CENTRE FOR RESEARCH ON DISCRETION AND PATERNALISM

CODING PROCEEDINGS - CHILDREN IN ECtHR PROJECT

Data collection and coding process

To examine our research questions, we have collected all child protection judgements pertaining to Article 8 of the ECHR that are available in English from 1959 till the end of 2022. The data sample consists of 112 judgements, including four judgements decided both in the Chamber and in the Grand Chamber. The data collection and reliability testing were carried out in multiple steps throughout 2023, while the coding of the data was carried out during the spring semester of 2024. In this document, the process of collecting data, sampling and coding process is presented in detail.

Searching HUDOC for Child Protection Judgements 1959-2022

To identify the judgments, we used the online database HUDOC, which provides access to all case law of the ECtHR. We include judgments that were decided in the Chamber, Grand Chamber and Committee from 1959 up until December 2022 that are about Article 8 and are available in English. We do not include 'decisions' made by the ECtHR. While acknowledging that decisions have relevance, especially in terms of early jurisprudence,[1] they are excluded as they are, as categorized in HUDOC, delivered on admissibility issues, including ill-founded and struck-out of the list.[2] Reports issued by the European Commission on Human Rights up to October 31, 1999, are not included in the sample. These reports are confined to brief statements of the facts and the solutions reached by the parties. Through the search for ECtHR case law (see description below) 43 such reports were found. Some earlier judgements could contain both a report and a judgment, such as Margareta and Roger Andersson v. Sweden, 1991 (Chamber judgment), application N12963/87. We have included this judgment because the Court has decided on the merits of the case in this judgment and has delivered a decision on the question of violation of human rights. Some judgements solely feature reports, typically when the involved parties have reached a friendly settlement, as seen in Aminoff v. Sweden (1985). In Aminoff v. Sweden (1985), the ECtHR decided only on the admissibility of the case and not on the merits. Thus, it is not included in the sample.

We used the following search string to identify relevant judgments:

- child* AND care AND welfare. This resulted in a total of 357 judgments.

To ensure the robustness of the search string, several searches were conducted (under the same criteria):

- child* AND care: the search returned 699 results.

The main search was also performed with 'decisions' included, this resulted in 690 results.

[1] Decisions made by the Commission (before 1998) had a different character than decisions made by the Chamber and Grand Chamber today, as most cases were decided at this level and thus had a character more resemblant to judgements.
[2] HUDOC User Manual. HUDOC European Court of Human Rights, Oktober 2022, p. 15. Retrieved 29.09.2022 from https://www.echr.coe.int/documents/d/echr/HUDOC_Manual_ENG. In several posts Prof. Eva Brems asks if the case law can be understood without having an examination of the single judge decision about admissibility, https://strasbourgobservers.com/2024/04/12/the-single-judge-and-the-single-sentence-motivation-2-the-bewildering-dismissal-of-asmeta-v-france/#more-9975.

Additional searches were made ad hoc with the same criteria, with different search strings. These were compared with the main search, and random checking was made for searches 1-2, while all new cases were assessed for search 4 to assess if the main search was adequate in identifying the relevant cases. The following search strings were used:

1. child* AND care AND protection: the search returned 698 results (the search gave 334 new cases).[3]
2. "care order" AND child* AND protection: the search returned 683 results (the search gave 319 new cases)[1]
3. "care order" AND child* AND welfare: the search returned 354 results (the search did not give any new cases, and failed to identify three cases found in the main search)
4. "care order" AND welfare: the search returned 370 results (the search gave 16 new cases)

In addition, we searched for "child AND ("social services") (EXCLUDE "welfare")" at a later stage of the sampling process, this is elaborated on below.

Sampling and reliability measures to ensure the accuracy of the sample

The 357 identified judgments were manually reviewed by a research assistant based on a set of predefined criteria for what is defined as a child protection case. By child protection, we mean public law cases where children have been involved with the public CPS, where there have been state interventions due to parental maltreatment, abuse and/or neglect and where the alleged violation of Art. 8 concerns the public's actions in conjunction with the child's involvement with the CPS. The assessments are discretionary as there is no filter in HUDOC or an overview of cases by topic that allows us to produce outputs that are predefined by the ECtHR or the Council of Europe.

In the first round of review, written assessments for exclusion and inclusion were given for each case. Of the 357 judgments, 72 were assessed and defined as 'unsure'. The 72 judgements were then reviewed by the two senior authors and a research assistant in several rounds until all unsure cases were either defined as included or excluded. All excluded cases were also manually reviewed by the third author. Parallel to this, a validation test of the 357 judgements was conducted using a cross-checking procedure. A list of 117 judgements previously identified as child protection judgements in three relevant publications (Skivenes & Søvig, 2016; Fenton-Glynn, 2021; NIM, 2020) was cross-checked with the full sample (n=357), resulting in six judgements being added to the full sample.[4] The sample now consisted of 108 judgments. Following this, three external experts on Norwegian and international child protection law, with specific knowledge and experience with the ECtHR, were consulted to assess the included 108 judgements and to review if any judgements were missing. From this, three judgments were added to the sample, and two were excluded. The sample now consisted of 109 judgments.

An ad hoc search where 'welfare' was exchanged with 'social services' was conducted in HUDOC, resulting in the inclusion of three judgements not previously detected. The final sample now consisted of 112 judgments.

[3] The word 'protection' is used widely in the human rights discourse, and this creates a lot of noise in the data when including this term. Firstly, it is clear that by adding 'protection', we get all the cases that refer to the full article 8 and also refer to the words 'child*' and 'care'. Other articles, such as Article 10, also include the word 'protect'. Secondly, the Convention itself includes the word 'Protection'.

[4] Kuimov v. Russia; Levin v. Sweden; M.P. and Others v. Bulgaria; R.K. and A.K. v. the United Kingdom; Saviny v. Ukraine; V.D. and Others v. Russia.

As a final check we searched HUDOC for judgements citing six authoritative judgements, including K. and T. v. Finland (2001) (GC); Paradiso and Campanelli v. Italy (2017) GC); Y.C. v. United Kingdom (2012) (Chamber); Jovanovic v. Sweden (2015) (Chamber); Olsson v. Sweden (1988) (Chamber); Johansen v. Norway (1996) Chamber) (see Emberland, forthcoming). This search did not alter our sample of 112 judgements.

Thus, our data material consists of a total of 112 judgments about child protection and Article 8, concerning 193 children. Four of the included judgements are treated both in the Chamber and the Grand Chamber[5] meaning that the sample consists of 108 'unique' cases and 187 'unique' children. A total of 107 judgements included cases in which the child had been removed from parental care by the state, and in the remaining five judgements, there were no care orders issued as they concerned, for example, lack of intervention from the domestic authorities and/or improper investigation carried out by the domestic authorities (K.T. v. Norway, 2008, M. and M. v. Croatia, 2015, A and B v. Croatia, 2019), or annulment of adoption as a result of ineffective investigation (Kurochkin v. Ukraine, 2010), deprivation of parental authority of one of the parents and starting the adoption process by a step-father (Ilya Lyapin v. Russia, 2020).

We are aware that there are cases that will be adjacent to CPS matters and that can be 'borderline' cases, depending on how you define a 'child protection' matter. Most of the judgements are primarily about the child protection intervention and/or the role and actions of the child protection authorities, but the sample also includes judgements on the fringes as the complaint only partially concerns the child protection authorities and primarily other public authorities, such as the judgement *M.A.K and R.K/UK 2010*. Some private family law cases can be relevant for child protection matters as they address enforcement of contact orders in a manner that has cross-over implications for public care cases (e.g., *Ribic v Croatia* (27148/12, 2 April 2015) or *Stasik v Poland* (21823/12, 6 October 2015). These are *not* included in the sample. Child abduction cases can also have elements of child protection, but, by our definition, do not fall under the scope of cases that we are concerned with. Some cases may also have aspects of both private and public law, in which we have defined the cases as relevant or not based on what aspect of the case the allegation by Art. 8 is concerned with. Additionally, there is the inconsistency of the Court in how they define and consider cases after Art. 3 and Art. 8, respectively (O'Mahony, 2019). This means that some cases are defined as Art. 8 but may be more in the direction of Article 3 in the sense that the material considerations are not included if they do not directly address Art. 8 as defined above.

Coding process

The 112 judgements were imported in full as PDFs into the qualitative data program NVivo (version 1.7.1), where we categorized the different parts of the judgment and coded for the child's opinion. We started by categorizing the different parts of the judgement. A judgement typically consists of four overarching parts: The procedure, the facts, the law, and the court's decision. Within these parts, you typically find the following segments: The procedure, the circumstances of the case, relevant law and practice, alleged violations (including the invoked articles), admissibility, party submissions, the Court's assessment, decision, and separate opinions (concurring, dissenting, and other).[6] As a first step, each judgment was coded into segments reflecting the segments of a typical judgment. Next, we searched the Court's assessment and the Parties' submission for the Child's Opinion. The two steps are outlined below.

[5] K. and T. v. Finland; Strand Lobben and Others v. Norway; Paradiso and Campanelli v. Italy; Abdi Ibrahim v. Norway.
[6] We also included Award and reimbursement and a category for text that does not fall under any of the headings covered in the aforementioned categories, labelled Other.

Identifying and reliability testing the demarcation of the segments "Parties submission" and "Court's Assessments"

The Parties' submissions section includes the submissions made by the applicant(s) and the government and, in some cases, by third parties who provide a so-called third-party intervention (these are not included in our searches as these are not parties to the case).[7] These sections constitute, on average, about 1.2 pages (5 per cent) of a judgment. In the Court's assessment, the ECtHR provides its understanding of the facts and evidence and presents its reasoning and justification for the judgement's conclusion.[8] This part of the judgements constitutes, on average, 3.5 pages (12 per cent) of a judgment.

The coding process assumes the formal assessment of judgments primarily based on the structural characteristics of the document highlighted by the Court itself. The general structure of ECtHR judgments is usually composed of the list of the names of the judges involved, followed by the procedure and the facts of the case, domestic and/or international law and practice, and concluded with a section on the law – case's admissibility and merits, sometimes followed by separate opinions of judges (Keller & Heri, 2018). In addition, there may be a section on the award to be made regarding 'just satisfaction' under Article 41 ECHR. Despite all judgments having similar components listed above, there is a variation in how they are included in the text. This is elaborated on below.

The segment 'The parties' is present in all judgments as well, but six judgments discuss the parties' submissions in detail as part of the Court's reasoning in a way that makes it difficult to separate them based on the paragraphs or even sentences.

Coding and reliability testing the segment 'the Court's assessment':

The Court's assessment segments of all 112 judgments are situated in the "Law" section of judgments. This section contains information on 1) the alleged violations, 2) admissibility, and 3) merits, including parties' submissions and the Court's reasoning. Generally, this information is well-divided into sub-sections that are named accordingly. However, some judgments, especially those that were delivered before 2000, do not have a separate part that is composed of the Court's assessment only. Such judgments start the reasoning under the topic of alleged violations and include parties' submissions as separate paragraphs. Those submissions are considered by the Court on different issues raised under Article 8 or other articles of the ECHR. Thus, some paragraphs are coded as parties' submissions and excluded from the analysis of the Court's reasoning. These paragraphs start with *"The applicants submitted that..", "The Government accepted that…", or "The applicants contended that…"* and end with *"The Government contested this allegation"*. Those paragraphs do not mention the Court or its opinion on the matters discussed.

Finally, another variation in the judgments' structure relates to the 'Scope of the Case'.[9] This part can be situated 1) separately from the merits and admissibility in the Law section of judgments, 2) under the Court's assessment,[10] or 3) be joined with the admissibility part.[11] When the 'Scope of the Case' section is a part of the Court's assessment or admissibility, it is coded respectively. Thus, the scope of the case section is coded as a

[7] Of the 112 child protection judgements, 22 judgements have third-party interventions.
[8] Separate opinions follow, if relevant. These are not included in this analysis.
[9] The Scope of the Case is mentioned in 21 judgments as a separate part (most of cases) or within the paragraphs.
[10] Examples are Roengkasettakorn Eriksson v. Sweden, 2022, ; Zelikha Magomadova v. Russia, 2019.
[11] An example is McMichael v. the United Kingdom, 1995.

part of the Court's reasoning: 1) when it is placed in this section by the Court themselves, 2) when it is placed in the Law part of a judgment outside the Court's assessment section and does not mention the admissibility of the case (otherwise it is coded as admissibility).

An important criterion for coding the Court's assessment segment in earlier jurisprudence is how the Court refers to or makes statements related to the issue at hand, e.g. *in the Court's view (opinion)'* or the Court *'notes', 'observes', 'highlights', 'concludes'*. If the paragraph mentions the Court or does not merely summarize parties' submissions, then the paragraph is coded as the Court's assessment. Scozzari and Giunta v. Italy [GC] (2000) provides an example where the Court themselves highlights paragraphs with the party's submission under each issue raised under Article 8.

Only text under 'the merits' subsection is coded as the Court's assessment. The coding of the Court's reasoning differentiates between the ECHR Articles considered by the Court. Thus, assessments relating to other paragraphs of other alleged violations and parties' submission segments are not included in the Court's assessment segment.[12] See Table 1 for an overview of the structure of the 112 judgments and the number of judgments that are found under each structure type.

Table 1. The 112 judgments and their type of structure of the law section. Presented for the n=40 cases where the Court mentions the child's opinion and the n=72 where it does not.

Structure type	**Description of variations of structures of judgments**	**40 cases**	**72 cases**
Common structure	The Court's assessment segment is explicitly defined under all articles. When several articles are involved, every part is structured with marked sections for the parties' submissions and the Court's assessment.	11	30
Common structure but with some issues	Judgments that have a common structure and are straightforwardly structured except for some issues, including the scope of the case raised by the Court before the merits. Coded as part of the Court's reasoning.	8	4
Common structure under main articles	Common structure of the Law section under the main article(s), but not under all articles. Alleged violations and/or parties' submissions are not separated from the Court's assessment under some articles in the judgment and are presented together under the "Alleged violation" segment.	15	24
Early jurisprudence	The parties' submissions and the Court's assessment are integrated and undivided. The Court responds to the parties' submissions on each issue raised under articles of the Convention.	4	10
Not separated but easy to define	The Court's reasoning segment is not marked but easily can be separated from the parties' submissions.	2	4
Total		**40**	**72**

[12] See for example Q and R v. Slovenia, 2022.

Coding and reliability testing of the segment 'the Parties' submissions':
For six judgments, private parties' submissions are not coded because of difficulties of separating the applicants' submissions, the governments' submissions, considerations of the Commission, and the Court's reasoning based on the paragraphs of a judgment. Thus, these parts were coded as the Court's assessment.[13] Public submissions are coded in these cases because of the presence of a separate segment "on the final submission by the government". However, the government's submissions in detail are discussed in the part that was coded as the Court's assessment (as well as the applicants' submissions).

Coding for child´s opinion

We coded references to the child's opinion in two segments: the 'Court's assessment' and the 'Parties submission'. As a first step in identifying if the child´s opinion has been mentioned in the judgements, we searched the two segments for a selection of terms based on previous research, child rights literature and law, reading of the judgments, and legal discourses around children's participation in child protection matters.

The main search string included the following terms (applying the boolean operator OR and stemmed words): view*, opinion*, wish*, feeling*, consideration*, heard, hear*, consent, participate*, react*. Ad hoc searches were made for voice* express*, fear*, want* statement*, testimony*, accus*, interview*.

Each match was manually examined to understand the context and, when identified as relevant, coded in NVivo as "child's opinion" under either the parties' submission or the Courts assessments.

We coded '*mentions the child's opinion'* as those parts of the text where the Court, the applicant(s) or the government referred to/mentioned the child's opinion, including the child´s view, wishes, expressions, or feelings on the matters related to the case. This includes both when the child has provided their view, or when a representative has provided their view on behalf of the child. Moreover, references to children's statements and opinions in relation to the matter at hand are included.

For the Court's assessment segment, we also included the subcodes '*not heard'* and *'reasonably not heard'*, which include where the Court mentions or refers to the fact that the child is not heard or to the failure to include the child's opinion and/or the (in)adequacy of the child's participation in the domestic proceedings (for example, failing to hear the child directly, asking incorrect questions, or not re-hearing children after significant time has passed) or when the Court mentions that a child is reasonably not heard, e.g. due to their age. These two subcategories are merged in the presentation of results.

See the Code book for the full description of the codes: https://discretion.uib.no/wp-content/uploads/2025/01/DONE_Code-book-1.pdf

Coding for mentions in relation to ECHR article 8 and other ECHR articles
The 112 child protection judgements are all about ECHR article 8, but other ECHR articles are invoked in the judgements and appear in the Court's assessment of the case. An examination of the Court's assessment shows

[13] O. v. the United Kingdom, B. v. the United Kingdom, R. v. the United Kingdom, W. v. the United Kingdom, H. v. the United Kingdom (N111), McMichael v. the United Kingdom.

that in 37 out of 41 judgments where the Court refers to the child's opinion, the references are made exclusively under Article 8. Two judgments cite the child's opinion when deciding on alleged violations of Articles 8 and 3 considered together, one – on alleged violations of Article 8 in conjunction with Article 13, and one – on violations of Article 3. In one judgment, *E. and Others v. the United Kingdom, 2002,* there are three articles separately invoked – Articles 3, 8, and 13. The Court delivers its reasoning under Article 3 on the alleged (and confirmed) failure of social services to react to abuse within the family as well as on the lack of investigation, communication, and cooperation by the relevant authorities that could have allowed to avoid or at least minimize the damage suffered by children. In this judgement, the Court declares that no separate issue arises under the provision of Article 8 by referring to its finding of a violation of Article 3. In all other cases, the Court refers to the child's opinion when delivering its decision under the provisions of Article 8.

Reliability testing of coding of the child's opinion

The coding of the child's opinion was reliability tested following the norms for intercoder reliability. A random sample of 25 per cent of the judgments was tested manually by two coders independent of the first round of coding (O'Connor & Joffe, 2020). The randomization of the 112 judgements was done by chronologically ordering the judgements and using the statistical package *data.table* in the statistical programming tool *R* (Barrett et al., 2024). This resulted in 28 judgments (25 per cent). Independent coder 1 read the full text of the Court's assessment, and independent coder 2 read the full text of the Private and Public parties' submissions' sections and identified and marked segments that should be coded as the Child's opinion according to the coding criteria. The independent coders were tasked to assess the context and surrounding sentences of the text segments to ensure thoroughness and valid coding. The main authors received a report from the independent coders throughout the process to make sure that the test procedures and coding instructions were adequate. The intercoder consistency rate was then assessed for the overall accuracy of judgments identified as containing the child's opinion and for the similarity in coded segments between coders. In the sections concerning Court assessments, the overall consistency rate was 85,7 per cent, while the segment similarity in the sub-coding was 46,2 per cent. The latter is lower mainly because the second coder marked text segments more conservatively than the first and with less context. For the sections concerning the Private and Public parties' submissions, the segment consistency was 89,3 per cent. The authors reviewed the inconsistency, assessing the correctness of the coding when there were discrepancies in coding between coders, and made adjustments where this was considered necessary. The reliability testing resulted in one judgement (*T.P. and K.M. v. the United Kingdom [GC], 2001)* being added to the sample of judgments mentioning the child's opinion.

The final round of reliability testing involved author 3 reviewing the full-text sections of "Parties' submissions" and the "Court's assessments" in all 112 judgements and author 1 reviewing all coded text within the two segments. This resulted in 11 extra text snippets being coded (distributed on eight judgments) and two new judgments being added to the sample of judgments containing reference to the child's opinion.

The total sample of judgments with a mention of the child's opinion is n=51.

References

Barrett T., Dowle M., Srinivasan A., Gorecki J., Chirico M., Hocking T. (2024). data.table: Extension of 'data.frame'. R package version 1.15.00, https://Rdatatable.gitlab.io/data.table, https://github.com/Rdatatable/data.table, https://r-datatable.com.

Fenton-Glynn, C. (2021). *Children and the European Court of Human Rights*. Oxford University Press.

Keller, H., & Heri, C. (2018, May). Deliberation and Drafting: European Court of Human Rights (ECtHR). Oxford Public International Law. https://doi.org/10.1093/law-mpeipro/e3210.013.3210.

O'Connor, C., & Joffe, H. (2020). Intercoder Reliability in Qualitative Research: Debates and Practical Guidelines. *International Journal of Qualitative Methods*, *19*, 1609406919899220. https://doi.org/10.1177/1609406919899220

O'Mahony, C. (2019). Child Protection and the ECHR: Making Sense of Positive and Procedural Obligations. *The International Journal of Children's Rights*, *27*(4), 660–693. https://doi.org/10.1163/15718182-02704003.

Skivenes, M., & Søvig, K. H. (2016). Judicial Discretion and the Child's Best Interests: The European Court of Human Rights on Adoptions in Child Protection Cases. In E. E. Sutherland & L.-A. B. Macfarlane (Eds.), *Implementing Article 3 of the United Nations Convention on the Rights of the Child* (pp. 341–357). Cambridge University Press. https://doi.org/10.1017/9781316662977.022.