

Input to the “List of Issues” for Norway’s seventh report to the UN Committee on the Rights of the Child from the Norwegian Bar Association

1 About the Norwegian Bar Association

The Norwegian Bar Association is the professional body and interest group for lawyers in Norway. Together with its members and elected officers, the Bar Association works to ensure that Norwegian lawyers meet high professional and ethical standards and enjoy good framework conditions. Furthermore, the Bar Association works to promote due process protection and the principles of the rule of law. The Bar Association is the most important arena for its members’ engagement in criminal justice issues and the development of the law.

The Bar Association’s Human Rights Committee works to safeguard and strengthen fundamental human rights, both nationally and internationally. The committee focuses on several matters relating to fundamental human rights and writes several consultation submissions every year on behalf of the Bar Association. The Human Rights Committee has provided the input below to the Norwegian Bar Association.

2 Introduction

The Norwegian Bar Association has already signaled support to the List of Issues submitted by the Norwegian Forum for the UN Convention on the Rights of the Child. In addition, the committee wishes to express its concerns about two additional matters regarding the Norwegian state authorities’ fulfilment of the provisions of the UN Convention on the Rights of the Child.

3 Preventive detention of children

3.1 Background

This matter concerns the inadequate practice and legal framework on preventive detention, which leads to the sentencing of children with the possibility to prolong indefinitely. It concerns the following provisions of the UN Convention on the Rights of the Child:

- Protection against torture or other cruel, inhuman or degrading treatment or punishment – article 37 a.
- Unlawful and arbitrary punishment – article 37 b.
- Treatment in prison – articles 37 c and d.

If a sentence of imprisonment is deemed insufficient to protect the life, health or freedom of other persons, preventive detention in an institution under the correctional services may be imposed. The Norwegian Penal Code Act section 40 allows for sentencing of protective custody imprisonment (in Norwegian: *“forvaring”*). This sanction can be prolonged indefinitely, but only for five years at a time.

Regarding the use of such a regime for persons under the age of 18, section 40 reads; *“If the person charged is under 18 years of age, preventive detention may not be imposed unless altogether extraordinary circumstances are present.”*

In Norway, cases of child-perpetrated murder are rare, but have generated such sentences on four occasions since 2016. Of these, one case has recently been reopened by the Criminal Cases Review Commission (in Norwegian: *“Gjenopptakelseskommisjonen”*) due to new information on the mental health status and sanity of the child who was convicted.

The Norwegian Ombudsperson for Children has criticized the practice of sentencing children to potential life imprisonment based on today’s legal framework¹. In particular, the threshold of the law seems inadequate. Also, the work of experts conducting psychiatric assessments in such cases has been scrutinized by the Ombudsperson. The Ombudsperson has criticized these assessments due to a lack of knowledge on children’s development, especially when assessing the future risk of violence and the psychiatric status. Also, the experts monitor the children over a fairly short time span, and their professional registration tools are meant for use on adult persons.

The Norwegian Bar Association shares these concerns, and its members with first-hand experience from cases as mentioned, express grave concern for the children’s right to protection from arbitrary sentencing with prolonged duration.

The Bar Association wishes to express deep concern for both the practice of and legal possibility to sentence children to preventive detention with the possibility of prolonging deprivation of liberty indefinitely. The Bar Association is also concerned about the lack of adequate safeguards against miscarriages of justice due to the exposed flaws in expert psychiatrists’ methods, tools, training and reporting in such cases. The possibility for this sentencing regime should not exist for children and should in any case be accompanied with adequate legal safeguards.

3.2 Questions

1. What is being done to increase and secure legal safeguards for children in criminal case psychiatric assessments?
2. Please elaborate on how the possibility to sentence children to preventive detention with the possibility to prolong indefinitely is in the best interest of the child.

¹ Letter from the Norwegian Ombudsperson for Children to the Ministry of Justice and Public Security on 4 June 2021, available here: <https://www.barneombudet.no/uploads/documents/Barneombudet-mener/Innspill-til-myndighetene/2021/Funn-etter-gjennomgang-av-saker-der-barn-er-fengslet-i-perioden-2016-2019.pdf>

4 Issues relating to children who are suspects in criminal cases

4.1 Background

This matter concerns the following provisions of the UN Convention on the Rights of the Child:

- The right of the child to be treated with dignity and respect – article 40 (1).
- The right of the child to be informed of charges against it and to have legal or other appropriate assistance – article 40 (2) b ii.

In Norway, there are no special requirements for investigators to interview children under 18 years of age who are suspected in criminal cases, beyond the compulsory training from the Police University College. This training is based on a method primarily aimed at adults. The national regulations regarding the investigative interview are also primarily established for adults, with limited adjustments for interviewing suspected children.

International regulations require that children who are suspects in criminal cases fully understand their individual rights. Strict requirements are set in place should a child be questioned without a lawyer present. According to a Master Thesis by Sigrid Buseth at The Norwegian Police University College in 2020², national surveys indicate that most investigative interviews of children who are suspects are conducted without a lawyer nor a guardian present, especially in initial phases.

The Bar Association wishes to express deep concern for the practice of interviewing children who are suspects in criminal cases without the legal safeguard of always having a lawyer present at all stages of the criminal investigation, cf. Convention on the Rights of the Child article 40 (b) (ii). Furthermore, the Bar Association is concerned for the practice of carrying out interviews without adequate adjustments to the vulnerability of the suspect being a child.

4.2 Question

What is being done to secure legal safeguards for children being interviewed as suspects in criminal cases?

² The Master Thesis is available here: https://phs.brage.unit.no/phs-xmlui/bitstream/handle/11250/2684018/master_Buseth.pdf?sequence=1&isAllowed=y