

United Nations
Committee on the Rights of the Child

Your reference:

Oslo, June 30th 2017

ALTERNATIVE REPORT FROM RETTSPOLITISK FORENING TO THE COMMITTEE'S 78TH PRE-SESSIONAL WORKING GROUP, CONCERNING THE NORWEGIAN GOVERNMENT'S FOURTH PERIODIC REPORT

1. General comments

Reference is made to the "Guidelines for the participation of partners (NGOs and individual experts) in the pre-sessional working group of the Committee on the Rights of the Child", where the Committee invites NGO's to submit reports on how the Convention is being implemented in a particular country.

The Legal Policy Association (Rettspolitisk forening – Rpf) is a Norwegian independent association of lawyers, law students and other interested. We work, inter alia, to defend the rule of law and to improve the legal status of socially vulnerable groups.

We commend the Committee's long standing commitment to upholding and improving the situation for children all around the world. We are grateful for the opportunity to present you with this additional report to the Norwegian Government's 5th/6th State party report.

In June 2016, the Ministry of Children and Equality circulated a draft version of the State party report, inviting governmental bodies and civil society organizations to address their remarks. The Legal Policy Association presented its comments to the Ministry in August 2016. This report will address some of our comments that were not reflected in the final version of the State party report, as well as some additional concerns.

2. Optional Protocol to the CRC on a communications procedure

Reference is made to the State party report chapter 1 litra a), subheading "International instruments" (p. 3)

In September 2016, the Government presented a green paper to Parliament where it concluded that it will not present a proposal to accede to the Optional Protocol on a communications procedure to the Convention on the Rights of the Child.¹

While it is a matter of policy considerations whether to accede to the protocol or not, Article 3 para 1 of the CRC sets out a procedural obligation for the State parties to have the best interests of the child as a primary consideration in all actions concerning children. When elaborating the content of this principle, the Norwegian Supreme Court has, based on an interpretation of the Committee's General Comment no. 14, stated that "the child's best interest shall form the basis, be highlighted and brought to the fore."²

The green paper briefly assesses the best interest of the child. The Government discusses which negative consequences an accession could lead to for children. A particular concern is expressed with regards to the possibility of an uncertain situation for the child, if the procedure were to be lengthy.³ The Legal Policy Association finds it worthy of critique that the green paper does not consider the possible positive effects of an international complaint mechanism for children. The child's best interest does not form the basis of the assessment, and neither is it highlighted nor brought to the fore; to the contrary, far more attention is paid to other considerations such as the composition of the Committee, its working methods and interpretative style. In a parliamentary hearing, several members of civil society criticized the green paper for not giving due consideration to the best interests of the child.

Suggested question to Norway:

- Does the Government think that an accession to the Optional Protocol can have any positive consequences for the protection of children's rights in Norway, and how does the Government balance these considerations against other arguments?

3. Unaccompanied minor asylum seekers

Reference is made to the State party report chapter 9 litra a), subheading "Unaccompanied asylum-seeking minors" (p. 40).

The Association would like to draw to the Committee's attention the situation of unaccompanied minor (UAM) asylum seekers in Norway. Especially to issues raise concern: First, the care service offered to unaccompanied minors between the age of 15 and 18, and second, a new legislative proposal that will lower the standard for those below the age of 15.

3.1 Unaccompanied minor asylum seekers between 15 and 18 years of age

In its Concluding Observations to the 4th Norwegian state party report, the Committee recommended that Norway "expand, as planned, the responsibility of the Child Welfare Services to children aged 15, 16 and 17".⁴ However, this recommendation has not been

¹ Meld.St. 39 2015–2016.

² Rt. 2015 p. 93

³ Cf. page 50 of the green paper.

⁴ CRC/C/NOR/CO/4 para. 52 litra e.

followed up. Unaccompanied asylum seeking minors between the age of 15 and 18 years are still under the responsibility of the Norwegian Directorate of Immigration (*UDI*), and the provision of care to this group is not regulated by statutory law.

A number of national bodies have criticized the current situation. *UDI* has argued that the provision of care should be regulated by statutory law, pointing out that there doesn't seem to be a coherent understanding among reception centers as to what level of care they are obliged to offer.⁵ More importantly, the Norwegian National Human Rights Institution has recently concluded that the current situation constitutes a violation of Article 20 and 22 of the CRC, read in conjunction with especially Article 2 on non-discrimination.⁶

The Association shares the Institution's conclusion, and urges the Committee to reiterate their position from the last Concluding Observations.

Suggested question to Norway:

- What concrete steps will the Government take to follow up the report from the National Human Rights Institution, and to ensure that the provision of care offered to unaccompanied asylum-seeking minors between the age of 15 and 18 is in line with the CRC?

3.2 New legislative proposal concerning unaccompanied minors under the age of 15

In August 2016, the Ministry of Children and Equality presented a new legislative proposal, where they propose a new Act on care centres for unaccompanied asylum-seeking minors under the age of 15.⁷ It has been proposed that The Norwegian Office for Children, Youth and Family Affairs (*Bufetat*) will continue to be responsible for the provision of care, but the care services offered will not be regulated by the Children Welfare Act or the Regulation on quality (*Kvalitetsforskriften*) anymore. A new Act in line with the Ministry's proposal will lower the standards for the care offered to those under the age of 15. In our response to the consultation paper The Legal Policy Association expressed our concern with the proposal, and recommended that the Ministry drop the case. In the following we will summarize our remarks.

The proposed Act will still contain – as the Children Welfare Act does – a general requirement to offer a "proper standard" of care. This new standard shall, however, not be based on child welfare considerations, but instead on a "refugee- and child perspective". It is explicitly stated in the proposal that the "proper standard" of care for the oldest children in care centres should be quite similar to the standard offered by *UDI* to those between 15 and 18 years.⁸ Another place in the proposal the Ministry distinguishes between children from 13–15 years and those below the age of 13, arguing that the former group as a main rule are in need of less follow-up.⁹ Hence, it seems like the actual consequence of the proposal will be an

⁵ <http://www.vg.no/nyheter/innenriks/udi/udi-vil-lovfeste-asylbarn-omsorgen/a/23957046/>

⁶ The Norwegian National Human Rights Institution, 'Omsorg for enslige mindreårige asylsøkere' ['Provision of care to unaccompanied minor asylum seekers'] (2017).

⁷ Høringsnotat: Forslag til ny lov om omsorgssentre for enslige mindreårige asylsøkere (omsorgssenterloven)

⁸ *ibid* p. 13.

⁹ *ibid*. p. 26.

expansion of the standard of care that is offered to those between 15 and 18 – a standard that has been found to be in breach of the CRC by the Norwegian NHRI – to children down to the age of 13.

Another consequence of the proposal would be that the provision of care to those under the age of 15 no longer would be regulated by the Regulation on quality (*Kvalitetsforskriften*) anymore. This regulation contains detailed requirements concerning i.a. competent staffing and physical standards. The Ministry states that the material standards for the care centers should be "sober, but proper".¹⁰ The current right to have a single room will not be upheld, and there will be no requirements to ensure a designated outdoor area for playing.

The rationale behind the proposal seems to be, first, that unaccompanied asylum-seeking minors have other needs than other children under the protection of the child welfare services, and second, that there is a need for a more flexible system.

To the first argument, the Association agree that unaccompanied asylum-seeking minors, although being a heterogeneous group, often will have other needs than other children. However, we strongly disagree with the Ministry's claim that this constitutes a legal ground for discrimination. The Ministry argues that the CRC does not oblige the State parties to offer equal care services to unaccompanied asylum-seeking minors and other children separated from their parents, as long as the former group is offered a proper standard of care. It goes on to argue that neither children under the protection of the ordinary child welfare services are treated equally, as the service offered will be based on an individual assessment.¹¹ This reasoning seems, however, to be based on an assumption that unaccompanied asylum-seeking minors in general have less need for care than other children separated from their parents. Our understanding is, quite to the contrary, that this group is particularly vulnerable, often with traumatic experiences from the past. This understanding seems to be an underlying principle of the Committee's General Comment no. 6 as well,¹² and has in addition been pointed out in several research reports.¹³

To the second argument, we acknowledge that periods with high arrival numbers of unaccompanied asylum-seeking minors can pose challenges to the Government. In 2015, 5.480 unaccompanied minors applied for asylum in Norway, which represented a significant increase from 2014, when the numbers were 1.204. In 2016 the numbers were reduced to 320, while 84 unaccompanied minors have applied for asylum in 2017 as of late June.¹⁴ However, the current legal framework does, in our opinion, open up for sufficient flexibility. If an extraordinary situation occurs, *Bufetat* may request the Ministry of Children and Equality to permit a derogation from most of the detailed requirements in the Regulation on quality.¹⁵

¹⁰ *ibid* p. 28.

¹¹ *ibid.* p. 63.

¹² CRC/GC/2005/6, see e.g. para. 1, 40 and 47.

¹³ See e.g. Hilde Lidén, Ketil Eide, Knut Hidle, Ann Christin E. Nilsen and Randi Wærdahl, 'Levekår i mottak for enslige mindreaarige asylsøkere' (2013) p. 19. The report can be accessed here:

https://www.udi.no/globalassets/global/forskning-fou_i/asylmottak/levekkaar-i-mottak-for-enslige-mindreaarige-asylsokere.pdf

¹⁴ <https://www.udi.no/statistikk-og-analyse/statistikk/>

¹⁵ Cf. Article 14 of the Regulation.

This derogation clause was, as mentioned in the State party report, introduced by the Ministry in late 2015, and was mainly enacted due to the high number of arrivals that year.¹⁶

In sum, the proposed Act on care centres for unaccompanied asylum-seeking minors will represent a backlash in the realization of the human rights for this vulnerable group. It is a well established principle in international human rights law that economic, social and cultural rights shall be realized progressively, and the Committee on economic, social and cultural rights has stated that the State party has the burden of proof to show that retrogressive measures – i.e. withdrawal of rights previously granted – are only introduced “after the most careful consideration of all alternatives and that they are duly justified”.¹⁷ The Legal Policy Association cannot see that the Ministry has come up with such reasonable justifications for its proposal. Moreover, a new Act in line with the Ministry’s proposal will be a step in the wrong direction, expanding a discriminatory practice instead of working to ensure that the provision of care to those between the age of 15 and 18 are non-discriminatory.

We would also like to point out that numerous organizations have criticized the proposal. The Norwegian Bar Association, Amnesty International Norway, Save the Children Norway, The Norwegian Ombudsman for Children, The Norwegian Equality and anti-discrimination Ombud, The Norwegian National Human Rights Institution, and several regional departments of Bufetat – to mention some examples – expressed concern about the proposed Act in their responses to the Ministry.¹⁸

Suggested questions to Norway:

- Could the Government present any research reports that support and justify their assumption that unaccompanied asylum-seeking minors as a general rule need a lower standard of care than other children under the protection of the child welfare services?
- Could the Government explain why the new derogation clause in the Regulation on quality is insufficient to ensure flexibility in times of high arrival numbers?

4. Detention of immigrant families with children

Reference is made to the State party report chapter 9 litra g), subheading “Deprivation of liberty pursuant to the Immigration Act” (p. 46).

In a judgment from May 2017, Borgarting High Court ruled that a detention of an immigrant family with children for a period of 20 days prior to deportation violated, inter alia, Article 3 of The European Convention on Human Rights and Article 37 litra a of the CRC.¹⁹

The case concerned an immigrant family whose applications for asylum and a residence permit on humanitarian grounds were rejected. As the family did not leave the country

¹⁶ Cf. ’Høringsnotat av 13.11.2015. Forslag til endring i Forskrift av 10. juni 2008 nr. 580 om krav til kvalitet og internkontroll i barneverninstitusjoner (kvalitetsforskriften)’

¹⁷ CESCR, General Comment no. 14 (E/C.12/2000/4) para 32.

¹⁸ All responses can be accessed here: <https://www.regjeringen.no/no/dokumenter/horing----forslag-til-ny-lov-om-omsorgssentre-for-enslige-mindrearige-asylsokere/id2510066/>

¹⁹ LB–2016–8370, delivered on 31 May 2017.

voluntarily within the time limit, the immigration authorities made an expulsion order. They also decided to arrest the family, fearing that they otherwise would evade deportation. The family – mother, father and their children born in 2000, 2002, 2003 and 2006 – was arrested on 10 August 2014 and brought to Trandum Police Immigration Detention Center. The eldest son (born 1998) was not present when the police arrested the family, however the family managed to contact him by social media and told him to hide. The deportation was scheduled for the following day, but could not be effectuated, as the family refused to leave without their son, and the airline would not cooperate to a forced deportation involving eight police officers that day. The next possible deportation date was 30 August. Upon a petition from The National Police Immigration Service (*Politiets utlendingsenhet*), the District court decided that the family could be kept in detention until 2 September the same year. The decision was upheld by the Court of Appeal. The family – except from the eldest son, whom the police did not manage to trace – was deported on 31 August 2017, after having spent 20 days at the detention center.

The High Court found, firstly, that the detention of the children was not "absolutely necessary" – which is a criteria that has to be met pursuant to the Immigration Act – after the unsuccessful attempt to deport the family on 11 August. Neither was the detention considered to be proportionate. The family was well integrated into their local society, and the High Court pointed out that this fact was not taken into consideration when the authorities considered the probability that the family would try to hide if they were released. Neither was any information presented that could indicate an increase of unsuccessful accompanied deportations due to families disappearing from asylum centres shortly prior to deportation.

Secondly, the High Court concluded that the detention violated Article 3 of the ECHR, and thereby also Article 37 litra a of the CRC. The Court's reasoning centred around five judgments from the European Court of Human Rights concerning immigrant children detained in France,²⁰ and, although the Court found that the physical conditions may have been slightly better at Trandum than at the French detention centres, it nevertheless found the overall circumstances quite comparable. The essence of the Court's reasoning was that the conditions at Trandum were suited to create a feeling of anxiety for children. Several factors were highlighted by the Court:

The door to the family's room was locked from the outside from 9 p.m. until 8 a.m. every night. The eldest daughter (14 years at that time) described the locking in as the worst part of the stay, as she felt that she might have done something criminal. Moreover, being surrounded by officials with police-looking uniforms and carrying large keyrings contributed to the feeling of imprisonment. The children also had to undergo a body scan and had their pockets controlled when they entered the detention center.

The children had access to a gym, but had to walk through institution-looking corridors to get there, and several doors had to be opened and locked by officials. The outdoor area designated for playing was surrounded by high fences, and was situated some hundred metres away from the end of one of the runways at Gardermoen airport, giving an impression that arriving planes were close to the rooftops.

²⁰ Cases 11593/12, 68264/14, 33201/11, 76491/14 and 14587/12.

In sum, all these factors contributed to the feeling of imprisonment. The Court considered the children to be in a particularly vulnerable situation, as they knew that their stay in Norway was soon coming to an end. Bearing in mind their difficult situation, the Court stressed the need for a strict compliance with the principle that detention prior to deportation should be a last resort for children and families with children.

The High Court also referred to a 2015 report from the Parliamentary Ombudsman, concluding that the conditions at Trandum were unsuitable for children. Similar conclusions are made in a recent report by Save the Children and the Norwegian Organisation for Asylum Seekers.²¹ The report is based on interviews with children and parents who have been detained at Trandum, and almost all of the children described the centre as a prison.

Suggested questions to Norway:

- What will the Government do to ensure that detention of children prior to deportation is only used as a last resort?
- What concrete steps will the Government take to ensure that children who are detained prior to deportation is not subjected to inhuman or degrading treatment, in light of the severe criticism of the conditions at Trandum Detention Center by, inter alia, Borgarting High Court and the Parliamentary Ombudsman?

5. Preventive detention of children

Reference is made to the State Party report chapter 9 litra f, subheading "Prison sentences" (p. 45).

Pursuant to Article 40 of the Penal Code, persons under the age of 18 may only be sentenced to preventive detention in "wholly exceptional circumstances". In two recent cases, children in Norway have been sentenced to preventive detention.

The first case concerned a girl who had committed a murder when she was 15 years and 1 month old. The Supreme Court sentenced her to preventive detention for 9 years.²² According to the Supreme Court, this is the first time a minor has been sentenced to preventive detention in Norway.

The convicted girl lived in an institution for mentally ill youth when she committed the crime by strangling one of the employees with a belt and stabbing her with a knife. Both prior to and after this incident she had been involved in a number of serious violent incidents. Experts diagnosed her with paranoid schizophrenia. The Supreme Court held that there were numerous reasons to avoid preventive detention, and particularly the girl's age, but

²¹ The report is titled 'Jeg har ikke gjort noe galt', which can be translated as 'I haven't done anything wrong'.

²² HR-2017-290-A, a summary may be accessed here: <http://www.domstol.no/en/Enkelt-domstol/-Norges-Hoyesterett/Summary-of-Recent-Supreme-Court-Decisions/summary-of-supreme-court-decisions-2017/>

nevertheless came to the opposite conclusion, stressing that: "The premeditated murder along with several serious violent incidents both prior to and after the incident, and her serious mental disorder and special motivation for her violent behavior, makes me conclude that there are wholly exceptional circumstances in this case."²³

The second judgment was delivered on 29 June by Kristiansand District Court. The case concerned a 15 years old boy who had stabbed a 14 years old boy and a 48 years old woman to death. He was sentenced to preventive detention for 11 years.²⁴

Given the seriousness of sentencing children to preventive detention, we find it important that the Committee is aware of the Norwegian practice.

6. Children with parents in prison

Reference is made to the State Party report chapter 6 litra j, subheading "Children with parents in prison" (p. 25).

Reference is also given to the Committee's Concluding Observation to the fourth Norwegian report, where it stated that: " The Committee also recommends that [...] that prison authorities facilitate the visiting arrangements of a child with his or her imprisoned parent. "²⁵

We recognize that the Government has have taken some steps to follow up to the green paper to Parliament in 2008 on the Correctional Services (*Kriminalomsorgsmeldingen*), however the visiting arrangements for children with imprisoned parents vary from prison to prison. The Legal Policy Association finds that work remains to be done, to better the conditions for these children.

Furthermore, we are concerned about the situation of children with parents serving time in Norgerhaven prison, a prison located in the Netherlands and rented by the Norwegian governments to cope with limited capacity in domestic prisons. Prisoners with children may be transferred to Norgerhaven, and even though the number of children affected by such a transfer is sought remedied by a limitation in the relevant administrative regulation, we cannot see how a transferral will not be an obstacle to a normal contact between children and parents. Organizations like the free legal aid clinic Juss-Buss have spoken about several cases in where inmates have appealed decisions of transfer, because the transfer would hinder contact with their children.

Suggested questions to Norway:

- Could the Government provide some information on what steps that remain in the follow-up of the 2008 green paper on Correctional Services to ensure adequate contact

²³ para. 80.

²⁴ The Legal Policy Association has not been able to study the judgment except through media coverage, as it was passed shortly before the deadline for the submission of this report. It should also be noted that the judgment might be appealed.

²⁵ para. 33.

between children and parents in prison, as well as how and when this work will be carried out?

- Could the Government explain what steps that are taken to guarantee adequate visiting arrangements between children and prisoners transferred to Norgerhaven prison in the Netherlands?

7. Children in prison

Reference is made to the State party report chapter 9 litra g, subheading "Children in prison" (p. 45 f.)

We acknowledge the legislative amendments carried out in order to reduce the use of pre trial detention and isolation of children, as well as the establishment of two new juvenile units in 2015 and 2016.

The Legal Policy Association is concerned about the pre-trial detention of minors together with adult inmates. The main rule is that minors are to be placed in a separate juvenile unit, however this main rule does not work as a guarantee. This practice, and the fact that Norway has made a reservation to Article 10, paragraph 2 (b) and 3 of the ICCPR, has been criticized several times.²⁶ The Legal Policy Association also miss numbers on how many minors that are placed together with adults, information about what measures that are taken to remedy the negative consequences of this practice, and what the Government is doing in order to be able to withdraw the reservation to the ICCPR.

In addition, The Legal Policy Association would also like to see statistics on minor pre trial detainees and isolated minors prior to and after the legislative amendments. Without such numbers, it is difficult to measure the effect of the legislative amendments.

Suggested questions to Norway:

- Could the Government provide information about how many minors that are serving in prison together with adults and what measures that are taken to remedy the negative consequences of this practice, as well as information about what the Government is doing in order to be able to withdraw the reservation to Article 10, paragraph 2 (b) and 3 of the ICCPR?
- Could the Government provide information about the numbers of minor pre trial detainees and isolated minors, both prior to and after the legislative amendments, in order to make it possible to measure the effect of recent legislative amendments?

²⁶ See e.g. the Committee's Concluding Observations to the fourth Norwegian report para. 7 and 58 litra c.

Inquires may be directed to Marius Mikkjel Kjølstad or Marie Skjervold at leder@rpf.no.

Kind regards
Rettspolitisk forening,