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ORIGINAL PAPER

In the Best Interest of the Child: the Norwegian Approach to Child Protection

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Abstract

In the present paper, we discuss three challenges with the Norwegian Child Protective System (CPS) that might have contributed to the recent criticism from the European Court of Human Rights (ECtHR). First, how to balance the rights of the child with those of the parents. Second, the psychological field's influence on the interpretation of what constitutes the best interest of the child, and third we describe several missing links in the CPS work. Throughout the paper, we find indications of a well-developed Act, but a less optional CPS practice. Likewise, we find evidence for a narrow interpretation of the best interest of the child related to CPS and expert psychologists' application of attachment theory, and several organizational and educational shortcomings in the area of CPS. We conclude that the child is not fully seen as a legal subject in the eyes of the ECtHR, and that more research into CPS measures and organization are needed to better deliver adequate assistance to vulnerable families.

Keywords Child protective service · Child protection · Best interest of the child · Parental rights · Convention of the rights of the child · ECtHR · Attachment · Child as legal subject

Introduction

Compared to many other western countries in the world, the Scandinavian countries, and particularly Norway, appear to be among the most 'child friendly' in terms of the most recognized welfare variables affecting children that are measurable (UNDP, 2020). During the past few years however, a stream of cases has been appealed to the European Court of Human Rights (ECtHR) with a particular criticism regarding parental rights. This wave of criticism motivates a reflective imperative as to asking how well our Norwegian system is working in terms of the ECtHR and the Convention of the Rights of Children (CRC). A state-of-the-art review of Norwegian assurance of children's right to personal security is warranted.

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As the child protective system[1] (CPS) evolved over the twentieth century, from a focus on helping poor and socially vulnerable individuals to more functions being added, it was not necessarily combined with more knowledge or evidence-based practice. In addition, support from other service areas of child welfare and health has become more frequent in the preventive work of vulnerable children. These welfare institutions are not, however, organized under the same responsible Ministry, but may often need additional coordination in the specific case. An important question the present paper raises is whether the CPS has grown without a unified thinking, or logic. Although not exhaustive, the present paper aims to discuss three main areas of concern that we believe contribute to the understanding of how well, or badly, the Norwegian system is working in terms of the ECtHR and the CRC.

After a brief presentation of the historical development of the Act, our first concern deals with how the CPS has to perform the challenging exercise of *balancing the rights of the child with those of the parents*. With our second concern, we discuss if the *psychological field's influence may have led to an interpretation of what constitutes the best interest of the child* with a too narrow focus. Our third concern is motivated by an identification of *several missing links in the CPS work*.

Background of Norwegian Legislative Development

The background of the 1896 Child Welfare Act (CWA) was the international movement to reform the criminal justice system, and the challenges of having children in prisons (Dahl, 1978). The main measure under that Act, in addition to admonishing the parents, was placement of the child outside the home (Bufdir, 2020a; Sandberg, 2003). The decision-making body, the Vergeråd, was a municipal body with power and a process resembling those of a court. In 1953, the post war CWA was adopted, in which the legislator wanted to remove the court-like nature of the Vergeråd. The emphasis should be on the prevention of neglect and behavioural problems through assistance to families. Still, the legislator acknowledged the need for coercive measures in certain situations and included provisions to that effect. The 1953 Act also introduced the best interests principle to guide the choice of measures. There was, however, no discussion in the preparatory works of the contents of the child's best interests or the relationship between the interests of the child and those of the parents and contact rights and revocation of placement decisions were not regulated (Sandberg, 2003).

With increasing attention to children and the CPS in the late 1980s and early 1990s, the CWA in 1992 replaced the 1953 Act. The best interests of the child were to be decisive in decisions on measures. When the 1992 Act was prepared, human rights had not yet entered Norwegian law. The CRC, ratified by Norway in 1991, was mentioned only briefly in a short passage (Ot.prp., 1992). However, the problems in the CPS at

[1] The Norwegian term 'barnevern' is an old word that is best translated into 'child protection'. Norwegian authorities, however, in English use the term 'child welfare', probably to demonstrate that it is not only about protection. As this journal is published in the US, we will use the term 'child protective system' or 'child protective services' in line with common US terminology. The term 'system' (CPS) is used to describe the whole system, including the decision-making body for coercive measures, while the term 'services' describes the municipal assistive services.

that time were claimed to be an obstacle to Norway's ratification of the CRC (Bratholm, 1993).

In 2003, the CRC was incorporated into the Human Rights Act and the CWA was amended correspondingly, notably by providing children with an unconditional right to be heard from the age of 7 years. Below that age, children have the right to be heard if they are capable of forming their own views, following article 12. In 2016, a proposal for a new Act was submitted, in which human rights are thoroughly discussed. Since its incorporation, the CRC has attracted increasing attention from the legislator, particularly regarding acts that concern children. Still, child protection was among the six main concerns in the Committee on the Rights of the Child 2018 review of Norway's efforts to implement the CRC.

Concern #1 – Balancing the Human Rights of Children and Parents

The parents' human rights have attracted increasing attention under the ECtHR article 8. Among the cases already decided, the Court found that Norway had violated article 8 in seven out of nine cases (as of January 2021), and more cases are awaiting a decision. According to the ECtHR, (1) Norway has paid too little attention to the parents' right to family life and the ECtHR insists that the child's best interests be explicitly balanced against the right of the parents. (2) In its decisions against Norway, the Court has criticized the child welfare authorities for giving up the reunification goal too soon, and for not explicitly taking the goal into account in their decisions. This is relevant to decisions regarding contact as well as return and adoption. (3) ECtHR states that after a child is placed in alternative care, contact needs to be easy and regular. (4) According to the ECtHR, decisions regarding return have to explicitly consider reunification and if return is denied, specify the reasons. Furthermore, (5) adoption cannot be based on the absence of bonds between the child and its biological parents if that absence is due to very limited contact and no real attempts have been made to retain the ties between them. Importantly, it is the practice under the CWA that has been scrutinized by the ECtHR, rather than the Act as such.

The child's Right to Measures, Best Interests and the Right to Be Heard (1)

After an almost 30-year long discussion, a right of the child to measures from the child welfare system was finally included in the Act, provided the requirements are fulfilled. The enactment is an important element in the implementation of the right of the child to be protected from 'physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse' under article 19 CRC and to 'such protection and care as is necessary for his or her wellbeing' under article 3 (2) (Sandberg, 2018). The interests principle was moved to the first chapter of the Act to demonstrate that the principle applies not only to formal decision-making on measures but also to any other action concerning a child's everyday life.

Article 12 to an increasing extent has become reflected in the CWA. Through amendments in 2013 and 2018, the right to participation was included in a stronger form in the first chapter of the Act, including the right to information, and a right was also introduced for all children in alternative care to have a person of trust.

Undoubtedly these amendments are a consequence of the increased awareness in Norwegian society of the CRC and in particular its articles 3 and 12, underlining the child as a subject of rights. However, these amendments also influence the weight Norwegian legislation puts into the balancing of parents' and children's rights.

The Biological Principle and the Goal of Reunification (2)

The biological principle is the point of departure of the Norwegian CPS (NOU, 1985: 18, p. 157). While the child lives at home, the biological principle works in support of keeping the child there and avoiding alternative care by way of supportive measures to the family to contribute to positive change (Prop. 106, 2013). Once the child is placed in alternative care, the effect of the biological principle is to pull towards a return and in the meantime to retain as much contact as possible. Thus, it is closely linked to the right to family life and the goal of reuniting the child and its parents as emphasized by the ECtHR. The Court has stressed the need for an explicit discussion of the reunification goal in its decisions against Norway.

However, the reunification goal is not absolute. Based on the judgment in Strand Lobben v. Norway (2019), the Supreme Court of Norway found that the reunification goal may be given up in three types of situations: If the parents are particularly unfit, if the measure in question will harm the child's health and development, or if the child's interest in stability ('not to have his or her de facto family situation changed again') justifies it (HR-2020-661-S, n.d.). This is relevant to decisions on contact, return of the child to its biological parents and adoption. Of interest to our review, psychologist experts outside the CPS are often asked to evaluate these questions and report their findings back to the service for further processing. Thus, the examination of several of these questions are handled by external psychologists.

Contact when the Child Is in Alternative Care (3)

While a child is in alternative care, the child and parents have a mutual right to contact under the CWA, unless it is not in the best interests of the child (CWA, 1992). The issue of contact is where Norway has met with the strongest substantive criticism from the ECtHR. Guided by a Supreme Court decision of 1998, a distinction was made between short- and long-term placements, with the potential duration decided at the time of the child's placement. In short-term placements, contact should be maintained as far as possible and thus be frequent. If, on the other hand, a return to the biological parents was not likely or might take place far into the future, contact should only aim at giving the child some knowledge of its parents and was regularly limited to a few hours three to six times per year (Rt., 1998). Of interest in our context, the Supreme Court later added that for children placed long-term, contact with biological parents should be kept at a level where it would *not prevent the child from establishing a secure and good attachment to the foster parents* (Rt., 2012). This guidance was based on expert advice from psychologists outside the CPS and has been followed in decisions by the county boards and courts of first and second instance.

The ECtHR in Strand Lobben (2019), opposed this practice and made it clear that any placement in alternative care should be considered temporary, with the aim of

reuniting the child with his or her family. Consequently, there has to be much more frequent contact between the child and its parents from the very beginning than three to six times per year. If reduced to a minimum because more contact would be harmful to the child, the ECtHR requires the reason to be very well documented. The Supreme Court in 2020 followed up by emphasizing the need for more frequent contact. This is probably the most important shift that has to take place in practice in these cases, in addition to a follow-up of procedural issues pointed out by the ECtHR.

The Court speaks about 'easy and regular access' (Strand Lobben, 2019) and states that family reunification 'cannot normally be expected to be sufficiently supported if there are intervals of weeks, or even months, between each contact session'. If contact every two weeks is unacceptable, it might leave very little room for individual considerations of the child's best interests. In a recent report, children with own experience of placement out of biological home express that contact needs to be decided individually according to their own views, which vary greatly and across time (Forandringsfabrikken, 2021). This highlights why carefully conducted interviews with the child is warranted also in contact matters.

Children in alternative care have very varying experience with their parents. The reason for their placement in alternative care is that they have been exposed to serious maltreatment by their parents. Thus, most of them are vulnerable and for many of them, meeting with their parents is frightening. Others have not been given the emotional care they need to form a proper attachment. This underlying fact is absent from the ECtHR decisions. The Court, however, recognizes that contact should not expose the child to 'undue hardship' (K.O. and V.M., 2019; M.L., 2020). The only way to attempt to satisfy the ECtHR's requirements while at the same not compromising the child's views and best interests, seems to be to document very carefully why, in the individual case, more contact than what is decided will expose the child to 'undue hardship'. The threshold for what is considered undue cannot be high. From a child rights approach, one may actually ask why it is acceptable that the child is exposed to any hardship at all in this situation.

Return to Biological Parents (4)

The parents have a right to have the child returned to them when they are able to provide adequate care, unless the child has become so attached to the people and environment that moving will lead to serious problems (CWA, 1992). From Pedersen v. Norway (2020), it appears that having regained their ability to care for their child does not in itself give the parents the right to have the child returned, as the child's interests in stability may prevail over the reunification goal. In considering the need for stability, that is, not having his or her de facto family situation changed again, the child's own view should carry considerable weight under the CRC, which it does in a Norwegian context. However, the children's views have not been focused in the ECtHR judgments against Norway so far. The child's need for stability is a particular focus in experts' evaluations of returns, but the child's view is rarely examined. A more frequent use of interviews with the child should be expected and carried out according to evidence-based protocols that guarantees reliable and transparent reports.

Adoption (5)

The 1992 Act authorizes the adoption of a child by abled foster parents, provided that the child's reunion with his or her parents is unlikely in a long-term perspective. Adoption must be *clearly* in the best interests of the child (Ot.prp., 1992). In Strand Lobben (2019), Norway was found to have violated article 8 in a case of adoption. Concerning the reasoning in the domestic judgement, the majority of the judges (seven) held that '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'. In the context of this article, it is noteworthy that they criticized the decision for being based on insufficient evidence, among others for containing barely any analysis of the child's vulnerability on which the need for adoption was based.

With reference to Strand Lobben (2019), the Supreme Court has clarified that the reasons for adoption must be so strong, compared to continued foster placement, that they justify the complete severance of family ties (HR-2020-661-S, n.d.). Even if the authorities have made mistakes at an earlier stage, typically by giving the parents too little contact with the child, the Norwegian court has to choose the solution that is clearly in the best interests of the child. Such mistakes cannot prevent adoption. Thus, adoption may still take place in three situations similar to those mentioned above: where the parents are particularly unfit and this will be a lasting situation, where continued foster placement will harm the child's health or development, or where the child's need for stability justifies it after considerable time in the foster home. These clarifications are helpful to avoid that the balancing exercise is detrimental to the child and the child's rights.

Regarding mistakes made by the authorities at an earlier stage, the ECtHR in M.L. v. Norway (2020) seems to counter the Supreme Court's view that adoption may still take place. The ECtHR states that 'in the light of the very limited contact rights that were granted and the complete absence of any other attempts over the years' to prevent the biological family from being permanently broken, the domestic authorities could not 'have based the adoption decision on the absence of bonds between the parents and the child'. However, the ECtHR also acknowledges that its approach of looking at the case in retrospect differs from the approach of domestic authorities that have to make a decision based on the situation of the child and the family at present 'and with an eye primarily on the future'. The recognition of the different roles is hard to reconcile with the statement above, indicating that adoption should not have taken place, but it opens the possibility of a broader assessment of the case even in these circumstances.

Concern #2 – Influences from Psychology that May Affect the Interpretation of the Best Interest of the Child

The rise of attachment approaches in CPS and respective courts offer a well-defined empirical ground for anchoring best interest considerations. However, the principle is sometimes inconsistently applied (Font & Gershoff, 2020), some have warned against bias in the interpretation of the principle (Kelly & Lamb, 2000), and others have claimed malpractice of the categorial system of attachment. An important missing link

is the lack of systematic evaluation of this practice. We suggest that the interpretation from some theoretical positions might have resulted in a too narrow focus on the child's best interest.

The emerging of the Act and its corresponding practice aimed at protecting the child from harmful care and maltreatment is also developed in a context of social science in which the discipline and profession of psychology has a given history and place. The development of a Norwegian psychological profession is described by Saugstad (cf. Nilsen, 2014). In addition, the profession's development in the early 2000s took a novel avenue integrating the attachment approaches and stress regulation theories with the new techniques to study the brain. These influences largely affected the psychologist experts' practice when evaluating child protective cases. Logically, we argue that the professional development of psychologists has influenced the interpretation of the principle of the best interest of the child and the following actions by the CPS.

From Experimental-Based Science to Practitioner-Based Expertise

During the early nineteenth century, an experimental and research based psychological tradition gradually was shifted into a therapeutical practice with its specific users (e.g. clients). The Norwegian Psychological Association was established in 1934, thereby creating the first professional arena for practitioner from the former academical experimental-psychological tradition (Nilsen, 2014). In 1948, the parliament implemented in law the professionalized program, inspired by the science-practitioner American Boulder model. However, it was not until 1973 Norway got a standardized program across all universities (Gullestad et al., 2009; Nilsen, 2014).

The psychological perspective gained further worldwide societal support after the two world wars when several symptoms of trauma, stress and shocks were observed. Of note is also that the introduction of psychoanalyses in Norway coincides with the 'Norwegian model' and social democratic political perspective, in which a prominent director of the Ministry of Health (1938–1972) stood close to the psychoanalytic milieu. Although important in a welfare society, the disadvantaged children, those from poor homes and being neglected, were not of high focus on the early stages of the professional's development.

Specialized Treatment Clinics for Children and Youths

One of the most influential treatment centres for children and adolescents in Norway throughout the years, the Nic Waals institute, was grounded in 1953 on a psychoanalytical basis and attracted several highly profiled professionals (Lange, 2008; Sommerschild & Moe, 2005). In accordance with a psychoanalytical approach, child clients were provided play therapy and parents consultations with a case manager. Given that most of the therapeutical focus in psychoanalytic practice was concerned with inner conflict, neglect and maltreated children's basic struggling in the real world was sometimes overlooked.

The child psychiatric service relies on a medical frame of reference with diagnostic practice according to international classification systems. Because many of the disadvantaged children do not have a specific diagnosis, they are rejected from psychiatric treatment even if they have symptoms and difficulties that we otherwise would

recognize as serious and relevant psychological symptoms. For instance, a novel evaluation revealed that approximately half of children in the child protective service showed evidence of psychological symptoms and difficulties that would qualify treatment by the child psychiatric service (Larsen et al., 2018).

Institutional Care and Behaviourism

In the USA, behaviourism stood central within the academical milieu in the 1950–1980, but in Norway it was met with scepticism from both the academic and the psychiatric milieus. However, in the 1960s and 1970s, the need for psychological testing and clinical work pushed the needs for more psychologists, including to fill an increasing field within institutional care for people with intellectual disabilities and for disadvantaged children and youths. The treatment in these institutions were mainly delivered by nurses and educators, but behavioural psychologists were often hired to train and supervise the treatment plans (Sommerschild & Moe, 2005). Slowly the attention to these vulnerable children evoked, and as a response to the ignorance of the long-term effects of neglect and maltreatment in the child psychiatric clinics and the lack of academical interest in disadvantaged children, the Behavioural centre (Atferdssenteret) was established in 1999 (Tollefsen & Christensen, 2013). On several cities across the Norwegian country, behavioural programs were implemented and the CPS started to employ Parental Management Training (e.g. the PMT Oregon model), and later also a Multi System Therapy (e.g. the MST) (Tollefsen & Christensen, 2013) to prevent maltreatment and as part of the supportive measures of the Act.

A Unifying Interest in Stress with Reference to the Disadvantaged Children

The psychoanalytical approach was gradually moved out from the academical milieu and referred to private practice. Instead, a wave with cognitive psychology, building on models from computer science, information technology, and brain research, emerged and became a solid contribution to the academical sphere (Gullestad et al., 2009). For instance, brain imaging studies relatively early started to focus on effects of stress on the human cognition (for a review, see Lupien et al., 2007) – a perspective well suited with the growing attachment related milieu that related attachment stress to later diverse outcomes. Already in the 1960s, attachment work was acknowledged in Norway. However, it was not until the early 1990s, that a pool of attachment-oriented professionals was centred at the University of Oslo and made the attachment theory and practice available for students and practitioners (Helmen-Borge, 2020; Smith et al., 2019). The milieu also attracted clinicians with interest in traumatology. The influence of attachment, traumatology, and stress regulation approaches became gradually important factors for the CPS and the education of child protective workers. One particular important institution that was grounded back in 1907 to help homeless mothers and their babies, was the Aline infant centre in Oslo that gained attention from the attachment milieu in the 1990s. The centre became an important premise supplier to the CPS and to the court that handled these cases, and it inspired psychologists from both clinical, research, and child protective arenas. One of the main treatment principles the Aline model works from, is what generally is labelled ‘trauma

sensitive care' to systematically and in everyday practice treat the effects of adverse experiences (Bath, 2008; Perry & Hambrick, 2008; Sjøvold & Furuholmen, 2015).

Theory and research on attachment are frequently employed in CPS assessment and decision-making (Crittenden & Baim, 2017), but a novel review raises the question if misinformation and misuse of attachment theory and procedures might have negative consequences when employed in the legal system (Forslund et al., 2021). Attachment theory builds on the idea that behaviour has a biological base and that early (relational) experiences are determinant for later outcome (Bowlby, 1969/1982) and general development (Vaughn et al., 2019). One distinction of the attachment theory is whether the attachment form is secure or insecure, the latter with subcategorizations (e.g. avoidant, disorganized and ambivalent). Particularly, the concept of disorganized form make visible risk factors in the relationship between the child and its parents and it might be used in predictions of future child psychic and care related conditions. Important for the later integration with brain functioning, the disorganized form evolves with dysfunctional stress regulation that affects long-term adaptation and may result in severe psychological and physical health conditions (Farrell et al., 2018). The prevalence of disorganized attachment form is higher in risk samples (Cicchetti et al., 2006; Cyr et al., 2010). In addition, caregivers' sensitivity to and mentalization capabilities of offspring needs has further been established as a predictor of attachment quality and further development (De Wolff & van IJzendoorn, 1997). Thus, attachment theorizing is of special interest for CPS work as it reflects the child and caregiver bi-directional relationship.

Because attachment theory helps explain why adverse childhood experiences may result in lifetime suffering, it was highly warranted within the practical milieus – including psychologist experts – that worked with maltreated and neglected children. Attachment based interventions were firmly established in the 1990s and early 2000s (Powell et al., 2014). The aim with such interventions is to strengthen or eventually change the caregiver's behaviour to better fit the child's needs (Steele & Steele, 2017). Specifically, as the original classification system of attachment behaviour is developed for infants and toddlers, early intervention towards families that showed insecure attachment form was possible and thus a fruitful avenue for preventive child protective work. Should the intervention not be successful, removals from biological homes would be appropriate as the change of attachment figures is possible and may form a new secure base. However implicit in the thinking with a new base, the child would need less contact and relationship with biological parents, and visits may therefore be seen as a disturbance in the new formation that needs its full attention.

Closer Integration between CPS and the Psychological Milieus

While the biological principle refers to the importance of binding the child to its biological parents because kinship is the base of all attachment bounds, the psychological approach makes valid the attachment's quality and the importance of the child's needs and is often related to the best interests of the child. If these needs are neglected, then the attachment security is threatened; the child's care is regarded unfit and the child's stress level will increase, putting the best interests at stake. Concepts such as stable care, sensitive caregivers who can mentalize, and the child's vulnerability to re-

traumatization are central within a psychological approach, and match quite well with the attachment references above.

One underlying mechanism that may explain some of the long-lasting difficulties children with adverse childhood experiences exhibit at a group level is the persistent high level of stress that maltreatment triggers. An unstable attachment situation, with a constant threat of loss, is a condition that possibly would qualify for persistent stress associated with several maladaptive behaviours and relationships, why CPS are alert to such conditions. However, a consensus about what constitutes and captures unsecure attachment at an individual level does not exist (Rutter, 1972).

The theories and perspectives coming from attachment theory, stress regulation research and brain imaging studies are all general theories that must be considered together with other developmental factors in each case. That is, the expert psychologist has to look for additional explanations other than the assumed one in order to avoid confirmation bias. However, these perspectives have reached an enormous popularity in the folkloristic saying. In fact, around 2010, a novel concept was created that alluded to the effects of neglect on the developing brain, namely the 'brain protective service' (Hjernebarnevernet). At some point, these general theories became very influential in the practice of psychologist experts working for the courts and within the CPS and resulted in a devotion to the psychological approach, often without a steady and reliable measure of either attachment or stress responses. Following the logic from attachment and stress theories, the individual child would be better off with a new care situation than staying in the biological home if this was regarded unstable and the parental forces as unsensitive caregivers as these factors could predict an ambivalent or disorganized attachment form. An additional distance was further implicated in the thinking so that the child could adapt to the new foster home without disturbances form biological parents and possible re-traumatization. Consequentially, the removal intervention outside biological homes was facilitated and frequently employed, and the visits orders became equivalent restrictive. To some degree, this well-established approach in Norway might explain part of the practice that has resulted in several ECtHR judgments against Norway, including the attitudes towards removals form biological parents, visits and planning for reunion. The tendency may have resulted in a too narrow focus on best interest.

Concern #3 – Organization, Collaboration and Competency in the Child Protection System – Are the Human Rights and User Perspectives Sufficiently Recognized?

Our third concern relates to the question if the human rights and user perspectives is sufficiently recognized within the CPS. Systemic criticism from the children's ombudsperson illuminate several difficulties related to the organization of, competency in, and internal and external collaboration within the Norwegian CPS.

The Child Protection Organization – Collaboration and Coordination Difficulties

As shown in Fig. 1 below, the Norwegian CPS is divided into central and local government levels, with different responsibilities (NOU 2009:22). Local authorities

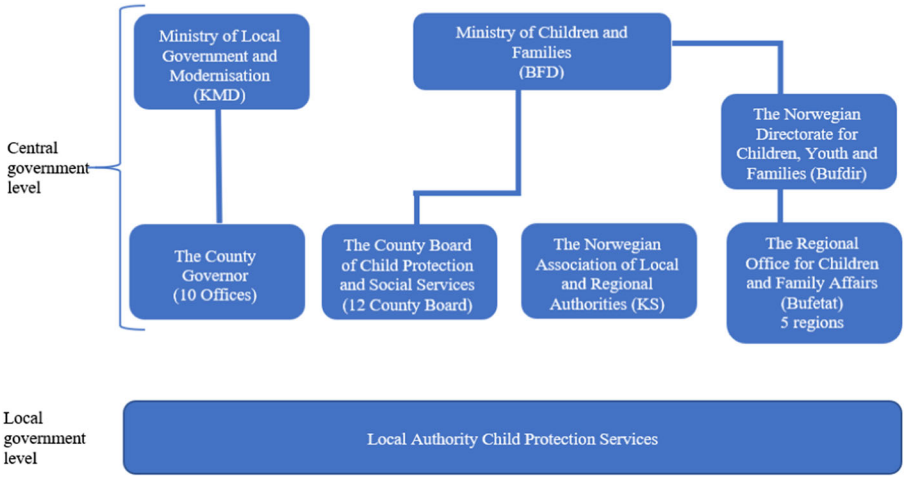

Fig. 1 Structure of the Norwegian CPS

are responsible for establishing first line CPS to prevent, uncover and identify children suffering from failures of care or abuse. The central government level is exercised through the Directorate for Children, Youth and Families ('Bufdir') and The Regional Office for Children and Family Affairs ('Bufetat'). Bufdir is a professional body that manages 'Bufetat' which supports local authority services in placing children outside home, including in institutional and foster care.

A lack of cross-sectoral responsibility has been perceived as a key explanation for the challenges encountered by children and their families in the current support system. The Ombudsperson for children (2018) has expressed concern that gaps in support exist between central and local authority services, and between these and the specialist health system, represented by mental health services for children and youths. For instance, that provision for follow-up is inadequate and not based on the child's individual needs. Also, follow-up of families in receipt of support or measures from the CPS varies greatly. A general problem, according to the Ombudsperson (2020), is that the services seldom document how they assess the child's institutional care and treatment, which is a management responsibility. Inadequate training in how to report errors and correct them has further been identified as a serious challenge in a number of local authorities. The proposed child welfare reform will give local authorities greater latitude to prioritize resources and organize their services in accordance with local conditions and needs. It is then important that the CPS is viewed in relation to other provision for children and families, and that the local authority's management takes clear ownership of child protection.

Where children and families are concerned, the child protection system can be perceived as a source of support, and as a threat. Investigations by the Ombudsperson (2018) show that some children are reluctant to speak out about difficult conditions at home. Some children fear removal from their parents, others are afraid of being disbelieved, and some children also report that the information they gave was passed directly back to the parent who has subjected them to violence or abuse. These findings suggest that the child's right – under articles 12 and 16 of the CRC – to be heard, participate in dealing with their own case and their right to privacy

and personal integrity is not adequately safeguarded by the CPS. Parents can also be reluctant to contact CPS when they need support, because they fear being regarded as inadequate carers, and thereby lose their children. A survey has shown that the general population's trust in Norway's CPS is low (Juhasz & Skivenes, 2016), but nevertheless slowly increasing (Bufdir, 2020b). The lack of trust in the CPS can be identified as a key issue because early intervention is dependent on the parents' consent and willingness to receive assistance measures. Scholars have argued that the CPS has an impossible double role, and that the organization is unfortunate (Andersland, 2019). Thus, improvement of communication and information exchange between child welfare services and families is essential (CRC Committee, 2018).

Competence and Discretionary Judgements – Expertise Role Challenges

The CPS should understand the family's circumstances and be able to assess the best solution for the child. At the same time, caseworkers should strive to ensure equality before the law for their clients. In exercising their discretion, the CPS must keep within legal standards for when they should or should not intervene in family life, however, inspections suggest that the scale of errors and unjustifiable practice is too high (Norwegian Board of Health Supervision, 2019; NOU 2017: 12). For example, Falck-Eriksen and Skivenes (2019) have illuminated that the CPS intervene more frequently with migrant families and argues that this can be perceived as a matter of discrimination. Research has revealed large variations in the quality of service in terms of whether reported concerns are well planned and investigated further or shelved (Lauritzen et al., 2019). Professional child protection assessments are inadequately documented in many cases (cf. attachment practice), which makes it difficult to verify decisions. As a result, many children and families fail to receive the help they require (Norwegian Board of Health Supervision, 2019).

Article 19.1 of the UN convention specifies that education is one of several measures states can take to protect children. Expertise development and enhancement in the CPS is consequently recognized to be an important factor in ensuring that the child's right to protection is maintained and practised. However, formal educational requirements in the CPS are low, compared with both child protection in other Nordic countries and other professions that child protection workers collaborate with regularly, such as psychologists, teachers and lawyers (Ministry of Children and Families, 2020a). Many employees themselves believe they lack the expertise to carry out core tasks in the profession; for instance, the ability to identify failures of care and assess the consequences for the individual child (Røsdal et al., 2017).

Large variations are identified in the way information is systematized and analysed, while a detailed assessment of the child's needs and what help they need is often lacking (Ombudsperson for Children, 2020). Similar findings are highlighted by a committee that found assessments of factual information being inadequate, and that conclusions reached in the case investigations were poorly based (Fjeld et al., 2020).

The Norwegian government recently proposed that specialist child protection or other relevant education to master's level should be required for personnel in local authority child protection services with management functions, investigation roles and

decision-making authority (Ministry of Children and Families, 2020a). Nevertheless, a number of scholars and NGO's have expressed concern over the lack of connection between child protection courses and practical experience. The direct link between educational institution and work practice found in university hospitals is not replicated in the Norwegian CPS (Falck-Eriksen & Skivenes, 2019). Another concern relates to the absence of any requirement for legal knowledge by child protection workers. If they are to be qualified to apply the UN convention in practice, clearer requirements must be established for their knowledge of children's legal rights.

Towards a CPS Based on Human Rights and Expertise

The motivation for writing up this paper was generated from the fact that in spite of being a well-functioning welfare state, several serious reactions from the ECtHR have shown that Norway has violated a central human right, article 8 on the right to family life. As we have seen, the Child Welfare Act is well grounded in human rights and the corresponding national legislation. The challenges are rather related to the practice under the Act. Although many important steps are being taken, the overall development of evidence-based measures and policy to balance parents' and children's rights comes across as fragmented. Throughout our evaluation and discussion of the three different concerns, we conceptualize three areas that we believe explain some of the mechanisms behind the question raised of how well the Norwegian system is working in terms of the ECtHR and the CRC.

Balancing the Rights of the Child with those of the Parents

At the core of the ECtHR decisions is the goal of reunification of the child with its biological parents which is, according to the Court, given up too soon and not explicitly taken into account in Norwegian decision-making. To pursue that goal, the authorities have to establish easy and regular contact between parents and their child when a child is placed in alternative care, contrary to the dominant Norwegian practice, and contrary to a certain application of attachment theory.

Looking at this from a children's perspective, the reunification goal serves the right of the child to family life with his or her parents. However, children also have other rights. The Norwegian child protection cases have all been brought by the parents and primarily concern their right to family life (e.g. Jansen v. Norway, 2018). For that reason, the child's other rights – be it to protection from their biological parents or to family life with their foster family – do not appear in the ECtHR judgments. Instead, they may be alluded to in the proportionality assessment where the child's best interests are to be paramount. Importantly, in Strand Lobben (2019), the Court states:

> '[I]t is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development … .'

Here the Court acknowledges the interest of the child in a sound development and in avoiding harmful behaviour from the parents, but does not recognize these interests as

rights, as they are under the CRC. The same applies to the child's interest in stability in the case:

'However, when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her de facto family situation changed again may override the interests of the parents to have their family reunited ….'

In other types of cases, the Court has recognized the right to family life based not only on biological or legal elements but also on social ones. Thus, the relationship between a foster child and its foster parents may qualify as family life, depending on the facts. The perspective that the child may not only have an *interest* in not having his or her de facto family life changed again, but also a *right* in that regard is not mentioned by the Court. The rights approach might serve to strengthen the argument of the child's interest by providing it with a stronger legal basis.

For procedural reasons the child does not appear in the ECtHR child protection cases as a subject of rights, but rather as the object that the case is about. It may be true that the Norwegian decisions have not made the parents' rights visible but rather considered them implicitly as an underlying factor (HR-2020-661-S, n.d.). However, it is important that the child is recognized as a rights holder as well, a focus which has been strengthened in Norway over the past 15–20 years. If the rights of the child were recognized in these cases, they might be considered differently.

One of the rights of the child is to have his/her best interests taken into account as a primary consideration. Although at the general level the ECtHR acknowledges that the child's best interest should be paramount and in cases like these come before all other consideration, this is not evident from the Court's application of its own principles to the facts of the recent cases, where the parents' right to family life is given priority. Crucially, the best interests principle requires an individual assessment in each case. With regard to contact in public care, both the Norwegian practice of very limited contact and the ECtHR's requirement of frequent contact appear to be too standardized. Rather, contact should be decided based on an individual assessment.

Another essential right, which is key to assessing the child's best interests, is the child's own views (CRC, articles 12 and 14). In Norway, great attention is paid to the child's right to be heard and a child's spokesperson is regularly used in court proceedings. There are great variations in children's views on how often they would like to have contact with their parents, for how long, and where it should take place (Forandringsfabrikken, 2021). The child's views are absent from the ECtHR judgements. However, in the Court's concession that the contact regime should not expose the child to 'undue hardship' there is an opening for including the child's views and making an individual assessment, although the threshold of 'undue' should not be high.

In exercising their discretion in every single case, the child welfare authorities have to perform the difficult exercise of balancing the two sets of rights. Even if there may have been a shift in the dominant position of ECtHR judges towards a more family-oriented approach (Jacobsen, 2020), we remain bound by the CRC and have to find a way to reconcile the two. In this exercise, psychologist experts are frequently involved and have the important task of examining and explaining the child's needs and parental capabilities, why continuous education and critical review of scientific materials ought to be their central tasks. However, it is the responsibility of the decision-making body to ensure that the rights of the child and those of the parents are balanced and that this

appears explicitly from the decisions. If in the individual case it is not possible to balance the two, the child's right to protection, care and a sound development should be prioritized.

The Psychological Field's Influence on the Interpretation of What Constitutes the Best Interest of the Child

From our review, it seems likely that the professional development of Norwegian psychologists largely has influenced the CPS practice and dragged the more recent development towards a trauma and attachment perspective, which gradually has been reinforced by official evaluations and documents that clearly recommended a movement towards a psychological approach. This implies that the biological parents' position in relation to the child's rights has been weakened in terms of their rights to family life and integrity. Implicit in the attachment and sensitive care thinking – that also influences psychologist experts' evaluations for the court – the child would need to establish a new attachment base and tune down the contact and relationship with biological parents, and in some cases also to avoid parental re-traumatization. Visits may therefore be seen as a disturbance in the new attachment formation with the foster parents that needs its full attention. Thus, placement outside the biological home often results in restrictive visiting orders, which in turn diminishes the possibilities for the goal of reunification.

A reasonable question concerns whether these perspectives on children's needs in terms of a healthy development, that is, attachment and traumatology mixed into sensitive care and parents' ability to mentalize, may result in a too narrow perspective on the child's best interest. What is seen as measures to achieve expected (typical) developmental trajectories, might put a demand on parents' capabilities far beyond what could be defined as within a normal range of parenting, as well as beyond a reasonable prediction of future parental behaviour based on current performance.

Supporting this suspicion, a recent review of the concept of parents' mentalizing in Norwegian child protective work, raises critical arguments regarding the service's use of it to form predictions of the individual child's future psychological health (Lauritzen et al., 2019). The author refers to conclusions of psychologist experts – hired by the service to provide evidence in maltreatment cases – about the associations between lower ability to mentalize and unsecure attachment to risk of maladaptation in short and longer run. Both mentalizing processes and attachment approaches are encumbered with several assumptions that have not been fully empirically tested (cf. Forslund et al., 2021), which makes the interpretative power from these methods less reliable. Predictions from psychological theories, to correctly forecast behaviours that have not yet been observed, are difficult to make on an individual basis (Yarkoni & Westfall, 2017). Additionally for the worse, it is well-known that there exists a replication crisis in psychology that should make every single study without a replication nothing more than one observation (Bakker et al., 2012).

Lastly, the child's own views should be of particular focus in experts' evaluations of care orders, visits and returns, why interviews with the child should be expected. However, a novel study shows that out of 201 cases, only 12% of the mandates to psychologist experts in these cases included an explicit demand to interview the child

about these themes (Melinder et al., 2021). Thus, it is up to the individual psychologist to perform, or not, such interviews as long as it is not a mandatory request in the experts' mandates. We urge that expert psychologists regularly are encouraged to employ models from a variety of approaches to reduce confirmation bias, and to conduct child interviews based on evidence-best practice protocols through the mandates designed for their service.

Several Missing Links in the CPS

Norwegian policy makers have recently taken important steps to overcome the identified difficulties concerning lack of collaboration, coordination and competency within the CPS. In 2017, a CPS reform that was driven by the need to enhance interdisciplinary collaboration and to strengthen the incentives to implement preventive measures and early interventions strategies, passed through Parliament. The reform underscores the importance of local authority management and leadership that child protection is viewed in relation to other provision for children and families, and that the local authority's management takes clear ownership of their child protection services (Bufdir, 2020a). The CPS reform goes along with the already ongoing work on implementing a new CWA, a new competence strategy for the workforce in the CPS, enhancing cooperation between the local CPS and the local health services, and improving digital solutions to strengthen the quality and efficiency of the CPS (Ministry of Children and families, 2020).

When the child welfare service obtains expert reports, these can become a central part of the decision-making basis. Consequently, it is important that contributions from psychologist experts hold a high professional standard. In order to strengthen the quality of psychologist expert work, and to raise the popular trust in the decision-making bodies' conclusions in CPS cases, Norwegian policy makers have proposed regulations to strengthen the formal framework for psychologist expert work. By implementing educational requirements for experts, requirements for their mandates and reports – greater predictability and uniform practice are to be ensured (Ministry of Children and Families, 2020c).

An important framework for expert work in child welfare cases is the mandate given by the engaging party (e.g the local authority CPS, the County Board and the Court). The mandate of the expert lays out, among other things, the premise of the expert's work process, assessments and advice. In addition, the mandate enables readers of an expert report to assess the work of the expert. Analyses of 200 mandates given to psychologist experts in CPS cases, show that there is a very large variation in the design of the mandates and topics the experts are meant to assess (Melinder et al., 2021). In 2020, the Ministry of Children and Family Affairs proposed to introduce minimum requirements for the mandates, including a precise indication of what the expert should consider (Ministry of Children and Family Affairs, 2020c). This notion may call for increasingly standardized mandates that better capture the relevant issues of the case. Standardized mandates may also simplify the work of the Children's Expert Commission, which assess the expert report before it can be used for decisions in the CPS, the county board and the court. These proposed legislative steps will make it easier to ensure systematic evaluations

of the experts' work, and should be accompanied with systematic research to further develop procedures and evaluative measures.

For the preventive part of the CPS, the PMTO and MST (recently also MST-CAN, for Abuse and Neglected Children) approaches have been employed to some degree (Tollefsen & Christensen, 2013; Thuve et al., 2021). Interestingly and coinciding with our discussion of the polarized psychological milieus above, these approaches have mostly been employed in areas where the staff are less involved with sensitive care thinking, and with older children and youths in institutions.

Children receiving measures from the CPS often have complex needs, which require interdisciplinary efforts from different services. Hence, cooperation and coordination within and between local authorities and specialized health services is crucial. In 2014, the Directorate of Health and the Directorate Children, Youth and Families established a Cooperation Forum for the CPS and Mental Health services, followed up by an official circular in 2015 giving guidelines on the collaboration between the Child and Adolescents Mental Health Service and CPS and the coordination of their respective services. However, a survey of this circular's impact in practice, showed that many practitioners were not aware of or familiar with the existence of the circular, implying further implementation work (Lauritzen et al., 2017).

In 2017, the Directorate for Health and the Directorate for Children, Youth and Family Affairs (Bufdir) issued an official report containing several recommendations for the future organization of services and legislative changes in the work on healthcare for children placed in alternative care. The establishment of primary care teams with competency on children with complex needs is recommended. These teams should have a coordinating function between local authority levels of services and ambulatory teams in mental health services responsible for adolescents in institutional care. Furthermore, the report calls for commitment to cooperation agreements between CPS and mental health services (Directorate for health/BufDir, , 2017, but see Lehman & Kayed, 2018).

To overcome collaboration challenges and fragmented support, the Norwegian government in 2020 issued proposals for changes in the law aimed at strengthening coordination between services for vulnerable individuals. One proposal is to introduce a legal requirement for collaboration between services covered by the various sectoral statutes, including the CWA (Ministry of Education and Research, 2020). During the consultation process, several respondents have objected that the proposals are adequate but complicated. A main concern is that it will challenge the expertise of those required to understand and apply the regulations as very few of those working with and for children in the various services have legal expertise.

Our identification of several missing links in the CPS suggests there are common, and perhaps intractable challenges, in policy and systems design, workforce recruitment and development, CPS management and multidisciplinary teamwork. It also suggests there are persistent challenges translating theory, law and policy into practice both within the CPS and in connection with multidisciplinary collaboration with other welfare providers. There is an urgent need to unify the work and implement knowledge-based and systematic measures. This notion was recently confirmed in a comprehensive national strategy on competence enhancement for vulnerable children and adolescents (The Research Council of Norway, 2021). The main conclusion of the strategy group is that Norwegian policy development is dependent on stronger alliances

between research, education and innovative practice. The strategy group makes several recommendations to achieve this goal – among them:

- *A coordinated and long-term research and innovation program.*
- *Research-based and practice-oriented education, further education and continuing education for employees and managers in the field of practice.*
- *Leadership for a knowledge-based and change-oriented practice.*
- *A review of the role of knowledge and competence centres.*

Conclusion

From the presentation above, it appears that in the course of the development of the CPS, its main goal has moved from the protection of others from morally deprived children and young people, via protecting children from neglect and abuse, to seeing the child as a rights holder with a right to measures and to participation in decision-making. During the second phase, the parents obtained a right to family life with their children, which is somehow challenged in the third phase where children are provided with their own rights. However, nobody – and definitely not the children – are served by a tug of war between the rights of parents and children. Rather they need to be reconciled. The idea of the parents' ownership of their children needs to be left behind and so does any idea of standardized solutions in these cases. Instead, we need new principles of management, and governance must be developed and implemented to achieve collaboration and coordination across sectors, secured through legislation and clear guidelines on partnerships. We further need sustainable and interdisciplinary-based research programs and innovations that provide individualized prevention and relevant care to children and adolescents involved in the CPS, including a research-based and practice-oriented educational system for future child protective employers. There might be too many competence centers – sometimes with overlapping missions and some with a theoretical bias, but without demands and responsibility of teaching and knowledge dissemination. When the issue is alternative care, contact or adoption, we need psychologists who are able to assess the child's needs with an open mind by scientific sound methods that will help reduce confirmation bias. Last, but not least, we need to talk with the children in a proper way, listen to what they say and react on what we hear.

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Conflict of Interest The authors declare that they have no conflict of interest.

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