

# Child protection and the European Court of Human Rights: the case of Finland and Article 8

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## Introduction

Finland first became a member of the Council of Europe in 1989 and ratified the European Convention on Human Rights (ECHR) in 1990 – almost 40 years later than the other Nordic countries (Council of Europe, 2023). The UN Convention on the Rights of the Child (CRC) was ratified the following year. As Finland ascribes to a dualistic model with regard to international treaties, the two conventions were implemented by means of national legislation in 1990 and 1991, respectively (Koulu, 2019). The ratifications were followed by the reform of fundamental rights in the Constitution of Finland in 1995 and the overall reform of the Constitution in 2000. These reforms and ratifications demonstrate a profound change in the Finnish legal culture with an increasing emphasis on human and fundamental rights in both the legislative process and the application of law by the courts and administrative authorities (Ojanen, 2012; Pellonpää et al, 2018).

Since its implementation, the ECHR has played an important role in many fields of Finnish law. The European Court of Human Rights (ECtHR) has issued almost 200 judgments concerning Finland, more than in any other Nordic country (Table 3.1). With regard to Finnish law-making, there are many references to the ECHR and ECtHR in government proposals as well as other legislative documents. Both Finnish supreme courts – the Supreme Court and the Supreme Administrative Court – have frequently referred to ECHR and ECtHR case law in their decisions. This especially concerns matters relating to Article 6 (the right to a fair trial), for instance, the length of proceedings, while the influence of Article 8 (the right to respect for private and family life) has most often been seen with regard to some family law matters and alien affairs (Pellonpää et al, 2018).

There are only a few ECtHR judgments (4) concerning Article 8 and Finnish child protection, which is different from Norway, for example (Skivenes and Tefre, 2021). Although the ECtHR case law has been

**Table 3.1:** ECHR and the ECtHR judgments in the Nordic context, 1959–2023

Country	The year of ratification of ECHR	Total number of judgments	Number of judgments with at least one violation of ECHR	Number of judgments with at least one violation of Article 8
Denmark	1953	70	25 (36 %)	8 (32 %)
Finland	1990	194	142 (73 %)	24 (17 %)
Iceland	1953	39	27 (69 %)	1 (4 %)
Norway	1952	75	48 (64 %)	26 (54 %)
Sweden	1952	159	62 (40 %)	10 (16 %)

Source: [European Court of Human Rights \(2023b; 2024\)](#)

explored by many Finnish researchers (for example, [Sormunen, 2021](#)), the particular influences on child protection have not been studied to our knowledge. In our tentative analysis, we will argue that the judgments have had a great – but not unproblematic – influence on Finnish child protection legislation and its application. The influence is most apparent in matters related to the duration of placements and termination of care, which were, in short, the violations recognised in those judgments. As a result, children should at the moment be placed into public care only ‘for the time being’ with the aim of family reunification. Although Finland shares many principles of child protection with the other Nordic countries as service-oriented child welfare systems ([Gilbert et al, 2011](#); [Berrick et al, 2023](#)), the absence of the option of permanent placements distinguishes the Finnish child protection system from Sweden and Norway where the opportunity to consider a more permanent placement, or even adoption, exists on certain (exceptional) conditions ([Svensson and Höjer, 2017](#); [Helland and Skivenes, 2021](#)).

In this chapter, we will first examine the four judgments by the ECtHR regarding Finnish child protection and the violations of Article 8<sup>1</sup> therein, and second the influences of ECtHR case law on the Finnish child protection in more detail. The sources explored for influences include the present Child Welfare Act (417/2007) and its preparatory works, the Supreme Administrative Court’s decisions regarding child protection, as well as various policy papers concerning child protection, such as national reviews and reform programmes. All sources are official documents. In these, we have sought not only explicit textual justifications referring to Article 8 or ECtHR judgments but also more implicit references to the topic of permanent placements or the duration and termination of care. The sources and the methods used for our text analysis will be described in more detail in each subchapter.

## The European Court of Human Rights judgments regarding Article 8 and Finnish child protection

In total, the ECtHR has issued 194 judgments concerning Finland and found at least one violation of the ECHR in 142 judgments (1959–2023). The total amount of judgments concerning Finland is large when compared with the other Nordic countries, as is the number of judgments finding at least one violation of the ECHR and the percentage of these judgments in all judgments (Table 3.1). The differences become even more apparent when considering the fact that Finland ratified the ECHR approximately 40 years later than the other Nordic countries. As regards Finland, Denmark, Iceland and Sweden, violations of Article 6 are the biggest group of judgments finding at least one violation of the ECHR, while in the case of Norway the biggest group in this respect consists of violations of Article 8 (European Court of Human Rights, 2023b; 2024).

The violations of Article 8 in 24 judgments concerning Finland are a heterogeneous group including, apart from child protection cases, cases concerning, for instance, child custody and access rights (for example, *Hokkanen v Finland*, 19823/92, 23.9.1994) and confidentiality of medical data (for example, *Z. v Finland*, 22009/93, 25.2.1997).

With regard to Finnish child protection, the ECtHR has altogether issued five judgments, which we sum up in short descriptions in Table 3.2.<sup>2</sup> In all of these judgments, there was a violation of the ECHR. We will focus on the four judgments relating to Article 8 and, therefore, exclude the first case from our analysis. The four judgments were issued in the early 2000s over a short period of six years (2001–2006). The violations concerned decisions made by child welfare authorities on grounds of legislation, especially of the Child Welfare Act (683/1983), and the discretionary powers the authorities used when applying this legislation. In three cases, the violation was exclusively or partially due to the authorities' failure to facilitate a possible family reunification – a failure that, according to the ECtHR, was proved by severe restrictions on contact reflecting the authorities' presumption of the need for long-lasting public care. For reasons of simplicity, we use the term 'duration and termination of care' in this chapter to cover these violations found by the ECtHR.

The first and the most important of the four judgments is *K. and T.*, decided by the Grand Chamber (GC) in 2001. The issue at stake was the care orders concerning the applicants' two children and the implementation of these orders. The ECtHR found a violation of Article 8, first (by 14 votes to 3) in respect of the emergency care order related to the newborn baby J., and second (unanimously) by reason of the failure of the national authorities to take proper steps to reunite the family. As for the emergency care order, the ECtHR held that the situation was not an emergency in

**Table 3.2:** ECtHR judgments concerning Finnish child protection in 1990–2023

The case	The applicant(s)	The complaint	The article(s) applied by ECtHR	The violation(s) found by ECtHR
L. v Finland (25651/94) 27.4.2000	The father and the grandfather of two children born in 1985 and 1991 respectively.	Care orders concerning the children, continuation of care, the Court's refusal to hold an oral hearing when deciding on contact restrictions and prohibitions.	Art. 6 (Art. 8, Art. 13)	The lack of an oral hearing before the County Administrative Court in the proceedings concerning the contact restrictions and prohibitions.
K. and T. v Finland (25702/94) 12.7.2001 (GC)	The parents of two children born in 1988 and 1993 respectively.	Emergency and normal care orders concerning the children, continuation of the care, contact restrictions and prohibitions.	Art. 8 (Art. 13)	The emergency care order concerning the newborn baby, the authorities' failure to facilitate a possible family reunification.
K.A. v Finland (27751/95) 14.1.2003	The father of three children born in 1980, 1981 and 1986 respectively.	Care orders concerning the children, the implementation and continuation of care.	Art. 8.	The authorities' failure to facilitate a possible reunification of the applicant and his children.
R. v Finland (34141/96) 30.5.2006	The father of a child born in 1987.	Contact restrictions concerning the applicant and his child in care, continuation of care.	Art. 8 (Art. 6, Art. 13)	The authorities' failure to facilitate a possible family reunification, for instance by severely restricting the applicant's right to visit his child.
H.K. v Finland (36065/97) 26.9.2006	The father of a child born in 1990.	Emergency and normal care orders concerning the child, contact restrictions.	Art. 8 (Art. 6)	The authorities' failure to make any formal decision when placing the child in foster care and imposing contact restrictions despite the applicant's objection.

Source: [European Court of Human Rights \(2023a; 2024\)](#)

the sense of being unforeseen. The mother and the baby were in hospital at the time, and the authorities had known about the forthcoming birth months in advance and were well aware of the mother's mental problems. The reasons the national authorities relied on were insufficient to justify the serious intervention in the parents' family life. Even with regard to the national authorities' margin of appreciation, the making of the emergency care order and the methods used in implementing it were disproportionate in their effects on the parents' potential for enjoying a family life with their newborn child as from her birth. Therefore, the interference was 'not necessary in a democratic society' (para 168). As for the failure to facilitate the reunification of the family there had been only one effort on the authorities' part to that effect in the seven-year period during which the children had been in care. According to the ECtHR:

The minimum to be expected of the authorities is to examine the situation anew from time to time to see whether there has been any improvement in the family's situation. The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the children are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur. The restrictions and prohibitions imposed on the applicants' access to their children, far from preparing a possible reunification of the family, rather contributed to hindering it. (Para 179)

In the cases of K.A. and R. the national authorities had also failed to facilitate possible family reunification by restricting contact between the biological parent and his children in care and by not considering the reunification of the original family as a serious option but, instead, 'proceeding from a presumption that the children would be in need of long-lasting public care' by substitute carers (K.A., para 143). In the case of H.K., the ECtHR found two violations of Article 8 in respect of the decision-making procedure, as the authorities had made no formal decisions when placing the child away from the parent and issuing contact restrictions. As a result, the parent could not contest the restrictions, and no sufficient justification for that shortcoming had been provided.

## **Implications of the European Court of Human Rights case law on Finnish child protection**

### *Implications for child welfare legislation*

All the ECtHR judgments described in the previous section were based on decisions made under the previous Child Welfare Act (1983). It is noteworthy that there are no ECtHR judgments under the present Act (2007),

suggesting prominent changes were introduced since the new Act. The reforms introduced by the present Child Welfare Act aimed at bringing the legislation up to date with regard to Finland's international treaty obligations (Tolonen et al, 2019). For example, a child's right to become involved in the decision-making concerning the child was strengthened in compliance with Article 12 of CRC regarding the child's participation rights (HE 252/2006 vp). With regard to the ECHR, the duration and termination of care were the issues most affected by the ECtHR case law. An important change in this respect was that the social worker responsible for the child's affairs must now assess the conditions for continuing the care when the client plan is reviewed, that is, at least once a year. This must also be done when a child or the custodian applies for termination of care or when it otherwise proves necessary. No such obligation was included in the previous Act when there was no option for permanent placements, either. In the preparatory works of the present Act, the change was justified by referring to, on the one hand, the four ECtHR judgments concerning Finland and, on the other, some real cases where the authorities had neglected to facilitate family reunification for many years (HE 252/2006 vp).

According to the present Act, taking a child into care is only valid for the time being. However, care must be terminated when the conditions prescribed by the Act are fulfilled. The conditions for discontinuing care are bound to those for taking into care, meaning that care must be terminated when the conditions for taking into care no longer exist. However, if the discontinuation is 'manifestly against the interests of the child', it is not permitted (section 47). Taken together with the obligation to regularly review the continuation of care, the provisions reflect the idea that placements in substitute care should be temporary in the first place. In addition, and due to the proposal by the Constitutional Law Committee of Parliament, the explicit aim of family reunification was added to the Act by the Parliament (PeVL 58/2006 vp). As one of the main principles of the Act, it is now prescribed that when providing substitute care, the aim of reuniting the family must be taken into account in a manner that accords with the child's best interests. Furthermore, a client plan for a child taken into care, as well as that for the parent, must set out how contact with the child will be organised, and how the aim of reuniting the family will be taken into account in a way that is in the child's best interests.

Accordingly, the present Child Welfare Act does not present any formal opportunity for a permanent placement. Adoption is not an option provided by Child Welfare Act nor is the deprivation of parental rights or the transfer of custody to the foster parents. Adoption is regulated by the Adoption Act (22/2012) and the custody of a child by the Act on Child Custody and Right of Access (361/1983). In both cases, the criteria, procedures, legal implications and decision-makers are different from those in child welfare.

Children who have been taken into care may be adopted by the Adoption Act, but this is rarely done (Eriksson and Pösö, 2021). Nevertheless, children stay in care for long periods and family reunifications are rare. There are very few studies examining the frequencies of family reunifications, but the statistical analysis based on the national child welfare register data highlights a very low frequency: in 2016, only 4.5 per cent of children who were in care through a care order decision had their order terminated in that particular year before they reached their adulthood (age 18) (THL, 2018, 10). Furthermore, when parents and children, aged 12 years or older, appeal decisions concerning the continuation of care, the administrative courts typically uphold the decisions made by child welfare authorities, meaning that the appeals do not usually lead to family reunification (Pösö et al, 2019).

### *Implications for the Supreme Administrative Court's decisions*

Finnish law follows the Nordic legal system with Parliamentary Acts as the main source of law. Similar to Sweden, Finland has a system of general courts of law and administrative courts of law. The jurisdiction of administrative courts covers all administrative law cases, which also include child protection cases (Mäenpää, 2012; Pösö and Huhtanen, 2017). The Supreme Administrative Court is the court of last resort in administrative law cases with a task to grant judicial protection and guide the application of the law by precedent. It issues thousands of decisions yearly, the most important of which are published on the Court's web page (<https://www.kho.fi/>). While the legal-formal and doctrinal position of precedents is relatively weak in Finnish law, they still play a significant role (Husa, 2012).

At the time of writing, the Supreme Administrative Court has published 13 decisions regarding child protection with a reference to Article 8 ECHR and/or ECtHR case law.<sup>3</sup> The main topics of the decisions concern restricting contact or changing the substitute care place of the child in care, while some individual decisions, for example, concern the preconditions for taking into care. The majority of the references to ECtHR case law are very short and made in general terms only. In some cases, however, the Supreme Administrative Court has examined the ECtHR's reasoning more thoroughly and justified its decision by resorting to the principles developed by the ECtHR. Nonetheless, even in these decisions, the ECtHR judgments seem to comprise only an additional argument, while primary arguments are based on domestic legislation and, especially, the Child Welfare Act.

The aim of family reunification has played an important role in two Supreme Administrative Court precedents. In one of them, KHO 19.9.2000/2302, the issue was about changing the substitute care place of three children, aged eight, nine and 11 years, respectively, taken into care and placed in foster care six years earlier. The social welfare board rejected the parent's

application for placing the children under their aunt's care as no remarkable shortcomings were found with regard to the original foster care place. The Court overruled the decision and returned the case to the board. It shortly referred to Article 8 and ECtHR case law and, apart from other arguments, held that placing the children under their aunt's care would facilitate reuniting the children with their biological parent. It was for the social welfare board to weigh this argument as well as other relevant considerations and decide the case anew.

The other case, KHO 2011:99, concerned the taking into care of a child of one year of age with a single mother with slight mental disabilities. The Court upheld the care order decision as the child's health and development had been seriously endangered due to the lack of care. According to the Court, the shortcomings found in the mother's caring skills were relevant with respect to a very young child but their relevance might decrease as the child grows older. They must therefore be reassessed later, and attention must then be paid to the ECtHR case law concerning a care order as a temporary measure to be discontinued as soon as circumstances permit. So, while the outcome was not directly affected by the ECtHR case law, the Supreme Administrative Court took advantage of the opportunity of guiding the application of law to be in harmony with it in the future.

In all, the Supreme Administrative Court has utilised ECtHR case law in few decisions regarding child protection. What is interesting is that in two decisions it explicitly referred to family reunification as the aim of substitute care. This might underline the precedential value of these decisions as they both only indirectly concerned duration or termination of care. Drawing any conclusions is, however, difficult, because of the age and small number of these decisions. While the more recent references to ECtHR judgments concern other issues – such as the notion of 'family life' in Article 8<sup>4</sup> – they still prove that these judgments are an important source of law in this area. This most probably also concerns the decision-making of the child welfare authorities as, due to the guidance by national authorities (via, for example, the online Handbook of Child Welfare), they are informed of the Supreme Administrative Court's precedents and the influence of the ECtHR judgments on them.

### *Child welfare policy and practice: permanent care orders or not?*

Since the beginning of the 2010s, the policy and practice of child welfare have been the target of a variety of national reviews and reform programmes. Article 8 appears occasionally in the policy documents regarding children and child welfare. For example, the recent policy document, the National Child Strategy Committee report, published by the Finnish government in 2021, makes a clear reference to Article 8 when drawing the principles for policies

regarding children's relations with other people (Finnish Government, 2022, p 29). The reference to Article 8 is not linked to child protection but addresses children's relations in a wider meaning. Child welfare policy documents seem to invite more frequently the recognition of CRC than that of ECHR. This does not, however, mean that the ECtHR judgments would be ignored; instead, their implications are more indirect as will be demonstrated by our examination of the pivotal policy review of the state of child welfare (STM, 2013) and its follow-up reports.<sup>5</sup> This review was run by an expert group established in 2013 by the Ministry of Social Affairs and Health and it was timed after the tragic death of a child known to the child welfare authorities, with a lot of media attention. The review resulted in 54 proposals for changes. Although the review lacked direct references to the ECtHR judgments, there was one recommendation which is relevant for this chapter. Recommendation number 19 states that the existing Child Welfare Act should be changed to make a permanent care order possible (STM, 2013, p 46).

According to the expert group, a permanent care order could be an option 'if there is a realistic reason to believe that parents or other custodians could not take care of the child's care and upbringing and no other options to secure the child's situation exist' (STM, 2013, pp 45–46). The temporary nature of a care order is seen as being a problem in those cases in which there is no real likelihood of family reunification. Therefore, the group argued that the existing regulation about care orders being only of a temporary nature should be changed.

The review was followed by an implementation plan for the period of 2014–2019, published again by the Ministry of Social Affairs and Health (STM, 2014). There the proposal about a permanent care order is among the recommendations *not* to be implemented, because of the serious criticism received. The criticism included concerns about the proposal's legitimacy from the point of the view of the Constitution of Finland and human rights treaties (STM, 2014, p 35). Furthermore, there were also concerns about whether there would be any clear and uncontested criteria for those cases in which family reunification would not be a likely option. Despite the criticism, the plan documented that the proposal needed to be further elaborated regarding its relation to basic and human rights as well as to family reunification and practices abroad. However, in 2019, in another review of child welfare published by the Ministry, now as a part of a nationwide programme for child and family services, the conclusion was that that particular proposal of the review in 2013 had not been implemented as the views among authorities and stakeholders were not supportive of it (Kananoja and Ruuskanen, 2019, p 87).

As said, the series of these three policy documents, important in the Finnish child welfare context, do not make any direct reference to the ECtHR or

Article 8. It is, however, likely, in our view, that the sensitivity of the topic of permanent care orders is indirectly related to the ECtHR judgments and how they were nationally interpreted and manifested in the collective memory of stakeholders outside the law-making bodies: there were hesitations about whether permanent placements would be against human and basic rights, yet without any detailed exploration of the matter. A different and explicit frame for considering permanent placements is provided by the recent Government Programme, introduced in June 2023 by the newly elected government, as it includes a plan about considering adoption as an option for children in care for the best interests of the child (Valtioneuvosto, 2023, p 33). What is essential in this short formulation is that it is in a paragraph highlighting that childlessness affects one in five persons of fertile age whereas child protection issues are described in other sections. This may suggest a new emerging discursive frame for considering adoption with an emphasis on making families for adults to tackle childlessness, challenging the older hesitations about adoption or any other type of permanent placement being against basic and human rights.

## Discussion and conclusion

We have seen in this chapter that since Finland ratified the ECHR in 1990 and CRC in 1991, the basic and human rights have been included in Finnish legislation, including the Child Welfare Act. We have also seen that the ECtHR, in the period of 1959–2023, has had more judgments regarding Finland than other Nordic countries, but only four ECtHR judgments about the violation of Article 8 ECHR in child protection in Finland. These judgments, focusing on the duration and termination of care, directly influenced legislation as the Child Welfare Act was reformed in 2007. As a result, social workers were required to carry out new procedures; for example, the continuation of placements needs to be assessed at least once a year, and the restrictions of contact between the child and parents, if needed, are time-limited and require a specific decision-making procedure. The judgments have also had indirect implications on child welfare policy, as we have seen in the policy reports analysed in the chapter: reluctance to examine permanent placements as options for children needing long-term care because of the perceived complexities concerning basic and human rights.

Consequently, at first glance, the right to respect for private and family life seems to be well guaranteed in Finland at the moment as there have been no ECtHR judgments regarding Article 8 and child protection since the reform of the Child Welfare Act in 2007. However, from a more robust point of view, the lack of permanent placements in Finnish child welfare may suppress the critical concerns some parties, parents especially, may have about child protection but it can be in conflict with the interests of those children needing

long-term care. As formally no permanent care exists, children's everyday life is at stake at least once a year when a full assessment of their need for care is made. Sometimes there is no contact or the contact is not safe between the child and birth parents despite social workers' family reunification efforts (for example, [Helavirta, 2016](#)). In some case, children's sense of permanence and continuity, as well as their sense of belonging to a 'substitute family' may be threatened. As previously described, family reunifications are rare, as are adoptions from care. Children may stay in care for many years, even for their whole childhood, on 'a temporary basis'. Permanence consists of legal, residential and relational elements ([Palacios et al, 2019](#)) which are not well supported by the present legislation. Therefore, the consensus not to revise the Finnish legislation and policy about permanent placements may be problematic for some children.

Indeed, the case of Finland demonstrates that the role of ECtHR and its judgments can have multiple and even controversial influences on national legislation, policy and practice. Their implementation may eventually even exclude the interests of very vulnerable children needing long-term care if 'protection of family life' rests on the narrow concept of (birth) family only. Obviously, the question 'what is family' and whose standpoint is seen as being relevant in its definition is still highly topical in Finland and beyond ([Pösö et al, 2021](#); [Fenton-Glynn, 2021](#)).

## Notes

- <sup>1</sup> Article 8 ECHR guarantees everyone the right to respect for his private and family life. As ECtHR has reiterated in numerous child protection cases, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of the family life protected by the ECHR (for example, [Fenton-Glynn, 2021](#)). Article 8 § 2 sets the preconditions under which any domestic measure hindering such enjoyment is permitted: the measure must be 'in accordance with the law', and it must be 'necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'.
- <sup>2</sup> In addition to the judgments, ECtHR has issued 21 decisions regarding Finnish child protection (1990–2022). By the decisions, the application was declared inadmissible in 18 cases and struck out of the Court's list in three cases. See Art. 35 ECHR and <https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22%7D>. The data were collected from HUDOC by using different keywords ('public care', 'care order', 'child protection', 'child welfare') and reading the results in order to sort out the child protection cases from other, such as criminal law, cases (for example *T. and others v Finland* 34952/97, 14.10.1999). As these data are not directly available from the statistics published by the ECtHR, we cannot present corresponding figures regarding the other Nordic countries.
- <sup>3</sup> The decisions were identified on the Supreme Administrative Court's web page by using keywords referring to Child Welfare Act and Article 8 ECHR. Since 1990, the Court has published altogether 103 decisions with reference to the Child Welfare Act. We may, therefore, say that a bit more than every ten of them also have a reference to Article 8. This

is, however, just a very rough estimate as the decisions differ from one another and some of them have only a loose connection to child welfare.

- <sup>4</sup> For example, the case of KHO 2021:22 concerning the foster carer's right to respect for her family life with the child placed under her care for five and a half years.
- <sup>5</sup> When analysing the review report and its follow-up reports, we have focused on three issues: whether the reports make any reference to Article 8 or, second, to the ECtHR judgments regarding the violations of Article 8, and third, whether they explore the topic of permanent placements or family reunification.

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