

The representation of children's views in the Finnish court decisions of care orders

by Tarja Pösö and Rosi Enroos

Abstract

The article examines the representation of children's views in the Finnish court decisions of care orders. It explores how the written court decisions recognise, address and use children's views in care order decisions and compares the results with a similar study conducted in Norway. In the literature both countries are suggested to have a child-orientated child welfare system. Based on the analysis of 36 court decisions in Finland, it is argued that children's views are narrowly represented and used in the written court decisions of care orders. Three patterns emerged: the direct and indirect representation of children's views and the absence of children's views. The first pattern is strongly related to the child's age.

Key words:

Care orders
Decision-making
Courts
Children's views
Children's rights
Child welfare

Contact information

Tarja Pösö, Professor, School of Social Sciences and Humanities, 33 014
University of Tampere, Finland. E-mail: tarja.poso@uta.fi, phone: +35850433
6258
(corresponding author)

Rosi Enroos, PhD, Postdoctoral Researcher, School of Social Sciences and
Humanities, 33 014 University of Tampere, Finland. E-mail: rosi.enroos@uta.fi

Acknowledgements:

The project was funded by the Norwegian Research Council. We would also like to thank Professor Marit Skivenes for her valuable comments for the manuscript.

1 Introduction

In a recent cross-country analysis of the child welfare systems in high-income countries, Norway and Finland are described as systems orientated towards family-services in their approach and most recently, towards child-centrism (Gilbert *et al.*, 2011). One feature of child-centrism is that children's rights, interests and needs are considered as being essential elements in service-provision and that children are given the position to express their views and opinions and that they should to be involved in the matters concerning them. Children's views should also be considered in care order decisions which may result in removing the child from parental care into public care. Bearing this in mind, the results of the analysis of the Norwegian court decisions of care orders are highly surprising. The analysis of the 53 written rulings on care orders of children 5-11 years of age, published in *International Journal of Children's Rights*, demonstrated that it is very common not to mention the child's opinion at all or only very briefly (Magnussen and Skivenes, 2015). This happened in seven out of ten cases. In this respect, the courts in the Norwegian study do not pay attention to children's views and opinions in their decision-making, and consequently, the decisions do not reflect children's participation as the very principle of child-centrism and thus they do not fully adhere to the Convention of Children's Rights (*ibid*).

Similar findings regarding the lack of recognition of children's views and opinions in the courts have been reported in those countries which are not defined as being child-centric in international comparisons (Gilbert *et al.* 2011), including for example Ireland, Australia and the United States (e.g. Parkers *et al.*, 2015; Thomson *et al.*, 2015; Block *et al.*, 2010; Cashmore and Parkinson, 2007). Are the court decisions in Finland, the other country with a child welfare system orientated towards child-centrism, be different in regards to paying attention to children's views in court decisions of care orders? Inspired by the Norwegian analysis, a similar study was conducted in Finland. In the following we explore the ways *how* the written court decisions recognize, address and use children's views in Finland, and how the findings differ from the Norwegian ones. In particular, we are interested *when* children's views become topical in the decisions and when they are not presented.

Before the empirical analysis of 36 court decisions of care orders, we present a short description of the care order decision-making system.

2 Court decisions of care orders

Norway and Finland share many characteristics in their child welfare systems such as low threshold for services, emphasis on in-home services and the child's best interest as the paramount principle and both look quite alike on an international spectrum of child welfare systems and the welfare state systems (Gilbert *et al.*, 2011; Pösö *et al.*, 2014). Norway and Finland have incorporated the Convention of Children's Rights into their national legislation and the CRC is thus regarded as a legal source for the administrative-legal decision-making and as a frame for social work with children (Skivenes, 2011; Pösö, 2011). Both countries use care orders only as last resort interventions. Nevertheless, they also have several differences regarding the decisions of care orders. There are three major differences relevant for the study here.

The first difference concerns the decision-making bodies: in Norway, all care order decisions are made by county boards, court-alike bodies (Skivenes and Søvig, in print), whereas the Finnish child welfare legislation makes a distinction between a 'voluntary' and 'involuntary' care order and related decision-making bodies. If the care order is voluntary – the guardians and the child who is 12 years or older agree with the care order proposal presented by social workers – the care order decision is made by a leading child welfare official in the municipality. The court is involved only if there are any appeals of voluntary care orders. An involuntary care order decision is made by administrative courts; the care order is seen as being involuntary if the guardians (or one of them) or the child who is 12 or older disagrees with the care order proposal. The majority of care orders are 'voluntary' with only less than a quarter of the care order decisions being made by the court (Pösö and Huhtanen, in print). Both types of care orders have the same legal implications for children's and parents' rights and the preparatory process is similar; it is only the decision-maker which differs. As a whole, Finnish care order decision-making is very much led by social workers whereas the Norwegian system is based on the courts' decisions (Burns *et al.*, in print). When the care order decisions are made by the courts in Finland, they represent somewhat contested care order cases whereas in Norway the

court decisions represent care orders in general.

Secondly, in Finland, children who are 12 years or older are given the right to express their view on the care order proposal in a hearing organised by social workers during the preparatory process and thereby to determine where the care order decision is made. If they disagree with the care order proposal and/or related placement, the decision will be made by the court, as described above. This is to say that hearing the child of that age has fundamental procedural and legal consequences and is a very integral part of the decision-making. The Child Welfare Act (417/2007) demands all children be involved in the decisions of matters concerning them. This means that the legislation is both wide – requires all children to be involved – and specific – children of certain ages have a certain legal position in the decision-making process. In Norway, a child who is 15 or older is given the similar legal position in the care order proceedings as his/her guardians, and young children should be involved in matters concerning them (Skivenes and Søvig, in print). As all decisions of care orders are made in the same way in Norway, the consequences of the view of a child of a certain age are not procedurally as determinative as they are in Finland.

The third difference in the court decision making of care orders is that the Norwegian country boards almost always include oral hearings whereas the Finnish administrative boards make decisions mainly based on written material. Oral hearings are used in Finland if one party requests an oral hearing. As a result, oral hearings are carried out in one third of care order decisions (de Godzinsky, 2012) which is more often than in other decisions made by administrative courts (Pösö and Huhtanen, in print). The written material has the role of representing the case and the views and opinions of different parties, and in most cases the decisions are made only on the written views and opinions.

The above description of the characteristics of Finnish care order decision-making suggests that the court decisions include children's views and opinions of children of any age, and that children who are 12 or older are given an especially important status. The existing research on Finnish court care order decisions do, however, inform about practice in which children's views and opinions are not given a strong position. Based on the analysis of 194 court decisions from 2010 and interviews with

12 administrative court judges, Virve de Godzinsky (2014) concludes that the children's rights to participate and to be heard are rooted in the court procedures of care orders if the children are 12 or over. Younger children are heard only occasionally. Nevertheless, even if the court hears child, his/her voice is seldom visible in the court decisions. The oldest children, those between 14 and 17 years, had their voice most clearly written in the court decision. The approach to children's views is to summarize them rather than to analyze them in the court decisions. Finally, she also found that there was no reference to what impact – if any – the views of the child had on the conclusions of the court. (de Godzinsky, 2014.)

The Committee of Children's Rights has critically reviewed the implementation of a child's right to be heard in care order court decision-making in Finland (de Godzinsky, 2014; Križ *et al.*, in preparation). When the latest act on child welfare was introduced in Finland in 2007, attention was paid to that criticism. Consequently, the new Child Welfare Act (417/2007) emphasized children's participation more extensively than before. The legislative recognition of children's views has been manifested in practice in different ways. For example, the written court decisions now specify more clearly how the courts address the best interest of the child than they did before (Hiitola and Heinonen, 2009; Hiitola, 2015). Nevertheless, several shortcomings in documenting children's opinions have been recognised in the court decisions (de Godzinsky, 2014; 2015) and in general, child welfare has been criticised for not being as child-focused as it should be (e.g. Toimiva lastensuojelu 2013). One could anticipate some changes in the recognition of children's views and opinions as the new legislation and the critical remarks by the Committee of Children's Rights have now had time to be rooted in practice. Is the view of the child now routinely and actively included in the court decisions?

3 Data and analysis

The analysis is based on 36 written care order decisions made by two administrative courts in 2013 in Finland. The cases were chosen and anonymised by an administrative person in the Ministry of Justice, after the permission to study the documents had been granted by the Ministry. The selection process was conducted so that the sample would include the first and last decisions in each month during the

year so that the total sample would be 30-40 cases. This instruction aimed at a random selection, one simple enough to follow in practice as there is no reason to think that the cases differ in terms of the date of the decision. In 2013, the administrative courts (6) made 685 decisions regarding care orders (Hallinto-oikeuksien ratkaisut, 2013). This number also includes appeals. The data represents somewhat more than five percent of all the decisions.

The documents include 40 children as two decisions were made with regard to siblings. The age distribution of the children of the care order decisions (cf. table 1) follows the national pattern, as the majority of children are teenagers (Pösö and Huhtanen, in print). The number of young children aged between 0 and 6 is higher than the national average as two cases include young siblings.

Table 1. Overview of the age distribution of the children in the data (N=40)

Age	Number of children
0-2 years	8
3-6 years	10
7-11 years	6
12-15 years	13
16-17 years	3
Total number of children	40

The length of the written documents in the data varies between five and 16 pages. The majority of documents – 24 out of 36 – had fewer than 10 pages. The documents include a summary of the care order application given by the social workers, the summaries of the explanations given by the parents and child (or a note about the lack of such explanations) and of possible expert statements, the court’s own presentation of the case, a summary of the oral hearing if conducted, and the decision with the court’s arguments. The style and details of the decisions vary between the documents, as there are only a few rules and norms about the written decisions (Hiitola, 2015).

In the analysis, we use the term ‘care order decision’ to address the written court documents as described above and treat all the text material in the written decision to represent the court’s decision. They, as any type of institutional document, manufacture the case so that it fits to the institutional purposes at hand (Prior, 2004). In our methodological thinking documents contain information which is seen as being relevant for the institutional task. In this case, the documents are written to inform the parents, children, social welfare agencies and legal authorities about the court’s reasoning whether and for what reason the child should be taken into care. As care order decisions are one of the most invasive and consequential decisions a state can make (Berrick *et al.*, 2015a), there is reason to assume that the court decisions are written so that they can be read as a detailed and fair presentation of the relevant arguments of the care order decision. The standpoint of the analysis rests on the view that “we cannot treat records – however official – as firm evidence of what they report” as stated by Atkinson and Coffey (1997). Thus the study can only say how children’s views are textually represented and communicated in the written decisions and very little, if anything, about the juridical reasoning and the role of the children’s view they contain. The time for decision-making can stretch over several weeks in the administrative courts (de Godzinsky, 2012) and is bound to include more varied reasoning than those presented in the final written decision.

In the analysis of the Finnish data, all textual descriptions of the child’s views in the decisions were coded and divided into the direct and indirect references to children’s views and opinions. *Direct references* include references in which children’s own speaking voices are used to express their view. A sentence such as “the child expressed his unwillingness to stay in that particular residential institution when he was asked in the hearing” was coded as a direct statement of a child’s view and opinion. The sentence needed to be written so that it was clear that the court document references a child’s voice as expressed by the child him/herself. The direct reference does not, however, necessarily mean that the court would have spoken with the child. *The indirect statements* included references to people who expressed the child’s view on his/her behalf. Sentences such as ‘the social worker tells that the child told her that s/he misses his/her home’ is coded as an indirect statement of a child’s view. The coding was done by two researchers separately. In the second round, the codes were summarised in each decision so that if the decision included any direct representation

of the child's view, it was given a number 1. If the decision did not include any direct representation, the number 0 was given. The same was done with indirect representation. As the written decisions vary very much in length and style, a more detailed counting of the codes was not seen as being relevant. These findings are presented under the titles of direct and indirect representation of the child's view.

The second stage of the analysis focused on the decisions that did not pay any attention to the child's view. This task for the analysis became topical as the first stage revealed cases in which no reference was made to the child's view. The results of this reading are presented under the heading "The absence of the child's view".

The extracts from the care order decisions have been translated into English and changed somewhat in order to make them unidentifiable. For example, we do not specify the gender of the child although it was evident in the original text. In addition, we have changed some details (e.g. the number of siblings) and excluded the names, irrelevant for the analysis, to make the actual cases unrecognisable. For the sake of research ethics, we do not announce either the names of the administrative courts whose decisions are studied.

4 Findings

4.1 Overview on the direct and indirect representation of the child's view

The representation of children's views, both in their direct and indirect forms, is age-related as is demonstrated by Table 2. As a whole, the older the child is, the more attention is given to his/her view either directly or indirectly in the written court decisions.

Table 2. Direct and indirect representations of the child's view (36 decisions, 40 children)

Age of the child, number of children	Direct reference to the child's view	Indirect reference to the child's view	Child's view not referenced in the decision	The number of oral hearings and those oral hearings in which the child was present)	Spokesperson or legal advisor for the child involved
0-6 years (N=18)	0	4	13	10 oral hearings, none included children present	0
7-11 years (N=6)	1	2	3	3 oral hearing, none included children present	0
12-17 years (N=16)	15	11	0	5 oral hearings of which four had children present	2
Total	16	17	16	18 oral hearings in which four had children present	2

In this data, 16 children out of 40 are referenced as 'speakers of their own voice'. Fifteen of them are children who are 12 or older. In fact, all children who were 12 or older are referenced as speakers with their own voice, except one girl, 12, who had run away from her temporary placement and was not met properly in the care order proceedings. Indirect references are made about 17 children. Again, the majority of indirect references are made about children who are 12 or older. Some children (12) are referenced both directly and indirectly. In total 16 children are not referred to in any way: 13 of them are below the age of 6 and three between the ages of 7 and 11.

Oral hearings are more common in this data than in general in the administrative courts as an oral hearing had been organized in 18 decisions out of 36 (50 %). A child was involved in person in four oral hearings and in these cases the child was 12 or older. A legal advisor or a spokesperson was involved in two decisions, both including children who were 12 years of age or older.

4.2 Child representing his/her view (direct representation)

The view of the child is documented mainly in relation to the child's procedural right – whether to agree or to disagree with the proposal for a care order and/or a placement¹. In our data, there is only one reference to a child's view about a topic which is not about a disagreement/agreement with the care order or the placement. This is a case in which the child's view on in the interpretation of a certain abusive situation was described. There is a wide spectrum of how their views are documented about the proposals: the spectrum varies from very narrow minimalistic accounts to detailed and reflective ones. The narrow approach is more in use than the detailed one.

In the most minimalistic way, the reference to the child's view about the decision at hand is the following:

The child has announced in the hearing that s/he disagrees with the care order proposal. The child has been given an opportunity to explain her/his situation. No explanation has been given. (Case 31: a child 14 years)

This minimalistic recording presents the child's view on the care order but nothing in the document describes her/his reasons for the disagreement with the proposal or any of his/her wishes in the situation. The text says that the child had been given an opportunity to explain his/her view, which means that the child was asked to present a written statement, as is the custom of the administrative courts. In the decisions of children of 12 and older, it was noted that 10 children had not provided any explanations to their views about the care order proposal when asked. The minimalistic representation of the child's view follows the legislative norm to hear the child by giving him/her an opportunity to express his/her view; the court decision does, however, explore the view in depth.

¹ In this data, 11 children disagree with the care order and/or the suggested placement; only one child opposes the placement but not the care order proposal itself. In six cases the child is the only person opposing the care order and/or the placement, whereas in five cases the child and at least one custodian oppose. Three children of 12 years of age or older did not oppose the care order proposal or the placement (but one or two of their custodians did).

The following extract demonstrates the child's view in a more descriptive manner than the previous minimalistic account. In this case, the child opposes both the care order decision and the placement whereas his/her parents do not oppose them:

The child explains that s/he does not want to stay in the foster family, as there are so many rules and norms. S/he has not gone to school and does not intend to do so. (Case 8, a child 14 years)

Although still quite limited, this extract gives some information about the child's view on the placement and arguments for his/her disagreement with the proposal. The child has his/her specific reasons not to like the foster home (too many rules and norms) and s/he avoids school. The text does not give any reasons for his/her dislike of school (whether it is a particular school or school in general for example) and there is no description of the rules and norms in the foster home; consequently, the child's view is still explored quite lightly.

At the other end of the spectrum of the direct references to children's views are the texts which address the child as an active speaker in detail. All these references are based on the face-to-face meetings between the court decision-maker and the child, either in the court's oral hearing or in individual interview occasions attached to the court decisions. The following extract belongs to a care order decision of a child who was 12 years of age at that time.

The child has given an explanation in which s/he has opposed the care order proposal and the placement. S/he has visited his/her mother's place at the weekends and these visits have been good. The child is better now than before. Her/his grief after her/his father's death has lessened and s/he is mentally more balanced. The child has decided to invest in his/her studies and it would be easier if s/he could attend school from her/his home. Also the child's sister, who is already adult, lives at his/her mother's home. In addition, the child's brother, who lives elsewhere, visits her/his mother often. The child's mother has been unemployed a year at least and the child is very worried about her/his mother's situation and because of that s/he would like to stay with his/her

mother to support him.

The child has not got along in the placement. It is restless there. It is difficult for a child to control his/her anger there. In addition, this placement is far away from everything. The child would have liked not to change the school. In her/his previous school his/her school performance was better. In any case, the child would like the placement be nearby home. (case 33: child 12 years)

The extract covers a variety of topics. First the extract describes the child's view on the situation and her/his understanding of the reasons for the present situation and his/her plans about the future. The child's disagreement with the placement – a small residential institution – is reasoned with the child's view on its location, atmosphere and school. The child's views are referred to again at the end of the document when the court presents its decision (care order and placement). The court addresses the concerns expressed by the child and argues why the child's view cannot be followed in the final decision. In this decision, the child's view is integrated in the written arguments about the court's decision and the reasons for and against the child's view are presented. This is one of the rare examples of this style. In the Norwegian analysis by Magnussen and Skivenes (2015) this was regarded as an approach to the child's view in which the child's view was assessed and elaborated, and not only reported.

4.3 The indirect representation of the child's view

If the child's view is indirectly referred to it is likely that the child's view is also directly referred to. Indirect references on their own are present in the reports about the youngest children (Table 2).

The speakers representing the children's views are mainly psychosocial practitioners involved in the care order proceedings: social workers, residential care workers, health nurses, teachers, psychologists, psychiatrists, kindergarten nurses or any other professionals who had worked with the child and/or the family. Their knowledge of the child's view is referenced to in a short and factual way. The following extract demonstrate this style.

According to the view of child welfare workers, the child wants to live together with his/her siblings most preferably with his/her mother. (Case 26: child 4 years)

The extract tells us about the understanding of the child welfare workers, according to which the child wishes to live with his sisters and mother (instead of the out-of-home placement). No doubts are expressed.

Also parents may express the child's view. A mother represents her child, 17, indirectly in an oral hearing:

The mother says that the child is ready to return home with the help of in-home-services. The family is prepared to receive all the potential support offered. The child's behaviour has changed very much to be more adult-like and s/he understands the things very much better now. The child has started to think about her/his behaviour and s/he has regretted stopping to go to school, as well as his/her absence during the nights. S/he is willing to receive support measures. (Case 14)

In this extract, the mother presents her child's wish to welcome in-home services. This wish is an important element in the care order proceedings as the care order should always be the option of last resort and in-home services should be prioritized. The child's – as well as the family's – willingness to accept in-home services is thus a counter-argument against the care order. The extract also demonstrates the changes in the child's behaviour and attitudes which are somewhat reflected in the child's view about in-home services as the mother sees them.

The child's view is expressed by children's spokesperson and legal advisors in two decisions only (Table 2). One of them includes a strong statement by the legal advisor: he addresses the child's changing opinion about the care order and even provides explanations for the changes on the child's behalf:

Before the care order proceedings in the court the child had to say to his/her

mother that s/he opposes the care order. In fact, the child's opinion is that s/he does not want to go home because s/he does not feel good there. In the professional family home s/he is fine and s/he gets on well there. (Case 3: child 15 years)

The legal representative states that the child had been forced to express a certain view but her real view is different from that. The text includes a strong 'factual' statement which refers to the child's real wish not to return home. This view is presented as the real one in contrast to the previous view, which was as a result of the pressure by the child's mother. There is no way of knowing whether this interpretation is just that of the legal representative.

4.4 The absence of the child's view

In this data, 13 documents (about 16 children) do not include any information about the child's view (Table 2). These decisions are about children below the age of 12. Three of them are between seven and 11 years of age. Despite the absence of children's views, the decisions contain rich and detailed descriptions of the child – his/her behaviour, personal characteristics, interaction with his/her family and surroundings, special needs and other similar issues. The child is then textually approached as an object to examine; more or less, the decisions treat the child as a 'clinical object' (cf. Goldson, 2001; Dingwall *et al.*, 2014) and exclude the voice of the child. Consequently, the child is not missing in the written court decisions, but his/her voice is.

On the other hand, some decisions in this category focus on detailed descriptions of the child's conditions and the quality of care provided by parents. The focus is on, for example, the parents' use of drugs and alcohol and the efficiency of the treatment programmes. The child may be mentioned in passing without any detailed presentation of his/her situation. These documents could be characterized as lacking the child (including his/her view).

5 Discussion

We have seen certain patterns in the representation of children's views in the care order decisions. First, the direct representation of children's views is age-related. This pattern refers to the legal norm about children 12 or older who are given the right to express their view about the care order and the placement. Thus the pattern is that the documents about children 12 or older include a direct – though often very short and technical – statement of the child's view (see also de Godzinsky, 2015). The Finnish Child Welfare Act does, however, state that every child, regardless of age, should be involved in matters affecting him or her. Therefore one could expect a practice to present the child's view directly which would not be age-related. This pattern could not be found.

Secondly, the indirect representation of the child's view *by proxy* is a common element in the decisions. Professionals in particular are referred to as knowers of the child's view, and their interpretation is trusted in that sense that the child is not directly consulted. Previous research suggests that court decision-makers may criticise the professionals' presentations of children's views but they still lean on them (de Godzinsky 2014; Kuokka, 2015; Kuokka and Pösö, forthcoming). Spokespersons and legal representatives of children are rarely mentioned in these decisions which reflect their marginal position in the process in Finland (e.g. de Godzinsky 2015; Laakso *et al.*, 2012; Marjomaa and Laakso, 2010). This pattern suggests that the preparatory process in the care order decision-making is seen as being the forum for discovering the child's view and the psychosocial professionals involved in that process are mandated to learn about the child's view. The courts trust the indirect representation of the child's view, given by the practitioners of child welfare, and do not tend to (re-)examine the child's view during the court proceedings. This is done although it may take several months – approximately six months (Pösö and Huhtanen, in print) from the moment the care order application has been sent before the court makes the decision. During this period, the child's view may change, as do her/his circumstances. In this respect, there is a risk that the indirect representation of the child's view becomes outdated and 'second-hand' instead of being *by proxy*. The very existence of this pattern suggests that the child's view expressed in the preparatory process may travel from the child welfare agency to the court and be used in a

manifested form in the final decision.

A third pattern is that the child's view or even the child may be lacking in the written court decisions. The analysis has demonstrated that attention given to the circumstances of the child and to the 'clinical' presentation of the characteristics of the child may overlook the child's view. The younger the child, the more likely this pattern is. The descriptions of child's conditions or child's behaviour present arguments for the care order as the criteria for a care order include assessment of nature of care provided by parents and possible harms caused by the child's behaviour (Pösö, 2011). Thus the written decisions reflect the norms of the legislation although they at the same time exclude the child's view which is *also* required by legislation.

Those patterns of representing the child's view do not overrule each other as they might all be used in one court decision. The problem is, however, that the inclusion of direct and indirect representation of the child's view could be found mainly only in the decisions of children who were 12 years or older. The younger children are, the more likely it is that their (direct) views are lost in the decisions. Age really matters in the court decisions as it does in child welfare decision-making in general (Berrick *et al.*, 2015b). The child's maturity to express the views is not examined in any of the decisions in this data. Instead, the legal norm of the age of 12 sets the landmark for learning about the child's views and it is categorically followed (see also de Godzinsky, 2014; 2015).

Whatever the way to present the child's view, it is more to report the view rather than to use it analytically to weight different options of decisions against each other. The use of children's views is similar to the findings of the studies by de Godzinsky (2014) and by Magnussen and Skivenes (2015). We found only one decision in which the child's view was integrated into the decision arguments. This was one of the rare decisions in which an oral hearing had been organised and the child was present. This could imply that if the court meets the child in person, the written decisions include a more elaborate approach to the child's view. In that case, the decision may also have been written with the child as a possible reader in mind.

Documents of care order decisions give only a fragmentary picture of the decision-

making process as a whole (Dingwall, *et al.* 2014). Therefore this analysis cannot demonstrate the involvement of the children's view in the overall process of care order decision-making in the court or elsewhere. Nevertheless, reading the written decisions gives a reason to argue that children's views are rarely and narrowly represented in the written court decisions. The written decisions do, after all, legitimise the care order decision and when doing that, the children's views are given only minor attention. Therefore the findings are important for the analysis of child-centrism of the Finnish child welfare system.

6 Conclusions

The analysis above gives a reason to argue that the children's views are only narrowly used in the written care order decision by the courts. The Finnish findings highlight the implications of the legal norm of the age of 12: if the child is 12 or older, it is likely that his/her view would be directly and indirectly represented whereas the views of young children are more often bypassed or their views are represented by professionals only. In a contradictory way, the landmark of the age of 12 is a sign of child-centrism in child welfare as it acknowledges the children's right to participate in the decision-making and gives children a formal (procedural) status in the care order proceedings. On the other hand, the disadvantage is that the younger children are neglected (de Godzinsky, 2014). In order to change this imbalance, there is a need to change attitudes and practices so that every child is guaranteed a right to be heard.

Due to the differences in the court decision-making practices and the chosen data by Magnussen and Skivenes (2015) we cannot make any exact empirical comparisons between the two countries' court decisions. In particular, as the Norwegian analysis focused on children between the ages of 5 and 11, we could not follow the impact of teenage years on the inclusion of children's views in the written decisions. Likewise, a more careful exploration of the use of children's views and opinions, as done in the Norwegian study, was not possible in the Finnish analysis as the Finnish material was very scarce in this respect. The general message is, however, similar: the court decisions of care orders examine, present and use the children's views and opinions only in a limited way in both countries. It may well be that the Norwegian practice of

oral hearings in the care order decision-making has an impact on the written decision so that children's views and opinions tend to be presented in a more nuanced way than in Finland. Nevertheless, the findings suggests that the child-orientation of the Finnish and Norwegian child welfare systems, with the emphasis on children's right for participation and the long-standing recognition of the Convention of Children's Rights, has not (yet) strongly manifested itself in the recorded decisions of the court decisions of care orders. This sends a problematic signal to children who have been taken into care: was it so that their view did not matter after all?

References

Atkinson, P. and Coffey, A. "Analysing Documentary Realities", in D. Silverman (ed.), *Qualitative Research. Theory, Method and Practice* (London: Sage, 1997).

Berrick, J., Peckover, S., Pösö, T. and Skivenes, M. "The formalized framework for decision making in child protection care orders: A cross-country comparison", *Journal of European Social Policy* 2015a (25(4)), 366–378.
Doi:10.1177/0958928715594540

Berrick, J., Dickens, J., Pösö, T. and Skivenes, M. "Children's involvement in care order decision-making: a cross-country analysis", *Child Abuse & Neglect* 2015b 49, 128–141. Doi:10.1016/j.chiabu.2015.07.001.

Block, S., Oran, H., Oran, D., Baumrind, N. and Goodman, G. "Abused and neglected children in court: Knowledge and attitudes" *Child Abuse & Neglect* 2010, (34 (9)), 659–670. Doi: 10.1016/j.chiabu.2010.02.003.

Burns, K., Pösö, T. and Skivenes, M. "Removals of children by the child welfare system – variations and differences across countries", in K. Burns, T. Pösö and M. Skivenes (eds.) *Child welfare removals by the state: a cross-country analysis of child welfare systems*, (New York: Oxford University Press, in print).

Cashmore, J. and Parkinson, P. "What Responsibility do Courts Have to Hear Children's Voices?" *International Journal of Children's Rights*, 2007 (15(1)), 43–60.

Child Welfare Act 417/2007, unofficial translation. Retrieved from <https://www.finlex.fi/fi/laki/kaannokset/2007/en20070417.pdf>

de Godzinsky, V. *Huostaanottoasiat hallinto-oikeuksissa. Tutkimus tahdonvastaisten huostaanottojen päätöksentekomenettelystä*. [Taking a Child into Care. Research of decision making in administrative courts]. Report. 260. (Helsinki: Oikeuspoliittinen tutkimuslaitos, 2012).

de Godzinsky, V. *Lapsen etu ja osallisuus hallinto-oikeuksien päätöksissä* [The Best Interest of the Child and the Child's Right to Participate in Administrative Court Proceedings]. Research reports 267. (Helsinki: Oikeuspoliittinen tutkimuslaitos, 2014).

de Godzinsky, V. ”Kohti lapsiystävällisempää oikeudenkäyttöä. [Towards more child friendly justice]” *Lakimies* 2015, 6, 856 – 878.

Dingwall, R., Eekelaar, J. and Murray, T. *The Protection of Children*. Second edition. (New Orleans: Quid Pro Books, 2014).

Gilbert, N., Parton, N. and Skivenes, M. (eds). *Child Protection Systems. International Trends and Orientations*. (New York: Oxford University Press, 2011).

Goldson, B. “The Demonization of Children: from the Symbolic to the Institutional”, in P.Foley, J. Roche and S. Tucker (eds.) *Children in Society. Contemporary Theory, Policy and Practice*. (Basingstoke: Palgrave, The Open University, 2001).

Hiitola, J. *Hallittu vanhemmuus* [Governed parenthood]. Sukupuoli, luokka ja etnisyys huostaanottoasiakirjoissa. Acta Universitatis Tamperensis 2026. (Tampere: Tampereen yliopisto, 2015).

Hiitola, J. and Heinonen, H. *Huostaanotto ja oikeudellinen päätöksenteko*. [Care order and juridical decision making]. Raportti 46. (Helsinki: THL, 2009).

Kuokka, P. *Lastensuojelun asiantuntijuus hallinto-oikeuksien päätöksenteossa* [The child protection expertise in administrative court context]. Master's Thesis. (Tampere: University of Tampere, School of Social Sciences and Humanities, 2015).

Kuokka, P. Pösö, T. “Huostaanotot hallinto-oikeudessa sosio-legaalisenä päätöksentekona [Care orders in the administrative courts as socio-legal decisions]” in Enroos, R., Heino, T. and Pösö, T. (eds.) *Huostassa* [In care]. (forthcoming)

Križ K., Pösö, T. and Skivenes M. The right of the child to be heard: the critiques of state party practices by the Committee on the Rights of the Child and state parties' responses. (in preparation)

Magnussen, A. and Skivenes, M. “The Child's Opinion and Position in Care Order Proceedings”, *International Journal of Children's Rights* 2015, (23(4)), 705–723. DOI: 10.1163/15718182-02304001

Laakso, M., Marjomaa, P. and Peltoniemi, K. *Lastensuojelun edunvalvoja - se on minua varten. Lasten ja edunvalvojen kokemuksia edunvalvojasta lastensuojelussa ja rikosprosessissa*. [Spokesperson in child welfare –it is for me. Children's and

spokespersons experiences in child welfare and criminal cases.] Report 19. (Helsinki: Pelastakaa Lapset ry, 2012).

Marjomaa, P. and Laakso, M. (eds.) *Lastensuojelun edunvalvonta – lapsen oikeus osallisuuteen häntä koskevassa päätöksenteossa. Käsikirja lastensuojelun edunvalvonnasta*. [Representing the child - child's right to participate in decision-making relevant in his/her life. The handbook of representing the child in child welfare.] Report 15. (Helsinki: Pelastakaa Lapset ry, 2010).

Parkers, A., Shore, C., O'Mahony, C. and Burns, K. "The rights of the child to be heard? Professional experiences of child care proceedings in the Irish district court", *Child and Family Law Quarterly*, 2015, (26, (4)), 423–444.

Hallinto-oikeuksien ratkaisut 2013. *Suomen virallinen tilasto*, Tilastokeskus. Oikeus 2014. Retrieved from http://tilastokeskus.fi/til/haloikr/2013/haloikr_2013_2014-09-26_fi.pdf.

Prior, L. *Using Documents in Social Research*. (Sage, London, 2004).

Pösö, T. and Huhtanen, R. "Removals of children in Finland: a mix of voluntary and involuntary decisions", in K. Burns, T. Pösö and M. Skivenes (eds.) *Child welfare removals by the state: a cross-country analysis of child welfare systems*. (New York: Oxford University Press, in print).

Pösö, T., Skivenes, M. and Hestbaeck, A. "Child protection systems within the Danish, Finnish and Norwegian welfare states – time for a child centric approach? ", *European Journal of Social Work* 2014 (17, (4)), 475–490. DOI 10.1080/13691457.2013.829802

Pösö, T. "Combatting Child Abuse in Finland: From Family to Child-Centered Orientation", in N. Gilbert, Ni. Parton and M.t Skivenes (eds.). *Child Protection Systems. International Trends and Orientations*. (New York: Oxford University Press, 2011).

Skivenes, M. and Søvig, K. "Norway: Child welfare decision-making in cases of removals of children", in K. Burns, T. Pösö and M. Skivenes (eds.) *Child welfare removals by the state: a cross-country analysis of child welfare systems*. (New York: Oxford University Press, in print).

Thomson, L., McArthur, M. and Camilleri, P. "Is it 'fair'? Representation of children, young people and parents in an adversarial court system", *Child & Family Social Work* 2015. Doi:10.1111/cfs.12226.

Toimiva lastensuojelu. [Functioning child welfare] Report 19. (Helsinki: Ministry of Social Affairs and Health, 2013).