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Case study

E. M. AND OTHERS VS. NORWAY AND THE PROPORTIONALITY OF OTHER JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract

In the E. M. case, two sons were removed from a Czech family in Norway in 2011 due to suspicion of sexual abuse by the father. This abuse was not proven, but the sons were not returned to the mother, against whom accusations appeared in the form of alleged neglect and later media coverage of the case against the children's interests. The boys were separated into two different foster families, and the mother's visiting rights were gradually reduced from two hours twice a week to 15 supervised minutes twice a year – and only with the younger son. In 2017, the mother also lost her parental rights. The case ended up at the European Court of Human Rights (ECtHR), which accepted Norway's full argumentation without examination and stated that there was no violation of the right to family life according to Article 8 of the European Convention for the Protection of Human Rights (the Convention).

Methods: A case study/interprofessional analysis of the ECtHR judicial decision and related facts emphasising social work.

Results: The judicial decision of the ECtHR was announced after more than 4 years, and the appeal was rejected within 19 days. This is the only case where a conflict of interests of the mother was noted when filing a complaint, and it was not explained who can file a complaint on behalf of minor children if neither the parents nor the Czech Republic can. The court also did not explain why the boys were separated, what the limit of acceptable media coverage of the case by the parents was, and why the Norwegian social service (Barnevernet) and the Norwegian courts did not have to accept any of the mother's evidence or investigate whether the children could be placed with other relatives in the Czech Republic – as required by the Hague Convention.

Conclusion: Due to 56 very similar complaints by parents directly against Barnevernet's procedure (insufficient visits, patronage of foster parents, forced adoptions, etc.), of which the ECtHR found a violation of Article 8 in 22 cases, as well as judgments such as T. vs. Czech Republic, it can be stated that that the sentence is disproportionate.

Keywords: *Barnevernet; Child protection; E. M. and others vs. Norway; False accusation; Social work*

INTRODUCTION

Norway is a country located in northern Europe with an area of 365,268 km2 and 5,492,720 inhabitants. The median age of its inhabitants is 39.8 years (Norway Population, 2023). After the respected NGO Human Rights Watch released its World Report in 2007, concluding that the USA could no longer be a credible leader in human rights, one of the most influential responses was an article in The Lancet journal, where MacDonald (2007) argued why Norway should assume the position of the world champion in the field of human rights.

The level of protection of children's rights was also highlighted when Norway was and has been in the top ranks of various indexes evaluating countries by the suitability of raising a child, e.g., Norway reached second place among 35 OECD countries in Ferguson's "raising family index" (Fergusson and Fergusson, 2020) or third among 73 countries in a comparative study by US News and World Report (Best Countries for Raising Kids, 2020). Hjermann (2020) adds that Norway was also the first country to establish an independent human rights institution for children, the Children's Ombudsman, in 1981, and therefore calls the country a world champion in the field of childcare.

The above is justified by the fact that Norway has been supporting projects in the field of child care within the financial mechanisms of the European Economic Area and Norway (EEA grants) since 2004. Since the 2nd period of the funds (2009–2014), it has been about the area of children and youth at risk, specifically subchapter 8 within the Social Inclusion, Youth, Employment and Poverty section (Dalen et al., 2023). As part of these activities, there has been support for awareness of children's rights, child-friendly justice, solutions to the poverty of families with socially excluded children, and complete changes in the socio-legal protection systems for children (Children and Youth at Risk, 2023).

Thus, many projects were implemented in direct cooperation with the organisations of the Norwegian child protection system, e.g., "Development of Support System for Foster Families, Adoptive Parents, Guardians and Host Families in Latvia" for €101,827 (Development of Support System..., 2014), in Lithuania the project "Building the Capacities of State and Municipal Services in Deinstitutionalisation Based on Good Experiences from Norway" for €193,289 (State and municipal servants..., 2014), in Estonia several projects for Children and Youth at Risk for €6,505,000 (Children and Youth at Risk: Estonia, 2012), or the project "The Role of Non-governmental organisations in Alternative Care for Children" in Romania for €73,726 (The role of NGOs in alternative care for children, 2014).

The Ministry of Labour and Social Affairs of the Czech Republic announced its own program for children and youth at risk, "Children and Youth at Risk", known primarily as the "CZ04 program" with a financial subsidy of €2,738,809 (Final Report on the Implementation of the Action Plan..., 2016). The Czech Republic also participated in experience-sharing projects with Norway (Oktábcová, 2013), and the project "Codification of the Legal Regulation of Family Support, Substitute Family Care and the System of Care for Vulnerable Children" was announced. This was approved in 2013 and contained six key activities, including a sub-program KA03 on the sectioning of the wording of the Act on the Protection of Children's Rights, Family Support and Substitute Family Care (In the matter of information on Norwegian funds..., 2015), where the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir), i.e., the Norwegian Directorate for Children, Youth and Family Matters (Codification of legal regulation..., 2014) was partner. Another recent direct bilateral cooperation between the Czech Republic and Norway is summarised by Imrich Dudková (2017).

However, in 2014, news about the case of the Czech woman E. M., whose two sons were taken away in Norway due to the suspicion of sexual abuse of the elder son X by the father, began to appear in the media on a large scale. Nevertheless, the boys remained separated into two foster families. The case ended up at the European Court of Human Rights (ECtHR, or the Court), but the mother did not succeed (E. M. and Others against Norway, 2019). However, this was far from the only published case. In the Czech Republic, cases covered by the media included that of a Slovakian-Norwegian couple whose 10-week-old fully breastfed daughter was taken away due to alleged bad eye contact with the deaf moth-

er and was won by the parents at the ECtHR (A. L. and Others, 2019); the case of Šárka S., whose sick daughter was taken away, was eventually recovered (One denunciation and Barnevernet took their daughter..., 2016); or the case of the Romanian-Norwegian Bodnariu family, from which five children were taken away – this case caused such massive global protests that the parents recovered the children by agreement (Marius Bodnariu and Others against Norway, 2020). These cases and dozens of others, whether in Norway or other countries, contradicted the procedure of the Norwegian child protection agency Barnevernet.

It must be added that serious reports and criticism from globally recognised prestigious organisations, e.g., the Commissioner for Human Rights Nils Muižnieks (2015), the Parliamentary Assembly of the Council of Europe (Borzova, 2015), the Council of Europe (Ghiletchi, 2018), the Committee for the Rights of the Child (Committee on the Rights of the Child, 2018) or the European Court of Human Rights (Zdechovský et al., 2021), various disinformation articles were also added (Pavlíková and Mareš, 2020) when the search for the truth was made much more difficult by the fact that Norway, referring to the protection of children's privacy, refused to comment on the cases, although some parents agreed to inform the public (Case of K. O. and V. M. v. Norway, 2019).

The result of the media pressure was that there was at least a formal suspension of the CZ04 program in the section dealing with direct cooperation with Norway. The program operated from 01/01/2014 to 01/20/2016 (Codification of legislation..., 2014). The Minister of Labour and Social Affairs at the time, Michaela Marksová Tominová, blamed some politicians who, according to her, senselessly scared the public: "The Ministry of the Labour and Social Affairs is said to be cooperating with the Norwegian social service, which will lead to the mass removal of children from families who displease the officials" (Statement of the Minister of Labour and Social Affairs, 2015).

E. M. versus Norway was not the first controversial Barnevernet case covered by the media. However, it contributed to the fact that the general public began to look into the practices of social workers, not only in Norway but also in the Czech Republic.

This article aims to describe the case of E. M. vs. Norway in a broader context and to compare the resulting judgment with other judicial decisions of the ECtHR, since the anonymised information published in these decisions can be considered a sufficiently relevant and reliable source fulfilling the ethical rules for reporting on sensitive cases regarding children.

MATERIALS AND METHODS

We used qualitative methods as a case study – an in-depth interprofessional analysis of the ECtHR judgment regarding *E. M. and Others sv. Norway* and related sources. The authors are members of the (formally) existing Petition Committee for Support of the Mother and, therefore, have access to the entire file, including previously unpublished documents.

Norway and the protection of children's rights

Norwegian child protection has been regulated by the Child Welfare Act since 1992, which was amended on 1 January 2023 (Ministry of Children and Families in Norway, 2023). It follows that the Norwegian Child Protection Service (Barnevernet in Norwegian, literally "child protection") has a crucial say in evaluating the occurrence of sociopathological phenomena in the family. Barnevernet is a public agency made up of branches in each municipality (there are more than 440 of them), whose activities are supported and supervised by various government bodies at the state level (two government agencies: The Norwegian Directorate for Children, Youth and Family, in Norwegian Barne-, ungdoms- og familiedirektoratet, abbreviated Bufdir, and the Office for Children, Youth and Family, in Norwegian Barne-, ungdoms- og familieetaten, abbreviated Bufetat) and at district level (district governor and district welfare council, Fylkesnemnda in Norwegian). This system is described in more detail in Fig. 1.

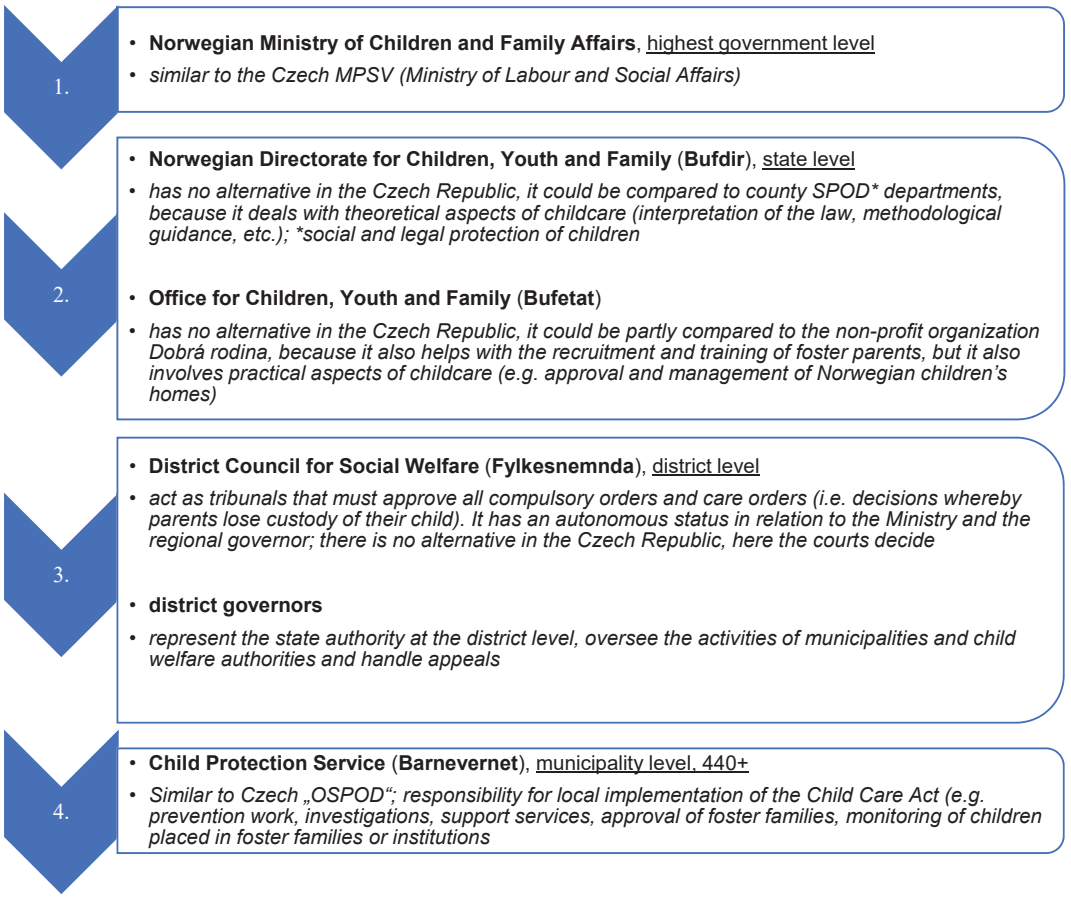

Fig. 1 – Diagram of the Norwegian system for the protection of children's rights; proper elaboration

The main responsibility of Barnevernet (BV) is to ensure that children and young people living in conditions that may be harmful to their health and development receive the necessary help and care at the right time (The Norwegian Directorate..., 2023). The measures it takes apply to all children under 18 years of age in the territory of the Kingdom of Norway, i.e., also to foreigners or children of tourists (Ministry of Children and Families, 2001, pp. 1.2 and 1.3).

In addition, the use of the services of a large number of different non-profit organisations is typical for the Norwegian system. This is primarily because individual municipalities do not always have a sufficient amount of financial resources for all support and protection measures (these include the evaluation of the situation in the family and the justification of possible removal of the child and placement with a suitable foster carer, etc.). If they outsource the services to a private actor, this is paid for from the state budget and not the municipality (Mazancová, 2015a). In 2016, when the Norwegian Ministry of Children entrusted the creation of an audit to the independent firm Vista Analyse, an unexpectedly high level of corruption in awarding these contracts was uncovered (Ekhaugen and Rasmussen, 2016).

Norwegian law relies on ensuring the best interests of the child (see section 4.1 of the Act). Removal from the family is explicitly dealt with according to section 4.12, which defines four situations in which Barnevernet can directly remove a child from the family. Sec-

tion 4.13 then states that Barnevernet must intervene as soon as possible if their decision is subsequently confirmed or revoked by a special commission (the county social welfare board, Fylkesnemnda) within six weeks, with possible justified extension (Zdechovský and Violet, 2023). A regular trial occurs only after Ghiletchi (2018), in his report to the Parliamentary Assembly of the Council of Europe (PACE), stated that confirmation occurs in approximately 90% of cases. This procedure has been repeatedly criticised by various international bodies (Zdechovský, 2021), including the European Court of Human Rights in Strasbourg (Case of Strand Lobben and Others vs. Norway, 2019).

Interestingly, the law repeatedly emphasizes the importance of considering the child's opinion. However, section 4.4 allows an exception when parents are supported by placing the child in state institutions: *"These measures to support parents can be carried out even without the child's consent if they are carried out within the final phase of the stay in the facility according to § 4–24. Parental support measures implemented without the child's consent must not be maintained for more than six months from the decision of the district social security administration"* (Ministry of Children and Families, 2001).

Furthermore, according to Section 4–20, the commission can relieve the parents of their parental responsibility and grant approval for adoption if the parents are permanently unable to provide proper care for the child, or if the child has developed a relationship with the people or the environment in which he/she lives (i.e., foster parents), i.e., such a relationship that taking the child away could cause serious problems (Ministry of Children and Families, 2001).

E. M. and Others vs. Norway

In the following case study section, we have based the description of the case exclusively on the ECtHR judgment in *E. M. and Others against Norway* (E. M. and Others against Norway, 2019). It will be divided into three parts and subsequently supplemented with the authors' commentary, which will appear in a broader context in the discussion part. The sections reflect the period before the media coverage, the media coverage period (2014–2017), and the period during which the European Court of Human Rights decided its view on the complaint.

A) Proceedings from January 2011 to May 2013

In the case of *E. M. vs. Norway*, two sons, Czech citizens (X born in 2005, Y in 2008), were removed from a Czech family living in Norway in May 2011 due to suspicion of sexual abuse by the father. The suspicion was sent to Barnevernet by a kindergarten teacher. The mother, who is the complainant in the case, was initially considered a victim by social workers. They encouraged her to divorce the father to qualify for state assistance, including sheltered housing for herself and the children. This was partially based on an agreement with the social-legal protection authority, where the mother could meet the children once and, later, twice a week. However, at the end of August, she was completely denied this contact as the boys told the foster mother about their mother abusing them, and a police investigation was launched.

On February 8, 2012, the regional commission (fylkesnemnda) reached the conclusion that the boys must have been seriously neglected and physically abused, but the commission did not consider it necessary to further investigate whether and to what extent they had been subjected to sexual abuse. They expressed concern that returning the children to their mother could lead to serious neglect. Therefore, a long-term placement was immediately considered, despite the assumption that the mother might eventually be able to care for the children properly. Subsequently, the complainant could only see her sons four times a year for two hours under supervision. The father was not granted any visitation rights. During the spring of 2012, the sons were placed in two different foster families with permanent foster parents.

The following district court (June 2012) upheld the commission's decision, but completely denied the mother the right to have contact with the children because her care of the children allegedly showed serious deficiencies; the children were allegedly subjected to corporal punishment, and they would have associated the mother's visits with violence and abuse by the father that the mother did not prevent. In February 2013, the High Court accepted the mother's appeal (not the

father's) and allowed personal contact under supervision for two hours twice a year. In their decision, the court stated that their findings were not definitive and they had not found sufficient grounds to conclude that the first applicant sexually abused the children or that she knew of their abuse by the father and did not intervene. The court ruled that there was no need to pursue these issues further as it was sufficient that suspicions against both parents were adjourned.

Two years after the removal of the children, in May 2013, the appeal committee of the Supreme Court (Høyesteretts ankeutvalg) did not accept the mother's appeal to the Supreme Court (Høyesterett). Subsequently, the limitation of the first complainant's right to have two hours of supervised contact with the children twice a year was confirmed; the purpose of the visits was primarily for the children to get to know their mother sufficiently, as the foster parents would provide them with daily care and long-term emotional attachment.

AUTHORS' COMMENT

The authors observe several contradictions in the case description. Each of the four hearings (District and Regional Commission, District and High Court) concluded that the situation was serious, even though the children and their families were never seen in their natural environment by either forensic experts or Barnevernet staff because the children were removed before the investigation. The mother was supposed to beat the children, but she was never even fined, when, in Norway, the punishment for a few slaps is up to six months in prison (Ferebauer, 2018). It is also rather illogical that the mother was presumed to seriously neglect the children in the future but still be able to take care of them over time. Abuse as the most serious allegation was adjourned, and they never "found a reason to pursue it further", yet it was always mentioned.

One of the documents from the file the petition committee published in support of E. M. (Mazancová, 2015b) was an official report from the police, in which the mother asked about the investigation against her. During the commission and court hearings, Barnevernet claimed it had filed a criminal complaint (CC) for abuse against her. However, the police stated they had never received a CC for abuse against the mother. They only investigated the alleged beating, for which they found no further evidence; the mother admitted to spanking the children a little on the bottom about twice for educational reasons – she did not know about the strict prohibition of physical punishment, which does not apply in the Czech Republic. The police also investigated the alleged showing of pornographic photos to children, for which they conducted a detailed search of the house and also checked all electronic devices. No evidence was identified, and both notices were shelved.

What remained unpublished was the temporary foster carer's statement that the children had allegedly confided in her about the conditions in the original home after a roughly two-month stay during a "rare moment of trust". The then-six-year-old X allegedly actively nodded and complemented the then-two-year-old Y with advanced turns of phrases such as "he stuck his penis in my anus" to describe how he was abused not only by his father but also by his mother. This testimony came days after Barnevernet told the mother they still couldn't get her the promised sheltered housing.

The authors are convinced that this statement could not be authentic from the point of view of developmental psychology and speech development of the children, who spoke mainly Czech at home. At the same time, the boys never said anything like that again, although they were repeatedly asked about it from many sides, and all available projective methods were used. The authors consider the fact that, before the district court proceedings, the older X began the last meeting by asking his mother not to beat him as "coerced behaviour". A similar concern would be likely for a 6-year-old child shortly after an incident and not at a time when he saw his mother only once in three months, was newly placed with permanent foster parents, separated from his brother, and experienced the original family environment almost a year before. However, Barnevernet used this sentence as the main argument for proposing a complete restriction of the children's contact with the mother, as it was supposed to demonstrate that they associate contact with her with violence and abuse.

After nearly three years of dealing with the Norwegian child protection system, the moth-

er's last attempt on August 26, 2014, ended with her complaint being declared inadmissible. This ultimately led to the withdrawal of all charges against her. The boys were separated into two foster families. The mother could officially see them only under the supervision of experts, Barnevernet workers, and the police for two hours twice a year. She was not allowed to talk about the past, say that she loved the boys or just cry spontaneously, which would terminate the meeting (Koukal, 2014). The authors consider this social work with the family to be completely inappropriate and lead only to the further division of the family, not to a merger.

Only after this did E. M. decide to contact Czech politicians and seek media coverage for the case.

B) Proceedings between 2014–2017

On December 10, 2014, the mother filed a motion to annul the decision to place the children in foster care, which Barnevernet did not agree to, and subsequently filed a counter motion for the removal of parental responsibility towards both children, a ban on contact with the children, and granting consent to the adoption of Y. This counter motion was initiated by the district commission debate in September 2015 and fully complied with Barnevernet's proposal. The decision to remove parental responsibility towards X was justified by the fact that the mother allegedly published the case in the media, including photos of the children with accompanying text about sexual abuse. The 9-year-old boy was allegedly under continuous pressure and followed these reports in detail on the Internet. Without parental rights, the mother could not publish information about the case to make X feel safer.

On June 30, 2016, the district court issued a sentence to which the mother appealed. The court reconsidered the approach to the mother, whose caregiving skills were to be improved, yet upheld the deprivation of parental rights to X, who was said to be suffering from post-traumatic stress disorder (PTSD) due to complex and long-term neglect. The diagnosis was made by Barnevernet's psychologist, who acknowledged that any treatment would be possible only after the proceedings, and X, therefore, had to remain with foster parents who could provide high-quality care in terms of safety, stability, and predictability. Furthermore, parental rights were to be removed because, despite what was said, X should be an outpatient at a psychiatric clinic for children and youth, where they had sensitive information about him, which the mother should not have access to because she could provide it to the media.

Visits would not be allowed due to X's alleged strong physical reactions at the mere mention of the possibility. The court, therefore, came to the conclusion that in this case denying the right to contact is not a violation of the European Convention for the Protection of Human Rights (hereinafter referred to as the Convention) or the Convention on the Rights of the Child regarding the right to personal contact with biological parents and to know one's cultural origin, as the human right to protection from harmful conduct should have prevailed. In other words, it should have been in the child's best interest that the contact did not occur (in the meantime, the contact was reduced by Barnevernet to 15 minutes twice a year), which will not change.

Both children allegedly expressed that they did not want to return to their mother; it was also noted that Y had a strong emotional attachment to the foster family, and there was no doubt that being removed from this family would cause him serious problems, including a sense of deep loss and grief. From this point of view, the original proposed adoption should have been justified, but the court did not approve it so as not to break the biological ties, especially those with the brother.

The district court also took the issue of publishing the case in the media into consideration. The complainant was to prove that she did not understand the needs of the children. Therefore, they proposed the removal of parental rights to Y, who did not know anything about the news in the Czech Republic due to his age, but if the mother continued to publish in the media, this could change.

The mother's later appeal to the High Court was rejected, thus confirming the withdrawal of parental and visitation rights due to media coverage, but at the same time stopping Y's adoption. An appeal was also filed against the High Court's refusal to allow the appeal, which was rejected in January 2017 because it allegedly did not stand a chance of success.

The mother, therefore, appealed to the ECtHR.

AUTHORS' COMMENT

Further proceedings were characterised by the mother no longer being accused of neglect, abuse, and inability to take care of the children; she was only blamed for the media coverage. From the point of view of the petition committee, the reason for the fundamentally better assessment of her educational abilities was primarily that she moved to another village to join her boyfriend, which also changed the local Barnevernet for her. They evaluated her care of her new friend's daughter as very good; in addition, she completed her master's degree in pedagogy and worked in a kindergarten, and later also in an elementary school as an assistant to children with special needs (physical and mental handicaps).

Neglect was mentioned only for the older son's PTSD. Here, it is surprising that this diagnosis appeared only in 2016, more than five years after the removal. It was allegedly caused by neglect, although in previous statements by Barnevernet, there was a problem of beating and abuse, which was not confirmed. According to Jochmannová (2021), PTSD can develop after exposure to an extremely dangerous or threatening event or a series of events. However, such a description is more likely to be matched by the sudden and violent removal from parents, repeated coercion to testify about the alleged abuse, conversations about beatings and probably manipulation by foster parents during media coverage. The authors consider it highly improbable that a 9-year-old child, who at that time had had no access to Czech for almost five years, would have been able to find the articles of opponents of E. M. on the Czech internet and translate them into Norwegian when Czech-Norwegian translations are very unreliable even nine years after the event. Overall, treatment should have been possible only after the end of court proceedings, which indicates that it is not acute. Moreover, it is hard to believe that such serious neglect would not have been detected by the Norwegian authorities earlier, and it is necessary to point out that the children's paediatrician always testified unequivocally in favour of the mother.

The district court also generally proceeded in a very non-standard manner. Compared to Barnevernet, E. M. was given disproportionately less time to defend herself and could not make a closing speech. They did not recognise the opinion of the renowned Czech psychologist Šturm or any other Norwegian psychologist other than those paid for by Barnevernet. In addition, the "independent psychologists" of Barnevernet were found to be life partners (Mazancová, 2015c), and opinions were not admitted by the psychiatrist of the support organisation Bufdir, who was convicted of possessing more than 20,000 images and 4,000 hours of videos depicting sexual violence against children (Gluck, 2023). The older X did not testify in court; only a 2-year-old video was played where he was asked guiding questions by a Barnevernet employee. So, all the claims about him not wanting to see his mother came solely from the Barnevernet staff, who presented this as the child getting his own "spokesperson".

Photo evidence or recordings of meetings and other evidence that the children had a good relationship with their mother and, for example, their grandfather or aunt, when the possibility of care with relatives was never examined, were also not admitted. On the contrary, Barnevernet staff were seen in court advising the foster parents on what to say to pre-arranged questions. The trial was once postponed a week before the meeting, to which journalists had also bought plane tickets. Later, there was a change of judge, who did not allow anyone into the courtroom, not even the mother's confidant, let alone her Czech lawyer, although everyone requested correctly and on time. They explained this by saying that the father's sign language translator would not feel comfortable (the father was entitled to one as a person with a slight hearing disability).

In the meantime, scheduled meetings with the children were cancelled because the children were under stress from court hearings or exams at school. Birthday gifts, etc., were returned in damaged packages.

C) Proceedings before the ECtHR

The mother, in her role of first complainant, objected that the decision, which confirmed

the second (X) and third complainants' (Y) stay in substitute care and the deprivation of the first complainant of parental and visitation rights to both children, violated the right of all three complainants to respect for their family life from Article 8 of the Convention:

"(1) Everyone has the right to respect for their private and family life, home and correspondence.

(2) A public authority may not interfere with the exercise of this right except when it is lawful and necessary in a democratic society and in the interests of national security, public safety, the economic welfare of the country, the prevention of riots and crime, the protection of health or morals, or the protection of rights, and freedoms of others" (European Convention on Human Rights, 1970).

She further stated that it was in the children's best interest to always take the least invasive measures possible, where a key aspect is the children's right to be cared for by their biological parents. She also claimed that although there had been rumors of alleged child abuse on her part, they had not been thoroughly investigated and the expert reports had not clarified the matter, only reaching an unspecified conclusion that the first complainant had failed to raise the second and third complainants. She further pointed out that no work was done with the family, the children were immediately left in foster care and visitation rights were gradually restricted to such an extent that it could not even be considered contact. Subsequently, she highlighted that, in her opinion, the procedures in the present case did not correspond to the model procedures as presented by the defendant state, and emphasized that the Court's general principles regarding the preservation of family ties should be applied mutatis mutandis to the relationship between siblings.

The Norwegian Government rejected these claims, stating that there were relevant and sufficient reasons for the contested measures, which were based on a thorough and careful assessment, as well as the special care needs of the children, and this, together with their clearly expressed opinion, should constitute an overriding reason for which the decision to place the children in foster care was confirmed and the mother was denied the right to personal contact. They also recalled that initially they provided the mother with supportive guidance and made arrangements to allow the mother to live with the children.

The ECtHR first recalled the legal framework for decision-making, which in the introduction is the Norwegian Act on the Socio-Legal Protection of Children from 1992 (barnevernloven) and then paragraphs 1 and 2 of Articles 3 and 12 of the UN Convention on the Rights of the Child adopted in New York on November 20, 1989 , which emphasise the necessity of decision-making according to the principle of the best interest of the child (Westphalová et al., 2021) with regard to the rights of parents and also the child's participation in the decision-making process.

The ECtHR further ruled on the admissibility of the complaint as the Norwegian government denied the admissibility of the second and third complainants' objection on the grounds that the mother did not have legal rights to file the complaint on their behalf due to a conflict of interest, which the mother rejected, citing the Grand Chamber's decision in the Strand Lobben case and Others against Norway. The Czech Republic also joined this point as an intervenor.

The Czech government stated that the biological family was not provided with sufficient support for their reunification, with the mother's parental responsibility and right of access to be preserved and a suitable solution to the family's difficult situation to be found, regarding which the authorities of the defendant state did no attempt. Other intervenors included the government of the Slovak Republic and the Polish organisation Ordo Iuris Institute for Legal Culture, which commented mainly on the general principles of how to assess complaints regarding the care of children.

The Court noted that, in several recent judgments concerning the defendant state, it expressed concern about the practice where a highly restrictive contact regime is justified by the likelihood of long-term placement (see Strand Lobben and Others, K. O. and V. M. vs. Norway, Pedersen and Others vs. Norway or M. L. vs. Norway). In this particular case, however, Norway should not have errored and should have properly justified everything, or paid considerable attention to the children's alleged negative reactions to contact and media coverage, which should have demonstrated decision-making in the best interests of the children.

The ECtHR subsequently dealt with the active authorisation of the mother to file a complaint on behalf of both children, when according to the current legal system, minors can file a complaint with the Court even if (or especially if) they are represented by a parent who is in dispute with public authorities – the position of the biological parent provides sufficient authorisation even in these cases (see Iosub Caras vs. Romania). This was clarified in Strand Lobben vs. Norway, stating that the Court can find a conflict between the interests of the parent and the child. In E. M. and Others vs. Norway, this conflict, unlike similar earlier cases, should have occurred because the children were placed in foster family care because of concerns that the mother would not protect the children she intended to represent before the Court from abuse in their home.

AUTHORS' COMMENT

It took the court four years to reach a decision in the case. The mother's appeal was subsequently rejected in just 19 days, when they described the case solely based on Norway's version of events and did not consider any evidence provided by the mother, including recordings of meetings that proved that their descriptions by Barnevernet staff were not true.

It was also not investigated why X had psychological problems. It was only considered confirmed that these issues were certainly not caused by the generally highly traumatic uprooting of the child from a familiar environment, separation from his brother, loss of contact with his native Czech language, and overall separation from his parents (Pavlát and Janotová, 2006), which can manifest in inhibition or deformation of the child's emotional and psychosocial development (Tomešová, 2019). At the same time, even when a child loses "only" one parent during a separation, it is perceived as highly stressful by the public and experts (Paloncyová et al., 2022).

Norway should have sufficiently justified all its actions, although it was not further explained why the brothers were separated, why Norway never allowed the upbringing of children by relatives in the Czech Republic, as required by the Hague Convention, or why the judgment of the court in Hodonín, which entrusted the children to the mother based on the detailed knowledge of the case, could be completely ignored, when, after many years, it became clear that, according to international law, it was the Czech side that should have decided on Czech citizens from the beginning (The Hodonín Court..., 2021).

The conflict of interest cited, which prevented the mother from filing a complaint on behalf of her sons, is also unusual. At the same time, this was allowed without exception to all other parents who turned to the ECtHR, even if the case involved, for example, proven violence against children (see A. G. against Norway, Application No. 14301/19, 2019, Lubomír POLÁŠEK contre la République tchèque, requête no 31885/05, 2007 or S. A. against Norway, Application No. 26727/19, 2019). It was not explained who could file a complaint on behalf of minor children, when it cannot be the mother and, in general, neither the home state, here the Czech Republic, which interpellated in the case.

The court also failed to explain why the media coverage of the case did not include freedom of expression or where the level of media coverage was still permissible because none of the other cases of internationally mediating parents, such as Marius BODNARIU and Others against Norway (2020) or the Case of K. O. and V. M. v. Norway (2019), was criticised for publishing. What the Norwegian Embassy claimed in 2015 was not true, i.e., that the authorities would not punish parents in any way if they presented their case to the public (Norwegian Embassy: Authorities do not punish parents for speaking to the media, 2015).

DISCUSSION

The authors consider the greatest difference between the Czech and Norwegian child protection systems to be the degree of autonomy and authority that the workers of social-legal child protection bodies have. In addition to the fact that Barnevernet employees can remove a child as a precaution based only on a received "report of concern", after which an investigation is carried out, they can also directly appeal against a court decision and refuse to return the child to the family, even if the court orders it. In the case of *A. L. and Others against Norway*, this even happened

twice, when at the next hearing several years after the removal, the court concluded that the child had become too attached to the foster parents and it was therefore necessary to leave him/her in their care (A. L. and Others, 2019).

The degree of trust given to Barnevernet officials by other bodies for the social and legal protection of children is unique. They usually comply with their requests (Ghiletchi, 2018) and in proceedings, according to the authors' experience with hundreds of similar cases, they accept evidence and opinions only from those experts who have been directly paid by Barnevernet, even if massive corruption in awarding and tailoring contracts is proven (Ekhaugen and Rasmussen, 2016). In the Czech Republic, family courts also tend to not recognise opinions that satisfy the claims of the parent who submits them, but the judges appoint their own independent experts.

The above provides a partial explanation as to why so many parents who disagreed with the decisions of Barnevernet officials and subsequently the Norwegian courts started turning to the European Court of Human Rights. In 2021, an analysis of all judgments and decisions of the ECtHR was processed (i.e., complaints to the minimally communicating government were also included, but after a detailed assessment, they were marked as inadmissible, and there was no direct judgment) for Article 8 for Norway (Zdechovský et al., 2021). The updated analysis from October 1, 2023 showed that the ECtHR dealt with 125 cases for this Article, of which 64 were directly related to custody proceedings, in 22 cases errors were found, in 7 errors were not found, 34 were marked as inadmissible, and 1 complaint was still undecided. Table 1 summarises what was said. What specifically the parents contradicted in the mentioned 64 cases is shown in Fig. 2. If we subtract 7 parental disputes, the case of the rights of the mother of the child from a surrogate mother, there are 56 cases related to the Barnevernet process.

The authors further observe the non-standard procedure of the Court in complaints in Norway, when the Court did not issue summary statistics of judgments in January 2024, as it did between 1959 and 2022, but only isolated statistics for 2023, with only 3 decisions issued in Norway (Violations by Article and by State, 2023, 2024). In September 2023, the Court issued a press release on 21 complaints (European Court rules..., 2023), of which 9 were identified as violations, and 12 were declared inadmissible primarily due to the failure to exhaust absolutely all, even the smallest, measures in Norway, including failing to visit children once (see J. B. and E. M. against Norway, Application No. 277/20, 2020), due to formal errors (see R. A. against Norway, Application No. 44598/19, 2019) or failure to file an appeal from the beginning of multi-year disputes. In the authors' opinion, this would not fundamentally change the subsequent progress of the case (see A. G. against Norway, Application No. 14301/19, 2019). The ratione materiae principle also appeared three times, i.e., the legal doctrine claiming that the court can hear and judge only cases of a certain type, specifically in the case of *IBRAHIM v. NORWAY, Application No. 41803/22*. In this case, the mother first won her forced adoption case at the ECtHR (Case of Abdi Ibrahim v. Norway, 2019) and then complained that, based on this result, Norway still refused to reopen the child's case, even though the win was an adequate reason for reopening. In the present case, the ECtHR, referring to Article 46 of the Convention, correctly decided that it could not deal with

Table 1 – Quantitative results of 125 unique complaints to the ECtHR in Norway and Article 8 of the Convention; custom processing (*N* 125)

	Total	Count of communicated	Count of violation	Count of inadmissible	Count of no violation
Complaints to the ECtHR in Norway	125	3	30	76	16
Custody cases	64	1	22	34	7
Other topics under Article 8 of the Convention	61				

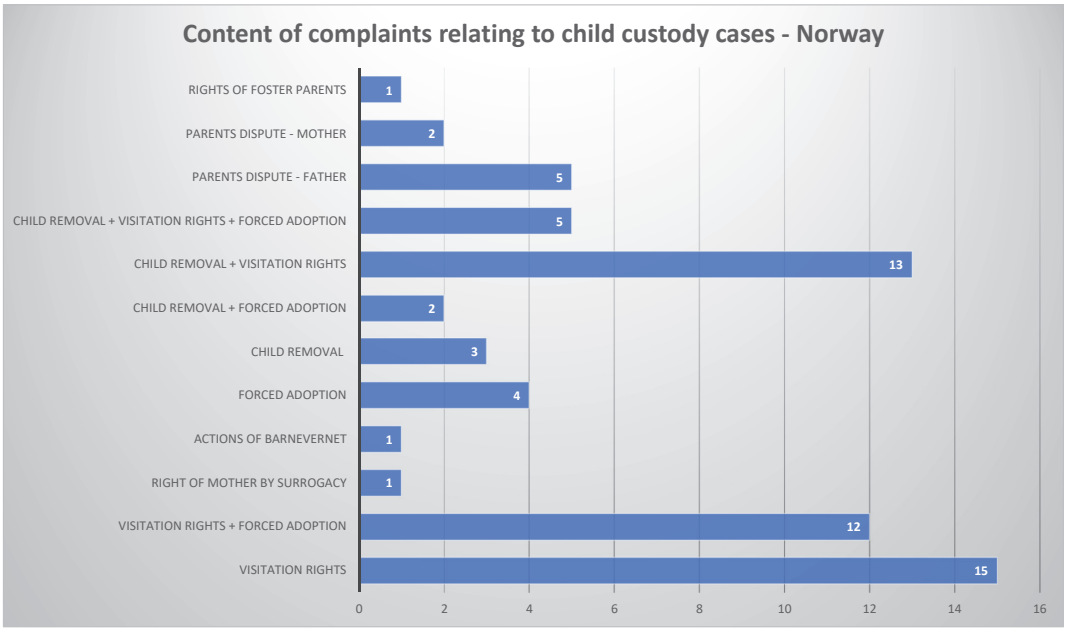

Fig. 2 – Summary of grounds for complaint in custody cases; custom processing

the applicant's complaints that the domestic proceedings had not been renewed based on the ECtHR's judgment because matters of compliance with its judgments by the High Contracting Parties did not fall within its jurisdiction if they were not brought within the "proceedings for breach of duty" according to Article 46, paragraphs 4 and 5. Concerning the above, attention can be drawn to the wording of the relevant paragraphs of Article 46 of the Convention: *"(4) If the proceedings violate the law, it is necessary to proceed in this procedure following Article 46 of the Convention. If the Committee of Ministers concludes that a High Contracting Party refuses to comply with a final decision in a dispute to which it is a party, it may, after receiving formal notification to that party, by a decision adopted by a two-thirds majority of the representatives entitled to sit in the Committee of Ministers, submit the question whether that party has violated its obligation under paragraph 1 to the Court of Justice. (5) If the Court finds a violation of paragraph 1, it will refer the matter to the Committee of Ministers for assessment of measures. (6) If the court finds that there has been no violation of paragraph 1, it will refer the matter to the Committee of Ministers, which will complete its assessment."*

The mentioned three decisions in the statistics probably arose so that five other unique cases were attached to the recognised complaint (Case of K. F. and Others v. Norway, 2023), but there was only one judgment.

As for the case of E. M. vs. Norway, the decision is not proportional to very similar complaints about the activities of Barnevernet – of which there were 56 and a violation of the law was found in 22 of them¬ – or to the case of T. vs. Czech Republic, when the violation of rights was marked by the fact that the Czech authorities did not entrust the father with the care of the daughter, who was demonstrably extremely afraid of him and preferred to stay in a children's home. The father had already been convicted of grievous bodily harm before her birth; he also brutally beat the mother, which the daughter witnessed, and together they fled from him to an asylum. However, the mother passed (T. vs. Czech Republic, 2014). The lack of proportionality is further shown by the already mentioned criticism for media coverage (which was not criticised regarding other parents) and the fact that in no other

case was a conflict of interest noted when filing a complaint for children.

The authors believe that the Court's decision in this case could have been influenced, e.g., by sending an extraordinary donation to the Court's activities in the amount of 600,000 euros by the Norwegian Crown Prince (Magnus, 2019) because it is true that E. M. was the first European case that revealed the practices of Barnevernet to the public, at the time when projects to copy the Norwegian child care system were being launched not only in the Czech Republic, which stopped the financing of some projects (Statement of the Minister of Labour and Social Affairs, 2015). The result meant that supporters of the transformation could label all criticism of Norway as unjustified when the mother lost and, in turn, refer to Norway as a friend from whom the Czech Republic should learn (which some actually did (Le Fay, 2022)), even though criticism appeared even in Norway (Salvesen et al., 2016) and from many prestigious foreign organisations. It should be added that the director of the Office for the International Protection of Children, Zdeněk Kapitán, stated that Norway should have returned the sons to the mother after the ECtHR's ruling (Pavlíček and Beránek, 2022).

CONCLUSION

In the case of E. M., two sons and Czech citizens (X born in 2005, Y in 2008) were removed from a Czech family in Norway in 2011 due to the suspicion of sexual abuse by the father. This abuse was not proven. The sons were not returned to the mother, who, according to the instructions of the Norwegian social service Barnevernet, divorced the children's father, which they had set as a condition. Later, accusations of abuse and serious neglect made by the mother also emerged, but the police dismissed them due to a lack of sufficient evidence.

Therefore, the authors are not afraid to call the accusations false or purposeful. Because of the financing structure of the Norwegian child protection system, Barnevernet workers are incentivized to outsource social services to external non-profit organizations, which are funded by the state rather than the municipality. There are financial interests in favouring foster parents. In this case, it was revealed that the foster parents of the younger child Y 'always wanted to adopt a boy from a poor country,' as they stated during the district court hearing in 2012. Thus, the mother was accused of not "protecting" the sons from the father. Later, she was guilty of the media coverage, which primarily bothered foster parents.

The case is exceptional in several respects. First, it was the first case of a parent from an EU country that came to the public to a large extent (before that, the case of Indian parents appeared, which was also the subject of the film *Mrs Chatterjee vs. Norway*, available on Netflix). The level of media coverage and political involvement, including sending several diplomatic notes to Norway, was indeed so unprecedented that it can be said that no other case has brought the general public interest in social work and the subject of child protection as much as this one. The reason was not only that opponents and supporters of the mother clashed here, but also the events at the Norwegian commissions and courts, which were very dynamic, especially at the moment when the forced adoption of Y was to occur, although it was stated that the mother's educational abilities had improved.

It is also exceptional for the withdrawal of parental rights due to media coverage and determining the mother's conflict of interests when she complained to the ECtHR. The authors studied all Article 8 complaints in the Czech Republic and Norway in detail, and there have been no other similar cases. The question of who can stand up for the children when neither the parents nor the Czech Republic can remains unexplained. Given 56 very similar complaints by parents against Barnevernet, where the extremely low visiting frequencies and dealings with foster parents rather than biological parents are repeated, of which the ECtHR found a violation of Article 8 in 22 cases, as well as judgments such as T. vs. Czech Republic, the authors dare to state that the judgment of the ECtHR is disproportionate.

Ethical aspects and conflict of interest
The authors have no conflict of interest to declare.

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