



The interaction of procedural rules and fundamental rights in child protection cases

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The research

- The thesis focuses on the interaction of fundamental rights and procedural rules in child protection cases
 - What is the importance of procedural rules in administrative law in child protection cases?
 - Do fundamental rights impact their importance?
 - Child's right to protection and care
 - Right to respect for private and family life
- Collaboration with The Government Agency for Child Protection in Iceland
- Done under the supervision of Dr. Ragnhildur Helgadóttir, professor and dean of Reykjavík University's School of Law
- Submission of thesis at the end of 2018

Research questions

- *What is the importance of procedural rules in child protection cases and what impact do the fundamental rules of a child's right to protection and care and the right to respect for private and family life have on their importance?*
 - Are child protection cases conducted in accordance with the procedural rules?
 - If deviations from procedural rules are made is it done with the purpose to protect other fundamental rights that are deemed more important?
 - Do infringements of procedural rules lead to infringements of fundamental rights and if so which rights and against which individuals (parents and/or children)?

Research method

- Traditional legal dogmatic approach
 - What is the law?
 - Key procedural rules identified:
 - Rule of investigation
 - Principle of proportionality
 - Right to be heard
 - Rule of prompt handling
 - Documentation of information
 - Legal sources examined:
 - Administrative Procedures Act No. 37/1993
 - Child Protection Act No 80/2002
 - Procedural regulation for CPS No. 56/2004
 - Information Act No. 50/1996

Research method, cont.

- Empirical research of child protection cases
 - Is the law being followed?
 - Out of home placements 2010 – 2012
- The Data
 - Placements of 187 children with consent of parents (and children 15+)
 - 55 court decisions (incl. 16 Supreme Court decisions)
 - 13 cases (23,6%) – decisions according to Art. 27 (up to two months)
 - 27 cases (49,1%) – decisions according to Art. 28 (up to twelve months)
 - 15 cases. (27,3%) – decisions according to Art. 29 (permanent placements)

The data – cases with consent

- Key documents identified and examined:
 - Documents that are mandatory and their content is determined by law/regulation
- 1. Notifications on children's circumstances
- 2. Reports with conclusions of the CPS investigations
- 3. Plans for handling of cases where special measures are required
- 4. Consent of parents and children for placements

Findings – placements with consent

- Results indicate a significant lack of compliance with procedural rules (N 187)
 - A report on the findings of the initial investigation lacks in many cases (102 = 54,5%)
 - 9 cases – first investigation before 2002 (N 187:4,8%) (N 102:8,8%)
 - 9 cases – transferred from another CPS (N 187:4,8%) (N 102:8,8%)
 - 8 cases – opened during pregnancy (N 187:4,3) (N 102:7,8%)
 - 76 cases – no explanation (N 187:40,6%) (N 102:70,6%)
 - Many reports lack proposals for suitable measures (38 out of 85 reports (44,7%))

Findings – placements with consent, (2)

- When special measures are required (the case is not closed)
 - Significant lack of the existence of a written schedule for further handling of the case
 - Continuous plans in 13 cases out of 187 (N 187:6,9%)
 - No plans in 9 cases (N 187:4,8%)
 - Schedules do not stipulate when and how it is to be evaluated (only in 2 cases out of 187:1,1%)
- Written consent lacking
 - Unclear if consent has been given and when, when the child is placed out of home, the time period that the parties are agreeing, consent given after the fact, witnesses lack (122 cases out of 187:65,2%)

Findings – placements with consent, (3).

- Procedural rules generally not followed
- Lack of systematic evaluation of cases
- Individual evaluation lacking in cases of siblings
 - Documents mostly done for siblings together, regardless of difference in age, gender, wellbeing, need for support
- Indications of physical violence not investigated/followed up with
- Cases seem disorganized, without direction
 - Difficult to see when children were placed and for how long
 - Cases are open for a long time – often with out a plan of action

Findings – court cases

- Total of 55 court decisions
 - 12 cases (21,8%) - some comments about the work of the local CPS/not agreed to placement
 - 48 cases (87,3%) - agreed to the CPS claims for placement
 - 5 cases (9,1%) - agreed to the claim even though some mistakes had been made
- 7 cases (12,7%) – not agreed to the claims of the CPS
 - 3 cases (5,5%) - agreed to a shorter time of placement
 - 4 cases (7,3%) - placement rejected altogether

Findings – court cases (2)

- Claims of violation of procedural rules are very general
 - Not connected to the documents in each case
 - Not referred to the procedural rules in The Child Protection Act or the Procedural regulation for CPS
- Facts of the cases as described in the decisions of the courts often indicate a lack of compliance with the special procedural rules
- Facts of the cases as described in the decisions of the courts show that in general the children's circumstances were very bad at the time of the decisions
 - Focus on the interests of the child

Main conclusions

- *Procedural rules don't play a significant role in child protection cases*
 - Child protection cases are generally not conducted in accordance with the procedural rules
 - Courts focus on the best interests of the child
 - Courts are not informed of violation of procedural rules
 - Infringements of procedural rules can lead to infringements of fundamental rights of both children and parents;
 - Lack of (re)evaluation of cases make it impossible to say which resources are suitable and when placement outside of the home is necessary
 - Uncertain if children and families get the necessary support to avoid placement
 - Support is haphazard – leads to placements that may have been avoided
 - Unsystematic evaluation - cases take a long time - can delay necessary action (incl. placements)
 - Difficult for parents/children to know when they have fulfilled their part