higher than in the case of children brought up in their families.[375]

Studies show that the mortality rates of these children are much higher than among children permanently residing with their biological families. Statistics also show a higher number of suicides committed by children placed in foster care. One such story is presented by the Dagbladet portal in one of its articles. In 2010, 15-year-old Ragnhild died of a drug overdose while fleeing from the Kasa Flatøy foster home.[376] The reasons for this were not clear to the authorities responsible for placing the minor in such Barnevern care. First of all, the quality of services provided by the institution and their employees was questioned. Although the principle of the best interests of the child was clearly violated in this case, Barnevernet consistently cited the potential incompetence of the employees as the reason for this tragedy. Such situations are hardly ever analyzed in the context of the negative consequences of separating a child from his or her biological family. Such approach of the Norwegian authorities only confirms the conclusion that being in Barnevernet's care often leads to psychological disorders in children. Biological parents who are victims of social service intervention also face health problems much more often than the average Norwegian family. The number of suicides among such parents is also much higher.[377]

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The VG.no portal (the equivalent of the paper version of *Verdens Gang* – the second largest newspaper after *Aftenposten*) has described further irregularities related to Barnevernet's activities.

374 *Høy dødelighet hos barnevernsbarn* – press release available at https://www.aftenposten.no/norge/i/LljMV/Hoy-dodelighet-hos-barnevernsbarn [access: 11.03.2019].

375 See: L.B. Kristofersen, *Barnevernbarnas helse. Uførhet og dødelighet i perioden 1990-2002*, NIBR-rapport 2005:12, Oslo 2005, pp. 12-13.

376 A. Hansen, R. Jarlsbo, *Nå svikter barnevernet på Vestlandet igjen* – press release available at https://www.dagbladet.no/nyheter/na-svikter-barnevernet-pa-vestlandet-igjen/70825613 [access: 14.03.2019].

377 *Ibidem.*

Information found by the authors of an article clearly indicates that more than 2,000 children in foster care are not covered by the statutory duty of supervision. VG gained access to data from 333 out of 422 Norwegian municipalities. The results turned out to be very worrying - every fourth child staying in a foster family did not receive the number of control visits required by the Act.[378] Municipalities explained themselves inaccurately, trying to justify their shortcomings based on staffing and financial problems, and long-term sick leave shortages. They also claim that some other entity is responsible, or that no entity has the authority to enforce the demanded visitations and preparation of reports that are key to proper assessment of the situation. The Norwegian Directorate for Children and Family Affairs (*Bufdir*) denies its responsibility and, furthermore, claims that it has no power to exercise any control over municipalities.[379] The former Minister for Children and Equality, Linda Hofstad Helleland, apologized for the situation and expressed her hope that the municipalities would significantly improve their activities in this area. However, the controversy surrounding the actions of Barnevernet is only cause for moderate optimism.

In the context of the publication of the PACE report entitled "*Striking a balance between the best interest of the child and the need to keep families together*", representatives of Norway in the Council of Europe found it necessary to provide relevant information in this respect to the Norwegian Parliament, the Stortinget. Unfortunately, the criticism of Barnevernet was completely rejected and even replaced with numerous words of praise.[380] The operation of the child protection system was presented as a strength and great success for Norway, and the Norwegian authorities were not at all alarmed by the unflattering comments on the Barnevernet's activities. Although the Barnevernet's abuses were described fairly and comprehensively in the Report, the Norwegian government has successfully challenged the Report's objectives at the national level.[381] First of all, it did not want to tarnish the good public reputation of Barnevernet. Moreover, it made efforts to maintain Barnevernet's position in this respect, which has been unchanged for years.

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378 S. Majid, T. Byermoen, *2100 fosterbarn uten lovpålagt tilsyn* – press release available at: https://www.vg.no/nyheter/innenriks/i/a24VJ7/2100-fosterbarn-uten-lovpaalagt-tilsyn [access: 12.03.2019].

379 S. Majid, *Barneombudet om fosterbarna: Bøter til kommuner som ikke fører tilsyn* – press release available at https://www.vg.no/nyheter/innenriks/i/7lm2bo/barneombudet-om-fosterbarna-boeter-til-kommuner-som-ikke-foerer-tilsyn?utm_content=recirculation-matrix&utm_source=p64Jn6 [access: 14.03.2019].

380 M.H. Skånland, *The Council of Europe with a critical report on European child protection systems* - materials available at http://www.mhskanland.net/page45/page495/page495.html [access: 12.03.2019].

381 *Ibidem.*

report adopted by the PACE.[382] During the PACE session, the Norwegian delegation tried to defend Barnevernet by pointing out that the actions of the service are always aimed at protecting the good and legitimate interests of the child. The session report available on the Norwegian Services' website is only a consequence of the lack of acceptance of the report's assumptions. It is clear from the media coverage that the conviction that Barnevernet's interventions are correct must dominate in the Norwegian media. Specific allegations formulated in the report have been given new wording, corresponding to the general rhetoric of the Norwegian government and indicating that the interests of the child take absolute precedence over the welfare of the community, and especially that of the biological family. Further, such formulations carry the subliminal, unjustified message, that the biological family's wellbeing is either unimportant for the child or in conflict with the child's best interests. In this way, the Norwegian government discredits internationally accepted principles and at the same time misleads the Norwegian public.

The Frylykta Foundation for Childcare, closely cooperating with the Norwegian state agency Bufetat, in fact turned out to be one of the elements of a larger organizational structure aimed at obtaining profits.

Another article published on the VG.no portal revealed worrying data on fraud related to the functioning of the social welfare system.[383] For several months, VG journalists conducted intensive observations aimed at reaching the sources and verifying the *Frylykta* Foundation and its institutions. The results are highly concerning. The Frylykta Foundation for Childcare, closely cooperating with the Norwegian state agency Bufetat, in fact turned out to be one of the elements of a larger organizational structure aimed at obtaining profits. The Foundation, operating under the façade of a non-profit organization and allegedly achieving its goal of improving child welfare, has long been engaged in parallel commercial activities.

According to VG, private foster homes were regularly subsidized by the Norwegian government. In 2016, over 17% of the total amount allocated to support private entities went to the *Frylykta* Foundation. Its founder and first general manager, Peer Salström-Leyh, has for years created a network of foster homes throughout Europe, resulting in the establishment of similar foundations in Sweden, Finland, Estonia, Germany, Lithuania and Latvia.[384] The enormous salaries paid to employees, management and supervisory board members only confirm that the Foundation's activities were purely profit-driven. The Foundation also offered bonuses to employees and foster families.

382 J-A. Torp, *Norwegian Parliamentarians mislead the Norwegian People regarding PACE´s Report on Barnevernet - Conveys Propaganda Version from Strasbourg* – press release available at https://christiancoalition.world/kkn-speaks/read3/norwegian-parliament-misleading-propaganda-pace [access: 12.03.2019].

383 M. Mikkelsen, S. Majid, T. Byeromen, *Rapport: Fyrlykta har brutt loven* – press release available at https://www.vg.no/nyheter/innenriks/i/VAyjd/rapport-fyrlykta-har-brutt-loven [access: 12.03.2019].

384 *Ibidem.*

The VG article directly reveals the rules of the functioning of foster homes run by private entities. The children placed in such homes repeatedly serve the system as a tool for carrying out large financial transactions.

The article directly reveals the rules of the functioning of foster homes run by private entities. The children placed in such homes repeatedly serve the system as a tool for carrying out large financial transactions. The costs related to the functioning of foster homes and institutions run by private organizations are much higher than those related to publicly run establishments, so some people have decided to treat this area as a field for business activity. Bufetat is obliged to find a suitable number of foster homes that can be used in case of emergency when the Barnevernet decides that a child has to be placed in foster care immediately. However, there are numerous doubts regarding the way Bufetat negotiates and executes contracts with private entities. The main criticisms concern excessive spending from the state budget on private foster homes and institutions and the lack of regulations guaranteeing fair competition between service suppliers.

There are numerous doubts regarding the way Bufetet negotiates and executes contracts with private entities. The main criticisms concern excessive spending from the state budget on private foster homes and institutions and the lack of regulations guaranteeing fair competition between service suppliers.

A former member of the European Commission on Human Rights, Norwegian Gro Hillestad Thune, also expressed her concern about the system of care for minors. In an article published by the newspaper *Norge IDAG* (website idag.no), one can read in detail Ms. Thune's observations on the functioning of the entire system. Above all, she signals the problem of too much freedom in the operation of social welfare and, consequently, of the authorities in deciding who will provide the best care for the child.[385] According to Ms. Thune, the rights of Barnevernet employees are too broad and the whole system needs to be thoroughly reorganized. It is hard not to agree with the fact pointed out by the author that an institution established as a form of support for families has gradually become a powerfull authority.[386] Ms. Thune also pointed out the need to deprive municipalities of the possibility of taking coercive measures.[387]

Although views moderately critical of Barnevernet's activities are expressed quite often in the Norwegian media, worrying tendencies related to the respect for the freedom of expression of more vehement critics of this institution are also noticeable.

385 T-B. Nordgaard, *Tidligere menneskerettighetsdommer slår alarm: - Totalt fravær av rettssikkerhet i barnevernet* – press release available at https://idag.no/samfunn/nyheter/totalt-fravar-av-rettssikkerhet-i-barnevernet/19.28084 [access: 14.03.2019].

386 *Ibidem.*

387 *Ibidem.*

Although views moderately critical of Barnevernet's activities are expressed quite often in the Norwegian media, worrying tendencies related to the respect for the freedom of expression of more vehement critics of this institution are also noticeable. This was highlighted, among others, by Professor Marianne Haslev Skanland, who has been involved in social issues related to the protection of human rights in Norway as well as in Sweden for many years. In her opinion, national authorities always set the Norwegian nation as a model for other countries, especially in the field of human rights, presenting it as infallible and perfect.[388] Meanwhile, when information about Barnevernet's questionable interventions reaches the public, the Norwegian government immediately tries to silence it, stating that it allegedly has no influence on any of the cases handled by this institution. In the context of such a model of action, Professor Skånland stressed how important it is to try to publicize Barnevernet's abuse in social media, blogs and forums[389] despite attempts to restrict freedom of speech. She also refers to the 1976 ECtHR judgment, which clearly states: „the Court's supervisory functions oblige it to pay the utmost attention to the principles characterizing a 'democratic society.' Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man."[390] In particular, the Norwegian authorities, convinced of the country's excellent democratic condition, should treat all citizens with due respect, ensuring not only freedom of expression, but also access to credible and truthful information.

Numerous articles published on foreign media websites show that the standards of respect for freedom of speech in Norway are viewed extremely positively. This is confirmed in particular by Norway's high ranking in the World Press Freedom Index.[391] On the other hand, according to information from alternative media, some areas of social life are openly discriminated against in this respect. Not only is the freedom of speech not respected properly, but it is also often in conflict with the Norwegian system, which tries to effectively prevent the spread of negative opinions about Barnevernet. As Professor Skånland rightly pointed out, those in power have consistently sought exclusive competence in the area of children's rights.[392] Moreover, they strongly influence public opinion by trying to force the only accepted narrative. Parents are increasingly faced with the challenge of preserving their right to decide about their children's best interests. Nor can they publicly express critical opinions on the actions taken by the state and certain institutions such as Barnervernet.

This is the pattern visible in the 2018 case concerning a woman who expressed a negative opinion about the functioning of the Norwegian childcare system in social media and was sued as a result. In an article by Irene Hov, published by alternativ-media.no, one can read the story of 72-year-old Ruth Ensby, whose grandson was wrongly taken from his parents by Barnevernet in Hønefoss. Her

388 M.H. Skånland, *Freedom of expression in Barnevern cases* – materials available at http://www.mhskanland.net/page45/page333/page333.html [access: 15.03.2019].

389 *Ibidem*.

390 Judgment of the European Court of Human Rights of 7 December 1976 in the case of *Handyside v. United Kingdom*, application no 5493/72, item 49.

391 *Wolność mediów na świecie – Norwegia w czołówce* - press releases available at https://www.mojanorwegia.pl/polityka/wolnosc-mediow-na-swiecie-norwegia-w-czolowce-9430.html [access: 17.06.2019].

392 M.H. Skånland *"Om ytringsfriheten i sammenheng med barnevern"* - press release available at http://www.mhskanland.net/page47/page589/page589.html access: 17 June 2019.

daughter and son-in-law were deprived of their son as a result of an erroneous diagnosis that the boy's mother was supposed to had a mild intellectual disability.[393] However, the diagnosis turned out to be incorrect and was challenged. Nevertheless, the boy was placed in foster care and although the mother's alleged disability was disproved, he was not returned to his biological family. Moreover, he was ordered to remain in foster care until all pending cases were resolved.[394] In view of the situation, Ruth Ensby, the boy's grandmother, decided to express her objection in public. Concerned about the fate of her grandson, the woman made many comments about the foster parents, as well as about the activities of the officials involved in this case. As a consequence, she was sentenced to 28 days' conditional imprisonment plus a fine of NOK 10,000 in connection with the publication of her opinions, which exposed the named people to public condemnation.

It is worth noting, however, that all the statements made by Ruth Ensby had already been disclosed by the court in the judgment concerning her grandson's case.[395] In addition, the court ruling in her case omits many important facts, such as the reasons why the boy's grandmother decided to take such action. The arguments in Ms. Ensby's defence were reduced to a single sentence and did not in any way refer to the freedom of expression as a value protected by law. It was no coincidence that the fact that the whole matter concerned obvious human rights violations was also overlooked.[396] Gro Hillestad Thune, mentioned above, also expressed her criticism in this case as well. As a former judge of the ECtHR, she pointed out very clearly that the fundamental rights of people with disabilities had been violated.[397] Ms. Thune considered taking the boy way from his biological family based on the presumption of a minor impairment of his mother reprehensible and deemed it a gross violation of human rights.[398] She was also very critical of the court, which ordered the forced adoption of the boy. The adoption was carried out immediately ignoring the importance of the biological bond as a factor enabling an attempt to solve the problem.[399] The case was referred to the European Court of Human Rights in Strasbourg.

Another case concerned a mother accused of posting pictures of her crying daughter on a social networking site. The daughter was crying because she had been taken away from her mother. The woman published critical comments and video accounts about her conflict with the childcare service, which decided to take over custody of her daughter. In this case, the court expressed the view that the protection of the child's privacy takes precedence over the rights of the mother, who broadly commented on the ongoing dispute between her and Barnevernet[400] in social media. In the court's

393 I. Hov Ensby saken: *Retten krenker personvernet til de fornærmede.* - press releases available at https://alternativ-media.com/2018/12/26/ensby-saken-retten-gir-egentlig-blaffen-i-personvernet-til-de-fornaermede/ [access: 17.06.2019].

394 *Ibidem.*

395 *Ibidem.*

396 *Ibidem.*

397 A. Øyhovden C. Bentzrud, *Barnevernet ble varslet om brudd på menneskerettighetene - ingenting skjedde* - press release available at https://www.tv2.no/nyheter/8931017/?fbclid=IwAR3qFVdF-rvGp5HuDqCUMC_-cjPNk_ttX6CtIZL55DId28EdS8Db-VvEkpu8 [access: 17.06.2019].

398 *Ibidem.*

399 *Ibidem.*

400 K. Kolsrud *"Mor pålagt Facebook-forbud fra sin egen rettssak"* - press release available at https://rett24.no/articles/mor-palagt-facebook-forbud-fra-sin-egen-rettssak [access: 17.06.2019].

view, the mother blatantly harmed the best interests of the child by publishing offensive comments on the staff and officials of the Norwegian child welfare services.[401] The court found that such action could have a negative impact on the child's development in the future and in the present could harm the witnesses appearing in the case.[402] As a result, the court banned the woman from publishing any reports or data concerning the course of the case.

According to the information provided by the portal rett24.no, bans of this type are applied in particular to the media and journalists.[403] Bans imposed on parties to proceedings are usually connected with the confidential nature of a case when a case is conducted in closed hearings.[404] Special Judge Anders Bøhn, an academic who studies the functioning of the Norwegian judiciary, also expressed his surprise, claiming that he had not remembered a situation in which this ban would have been used in such a context.[405] In his view, it is difficult to determine the scope of the ban imposed because of the belief, rarely taken into account, that information held by a specific person and subsequently disclosed at a hearing cannot be reproduced in other circumstances.[406] This clearly shows the biased nature of the Norwegian courts, which make every effort to ensure that negative opinions about Barnevernet's actions are immediately removed from the public domain. Without respecting the fundamental rights deriving directly from Article 100 of the Constitution of the Kingdom of Norway[407], the courts take into account only the need to protect the right to privacy. By justifying their decisions with actions aimed at protecting the best interests of the child, they marginalize the constitutionally guaranteed freedom of expression. Fearing the spread of criticism of the Services' activities, the courts violate the fundamental rights of citizens.

6.3 Foreign media coverage and Barnevernet activities

The controversial interventions of the Norwegian childcare services are commented on in the media around the world. Family tragedies that occur due to the Barnevernet's activities easily gain international attention by rousing public opinion and sometimes even provoking mass protests and demonstrations. As a result, foreign media are not indifferent to the voice of the affected families and are increasingly initiating reports showing the true face of this institution.

401 *Ibidem*.
402 K. Kolsrud *Straffedømt for å legge ut bilder av datteren på Facebook* - press release available at: https://rett24.no/articles/straffedomt-for-a-legge-ut-bilder-av-datteren-pa-facebook [access: 17.06.2019].
403 K. Kolsrud *Mor pålagt Facebook-forbud fra sin egen rettssak* - press release available at https://rett24.no/articles/mor-palagt-facebook-forbud-fra-sin-egen-rettssak [access: 17.06.2019].
404 *Ibidem*.
405 *Ibidem*.
406 *Ibidem*.
407 See § 100 Kongeriget Norges Grundlov.

Family tragedies that occur due to the Barnevernet's activities easily gain international attention by rousing public opinion and sometimes even provoking mass protests and demonstrations.

The scale of the problem is confirmed by an extensive report published in August 2018 by the BBC. The material prepared by Tim Whewell not only gives a general picture of the functioning of the Norwegian law on childcare in practice, but above all points out gross abuses that Barnevernet employees have committed when removing children from their families. The story of Cecilie, a single mother raising her daughter, is one of the stories presented. As a result of the erroneous assessment of the situation in the woman's home and formulation of far-reaching conclusions on that basis, she became a victim of the incorrect application of the procedures established in the BVL. The methods used by the Services' employees in the course of preparing their expert opinion seem to be dubious. The decision to deprive Cecilie of the custody of her daughter was issued even though the circumstances provided no rational grounds for it. As a result of over-interpretation of the events, Cecilie's daughter was removed from her and placed in foster care. Since then, the mother (now a 50-year-old woman) has seen her daughter only 7 times. As it turned out, one of the two experts requesting the placement of the child in foster care was the aforementioned pedophile psychologist, sentenced for collecting pornographic material over the years. After these facts were revealed, Cecilie demanded that his reports be invalidated on the grounds that he was unable to show compassion for children.

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The BBC also mentioned the famous case of Marius and Ruth Bodnariu, which caused protests all over the world, and another shocking story of a large family with four children taken from their mother, who was then arrested on charges of using violence against her children. These circumstances are eerily similar to the story of the Bodnariu family.

As the author of the article states, in the United Nations' view Norway is one of the leading countries in ensuring adequate conditions for the upbringing and development of children.[408] In practice, however, these standards are radically different and definitely do not correspond to the UN's glowing opinion, which is clearly disproved by the actions taken by Barnevernet, a body that aggressively

408 T.Whewell, *Norway's hidden scandal* – video available at https://www.bbc.com/news/resources/idt-sh/norways_hidden_scandal [access 12.12.2018].

seeks to destroy biological families in the name of the protecting the alleged welfare of the child and placing him/her in foster care. It is worth recalling at this point that, according to international law, it is the biological family that constitutes the natural environment necessary for the harmonious and full development of a child (see the Preamble to the CRC). However, the Norwegian Services seem to ignore the norms of international law, replacing them with assumptions about the actual family situation. The BBC material makes an extremely important contribution to raising public awareness about inefficient social welfare systems controlling the lives of many families.

According to international law, it is the biological family that constitutes the natural environment necessary for the harmonious and full development of a child.

In 2012, Polsat TV broadcasted a documentary film entitled "Barnevernet. Hunting for Children."[409] The methods used by Barnevernet in dealing with families were clearly presented. The film shows the tragedies of many Polish emigrants who, moving to Norway for work, taking their children with them or even starting their own families in Norway, were not aware of the risks they face. The accounts of children and parents presented in the documentary leave no illusions about the unjustified interference in family life.[410] It is also worth noting the words of Professor Nina Witoszek (University of Oslo), who critically summarizes the structure and operations of Barnevernet. First of all, she points out the lack of transparency and serious difficulties in establishing dialogue with employees of Barnevernet. All arguments and criticism of Barnevernet are ineffective. According to Witoszek, there are no developed standards concerning sensitivity to the fate of parents that take into account cultural differences.[411]

A shocking report on abuses in Barnevernet was produced in 2016 by the German-French Internet television station *Arte*. It presents further cases of families unjustifiably attacked by the police and Barnevernet, allegedly acting in the best interests of the child.[412] It also reveals a recording of an intervention by employees of Barnevernet in which a young couple, without receiving any explanation, is deprived of their one-year-old son within a few minutes. The modus operandi is analogous to other situations described by the media. Fewer and fewer elements in the proceedings of this institution are surprising and shocking, and the video proves the Barnevernet's destructive conduct and the weakness of the Norwegian childcare system.

Tomáš Zdechovský, member of the European Parliament from the Czech Republic, has also spoken out about the activities of Barnevernet. In an article published by the Indian *Sunday Guardian*, he

409 I. Alfredson, R. Kietliński, P. Morawski, *Barnevernet. Polowanie na dzieci* – video available at https://www.youtube.com/watch?v=7ki2y5lfBLw [access: 12.03.2019].

410 *Ibidem*.

411 *Ibidem*.

412 A. Fontaine, *Norvège: familles brisées* – video available at https://www.arte.tv/fr/videos/070086-000-A/norvege-familles-brisees/ [access : 18.03.2019]

unequivocally assessed the standards prevailing in Barnevernet.[413] His opinion is mainly based on the famous case of Eva Michaláková, a Czech mother whom the Norwegian system deprived of her two sons. Having familiarized himself with this case, the politician decided to examine how Barnevernet functions and to look for sources and true information about its working methods. Mr. Zdechovský analyzed many reports and articles and contacted many families, including native Norwegians, who have often decided to speak openly about the situation in Norway. In the course of his research, he also gathered a wide range of material concerning physical abuse committed by Barnevernet employees. As in any other case, all the information gathered led to the same conclusions regarding the dysfunction of Barnevernet and the hostility of its employees towards families. Mr. Zdechovský also tried to enter into a dialogue on this issue with Norwegian politicians in the European Parliament, but this met with surprise, disbelief and, for the most part, silence on their part.[414]

Another case concerns the Polish consul, Sławomir Kowalski, who, by decision of the Norwegian authorities in January 2018, was declared a persona non grata. This caused a great deal of commotion in the media.

Another case concerns the Polish consul, Sławomir Kowalski, who, by decision of the Norwegian authorities in January 2018, was declared a *persona non grata*. This caused a great deal of commotion in the media, especially the Polish media. As the daily *Gazeta Wyborcza* reported, the activity of the Polish consul was described as inappropriate for his position.[415] His critical attitude towards Barnevernet's activities was of key importance. In particular, the Norwegian authorities found it highly inappropriate for him to help Polish families in their struggle against Norwegian authorities.[416] In addition, they refuse to admit that it was Kowalski's efforts on behalf of families targeted by Barnevernet which was the cause of their wanting to get rid of him. In its communication the British agency Reuters[417] also drew attention to the fact that the consul questioned Barnevernet's decision concerning Polish families. It is clear from the article that this decision was an attempt at silencing him, which in the context of the questionable actions of Barnevernet met with indignation not only from Polish diplomats. The case was also commented on by the euronews.com portal, which explicitly referred to the failure of the Norwegian authorities to comply with international law and thus permit an infringement of consul Kowalski's status.[418]

413 T. Zdechovský, *Norway's Orwellian system of child protection and care* – press release available at https://www.sundayguardianlive.com/culture/norways-orwellian-system-child-protection-care [access: 18.03.2019].

414 Ibidem.

415 M. Czarnecki, *Norwegia uznała polskiego konsula za persona non grata. Jest natychmiastowa reakcja* – press release available at http://wyborcza.pl/7,75399,24449405,polski-msz-norwegia-wydala-polskiego-konsula-bedzie-natychmiastowa.html [access: 12.03.2019].

416 *Ibidem*.

417 N. Adomaitis, T. Chopra, A. Koper, *Norway and Poland to expel diplomats in tit-for-tat exchange* – press release available at https://www.reuters.com/article/us-norway-poland/norway-and-poland-to-expel-diplomats-in-tit-for-tat-exchange-idUSKCN1Q020B?fbclid=IwAR03Tnmfso4aVyKzv22kw7gbvi2OVwjRPOIUAmgxlPySqJcWfjJLdKwjMzQ [access: 19.03.2019]

418 R. Kennedy, *What has sparked Norway's diplomatic row with Poland?* – press release available at https://www.euronews.com/2019/02/12/what-has-sparked-norway-s-diplomatic-row-with-poland-euronews-answers?fbclid=IwAR3LayRUUls3NISteXJKYqHC1nKqKPhuJD71cZAuUbzT1hUko9MoMfrURlE [access 19.03.2019].

The fate of Silje Garmo, a Norwegian mother who fled to Poland with her daughter Eira in 2017, seeking asylum and shelter from the Barnevernet system, is a case that has been particularly intensively commented on in the media all over the world. The end of the battle and the granting of asylum to the Norwegian by Minister of Foreign Affairs of the Republic of Poland Jacek Czaputowicz were reported by the media of various countries.

The fate of Silje Garmo, a Norwegian mother who fled to Poland with her daughter Eira in 2017, seeking asylum and shelter from the Barnevernet system, is a case that has been particularly intensively commented on in the media all over the world. The activities of the Norwegian Services often caused intense criticism and indignation during the course of the case. The end of the battle and the granting of asylum to Ms. Garmo by Minister of Foreign Affairs of the Republic of Poland Jacek Czaputowicz were reported by the media of various countries. According to *The Times*, Silje Garmo and her daughter Eira are believed to be the first Norwegians since the Second World War to be admitted as refugees in another European country.[419]

A few attempts to address the subject of the Norwegian social welfare system can also be found in the German service *Der Spiegel.* In June 2017, an article on the problems faced by children during their childhood in various countries of the world was published.[420] The ranking of countries is surprising since Norway ranks first as a country that is definitely friendly to children. Considering the numerous issues with Barnevernet, the ranking does not seem to take all the factors into account equally. The health of the social welfare system in Norway is described in another article, published in May 2015, which refers to the situation of mothers in different countries.[421] According to that article, Norway is the country that offers the best living conditions for mothers. These articles provide a clear indication of how the Barnevernet narrative is shaped in the German media.

6.4 Social organizations working against abuses committed by Barnevernet

Since the late 1980s and the 1990s, there has actually been a rather continuous stream of small groups appearing in Norway to combat Barnevernet's harmful practices. Barnevernet's activities have been the same for decades. It is the advent of the internet which has allowed more victims to be heard. The coverage of the controversial activities of the Norwegian Child Welfare Services has

419 *Norwegian mother wins asylum in Poland*, materials available at https://www.thetimes.co.uk/article/norwegian-mother-gets-asylum-in-poland-m9bzjnt85?fbclid=IwAR1JsYZRcH3vIKpyCZHXDaVHYeALxLGb9xoLnKXWrsTyqOMAr1XHqUE8TLI [access: 19.03.2019].

420 B. Schulz, J. Witte, Kinder ohne Kindheit – press release available at http://www.spiegel.de/panorama/gesellschaft/kinder-weltweit-report-von-save-the-children-vergleicht-lage-in-172-laendern-a-1150114.html [access: 28.03.2019].

421 *Norwegen ist das beste Land für Mütter - Deutschland auf Platz acht* – press release available at http://www.spiegel.de/politik/ausland/muetter-studie-norwegen-platz-eins-deutschland-platz-acht-a-1032057.html [access: 28.03.2019].

gained the notice of social organisations from all over the world. In view of the many family tragedies caused by Barnevernet, the reform of its procedures seems imperative. In particular, efforts should be made to ensure that the Norwegian legal system properly understands the protection of children's and parents' rights taking into account international standards. To this end, however, it is necessary to take initiative from outside of Barnevernet and the authorities governing it. Over the last few years, there have been numerous calls for immediate reform of Barnevernet. One was an open letter addressed to the Minister of Children, Equality and Social Inclusion by a group of more than 200 psychologists, educators and lawyers, in which they pointed out, among others, numerous doubts as to the validity of the psychological expert opinions prepared and the experts' references to insufficient evidence and research. Another form of counteracting the practices of the Norwegian Barnevernet are actions taken by global social organizations established for this purpose. Initiatives to help the victims of unjustified Barnvernet interference are increasingly frequent. In particular, families that have been wronged by decisions of the Services, taking part in an unequal struggle to maintain the primacy of the natural family in the process of raising children, are willing to engage in activities aimed at reforming the Norwegian system.

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One such organization is **Kristen Koalisjon Norge** (KKN). It is a Christian movement operating in Norway, founded in 1993 in Oslo by Pastor Jan-Aage Torp. His main goals include the mobilization of Christians and people with similar values who live in Norway on a daily basis to disseminate broadly understood principles of faith and ethics in Poland and abroad. The KKN defends elementary values of the rights of children and their families. It often also speaks out on matters that are controversial in Norwegian society. In doing so, it shapes public opinion and strives to serve Norway in the best possible way.[422]

The case of the Romanian-Norwegian Bodnariu family has justifiably gained worldwide renown, provoking numerous protests in various countries. The **bodnariufamily.org** website was created to protest against Barnevernet's abuse and to show solidarity with the family in the face of its tragedy. Initially, it was only a movement of support for rapid return of the children to the family and a source of information about the current state of affairs. It now promotes solidarity with other families who have been similarly harmed by the Norwegian Services.[423]

422 Description of the organization is available at https://kristenkoalisjon.no/les1/verdibasert-folkebevegelse [access: 18.03.2019].
423 Description of the organization is available at http://bodnariufamily.org/our-mission/ access 18.03.2019.

Step up 4 Children's Rights is another social movement initiated as a result of disturbing events involving the Norwegian Child Welfare Services. It is a private initiative of Christian parents based in Vienna. Its main goal is to publicize the affairs of Norwegian families whose children *Barnevernet* unjustifiably took away and immediately placed in foster care. This is a particularly important idea in the process of making society aware of how Norway is violating international law by intervening directly in the welfare of the family.[424]

In 2007, a small social movement called **Folkevett** was established. Folkevett (meaning "common sense") was formed as a political party. It resulted from various opposition groups in many local communities that were not being satisfied with any of the established parties, forming local groups and organizations and then seeking contact with similar groups in other districts, in an attempt to create a lasting political movement. One of the participants in Kongsberg was Erland Løken, a local resident whose own family experienced Barnevernet's harmful actions, who had made contact with a group of anti-Barnevernet activists based in Bergen, and who had single-handedly conducted a very successful seminar in Kongsberg. The idea was to establish a policy program that would allow for changes in the functioning of Barnevernet at the local level. Professor Skånland's goals focus on the introduction of a special committee dedicated to supervising Barnevernet's activities during all stages of intervention by the authorities if there is any suspicion of a threat to the interests of the child.[425]

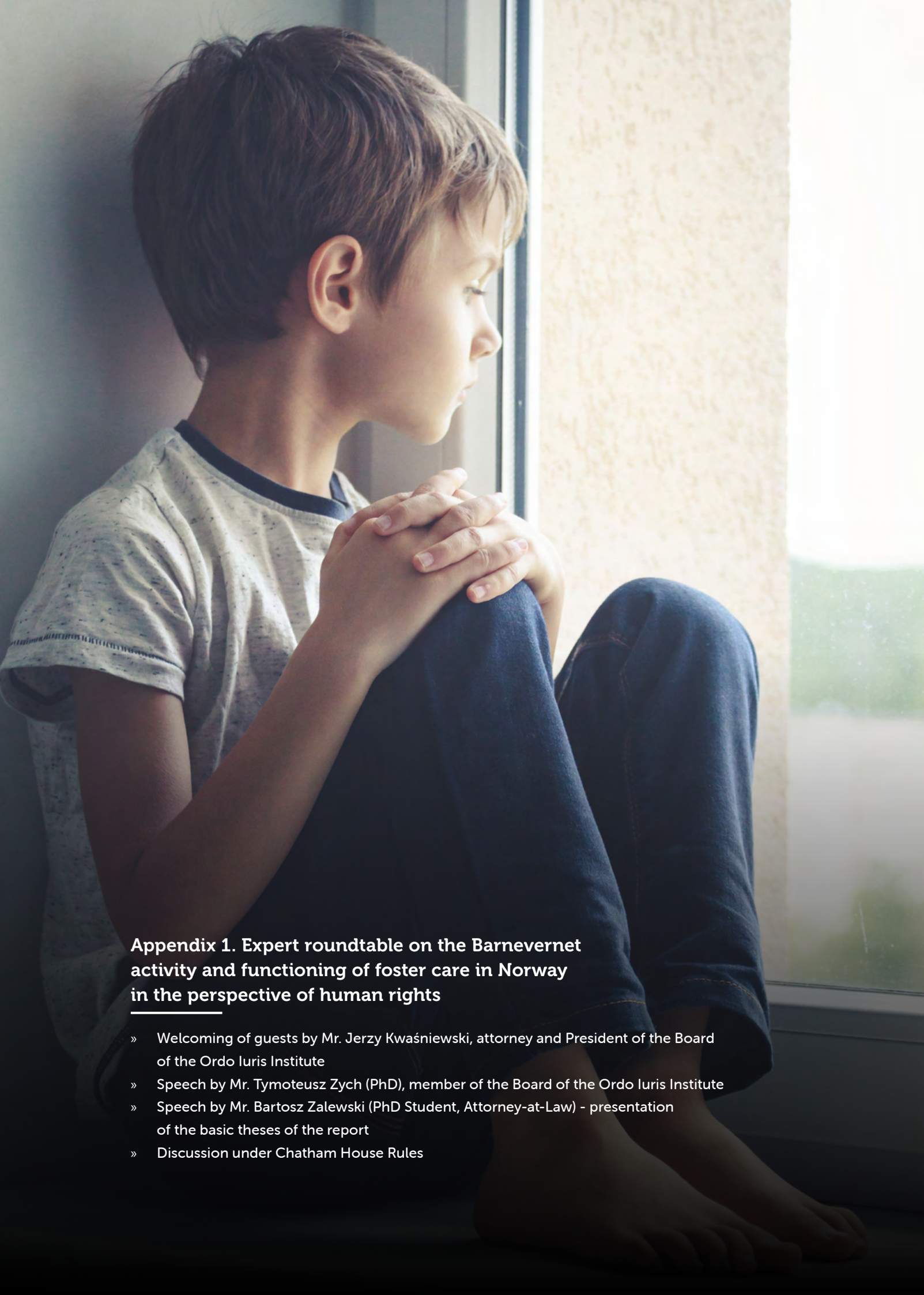
Summary

This case study, based on collected media material, perfectly illustrates the scale of the problems related to the activities of Barnevernet, as well as their diverse character. It also allows us to see certain trends in the media, which are influenced by growing criticism in various countries. The media of most European countries are aware of Barnevernet's activities. Descriptions of many problematic issues connected with the functioning of the Services can be found on various Norwegian websites. The fact that leading Norwegian newspapers write about it also encourages reflection. In particular, extensive foreign reports on the situation of broken families lead to a profound reflection on the legitimacy of its existence in such a form. In European media, one can definitely notice the reluctance of German portals to take up the subject. Despite the fact that many of the described issues have gained global publicity, causing controversy among citizens of various countries, the German media has decided not to comment on these well-known and problematic issues. It is difficult to find even a mention of abuses committed by Barnevernet in the German media. If this subject matter appears at all in Germany, it is rather in flattering opinions about the activities of the Services. Elsewhere criticism and unfavorable comments dominate in the media elsewhere, however. Dramatic stories of many families publicized by the media have made it possible to see the Norwegian Services for what it really is.

424 Description of the organization is available at https://stepup4childrensrights.com/who-we-are/ [access: 18.03.2019].

425 Description of the political program developed is available at http://www.mhskanland.net/page10/page124/page124.html [access: 18.03.2019].

In spite of critical assessments of Barnevernet by both Norwegian and foreign media, the conclusions regarding problems in Barnevernet's functioning are usually similar. This is mainly constructive criticism, which leads to a belief that all the problems related to Barnevernet's actions can be solved through administrative reorganization and more resources and people. Family tragedies, by contrast, that occur as a result of improper interventions result from the creation of a mechanism to control the Norwegian social welfare system. Activities detrimental to the well-being of the natural family appear in the media more and more often, causing greater interest in the subject, which results in an increase of the number of people opposed to the Barnevernet. Equally interesting and thought-provoking are the numerous side stories related to the functioning of the discussed institution. Many of them do not deal directly with the situations of disadvantaged families, but they definitely emphasize the diversified nature of the problems caused by Barnevernet. Comprehensive media coverage therefore allows us to form the right view, to join forces and to react together in situations where the welfare of children and their families is at real risk.



Appendix 1. Expert roundtable on the Barnevernet activity and functioning of foster care in Norway in the perspective of human rights

- Welcoming of guests by Mr. Jerzy Kwaśniewski, attorney and President of the Board of the Ordo Iuris Institute
- Speech by Mr. Tymoteusz Zych (PhD), member of the Board of the Ordo Iuris Institute
- Speech by Mr. Bartosz Zalewski (PhD Student, Attorney-at-Law) - presentation of the basic theses of the report
- Discussion under Chatham House Rules

APPENDIX 1.

Expert roundtable on the Barnevernet activity and functioning of foster care in Norway in the perspective of human rights

Oslo, 4th January 2019

The roundtable was convened in order to discuss issues of concern relating to the activity of the Barnevernet (Child Protection System) and functioning of foster care in Norway with national stakeholders and representatives of the international community in Norway, and to facilitate an exchange of views on its impact on human rights. There were representatives of parliaments from European countries, representatives of Norwegian civil society, lawyers practicing in Norway and specialists in the field of human rights and the Child Protection System. Unfortunately, representatives of the Norwegian authorities did not appear.

Welcoming of guests by Mr. Jerzy Kwaśniewski, attorney and President of the Board of the Ordo Iuris Institute

Mr. Kwaśniewski pointed out that this meeting was preceded by significant events related to the assessment of the Norwegian Child Protection System in the perspective of the protection of human rights:

- 26 January 2016: motion for a resolution (Striking a balance between the best interests of the child and the need to keep families together) is tabled by the members of PACE mentioning the Bodnariu family case and concerned about the best interests of the child being interpreted in an abusive and disproportionate manner leading to the children's removal from the family

- 31 August 2017: in Poland the Ordo Iuris Institute for Legal Culture files a motion for asylum protection on behalf of Norwegian citizen Silje Garmo

- 20 September 2017: the Ordo Iuris Institute for Legal Culture side event Child protection services - right to respect for family life, the right to a fair trial and rights of the child with the first public presentation of Silje Garmo's case takes place during the HDIM OSCE in Warsaw

- 6 June 2018: Valeriu Ghiletchi (member of the Committee on Social Affairs, Health and Sustainable Development, PACE) presents the report Striking a balance between the best interests of the child and the need to keep families together

- 28 June 2018: Resolution of the Parliamentary Assembly of the Council of Europe 2232 (2018) Striking a balance between the best interests of the child and the need to keep families together

- 6 September 2018: European Court of Human Rights judgment in the case of Jansen vs. Norway (Application no. 2822/16) concludes that there has been a violation of Article 8 of the European Convention of Human Rights

- 18 September 2018: the Ordo Iuris Institute for Legal Culture side event on Norwegian Barnevernet (Child Protection Services) in the light of Resolution 2232 (2018) of PACE with the participation of Valeriu Ghiletchi and Jan-Aage Torp takes place during the HDIM

- 12 December 2018: the Ministry of Foreign Affairs of Poland grants consent for asylum protection for Silje Garmo and her daughter, who escaped from Norway due to fear of Barnevernet

Mr. Kwasniewski then referred the agenda and the rules of the meeting. The meeting was invitation-only and was held under Chatham House Rules, i.e., reference to what was said in the discussion was allowed, but the identity of who made a specific comment could not be revealed. Media were not invited. The views and opinions expressed at the round-table do not necessarily reflect the policy or position of the Ordo Iuris Institute for Legal Culture.

After that, Mr. Kwaśniewski referred the structure of Report concerning the Norwegian Child Protection System, prepared by Ordo Iuris experts. The Report consists of five basic parts, which concern: [1] substantial premises for depriving parents of the right to care for their children, [2] foster care from the point of view of the objectives related to this institution according to ECtHR jurisprudence, [3] procedures set out in the Norwegian Barnevernet Act (Barnevernloven), [4] Barnevernet actions connected with national, ethnic, linguistic and religious minorities, and finally [5] analysis of the media coverage of Barnevernet and its image.

Next, Mr. Kwaśniewski briefly referred to the research visit of the Institute experts in Oslo.

Speech by Mr. Tymoteusz Zych (PhD), member of the Board of the Ordo Iuris Institute

In his speech, Mr. Zych pointed out that the Norwegian Child Protection System is unfortunately a model which tends to be followed in other European countries. This is despite numerous alarming signals that affect its functioning and even violations of human rights standards, such as in the Jansen case. Norway has invested a lot of effort and money in recommending the Child Protection System model to the countries of Central and Eastern Europe. Poland is a good example. A similar tendency is noticeable in the Baltic States and in the countries of the Visegrad Group. Thanks to Norwegian funds, hundreds of social workers have been trained according to the Norwegian model. Poland has gone very far in this process, which is evident not only in the number of social workers trained in Norway, but also in Polish legislation.

As Mr. Zych pointed out, there are currently no comprehensive scientific studies which deal with the problems of Barnevernet. Previous studies are available mainly in Norwegian, which makes it difficult to become familiar with their content. There are a few articles in English, but they are not an exhaustive source of knowledge. The studies known to Ordo Iuris experts are mostly favorable to the Child Protection System and are characterized by an uncritical approach. Only a small number of studies express reservations about Barnevernet's activities. As Mr. Zych pointed out, there are also media reports and a report by Valeriu Ghiletchi: Striking a balance between the best interests of the child and the need to keep families together.

The problem that must be faced by the team of experts is also the lack of unambiguous and publicly available data on the activities of the Child Protection System. The data provided by Bufdir and the Norwegian statistical office contain many inaccuracies, not always in line with the Barnevernloven regulations. This leads to a situation in which it is difficult to obtain even such basic information as the number of children who were taken away from their parents. The team of experts did, however, obtain information that shows that around 2,500-3,000 emergency orders and decisions about placing children into foster care are issued annually (which, however, does not reflect the exact number of children involved). These data correspond to the conclusions drawn from reading the Valeriu Ghiletchi report, but do not take into account the number of children formally volunteered by parents who are often influenced by Barnevernet employees.

Mr. Tymoteusz Zych's speech also concerned abuses that are visible in the interpretation of § 4-12 of the Barnevernloven. According to this provision: A care order may be issued (a) if there are serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development, (b) if the parents fail to ensure that a child who is ill, disabled or in special need of assistance receives the treatment and training required, (c) if the child is mistreated or subjected to other serious abuses at home, or (d) if it is highly probable that the child's health or development may be seriously harmed because the parents are unable to take adequate responsibility for the child. The very wording of this provision does

not raise any controversy. The problem, however, concerns its practical application and, in particular, understanding the concept of the best interests of the child.

In Polish jurisprudence, this principle is closely related to the biological bond between the child and his parents. The integrity of the family is part of the principle of the best interests of the child. It is therefore recognized that it is in the best interests of the child to remain in the natural family environment in most cases. In Norwegian practice, the best interests of the child and the autonomy of the family are treated as contradictions. As also emphasized by Mr. Zych, the majority of decisions issued by the County Social Welfare Councils depriving parents of the custody of their children are issued due to the lack of parental skills. This means that Barnevernet's activity is not aimed at eliminating violence, but rather interfering with family life.

Speech by Mr. Bartosz Zalewski (PhD Student, Attorney-at-Law) - presentation of the basic theses of the report

As Mr. Zalewski pointed out, the report prepared by experts of the Ordo Iuris Institute for Legal Culture focuses on the analysis of measures applicable under Norway law related to the Child Protection System (primarily the activities of its agency, called Barnevernet) and the study of individual cases. The assessment of the Norwegian measures was made taking into account human rights standards, which are defined in numerous acts of international law (including so-called soft law). The report also describes the media activity that applies to Barnevernet.

The report consists of five parts:

1. a description of the material premises enabling Barnevernet to deprive parents of custody over their children and the right to care for children, taking into account Norwegian court decisions and views of the legal doctrine, as well as a case study;

2. a description of issues related to placing children in foster care, particularly taking into account the latest ruling of the ECtHR in the case Jansen vs. Norway relating to the frequency of meetings of biological parents and children;

3. a description of the procedures applied in cases conducted by Barnevernet and the judicial review of such proceedings, including statistical data on the frequency of cases in which parents were deprived of the custody of their children on the basis of interim orders, appeals in such cases, etc.;

4. a description of Barnevernet's activity concerning children from ethnic, national, religious and linguistic minorities, including statistical data in this area, and analysis of the selected cases and human rights standards connected with the protection of the national, ethnic and religious and linguistic identity of children;

5. analysis of the media coverage of Barnevernet and its image in relation to how it is perceived by the public.

Mr. Zalewski drew attention to a number of specific problems that emerged during the work on the report:

- The issue of material premises for depriving parents of the right to care for a child, which are interpreted freely and which may result in unjustified interference in the family's autonomy;
- The institution of interim orders - on the basis of such orders children are removed in most cases, which is an abuse of an emergency measure;
- Limiting contact of biological parents with their children, which may result in the breakdown of family bonds and contributes to distorting the actual goals of foster care;
- Separation of siblings, which is a violation of the integrity of the family and which may result in its disintegration;
- No possibility for the Norwegian authorities to provide foster families that will be diverse enough to safeguard the rights of children from minorities, or to preserve national, ethnic, linguistic and religious identity;
- Maintaining the national, ethnic, linguistic and religious identity of minority children, which is at risk because of severely limited contact with biological parents;
- The excessive length of proceedings, which may contribute to the breaking of emotional ties between biological parents and their children and which may be used as a justification for a decision allowing a child to be adopted by a foster family without the consent of the biological parents;
- Effective filing of appeals from decisions of the County Social Welfare Councils, which is difficult due to the lack of trial transcripts;
- Despite extensive anti-discrimination legislation, there is a lack of appropriate procedures for challenging decisions to place children in foster families unable to provide them with the opportunity to maintain their ethnic, religious, cultural and linguistic identity, which is a violation of their rights.

Discussion under Chatham House Rules

During the discussion, the significance of the Bodnariu case was strongly emphasized to draw the attention of the public throughout Europe to the situation of Norwegian families. The importance of the Valeriu Ghiletchi report prepared for the Parliamentary Assembly of the Council of Europe was pointed out. According to participants of the discussion, the first problem faced by its author was finding the right balance between the need to protect children from violence and the need to maintain family bonds. He referred to the report by Olga Borzova and PACE Resolution 2049 (2015) and Recommendation 2068 (2015) Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States. Mr. Ghiletchi expressed his fears that children's rights were violated in Norway. In his opinion - shared by the participants in the discussion - it is always in the best interests of the child to be with his parents, and foster care should only be temporary. Although it was not Mr. Ghiletchi's intention to deal specifically with Norwegian matters, Norway was explicitly mentioned in the motion to prepare a report. It was pointed out that it was good that the Ordo Iuris Institute took up the subject of the Norwegian child protection system. Participants of the meeting do not see it as a fight with the Norwegian state, but emphasize the need for a critical look. It was therefore emphasized that this is not about an attack on Norway, but an expression of concern for the best interests of children because the publication of the Valeriu Ghiletchi report did not definitively end the matter.

Participants stressed that the data which the experts of the Ordo Iuris Institute collected about the subject are already extremely valuable. The presented fragments of the Report are characterized by precision and constitute a significant contribution to the analysis of the Norwegian situation. Discovering the genesis of the current state of affairs, attention was also paid to the involvement of the international community. As noted, this was in the aftermath of the Bodnariu case. Even the US Congress became aware of the matter, which was raised during a visit of Romanian officials in Washington. US Representatives and Senators paid a visit to the Norwegian ambassador, trying to find out more about the situation in Norway. When the Bodnariu case began, it was covered by the Romanian media for five months. Numerous demonstrations took place in Romania and other countries, including the United States and Canada. It focused the media's attention on topics rarely covered in the media, such as family, the right of parents to raise their children, etc. It was also the cause of political disputes that took place in international institutions. Representatives of the Norwegian authorities strongly protested and contested the necessity of actions on the basis of the Parliamentary Assembly of the Council of Europe and other organizations. As stated, all this is worth scientific analysis.

It was also underlined that legal analysis of Norwegian legislation is of great importance, including political significance. Very critical words were voiced about the Norwegian Child Protection System. An important part of the Report was the analysis of issues related to the religious freedom of children in foster care. As the participants of the meeting, from outside Norway, emphasized, they were shocked by Norway's disregard for the preservation of religious identity by children placed in foster care. This issue was raised during the visits oft Romanian parliamentarians to Norway. That was the

crux of the Bodnariu case. "Three years later, we can say that this case concerned religious persecution," stated one of the invited guests.

It was also noted that earlier media did not want to tackle the problems of the Child Protection System in Norway. The BBC document was a breakthrough in this regard. Earlier, these issues were only covered by some online media. However, as highlighted, the main problem facing the authors of the Report is the lack of interest of Norwegian parliamentarians and officials. Without them, it is impossible to change the system in any real way. The situation was similar in the Bodnariu case. Norwegian parliamentarians and officials did not want to talk openly about that matter. There was a kind of unofficial blockade. However, it is important to continue working. There are rational premises for this.

Representatives of Norwegian civil society also stressed that, although the Institute's efforts will not change the Norwegian system, it is an important source of support for them. It was pointed out that in her New Year's address the prime minister of Norway emphasized the advantages of the Child Protection System. However, she did not see the dangers and violations associated with it. Meanwhile, this system is being exported to other countries, such as Poland. Barnevernet employees train Polish social workers. It seems, however, that the authorities are feeling pressure to reform Barnevernet. It appears that something is finally happening. It was also added that, since Norway supports LGBT organizations in Poland, perhaps Poland should support pro-family organizations in Norway.

Attention was also drawn to the links between the judicial system and Barnevernet. Norway has won cases before the Grand Chamber of the European Court of Human Rights by a majority of one vote. This voice belonged to a judge from Norway, who was also a judge at the Norwegian Supreme Court, which is an egregious violation of the law due to the obvious conflict of interest.

Attention was also drawn to the "arrogance of the Norwegian public authorities" who, in the opinion of one of the participants, are convinced that the Norwegian judiciary and the Child Protection System are the best in the world. This is accompanied by propaganda that resembles that of North Korea. People who criticize Barnevernet are intimidated by the police. As someone stated: "You give us hope while our politicians are silent because of their lack of courage." As emphasized by guests from outside Norway, international pressure and the media are great for motivating politicians. It is important to change the media's approach to Barnevernet. Another of the participants added that he was not a proponent of extreme methods, but when the Czech president described Barnevernet as a Nazi organization, it had an effect.

Attention was also paid to the problem of ignoring research whose results are unfavorable for the assessment of the Norwegian Child Protection System. It also stressed the deep misunderstanding of the problem of human rights violations by Norwegian social workers and even practicing lawyers. It was indicated that not all parents know that they have the right to free legal assistance.

It was emphasized that linking Barnevernet with private businesses is a huge problem. Employees of private enterprises are slowly taking over the function of a public institution. They appear in court

and supervise the meetings of parents with children. They write reports that form the basis of decisions. The problem was considered to be that too many children are placed in care institutions run by private companies. One of the participants said, the these institutions are financed by municipalities, while foster families are financed by the government. Municipalities want to get rid of the children from assistance measures while the children are still with the parents and therefore do not have any incentive to properly check the competence of foster families.

It was noted that 3-6 meetings of parents with their children per year are the standard. It is a huge success to get one visit a month, which should be the minimum. Otherwise, the bond between parents and children stops. Children from immigrant families, for example Polish, are not allowed to speak their native language during meetings with their parents. Barnevernet does not care about preserving the national identity of a child. As indicated, religion is another important problem. Foster parents do not care to respect the traditions cultivated in immigrant families. Thus, they ignore the child's needs.

After a short summary, the meeting was closed. Mr. Kwaśniewski thanked everyone for coming and actively participating in the meeting.

Appendix 2.

Organization of the child protection system in Norway – basic definitions

BARNEVERNET - system of social welfare units dedicated to children, with various administrative and executive units on state, county and municipal level. The units with most direct contact with the general public are the local Barnevern offices, one in each municipality or part of a municipality such as the administrative districts within the cities. The municipal units of Barnevernet are regulated in the >*Barnevernloven*. Various aspects of Barnevernet's activities are subject to control by the administration and the political government on each level: central, regional and local. The committees called Fylkesnemnder (>*Fylkesnemnda for barnevern og sosiale saker*) are administrative bodies, appointed for each county or group of counties.

BARNEVERNLOVEN (abbreviation: BVL) - Norwegian Act of 17 July 1992 with later amendments and additions. It entered into force on 1 January 1993. It comprehensively regulates the legal situation and conduct with regard to children living in conditions that pose a threat to their life, health or psycho-social development. This Act also covers basic issues related to foster care, procedures for intervention in families and the structure of organisation of social services to perform the tasks provided for in its provisions. The content of the Act does not raise any major controversies, and its application in practice is much more problematic.

BUFDIR (Barne-, ungdoms- og familiedirektoratet) - the governing body of the government agency >*Bufetat*. Bufdir is based in Oslo. Bufdir reports to the Ministry for Children and Family Affairs (Barne- og familiedepartementet; previously: Ministry for Children, Equality and Social Inclusion: Barne-, ungdoms- og familiedirektoratet).

BUFETAT (Barne-, ungdoms- og familieetaten) - Norwegian government agency, subordinate to the Ministry for Children and Family Affairs (Barne- og familiedepartementet; previously: Ministry for Children, Equality and Social Inclusion: Barne-, ungdoms- og familiedirektoratet). Bufetat is organized in five regions with its headquarters in Oslo. The Agency is responsible for the functioning of

local Barnevernet units and public and private care facilities. It is also involved in adoption proceedings. The governing body of the Agency is >*Bufdir*.

FYLKESNEMNEMNDA FOR BARNEVERN OG SOSIALE SAKER – district (county) council for social welfare - are administrative bodies on a district level, appointed for each county or group of counties, to pass primary decisions on questions involving force/duress applied to individuals. They function like preliminary courts, although they do not have the formal status of courts. Their decisions regarding Barnevern cases can usually be tried in the common courts. There are currently 12 such bodies in Norway. They are composed of professional judges, experts and laymen. Cases decided by the Fylkesnemnd may be appealed to the common courts.

SENTRALENHETEN FOR FYLKESNEMNDENE - the central body responsible for the administrative operation of the Fylkesnemnder (>*Fylkesnemnda for barnevern og sosiale saker*). Reporting to Barne-, ungdoms- og familiedirektoratet (>*Bufdir)*, which is a directorate under the Ministry for Children and Family Affairs (Barne- og familiedepartementet; previously: Ministry for Children, Equality and Social Inclusion).

Appendix 3. Ordo Iuris Institute Written Observations for European Court of Human Rights of 4th November 2019

Appendix 3.

Ordo Iuris Institute Written Observations for European Court of Human Rights of 4th November 2019

European Court of Human Rights applications:

M.L. v. Norway **(no 64639/16),** ***K.F. and A.F. v. Norway*** **(no 39769/17),** ***E.M. and Others v. Norway*** **(no 53471/17),** ***E.M. and T.A. v. Norway*** **(no 56271/17),** ***O.S. v. Norway*** **(no 63295/17),** ***D.R. v. Norway*** **(no63307/17),** ***F.Z. v. Norway*** **(no64789/17),** ***S.E. and Others v. Norway*** **(no9167/18),** ***A.L. and Others v. Norway*** **(no45889/18),** ***M.A. and M.A. v. Norway*** **(no48372/18),** ***R.O. v. Norway*** **(no49452/18),** ***C.E. v. Norway*** **(no50286/18),** ***K.E. and A.K. v. Norway*** **(no57678/18),** ***M.F. v. Norway*** **(no5947/19),** ***S.S. and J.H. v. Norway*** **(no 15784/19),** ***S.A. v. Norway*** **(no 26727/19)**

WRITTEN OBSERVATIONS
by
Institute for Legal Culture Ordo Iuris
4 November 2019

Introduction

Ordo Iuris Institute is a Polish non-governmental legal association founded in 2013 with its registered office at Zielna 39, Warsaw, Poland. Bringing together academics and legal practitioners on various projects, our organisation is dedicated to protection and defence of a legal culture based on the respect for human dignity, rights and freedoms.

Observations presented herein consist of three chapters:

- Child-parents relation in light of the ECHR standards;

- Child protection system in Norway;
- Child protection system in Poland.

Ordo Iuris Institute does not comment on the facts of any case.

1. Child-parents relation in light of the ECHR standards

1.1. The essence of family life

1. The essence of family life between a parent and a child is a «mutual enjoyment of each other's company».[1] It must be noted that the mother and the father should be considered primarily as a source of *joie de vivre* of a child, and not as a potential threat for its well-being. Therefore, in opinion of *Ordo Iuris* Institute, public authorities shall always rely on the presumption that the child's best interest is best served with his or her biological family – any doubts should be resolved in favour of the parents. Only if there is a substantial and credible evidence that contradicts this presumption public authorities should endeavour to preserve child's interests outside its biological family. Even so, the state shall continue to attempt to re-establish the sound relationship between the child and its parents, by appropriate measures such as regular contact visits performed under supervision of social services worker, in some cases also unsupervised meetings, psychological assistance to both parents and their child and reports prepared by independent experts. Parents should be given opportunity to change their destructive or in other way unacceptable behaviour and to improve their care skills in order to prepare reunification with their child. In other words, in the opinion of *Ordo Iuris* Institute, Article 8 of the Convention can be interpreted as conferring a «right to the second chance». Consequently, the state should constantly monitor the situation of the family and include in decision-making process appropriate accommodations – e.g. by setting dates of contact sessions between children and their parents the state should take into consideration working hours of parents.

2. This view has been recently confirmed in the Court's Grand Chamber judgment in the case *Strand Lobben v. Norway*[2] and in the Court's Chamber judgment in the case *K.O. and V.M. v. Norway*[3]. In the first case, the Court found that failure to attempt to re-establish relationship between parents and their child and lack of fair decision-making process concerning deprivation of their parental responsibilities constituted violation of Article 8 of the Convention. The Court took

1 Judgment of 22 June 1989, *Eriksson p. Szwecji*, §58.
2 Judgment of 10 September 2019, *Strand Lobben and Others v. Norway* (Grand Chamber).
3 Judgment of 19 November 2019, *K.O. and V.M. v. Norway.*

particular account of the limited evidence that could be drawn from the contact sessions that had been in conjunction with the failure – notwithstanding the fact that mother stabilised her family situation by getting married and having a new child with her husband – to order an updated expert examination of her capacity to provide proper care and the central importance of this factor in the authorities' assessment and also of the lack of detailed reasoning of decision concerning mother's rights.[4]

3. In the second case, the Court again ruled that Norway violated Article 8 of the Convention, because instead of carrying out serious contemplation of the possibility of reunification of the family, public authorities implicitly resigned from regarding reunification as the ultimate goal at a very early stage, without demonstrating why the ultimate aim of reunification was no longer compatible with the child's best interests. The Court condemned false concept of parents-child contact, which is aimed only at upholding child's cognitive and intellectual understanding of who its parents are – authorities are obliged to facilitate contact to the extent possible without exposing a child to undue hardship, in order to guard, strengthen and develop family ties, thus enhancing the prospect of being able to reunify the family in the future. Family reunification cannot normally be expected to be sufficiently supported if there are months long intervals between each contact session (in the above mentioned case – the contact was limited to 4-6 sessions a year).[5]

1.2. The best interests of a child

4. There is no doubt that as far as the family life of a child is concerned its best interests are of paramount importance. The best interest of the child consists of two elements. The first one provides that the child's ties with his or her family must be maintained, except situations where the family has proven to be «particularly unfit», since severing those ties means cutting the child off from its roots. Family ties may only be severed in «very exceptional circumstances» and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family.[6] As Council of Europe's Committee of Experts on Family Law has pointed out, such exceptional circumstances *may include criminal offences committed by the parent against the child, for instance sexual or physical abuses, but could also include other circumstances, e.g. mental illness of the parent, where the physical and moral welfare of the child is in danger.*[7] In other words, maintenance of ties with biological family constitutes a significant factor, which should be taken into account, when assessing child's best interest in a particular case. Not only the existing emotional bond, but also the consanguinity between the child and its parents shall be taken into consideration by the state before making decision that permanently severs family relation. Moreover, even after the decision limiting parental responsibilities a positive duty lies on

4 *Strand Lobben,* §221-226.
5 *K.O. and V.M,* §68.
6 Judgments of: 19 September 2000, *Gnahoré v. France*, §59; 22 June 2004, Pini i Bertani and Manera and Atripaldi v. Romania, §47.
7 Council of Europe's Committee of Experts on Family Law, *Report on principles concerning the establishment and legal consequences of parentage – ''The White Paper''*, 15-17 November 2006, §70.

the national authorities to take measures to facilitate family reunification as soon as reasonably feasible.[8] The second element of a child's best interest encompasses ensuring of child's development in a «sound environment», which in particular means that it should be protected from parental behaviours threatening child's mental and physical health.[9]

1.3. Procedural requirements in family life cases

5. Plentiful ECtHR jurisprudence in family relations allows to draw a few fundamental procedural rules that should be respected in proceedings regarding parental responsibilities.

6. Firstly, any (temporary) placement of a child in alternative cares should be used as *ultima ratio* measure.[10] By imposing such radical measures the Court does not confine itself to ascertain whether a respondent state exercised its discretion reasonably, carefully and in good faith, but also determines whether the reasons adduced to justify the interferences at issue were supported with sufficient and relevant reasons.[11] The fact that a child could be placed in a more beneficial environment for his or her upbringing will not individually justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances proving the "necessity" for such an interference with the parents' right under Article 8 of the Convention to enjoy a family life with their child.[12]

7. Secondly, care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child.[13] Procedural delay in cases regarding deprivation of parental responsibilities may – because of particular quality of irreversibility – violate Article 8 in regard to parents of a child.[14]

8. Thirdly, children should be given the opportunity to express their opinions - children who did not have a chance to be heard may not be considered sufficiently involved in the decision-making process concerning them.[15]

9. Fourthly, the State should offer parents real possibilities for implementing contact between child and a parent during proceedings. Sparse contact, taking place a few times a year, does not

8 *Strand Lobben*, §205; K.O. and V.M., §60. See also judgments of: 25 February 1992, *Margareta and Roger Andersson v. Sweden*, §91; 23 September 1994, *Hokkanen v. Finland*, §55; 25 January 2000, *Ignaccolo-Zenide v. Romania*, §94.

9 Judgments of: 13 July 2000, Elsholz v. Germany¸ §50; 4 April 2006, *Maršálek v. the Czech Republic*, §71; 6 July 2010, *Neulinger and Shuruk v. Switzerland* (Grand Chamber), §136-138;

10 *K. and T.*, §168.

11 Judgment of 13 July 2000, *Scozzari and Giunta v. Italy* (Grand Chamber), §148.

12 Judgment of 14 January 2003, *K. and A. v. Finland*, §92.

13 Judgments of: Olsson v. Sweden (no. 1), 24 March 1988, §81; 12 July 2001, *K. and T. v. Finland* (Grand Chamber), §178; 30 May 2006, *R. v. Finland*, §89; 24 October 2017, *Achim v. Romania*, §113; 6 September 2018, *Jansen v. Norway,* §101; 26 April 2018, *Mohamed Hasan v. Norway*, §146; 30 October 2018, *S.S. v. Slovenia*, §85.

14 Judgment of 8 July 1987, *H. v. United Kingdom*, §89.

15 Judgment of 3 September 2015, M. i M. v. Croatia, §181.

enable parents and a child to reunify, nor it allows to draw clear conclusions with respect to caring skills of a parent and thus may not be considered as sufficient evidence.[16]

10. Fifthly, decisions concerning limitation or restoration of parental responsibilities shall be based on current evidence, especially the expert report evaluating the relation between the parent and the child. The lack of an updated expert examination substantially limits the factual assessment of the parent's new situation and his or her caring skills at the material time[17]

11. Sixthly, decisions should be based on detailed reasoning, which duly explains reasons which stand against reunification of a biological family. For example, if a state pays particular regard to special care needs of a child, seen in light of his or her psychological vulnerability it should thoroughly analyse the nature of this vulnerability –description of a brief character may not be sufficient.[18]

12. Seventhly, proceedings should be based on equality of arms, which implies that each party must be afforded a reasonable opportunity to present their case – including their evidence – under the conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his opponent.[19]

13. Eighthly, authorities shall disclose relevant documents to parents during the procedures in placing and maintaining a child in care.[20]

14. The problem was also addressed by other bodies of Council of Europe. The Parliamentary Assembly has expressed its concerns related to violation of children's rights in some countries, where social services take some children into care too rashly and do not make enough effort to support families before and/or after removal and placement decisions are issued: *These unwarranted decisions usually have a – sometimes unintended – discriminatory character, and can constitute serious violations of the rights of the child and his or her parents*.[21] Hence the Assembly recommended that Member States *ensure that any (temporary) placement of a child in alternative care, where it has become necessary as a measure of last resort, be accompanied by measures aimed at the child's subsequent reintegration into the family, including the facilitation of appropriate contact between the child and his or her family, and be subject to periodic review.*[22] Member States are also recommended to *avoid, except in exceptional circumstances provided for in law and subject to effective (timely and comprehensive) judicial review, severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent*.[23]

16 *Strand Lobben*, §221; K.O. and V.M., §68.
17 *Strand Lobben*, §223.
18 *Strand Lobben*, §224.
19 Judgment of 21 February 2012, *Karrer v. Romania* (Grand Chamber), §50. See also judgments of: 8 July 1987, *W. v. United Kingdom*, §62–65; 17 December 2002, Venema v. Netherlands, §91–93; 3 June 2014, López Guió v. Slovakia, §94-113.
20 Judgment of 10 May 2001, *T.P. and K.M. v. the United Kingdom* (Grand Chamber), § 73.
21 PACE resolution no. 2049 (2015) of 22 April 2015: *Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States*, §6.
22 *Ibidem*, §8.6.
23 *Ibidem*, §8.7.

2. Child protection system in Norway

15. The Norwegian Child Protection System is based on the Child Welfare Act (*Lov om barneverntjenester – barnevernloven*; hereinafter also as: BVL).[24] In 1996, the European Court of Human Rights ruled that Adele Johansen's right to the protection of family life had been violated.[25] The Norwegian Child Welfare Services – Barnevernet[26] – took a child away from A. Johansen and then denied her the right to have contact with her daughter, and finally successfully applied for parental disqualification, which the ECtHR found to be a violation of Article 8 of the ECHR.[27] It seems that in the following years the situation only deteriorated, as evidenced by the report of the Council of Europe's Committee on Social Affairs, Health and Sustainable Development, critical of the Norwegian authorities[28], as well as the judgments of the ECtHR in the cases: *Jansen v. Norway and Strand Lobben and Others v. Norway*.[29]

16. The main problem concerning the functioning of the child protection system in Norway concerns the abuse of legal instruments which should only be used in emergency situations, in particular emergency (interim) orders (midlertidige vedtak).[30] In this case, the structure of the decisions issued by Barnevernet and county councils of social welfare (*Fylkesnemnda for barnevern og sosiale saker*)[31] seems to be systematically flawed.

24 LOV-1992-07-17-100.

25 Judgment of the ECtHR of 7 August 1996, *Johansen v Norway*.

26 System of social welfare units dedicated to children, with various administrative and executive units on state, county and municipal levels. The units with have the most direct contact with the general public are the local Barnevern offices, one in each municipality or part of a municipality such as the administrative districts within the cities. The municipal units of Barnevernet are regulated in Barnevernloven. Various aspects of Barnevernet's activities are subject to control by the administration and the political government on each level: central, regional and local. The committees called Fylkesnemnder (*Fylkesnemnda for barnevern og sosiale saker*) are administrative bodies, appointed for each county or group of counties

27 Judgment of the ECtHR of 7 August 1996, *Johansen v. Norway*, §84.

28 On 6 June 2018, V. Ghilethi presented a report entitled *Striking a balance between the best interests of the child and the need to keep families together*, which became the basis for adoption, on 28 June 2018, of Resolution 2232 (2018) of the Parliamentary Assembly of the Council of Europe under the same title: *Striking a balance between the best interest of the child and the need to keep families together* – available at: http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?-FileID=25014&lang=EN (access: 21 September 2019).

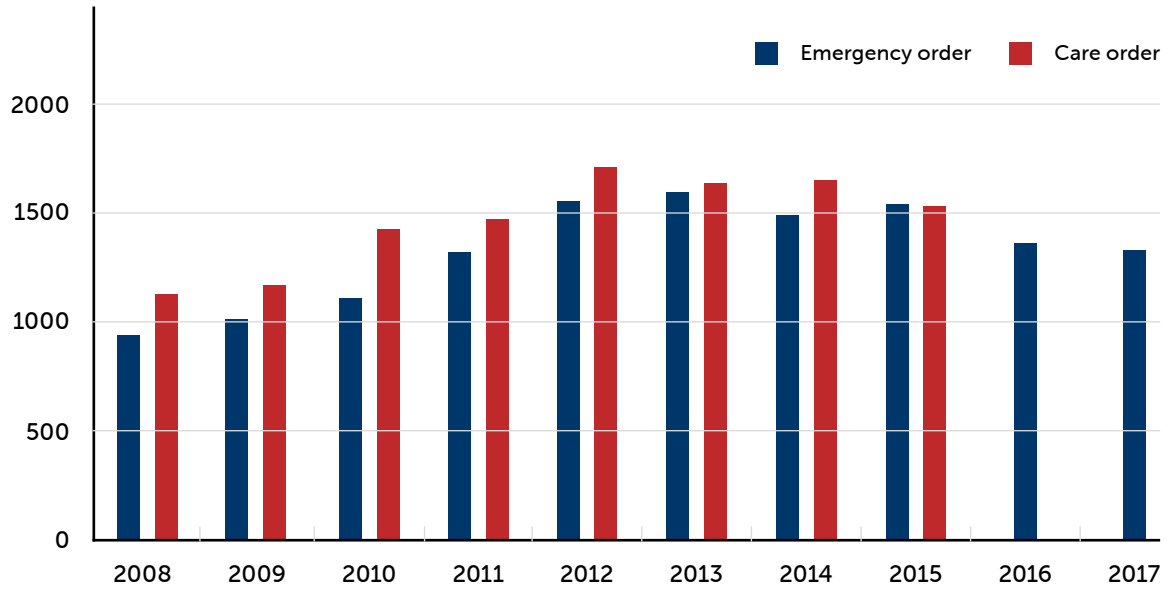
29 Judgment of the ECtHRof 6 September 2018, *Jansen v. Norway*,; Judgment of the ECtHR (Grand Chamber) of 10 September 2019, *Strand Lobben and Others v. Norway*,.

30 Emergency (interim) orders – based on § 4-6 of BVL. Depending on the situation, the child may be placed under custody of third parties or public institutions under this procedure upon their parents' consent or irrespective of their will. Parents' consent is necessary in the case when a parent is unable to care for the child due to illness or other reasons. In such a case, the temporary measure cannot be also applied if the child over the age of 15 raises an objection. Such a solution may be assessed positively – it may constitute necessary support for single parents without any other family members (such as some immigrants). Depriving parents of custody over their child against their will in the situation of risk of material damage which should be understood in the light of the Norwegian case-law as both personal injury to the child and harm to their emotional and social development is definitely more concerning from the point of view of fulfilling international legal standards. Although a temporary order should be issued in an emergency, even the Norwegian literature on the subject provides for the possibility to take the child away only after some time if the risk of personal injury to the child persists. The interim order referred to in § 4-6(2) of BVL may be also applied in situations which were only outlined in § 4-24 of BVL. It concerns the case when the child has committed a serious crime or several crimes, taken psychoactive substances or committed other similar offences. Pursuant to § 4-25(2)(2) of BVL, in such situations the manager of the Barnevernet commune branch or the prosecutor may issue a interim order. A interim order, contrary to decisions issued in administrative cases, does not have to be preceded by a prior notification on the intention to issue it submitted to the party.

31 County councils for social welfare (*Fylkesnemnda for barnevern og sosiale saker*) are administrative bodies on a district level, appointed for each county or group of counties, to pass primary decisions on questions involving force/duress applied to individuals. They function like preliminary courts, although they do not have the formal status of courts. Their decisions regarding Barnevern cases may usually be appealed against at the common courts. There are currently 12 such bodies in Norway. They

17. The issue is illustrated in Chart 1, which is based on data provided by Bufdir[32], and shows that the number of emergency orders between 2008 and 2014 was almost equal to the number of care orders issued by county councils. Already at this stage, the system's decision-making flaws can be seen in the abuse of emergency measures, which, in most cases, must precede the adoption of a proper decision depriving parents of custody of the child. In 2015, more emergency orders than care orders were used, which suggests that the system is highly dysfunctional and oppressive. It should be added that since 2016, the data on the number of care orders has no longer been collected.

Chart 1. Number of new children with a care order (§ 4-12 or § 4-8 BVL) and with emergency (interim) order (§ 4-6 BVL – only in emergency situations)[33]*



18. During the proceedings, the burden of proving the true nature of circumstances justifying the decision to deprive parents of custody over their child is lies on Barnevernet authorities. At the same time, these circumstances do not have to be proved, it is sufficient to determine the higher likelihood of abuse than its lack (see section 4-8(2) and 4-12(d) of BVL)[34], which seems to be

are composed of professional judges, experts and (layman to laik. Jeśli chodzi o ławnika, to LAY-JUDGE). Cases decided by a Fylkesnemnd may be appealed against at the common courts.

32 *Bufdir (Barne-, ungdoms- og familiedirektoratet)* - the governing body of the government agency *Bufetat*. *Bufdir* is based in Oslo. Bufdir reports to the Ministry for Children and Family Affairs (*Barne- og familiedepartementet*; previously: Ministry for Children, Equality and Social Inclusion: *Barne-, ungdoms- og familiedirektoratet). Bufetat* is Norwegian government agency, subordinate to the Ministry for Children and Family Affairs. *Bufetat* is organised in five regions with headquarters in Oslo. The Agency is responsible for the functioning of local Barnevernet units and public and private care facilities. It is also involved in adoption proceedings.

* Source: information get by Ordo Iuris from Bufdir pursuant to the Norwegian Act regulating the provision of public information - *Lov om rett til innsyn i dokument i offentleg verksemd (offentleglova)*, LOV-1970-06-19-69 (with no information about number of care orders in years 2016-2017).

33 See also judgment of the Norway's Supreme Court of 19 December 2006, HR-2006-2123-A - Rt-2006-1672, case no. 2006/953, §9.

completely disproportionate to the importance of the decisions made, including in particular the decision on depriving parents of custody over their child.

19. Parents may be deprived of custody over them under section 4-12 of BVL. Pursuant to this provision, such a decision is taken upon the request of the Barnevernet commune branch by the county social welfare board if it is found that one of the following conditions is met:

    a. if there are serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development;

    b. if the parents fail to ensure that a child who is ill, disabled or in special need of assistance receives the treatment and training required;

    c. if the child is mistreated or subjected to other serious abuses at home;

    d. if it is highly probable that the child's health or development may be seriously harmed due to the parents' inability to take adequate responsibility for the child.

In the Norwegian case-law it is also stressed that even if the conditions determined in Article 4-12 of BVL are met, it is insufficient to issue a decision on depriving parents of custody over their child. It is indicated that such a decision must be taken for the best interest of the child (Article 4-1 of BVL – positive conditions), and at the same time it is impossible to create appropriate conditions for their development by the application of aid measures determined in Article 4-4 of BVL or measures referred to in Articles 4-10 and 4-11 of BVL.[35]

20. What is significant, pursuant to section 7-6 of BVL, the participation ofa judge in the case at earlier stages, despite the individual identity of the parties, does not in itself constitute grounds for their. This solution may raise concerns related to international legal standards as, pursuant to section 6(1) of the European Convention on Human Rights, the court hearing a case should be characterised by impartiality, which may be violated in the event of participation of the same judge in the same case at different instances.[36]

21. It should also be noted that private entities being parties to the proceedings are provided with free legal assistance *ex officio* (section 7-8 of BVL). However, it is financed from the budget of Barnevernet, which may take decisions on establishing and maintaining the cooperation with law firms, which raises serious doubts concerning the reliability and diligence by the legal counsel appointed *ex officio* towards interests of the party represented. It must be mentioned that the remuneration of the counsel representing parents may be lowered by the judge at the stage of

34 Judgment of the Norway's Supreme Court of 19 December 2006, HR-2006-2123-A - Rt-2006-1672, case no. 2006/953, §39.
35 See judgement of the ECtHRin the case of *Korzeniak v. Poland* of 10 January 2017.

the judicial review of the decision issued by the county social assistance board, whereas as far as the counsels representing Barnevernet are concerned there is no such possibility.[37]

22. An equally problematic question is the issue of dysfunctionality of foster care, especially in the context of the Norwegian child protection system adoption of a very specific understanding of the child's best interest principle. Since 2012, it has been assumed that in order to determine the best interest of a child, the biological bond existing between the child and its natural relatives is indifferent, while the objectified criterion, defined as "the principle of the developmentally most beneficial relationship" (*Utviklingsfremmende tilknytning*)[38] is of fundamental importance.

23. The adoption of such a criterion for determining child's best interest translates into the number of contacts between the child and biological families determined in care orders. This is particularly important in the case of immigrant or minority families (ethnic, linguistic, religious).[39] In the light of Norwegian Supreme Court jurisprudence, it is permissible to limit contacts with a child to 2-6 meetings per year, each lasting no more than a few hours.[40] An example of that could be the case of a family from Myanmar, where four of five children were taken away from their parents immediately on 24 May 2013, and less than a month later, on 17 June 2013, Barnevernet applied to the County Social Welfare Boards for custody and care. Five months later, on 12 November 2013, County Social Welfare Boards issued a decision on assumption of custody by Barnevernet and placement of children in foster families as soon as they are appointed. In addition, the council decision states that parents and children are entitled to six meetings per year, each of three hours, and these meetings should be supervised.[41] In another case, County Social Welfare Boards, in its decision of 14 October 2008, set nine meetings per year of two hours each for the mother and 12 meetings per year of two hours each for the father with a year-and-a-half old daughter.[42] Another example is the council's decision of 15 July 2010, according to which the mother could meet her three-year-old daughter four times a year for two hours and the father for two hours.[43] In the next case, under the board decision of 22 December 2010, parents could see their daughters (then three months and three years old) four times a year for four hours, only under supervision.[44] On the basis of another decision of 30 January 2014 in the same subject, the council decided that the mother could see her daughters - then a four-year-old, twice a year for two hours, and a six-year-old four times a year for two hours.[45]

36 V. Ghilethi, *Striking a balance between the best interests of the child and the need to keep families together*, Doc. 14568 Report, p. 8 footnote 14.

37 Report Norges offentlige utredninger NOU (2012:5), published 17 January 2012, *Bedre beskyttelse av barns utvikling— Ekspertutvalgets utredning om det biologiske prinsipp i barnevernet*, Oslo 2012, pp. 111-112. https://www.regjeringen.no/no/dokumenter/nou-2012-5/id671400/sec1; hereafter: NOU (2012:5).

38 See for example: judgment of the Norwegian Supreme Court of 30 January 2015, HR-2015-00209-A, ase no. 2014/1631.

39 See for example: judgments of the Norway's Supreme Court of: 7 February 2019, HR-2019-239-U, 19-017484; 16 May 2018, HR-2018-922-U, case no. 18-064997; 23 October 2017, HR-2017-2015-A, case no. 2017/614; 2 July 2014, HR-2014-01392-U, case no. 2014/1185.

40 See judgment of the Norwegian Supreme Court of 3 November 2014, HR-2014-02129-U, (case no. 2014/1881).

41 See judgment of the Norwegian Supreme Court of 17 March 2011, HR-2011-570-A (Rt-2011-377).

42 See judgment of the Norwegian Supreme Court of 6 December 2012, HR-2012-2309-A (Rt-2012-1832).

43 See judgment of the Norwegian Supreme Court of 2 July 2014, HR-2014-01392-U, (2014/1185).

44 *Ibidem*.

24. Limiting contact with biological parents may have obvious consequences in the form of violation of the child's right "in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language" (Article 30 of the Convention on the Rights of the Child). It is also assumed that the purpose of these contacts is not to maintain the emotional bond with biological parents, but to preserve knowledge about the origin of the child.[46]

25. The issue of maintaining emotional bonds between siblings is equally problematic. The problem of separation of siblings placed in different foster families was highlighted, among others, in the report of the Council of Europe's Committee on Social Affairs, Health and Sustainable Development.[47] Also Resolution of PACE 2232 (2018) states that where the decision to remove a child from their family has been made, Member States should ensure that "sibling bonds are taken into account when placing children in alternative care" (§5.6.9 *in fine*).

26. From the procedural point of view, placing the child in a specific foster family is not perceived as a separate challengeable decision against which individuals can appeal.[48] According to S. Hofman, the child's will is seldom taken into account and they are not asked about their opinion concerning their cultural preferences, religious practices and native language.[49] It is assumed that the child should adjust to the lifestyle of foster parents.[50]

3. Child protection system in Poland

27. The system of Polish family law makes it possible to take actions aimed at separating children (minors) from their biological parents. Entities authorized to act in this regard are the competent officials and common courts. The basis for common courts are the substantive law provisions, i.e. the Family and Guardianship Code (KRiO)[51], while for officials, it is Article 12a of the Act on the prevention of domestic violence[52]. The decision to collect minors from the family environment by officials under the Act is subject to judicial review.

28. The best interests of the child constitutes the basic ground for interference with parental responsibilities by representatives of public authorities . The concept of the best interests has no statutory definition. Common courts in each case should interpret it in the context of a particular

45 A. Picot, *Out-of-Home Placements and Notions of Family in Norway and in France*, "Sosiologi i Dag", no. 3- 4 (2012), pp. 13-35.

46 V. Ghilethi, *Striking a balance between the best interests of the child and the need to keep families together* – Report, §31, p. 10.

47 S.Hofman, *Hensyn til kultur - til barnets beste? En analyse av 17 barnevernssaker om omsorgsovertakelse og plassering av minoritetsbarn*, Oslo 2010, p. 201.

48 *Ibidem*, p. 202.

49 *Ibidem*.

50 Act of 25 February 1964 - the Family and Guardianship Code (Journal of Laws 2019, item 2086), Polish version available at: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19640090059 (21.11.2019).

51 Act of 29 July 2005 on the prevention of domestic violence (Journal of Laws 2015 item 1390), Polish version available at: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20051801493 (21.11.2019).

proceeding. The Polish Supreme Court stated: *Filling its meaning should be made in specific factual circumstances, especially if it indicates the existence of a situation in which the child found himself, requiring interference from other entities, including the court. Specification of the right to protect life and health and all actions on the part of others that should ensure conditions for calmness, proper and undisturbed development, respect for dignity and participation in the process of deciding his situation, and indicate that it is an inexhaustible collection.*[53]

29. As far as the substance of the matter of legal sources enabling separation of minor from parents, Article 109 KRiO should be indicated in the first place:

§ 1. If the best interests of the child are at risk, the guardianship court will issue appropriate orders.

§ 2. The guardianship court may in particular:

1. *oblige the parents and the minor to take specific actions, in particular to work with the family assistant, implement other forms of work with the family, refer the minor to the day support centre or direct parents to the specialistic institution or a specialist dealing with family therapy, counselling or providing other appropriate help to the family and indicate how to control the implementation of issued orders;*

2. *specify what activities may not be carried out by parents without permission of the court or subject parents to other restrictions;*

3. *subject parental authority to permanent supervision by a custodian;*

4. *refer the minor to an organisation or institution established for vocational training or to another institution which exercises partial custody of children;*

5. *order the placement of a minor in a foster family, family orphanage or institutional foster care or temporarily entrust the function of a foster family to spouses or a person who does not meet the conditions regarding foster families or order the placement of a minor in a care and treatment institution, in a care institution or in a therapeutic rehabilitation institution.*

§ 3. The guardianship court may also entrust the management of the assets of a minor to a guardian appointed for this purpose.

§ 4. In the case referred to in § 2 (5), as well as in the event of other measures specified in the provisions on family support and foster care, the guardianship court notifies the competent

52 Decision of the Supreme Court of 24 November 2016, Ref. No. II Ca 1/16, Polish version available at: http://sn.pl/sites/orzecznictwo/Orzeczenia3/II%20CA%201-16.pdf (21.11.2019).

organisational unit of support for the family and foster care system that the decision has been issued. This entity shall provide the minor's family with adequate assistance and submit to the guardianship court, within the time limits specified by that court, reports on the family situation and assistance provided, including work with the family, and also cooperates with thecustodian.

30. In practice, the court's knowledge about threat to the child's best interests may derive from various sources of information such as an anonymous report, tip from school teacher about child's disturbing behaviour, certificate from a doctor suspecting physical violence etc. Depending on the degree of probability of accusation against the manner of exercising parental responsibility, the court may take two types of action. Firstly, it may register the signature under the reference number "Nmo", which aims to verify the family situation by, for example, interviewing the custodian, or taking testimony from the minor, provided that his or her age and maturity allow it. Secondly, if the court, while assessing the application for insight into the family situation, comes to the conclusion that it must take immediate action, the case is registered under the reference number "Nsm". In accordance with Article 570 of the Code of Civil Procedure (KPC) the court initiates proceedings ex officio. At the same time, pursuant to Article 109 KRiO the court may issue an order regarding a minor specified in particular in points 1-5 § 2 of the said provision. These activities are intended to safeguard the child's best interests as quickly as possible.

31. Pursuant to art. 109 § 1 of the KRiO, "by imposing preventive measures the court orders to interfere with the sphere of parental responsibility in the event of a threat to the best interests of the child in order to prevent the negative effects of improper or inefficient exercise of it."[54]

32. After regulating the legal situation of the minor, the court conducts evidentiary proceedings to determine whether the minor's well-being is at risk, and if so, how to secure his or her well-being and help the family. During the proceedings, the court may change its decision regarding the minor, depending on how the circumstances change. In practice, there are court decisions on separation of a child from parents, solely on the basis of information contained in the so-called 'Request for insight into the family situation'. After submitting a complaint against the decision and providing evidence that contradicts the theses constituting the basis for issuing the separation decision, the courts change the decision and establish the return of minors to the family environment. Notwithstanding the foregoing, at the time of initiating proceedings for insight into the family situation (pursuant to Article 109 of the KRiO in connection with Article 570 of KPC), the district court is conducting evidence proceedings to determine whether the child's best interests are at risk, and if so, which of the legal instruments provided for by family law will be the most adequate to protect the child.

33. Article 109 of the KRiO lists examples of court actions that may be taken against a minor to safeguard his well-being. The interpretation of the provision obliges the court to apply gradation and proportionality of measures towards the family. Removal of a child from the family

53 Decision of the Supreme Court of 13 September 2000, Ref. No. II CKN 1141/00.

environment should be applied definitively only if other measures provided for by law are not adequate to the child's situation. Deficiencies which justify separation of minors from parents are for example: abuse of alcohol by the parents[55], threat of using violence against minors[56], threat of homelessness[57].

34. If, after conducting evidentiary proceedings, a court comes to the conclusion that the only means that fully safeguards the child's interest is its separation from the parents, then it may decide to separate child from its biological family (Article 109 §2(5) KRiO).

35. To sum up this part of the considerations: courts are entitled to apply Article 109 of the KRiO, both by issuing temporary decisions for the duration of the proceedings for insight into the family situation, as well as by issuing a substantive orders determining the case. Each of the court's decisions, whether as part of temporary or definitive protection, is subject to review by higher judicial authority.

36. The second legal basis enabling the removal of children from the custody legal guardians is Article 12a of the Act on the prevention of domestic violence.

37. This regulation transfers the court's right to interfere in family autonomy to persons who do not exercise judicial powers (social workers, physicians, nurses, paramedics), but are endowed in power to decide on temporary separation of a child from its parents in emergency situations. In accordance with this provision, a social worker after consulting a police officer and a representative of the medical profession may decide to remove the child from its biological family and place it in foster care.

38. A social worker acts without a need to have prior court's authorisation. As it results from the cited regulation, a social worker may decide to take a child only in "in the event of a direct threat to the child's life or health due to domestic violence". The broad and imprecise definition of the concept of «violence» makes possible in practice to refer to the subjective image of a social worker about what violence is. This, in turn, may cause abuse by the social worker who, subjectively believing that there is a problem of violence in a given family, makes decisions about taking the child away, although there is no objective threat to the health and life of the child. Ordo Iuris Institute has encountered situations, in which parent where deprived of care of their child, because social worker recognised normal forms of upbringing a child such as cautioning, criticising or ordering to stay in home (making child «to be grounded») as "violence". In all such cases, where Ordo Iuris represented the parents, social worker decision were quashed by the court.

54 Decision of District Court for Piaseczno, Ref. No. III Nsm 832/17; decision of District Court for Warsaw Praga-Południe, Ref. No. V Nsm 2037/19.

55 Decision of District Court for Warsaw Praga-Połufnie, Ref. No. V Nsm 1312/16; decision of District Court for Piaseczno, Ref. No. III Nsm 524/17; decision of District Court for Warsaw-Mokotów, Ref. No. V Nsm 1701/19; decision of District Court for Warsaw-Mokotów, Ref. No VI Nsm 182/18.

56 Decision of District Court for Warsaw-Mokotów, Ref. No. V Nsm 1701/19.

39. In accordance with the data published by the Ministry of Family, Labour and Social Policy for year 2011 to 2017 on the basis of Art. 12a of the Act on the prevention of domestic violence, a total of 6,399 children were removed from their parents.[58]

40. Judicial review of the social worker's decision is possible due to the obligation imposed on social worker to immediately notify, within 24 hours, the court competent for the current place of stay of the minor about the removal of the child from the family and placing him or her at the immediate non-resident person, in a foster family or in a 24-hour family educational and care facility. It should be noted that taking a child away from parents is considered in Polish jurisprudence as an ultima ratio of legal response. The justification for such a decision should only be the exercise of parental responsibility by guardians in a way that directly threatens the health and life of the minor e.g. physical violence, negligence in childcare, excessive drinking or substance abuse. However, as aforementioned examples show, social workers not always respect rules of interference with family life established in the case-law.

Conclusions

41. Public authorities shall always rely on the presumption that the child's best interest is best served with his or her biological family – any doubts should be resolved in favour of the parents. Only if there is substantial and credible evidence that contradicts this presumption, public authorities should endeavour to preserve the child's interests outside its biological family.

42. Article 8 of the Convention may be interpreted as conferring a «right to the second chance». Parents should be given opportunity to change their destructive or in other way unacceptable behaviour and to improve their care skills in order to prepare to reunification with their child.

43. Child's ties with his or her biological family must be maintained, except situations where the family has proved «particularly unfit», since severing those ties means cutting a child off from its roots. Family ties may only be severed in «very exceptional circumstances» such as criminal offences committed by the parent against the child (e.g. sexual or physical abuses), substance/alcohol abuse or mental illness of the parent, where the physical and moral welfare of the child is in danger.

44. Any (temporary) placement of a child in alternative cares should be used as ultima ratio measure. The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents.

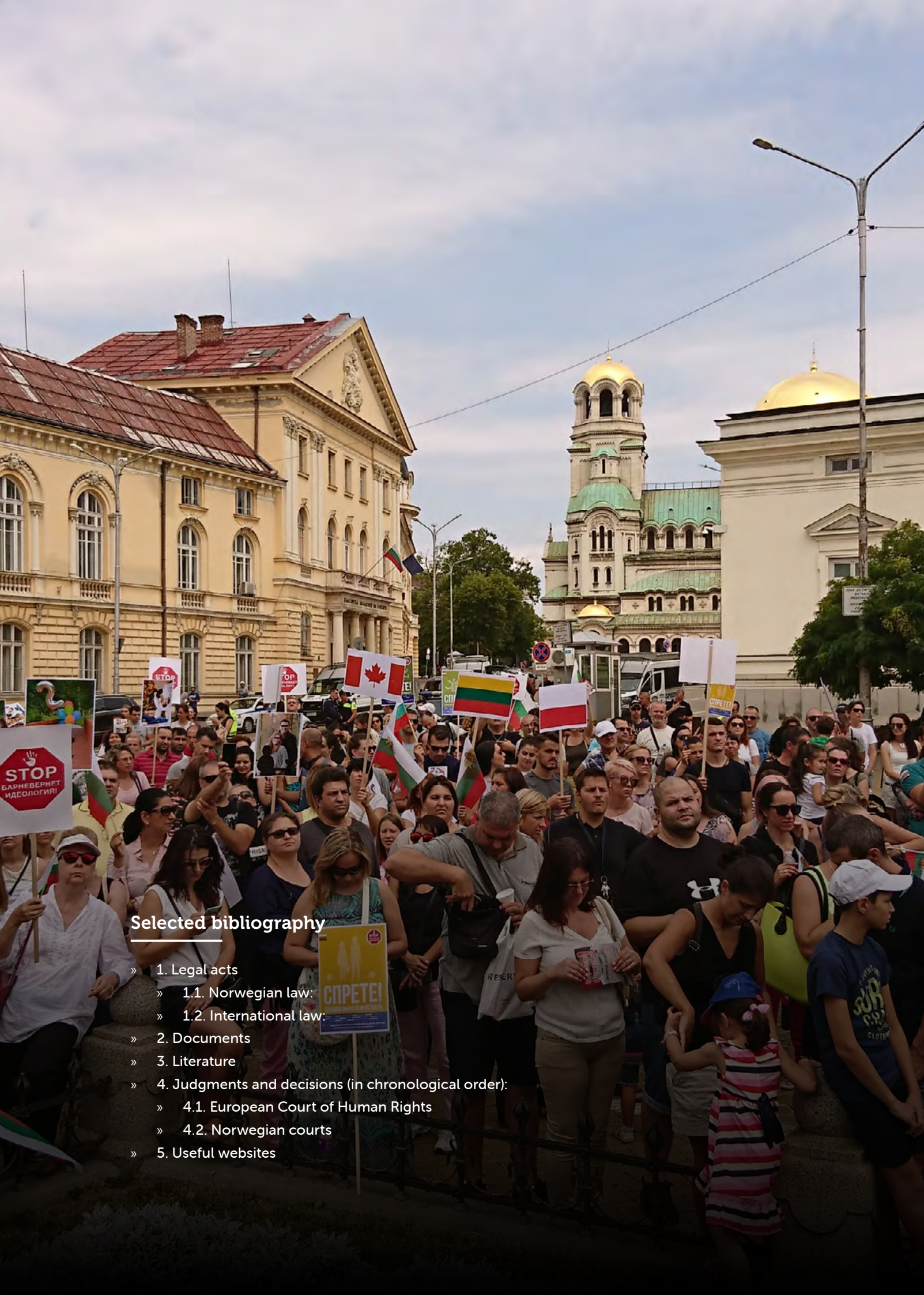
57 Report on the implementation of the National Program for the Prevention of Domestic Violence for 2014-2020, August 2018.

45. The main problem concerning the functioning of the child protection system in Norway concerns the abuse of legal instruments which should only be used in emergency situations, in particular emergency (interim) orders. Data provided by Bufdir shows that the number of emergency orders between 2008 and 2014 was almost equal to the number of care orders issued by county councils. Already at this stage, the system's decision-making flaws can be seen within the scope of abuse of emergency measures, which, in most cases, must precede the adoption of a proper decision depriving parents of custody of the child. In 2015, even more emergency orders than care orders were used, which suggests that the system is highly dysfunctional and oppressive. It should be added that since 2016, data on the number of care orders is no longer collected.

46. The participation of a judge in the case at earlier stages of family life related proceedings in Norway, despite the individual identity of the parties, does not in itself constitute grounds for his or her exclusion. This solution may raise concerns from the perspective of international legal standards.

47. Since 2012, it has been assumed that in order to determine the best interest of a child, the biological bond existing between the child and its natural relatives is indifferent, while the objectified criterion, defined as "the principle of the developmentally most beneficial relationship" (Utviklingsfremmende tilknytning) is of fundamental importance. The adoption of such a criterion for determining child's best interest translates into the number of contacts between the child and biological families determined in care orders. This is particularly important in the case of immigrant or minority families (ethnic, linguistic, religious). In the light of Norwegian Supreme Court jurisprudence, it is permissible to limit contacts with a child to 2-6 meetings per year, each lasting no more than a few hours. It is also assumed that the purpose of these contacts is not to maintain the emotional bond with biological parents, but to preserve knowledge about the origin of the child.

48. In Polish legal practice *Ordo Iuris* Institute encountered situations, in which parent where deprived of care of their child, because social worker recognised normal forms of upbringing a child such as cautioning, criticising or ordering to stay in home (making child «to be grounded») as "violence". In all such cases, where Ordo Iuris represented parents, social worker decision were quashed by the court. In accordance with the established case-law, placement of a child under foster care should be considered as last resort measure. In less serious situations, court should confine itself to less restrictive measures such as ordering the parents to work with the family assistant or direct them to the specialist dealing with family therapy or subject parental authority to permanent supervision by a probation officer.



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4. Judgments and decisions (in chronological order):

4.1. European Court of Human Rights:

» Judgment of the European Court of Human Rights of 8 July 1987 in the case of *W. vs. Great Britain*, A. 121.
» Judgment of the European Court of Human Rights of 24 March 1988 in the case of *Olsson vs. Sweden* (no. 1), A. 130.

» Judgment of the European Court of Human Rights of 28 November 1988 in the case of *Nielsen vs. Denmark*, application no. 10929/84.
» Judgment of the European Court of Human Rights of 22 June 1989 in the case of *Eriksson vs. Sweden*, A. 156.
» Judgment of the European Court of Human Rights of 25 February 1992 in the case of *M. and R. Andersson vs. Sweden*, application no. 12963/87.
» Judgment of the European Court of Human Rights of 27 October 1994 in the case of *Kroon et others vs. Niderland*, application no. 18535/91.
» Judgment of the European Court of Human Rights of 7 August 1996 in the case of *Johansen vs. Norway*, application no. 17383/90.
» Decision of the European Court of Human Rights of 8 January 2002 in the case of *A. Schultz and M. Schultz vs. Poland*, application no. 50510/99.
» Judgment of the European Court of Human Rights of 8 April 2004 in the case of *Haase vs. Germany*, application no. 11057/02.
» Judgment of the European Court of Human Rights of 4 October 2007 in the case of *Sanchez Cardenas vs. Norway*, application no. 12148/03.
» Judgment of the European Court of Human Rights of 25 September 2008 in the case of *K.T. vs. Norway*, application no. 26664/03.
» Judgment of the European Court of Human Rights of 18 December 2008 in the case of *Saviny vs. Ukraine*, application no. 39948/06.
» Judgment of the European Court of Human Rights of 8 January 2013 in the case of *A.K. i L. vs. Croatia*, application no. 37956/11.
» Judgment of the European Court of Human Rights of 29 March 2016 in the case of *Kocherov i Sergeyevaprzeciwko vs. Rusia*, application no. 16899/13.
» Judgment of the European Court of Human Rights in the case of *Lazu vs. Moldova* of 5 July 2016, application no. 46182/08
» Judgment of the European Court of Human Rights of 22 November 2016 in the case of *Grebneva i Alisimchik vs. Russia*, application no. 8918/05.
» Decision of the European Court of Human Rights of 7 February 2017 in the case of *Pihl vs. Sweden,* application no. 74742/14.
» Judgment of the European Court of Human Rights of 23 March 2017 in the case of *A.-M.V. vs. Finland*, application no. 53251/13.
» Judgment of the European Court of Human Rights of 10 April 2017 in the case of *Korzeniak vs. Poland*, application no. 56134/08.
» Decision of the European Court of Human Rights of 2 May 2017 in the case of *Haupt vs. Austria*, application no. 55537/10.
» Judgment of the European Court of Human Rights of 30 May 2017 in the case of *Trabajo Rueda vs. Spain*, application no. 32600/12.
» Judgment of the European Court of Human Rights of 13 July 2017 in the case of *Jugheli et others vs. Georgia*, application no. 38342/05.
» Judgment of the European Court of Human Rights of 25 July 2017 in the case of *Carvalho Pinto de Sousa Morais vs. Portual*, application no. 17484/15.

» Judgment of the European Court of Human Right of 5 September 2017 in the case of *Bărbulescu vs. Romania*, application no. 61496/08.
» Judgment of the European Court of Human Rights of 6 September 2018 in the case of *Jansen vs. Norway*, application no. 2822/16.

4.2. Norwegian courts:

» Decision of the Norwegian Supreme Court of 19 December 2006, HR-2006-2123-A - Rt-2006-1672, case no. 2006/953.
» Decision of the Norwegian Supreme Court of 31 October 2008, HR-2008-1900-U - Rt-2008-1456, case no. 2008/1627.
» Decision of the Norwegian Supreme Court of 4 March 2010, HR-2010-405-A – Rt-2010-284, case no. 2009/1001.
» Decision of the Norwegian Supreme Court of 17 March 2011, HR-2011-570-A (Rt-2011-377).
» Decision of the Norwegian Supreme Court of 15 April 2011, HRHR-2011-00843-A, case no. 2010/2115.
» Decision of the Norwegian Supreme Court of 19 June 2012, HR-2012-1262-A – Rt-2012-967, case no. 2012/379.
» Decision of the Norwegian Supreme Court of 6 December 2012, HR-2012-2309-A - Rt-2012-1832.
» Decision of the Norwegian Supreme Court of 2 July 2014, HR-2014-01392-U, case no. 2014/1185.
» Decision of the Norwegian Supreme Court of 3 November 2014, HR-2014-02129-U, case no. 2014/1881.
» Decision of the Norwegian Supreme Court of 30 January 2015, HR-2015-00209-A, case no. 2014/1631.
» Decision of the County Social Welfare Board for Oslo and Akershus of 28 May 2015, case no. 15/471.
» Decision of the Norwegian Supreme Court of 3 November 2016, HR-2016-02262-A, case no. 2016/1016.
» Decision of the Norwegian Supreme Court of 22 March 2017, HR-2017-596-U.
» Decision of the Norwegian Supreme Court of 23 October 2017, HR-2017-2015-A, case no. 2017/614.
» Decision of the Norwegian Supreme Court of 18 April 2018, HR-2018-720-U, case no. 18-046996.
» Decision of the Norwegian Supreme Court of 16 May 2018, HR-2018-922-U, case no. 18-064997.
» Decision of the Norwegian Supreme Court of 26 June 2018, HR-2018-1252-U, case no. 18-092145.
» Decision of the Regional Court in Gulating of 7 February 2019, LG-201895302 (18-095302ASD-GULA/AVD2).
» Decision of the Norwegian Supreme Court of 7 February 2019, HR-2019-239-U, case no. 19-017484.

5. Useful websites:

- BarnasRett (The children's rights): http://www.barnasrett.no
- Bodnariu family page: http://bodnariufamily.org
- Bufdir: https://www.bufdir.no
- Christian Coalition World: https://christiancoalition.world
- ECtHR judiciary: https://hudoc.echr.coe.int
- Website "Facts about Barnevernet": https://faktaombarnevernet.wordpress.com/about/
- Familiekanalen / Family Channel – Focus on Family & Human Rights in Norway: https://www.facebook.com/familiekanalennorge/
- Fylkesnemnda: https://www.fylkesnemndene.no
- Leo van Doesburg: http://leovandoesburg.blogspot.com
- Nordic Committee for Human Rights: http://www.nkmr.org
- Norwegian government: https://www.regjeringen.no/en/id4/
- Ordo Iuris Institute for Legal Culture: http://en.ordoiuris.pl
- Prof. M.H. Skånland private page about Barnevernet: http://www.mhskanland.net/page10/page10.html
- Step up 4 Children's Rights: https://stepup4childrensrights.com
- Stop Barnevernet: http://www.stopbarnevernet.com
- Tomáš Zdechovský: http://www.zdechovsky.eu
- UNICEF: https://www.unicef.org
- Valeriu Ghiletchi: https://valeriughiletchi.md
- Groups on Facebook – for example: "Barnevernet vil vi ha fullstendig fjernet"; "Barnevernkritikk"; "Fokus På Barnevernet".

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