

The legitimacy of child protection in times of changing environments

Prof. Marit Skivenes

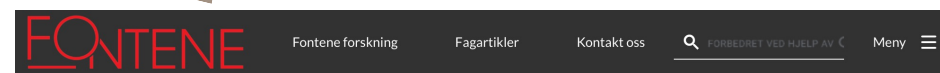
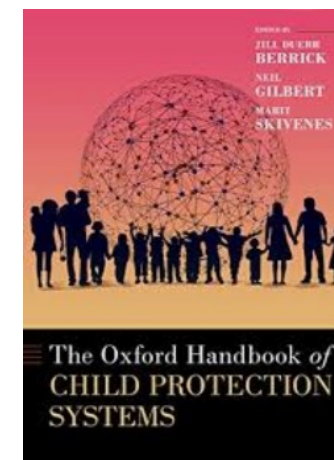
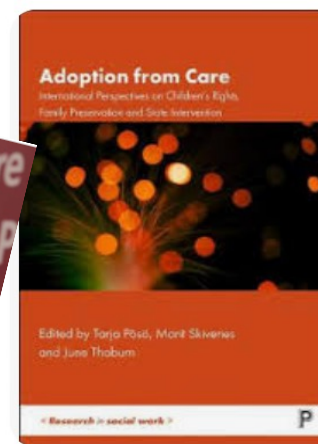
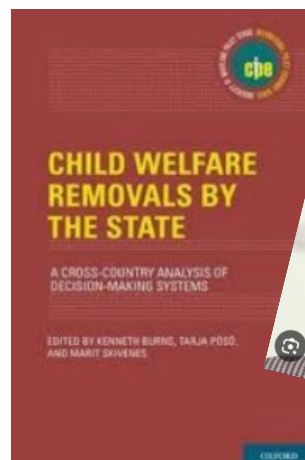
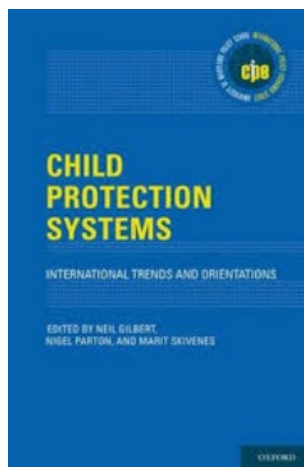
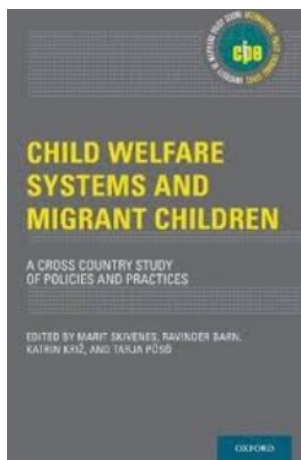
Centre for Research on Discretion and Paternalism,
Dept. of Government, University of Bergen, Norway

Tampere, Feb. 16, 2024

UNIVERSITETET I BERGEN



CENTRE FOR RESEARCH ON
DISCRETION AND PATERNALISM



Derfor trengs BRO – barnerepresentantordning – i barnevernet

11 av 14 medlemmer av utvalget om rettsikkerhet i barnevernet (se navnene i faktaboks)
Publisert 07.06.2023 13:15



What is meant with a title
about the legitimacy of child
protection in times of changing
environments

India: protest against Norwegian CPS



Ajay and Krishna Bhattacharya, paternal grandparents of children, are in New Delhi for a sit-in protest. Naresh Sharma/Firstpost

Romania: citizens protesting against the Norwegian child protection system



Sjokkangrep mot norsk barnevern

Menneskerettsdomstolen i Strasbourg krever svar fra Norge i nye 16 barnevernssaker. Totalen er nå 26.



Norway Child Welfare Service faces growing global protests



Sweden: Syrian parents plead to be reunited with children taken by authorities

Online campaign highlights case of Syrian couple in northern Sweden whose children removed by social services over three years ago



Nyheter / Göteborg

Demonstration i Göteborg: "Vill ha våra barn"

Emil Forsberg, Erica Fält

Publicerad 2022-02-13

YouTube The Muslim Skeptic · 1:58

YouTube TRT World · 2:16

Refugee parents say their children are 'kidnapped' by Sweden's social services

Uploaded: Feb 9, 2022 · 182K Views · 6.42K Likes

→ The Observers

Migrant families in Sweden accuse social services of 'kidnapping' their children



Issued on: 11/03/2022 - 15:30 Modified: 15/03/2022 - 10:08



Experts, families say Sweden's social system mistreats Muslim children

Social agencies have the right to send their staff and take children from their homes or from school without their parents' knowledge

Leila Nezirovic | 05.05.2022 - Update: 12.05.2022



World

UN Security Council strongly condemns terrorist attack of Pakistan's

Oxfam warns worsening hunger in Ethiopia's Tigray region



Changing environments- reoccurring

- In addition to social media and fake news
- **Right-wing wind** – want less state, less "socialism".
- **Resistance against rights**, including women's rights, children's rights.
- **Resistance against state involvement in the family**, in people's lives.
- The ECtHR has increasingly included **child protection** – amicus briefs.
- **Economy** - resources.
- **Downsizing** – recruitment issues, turnover
- **Organizational changes**
- **Damn if you do, damn if you don't**
- **Child rearing is about normative issues**

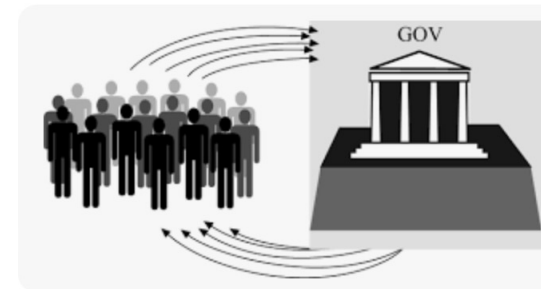


Legitimacy of the child protection system

Having legitimate state institutions is an essential virtue of democratic governance, stability and regime viability, as well as sustainability of the welfare state institutions such as the child protection system (CPS) and social services.

In political theory, legitimacy is often closely associated with concepts of trust and confidence.

It is about the quality of services provided to citizens and the population, which is about following the procedure and about fulfilling the rights people have.

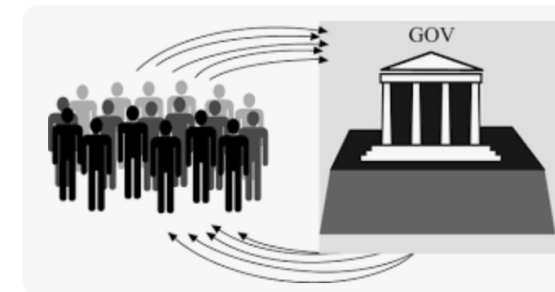




Quality of services and performance

A system or an agency's legitimacy is dependent on the quality of their services and performance. **This can be measured in different ways.**

1. How citizens – *voters / service users / culture bearers* – regards and are in moral alignment with a system.
2. How service users experience the system/agency.
3. How well the system performs according to goals and standards set in legislation, conventions and professional norms.





UN Convention on the Rights of the Child

Convention on the Rights of the Child, Article 19



1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.



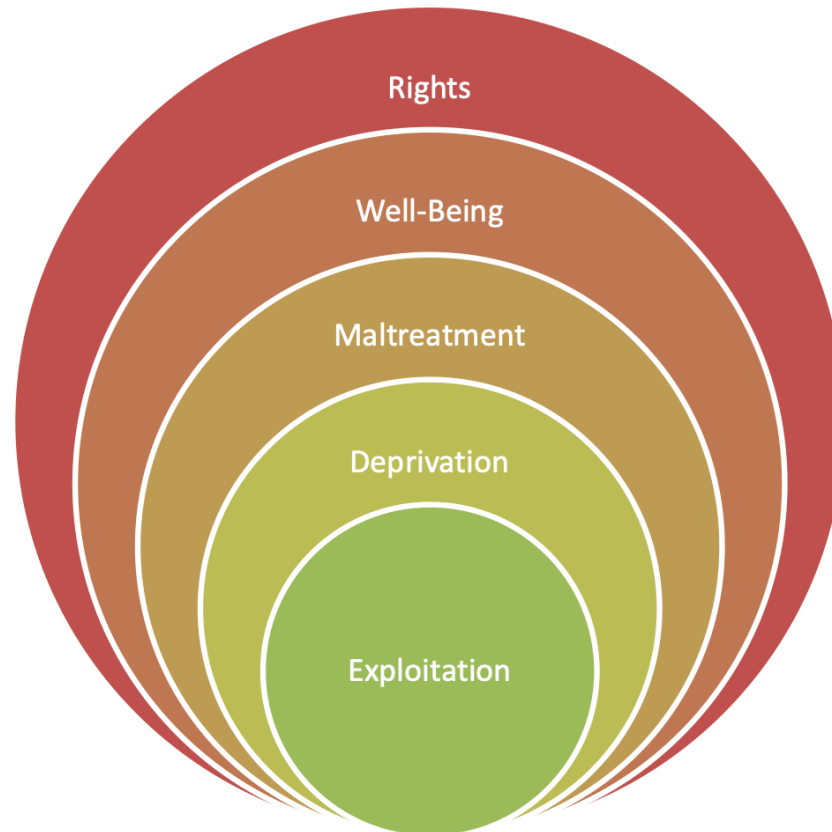


What are child protection systems designed to protect?

Concentric circles suggesting the **layered risks that befall children** to which the **state may respond**.

Variations in the magnitude of the severity of risks of harm and maltreatment to children.

Parents have greater and lesser capacities to protect their children against harm.



A global typology of child protection systems

**Child
exploitation-
protective
systems**

**E.g.:
GHANA
INDIA**

**Child
deprivation-
protective
systems**

**E.g.:
MEXICO
CZECH
REPUBLIC**

**Child
maltreatment
-protective
systems**

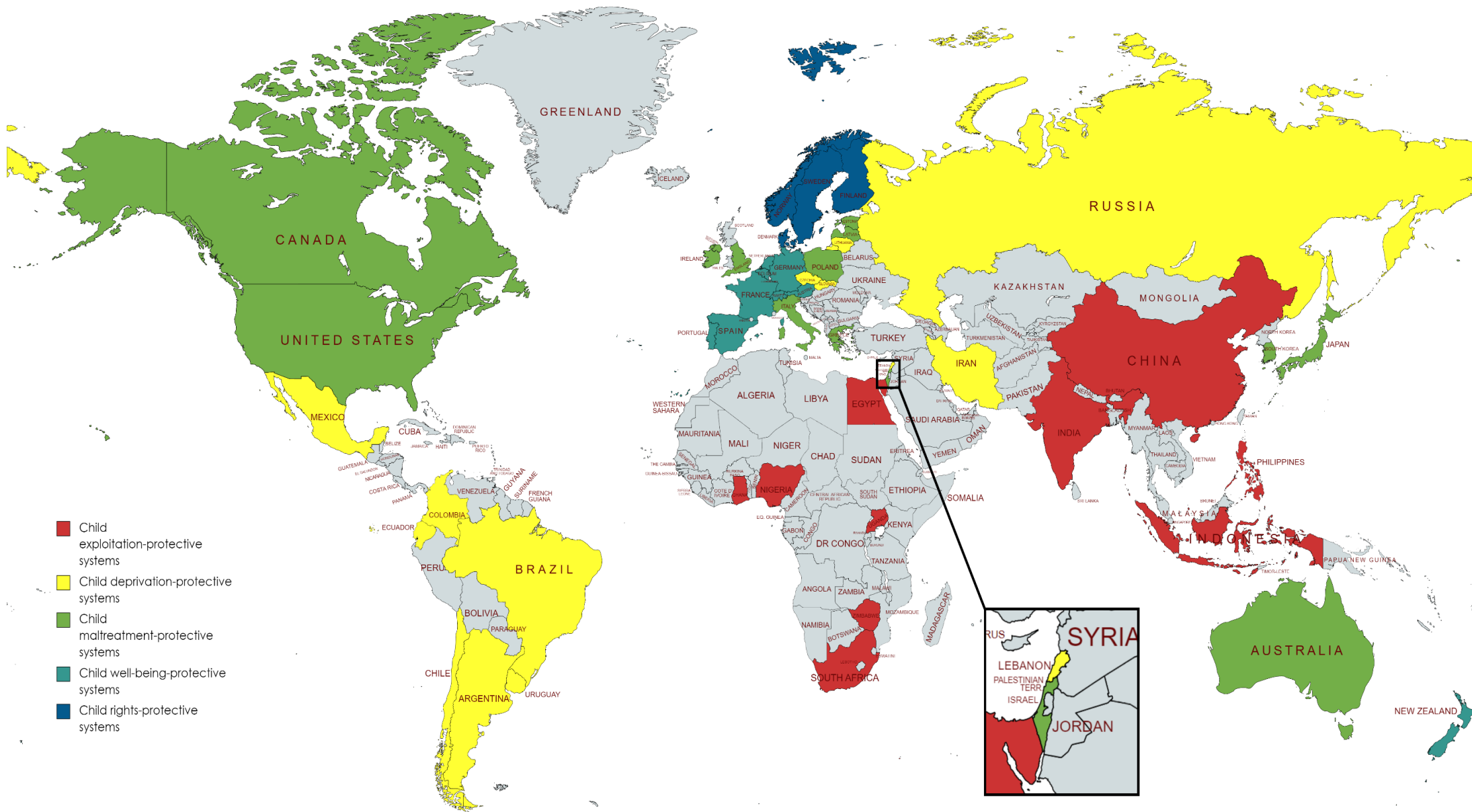
**E.g.:
USA
ESTONIA**

**Child
well-being-
protective
systems**

**E.g.:
GERMANY
SWITZERLAND**

**Child
rights-
protective
systems**

**E.g.:
NORWAY
FINLAND**



- Child exploitation-protective systems
- Child deprivation-protective systems
- Child maltreatment-protective systems
- Child well-being-protective systems
- Child rights-protective systems

Child Rights Protective Systems



- Besides guarding against exploitation, deprivation, maltreatment, and developmental harm, *institutionalized* countries with a **child rights orientation** are additionally concerned with addressing the child as a person with individual rights.
- Affirmative approaches for protecting children against rights violations. Child protection as a broad and comprehensive package of supports and services that respond to children as rights-bearing individuals.

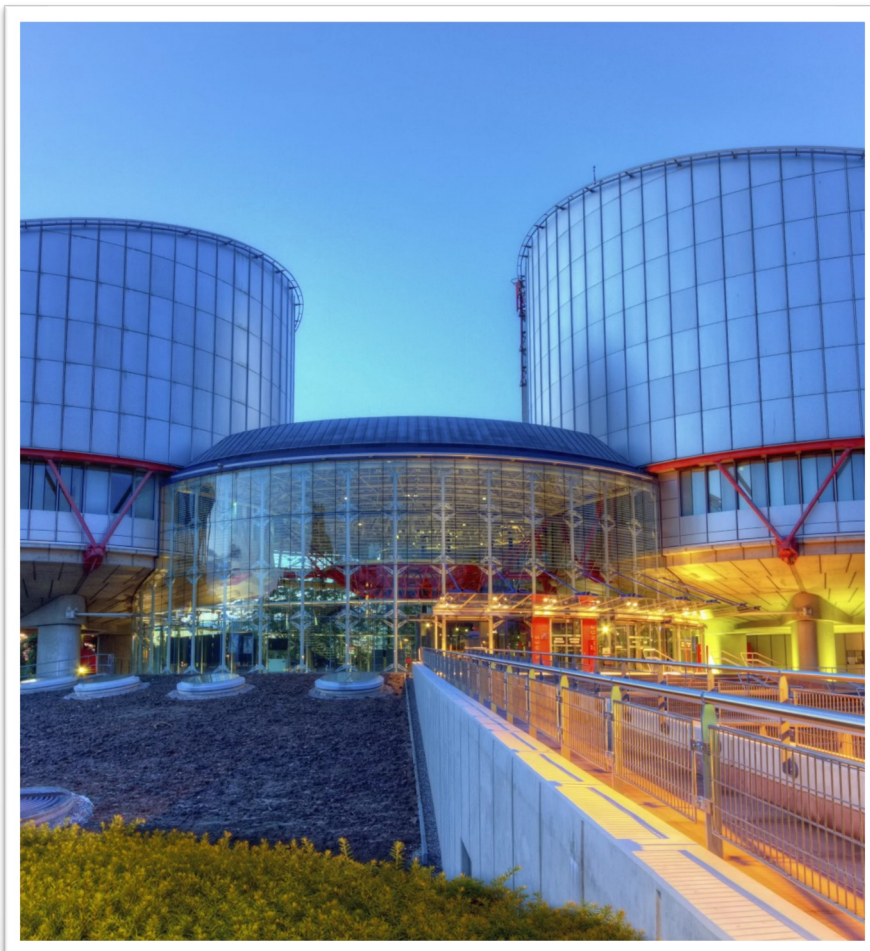


Norway



Finland

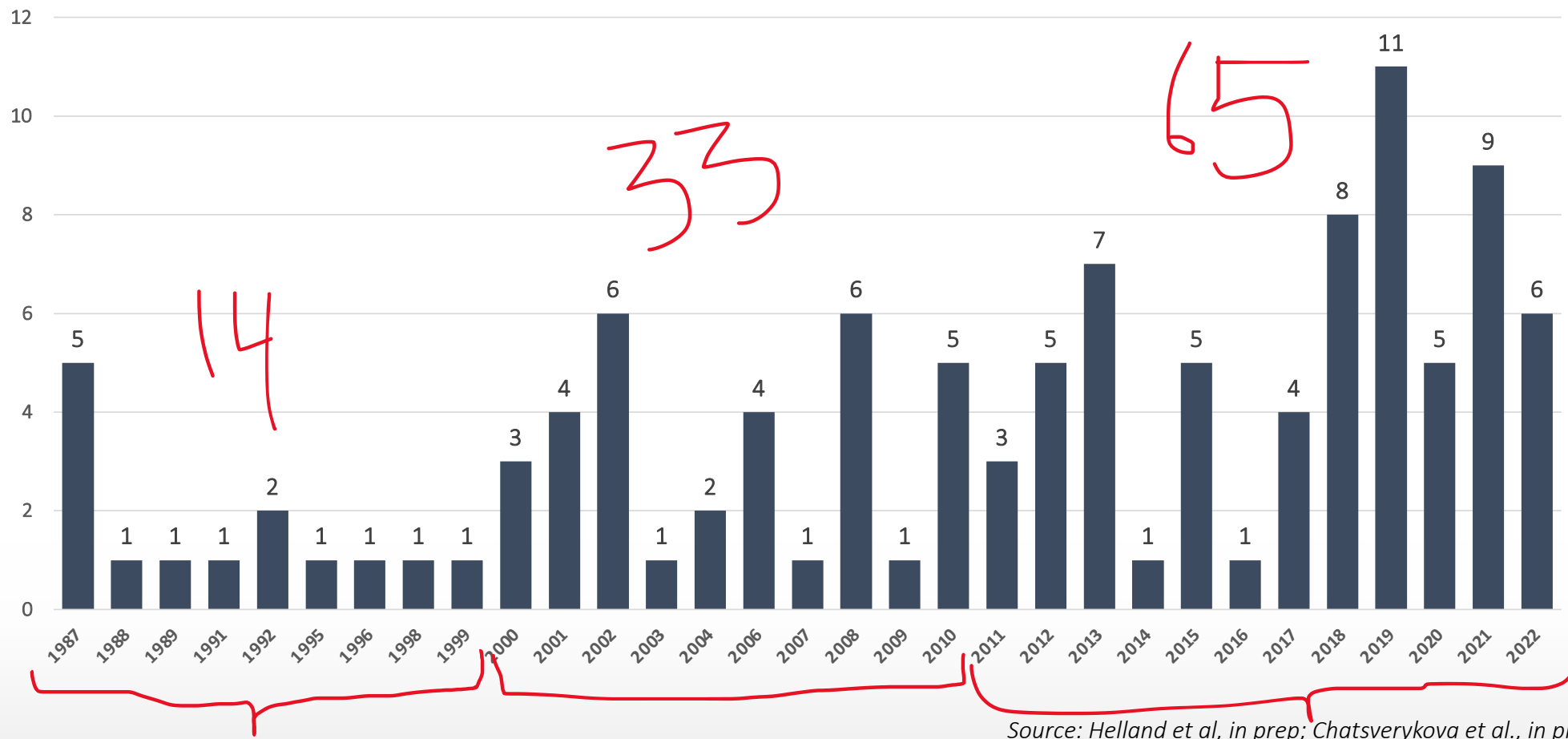




- **Article 8. Right to respect for private and family life**
- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing 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.”



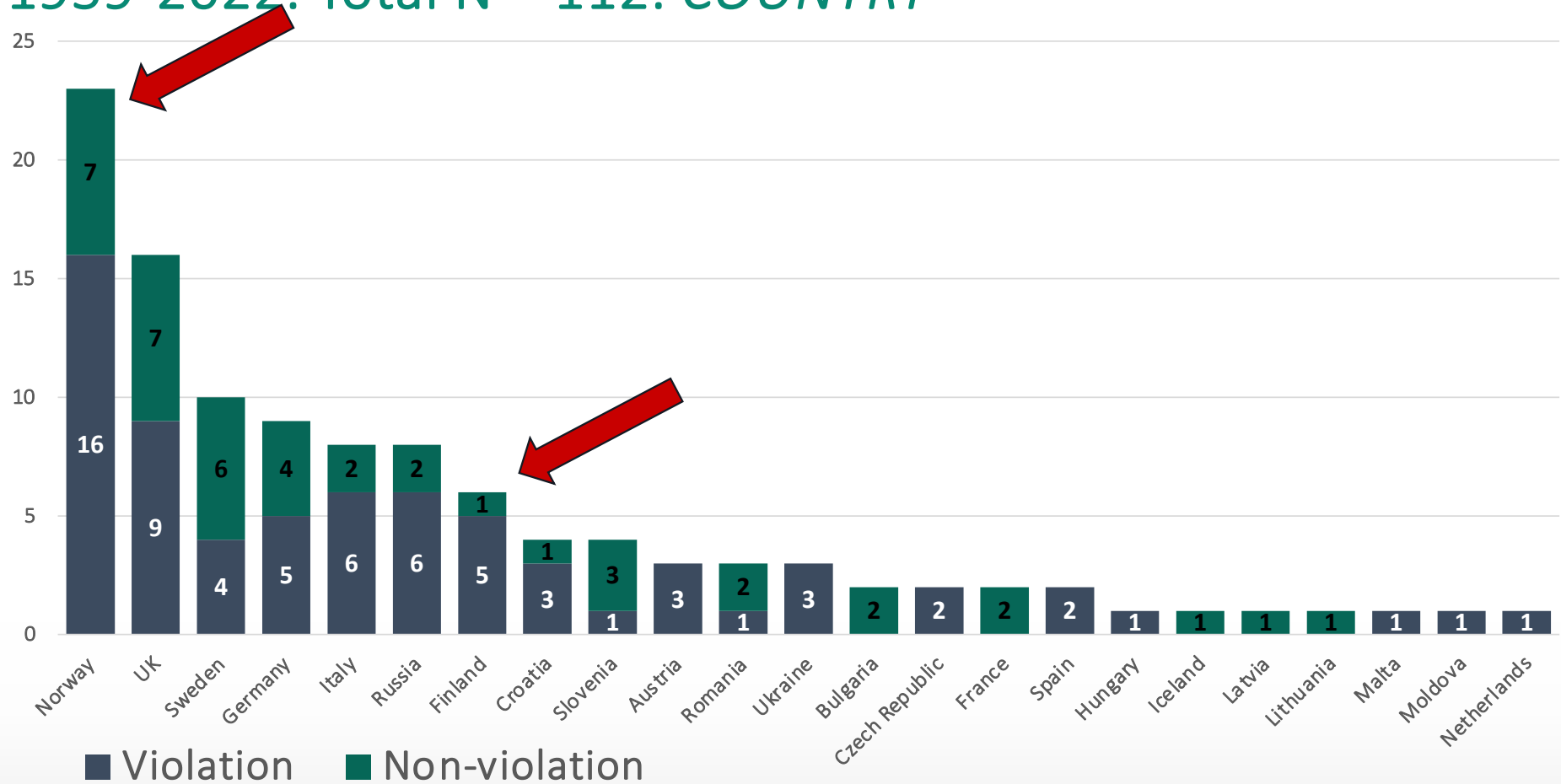
Child protection judgments. The European Court of Human Rights Article 8. Years 1959-2022. Total N = 112.



Source: Helland et al, in prep; Chatsverykova et al., in prep.



Child protection judgments. ECtHR. Article 8. Year 1959-2022. Total N = 112. *COUNTRY*

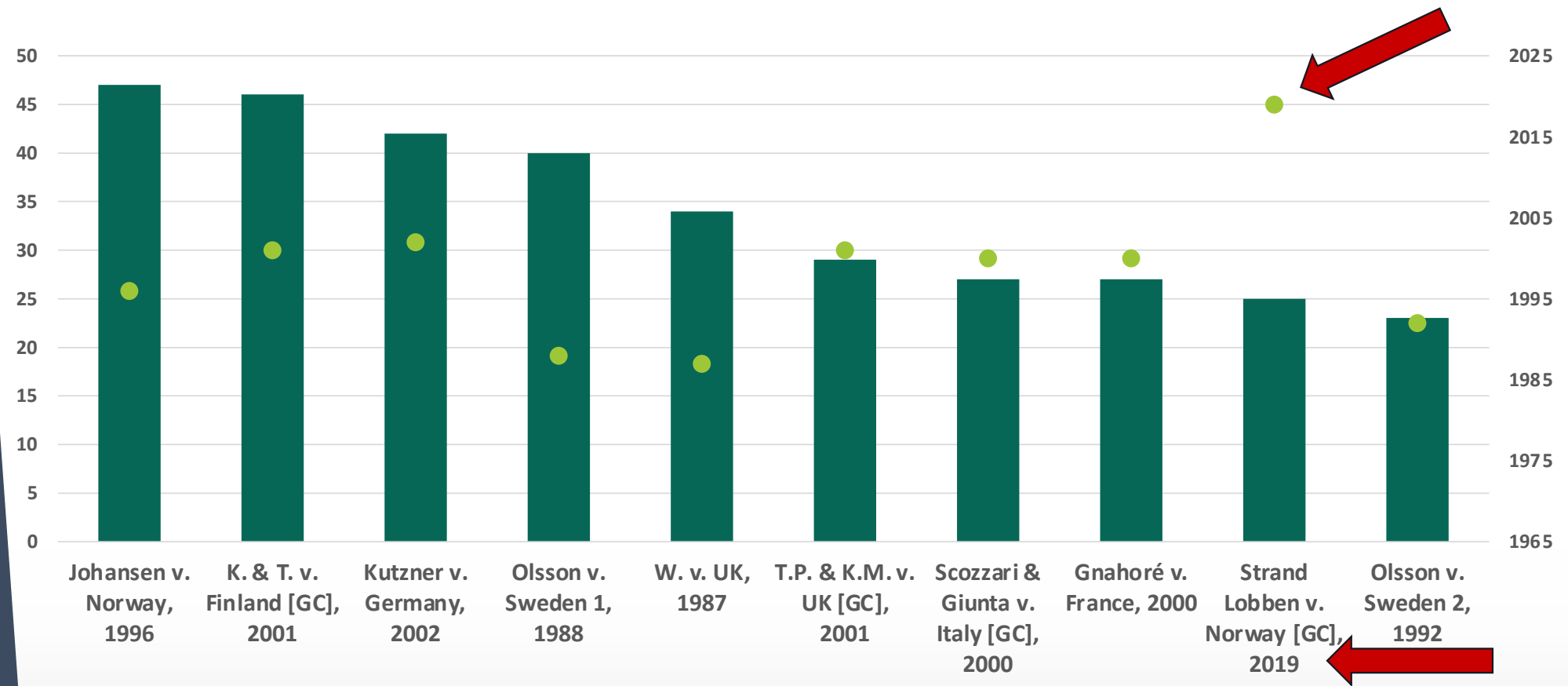


Source: Helland et al, in prep



10 most cross-cited judgments in child protection

Article 8. Years: 1959-2022. Total N = 112.



■ N of citations ● Year of judgment

Source: Helland et al, in prep; Chatsverykova et al., in prep.

ECtHR's main messages to Norway (and Europe)



Make sure to have sufficient justifications (striking a fair balance)

Make sure to keep the duty to ensure reunifications – because care orders are temporary!

«Another guiding principle is that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child» (Strand Lobben vs. Norway, GC, p.67)



Prominent lawyers are critical:

«This judgment, (Grand Chamber Strand Lobben vs. Norway 2019) coming as it does from the Grand Chamber, sets a new and concerning precedent.

To criticise a state for focusing too much on the interests of the child is an astounding position, turning the clock back on the position of children before the Court”

(Legal scholar, Fenton-Glynn, 2021: 307, my addition):



A notable shift in the ECtHR

An analysis of all adoption from care cases decided by the ECtHR 1959 – Desember 2018.

We concluded:

«The Court's understanding of family is in line with the theoretical literature, wherein the concept of family reflects the bonds created by personal, caring relationships and activities.»

.....

«The changes we find in the Court's view on and understanding of family for children entails a recognition and stronger protection of children's non-biological and *de facto* family life. «

Source: Breen et al., 2020

The question following the ECtHR is:
If all out-of-home care is temporary, what
then does a child's right to family life mean.



Legal basis: a right to family life for child and foster carers



When children cannot live at home, the child protection system is obligated to find a foster family (UN General Assembly decision of Nov. 27, 2019)

The ECHR has in several decisions stated that the question of whether there exists a family life must be assessed based on the actual circumstances, and whether there are close personal ties, see among others K. and T. against Finland (2001).

F ex, this is reflected in Norwegian Constitution and Child protection Act

This implies that also children and foster parents may have a protected family life.

What do children and young people themselves say about what is important with family life?



Thousands of British children aged 6 to 18 years, including many children who are in care or are adopted from care, have been asked about what they experience as important with families. **Children in care respond the same as other children:**

What is important is emotional attachment, sharing family experiences, safe and lasting relationships, and receiving practical and emotional support.

Source: Children's Commissioner (2022).



Broken relationships and lack of belonging are serious problems for many children

In Norway children in care move and move:

30 percent have moved two or more times.

9 percent have moved three times or more.

67 percent of children and adolescents in institutions had **three or more** moves behind them.



NRK 19 Nov. 2022



Problem: Public care and uncertainty

It's uncertain to be a foster child – in public care.

Many children say they want to be **'normal'**.

In Norway, a significant number of children live in foster homes for extended periods:

- a quarter of foster home stays last 7 years or more,
- 10 percent last 13 years or more.

Has the uncertainty increased in recent years?

Stavanger Aftenblad

11-åring tvangsflyttet etter 10 år i samme fosterhjem

– Et pågående menneskerettsbrudd, sier advokat. Til barnets beste, sier barnevernsnemnda.

Publisert: 22. oktober



Closing the door to reunification?



Norwegian Supreme Court (2020) interprets ECtHR, and states there are three reasons for giving up the goal of reunifications:

1. Parents are particularly unsuitable.
2. Reunification may harm the child's health and development.
3. Significant time has elapsed.

A Norwegian Expert Group has suggested (NOU 2023:7):

When reunification is not possible - ensure continuity and the child's relationships.

The child protection service, with a focus on the best interests of the child, is obliged to assess the duration of the placement after 3 years, and then annually.

Adoption and simple adoption must be utilized.

Does «closing the door» and adoption resonates with what citizens believe are the right thing to do?

We have examined representative samples of the populations in several countries and over several years.



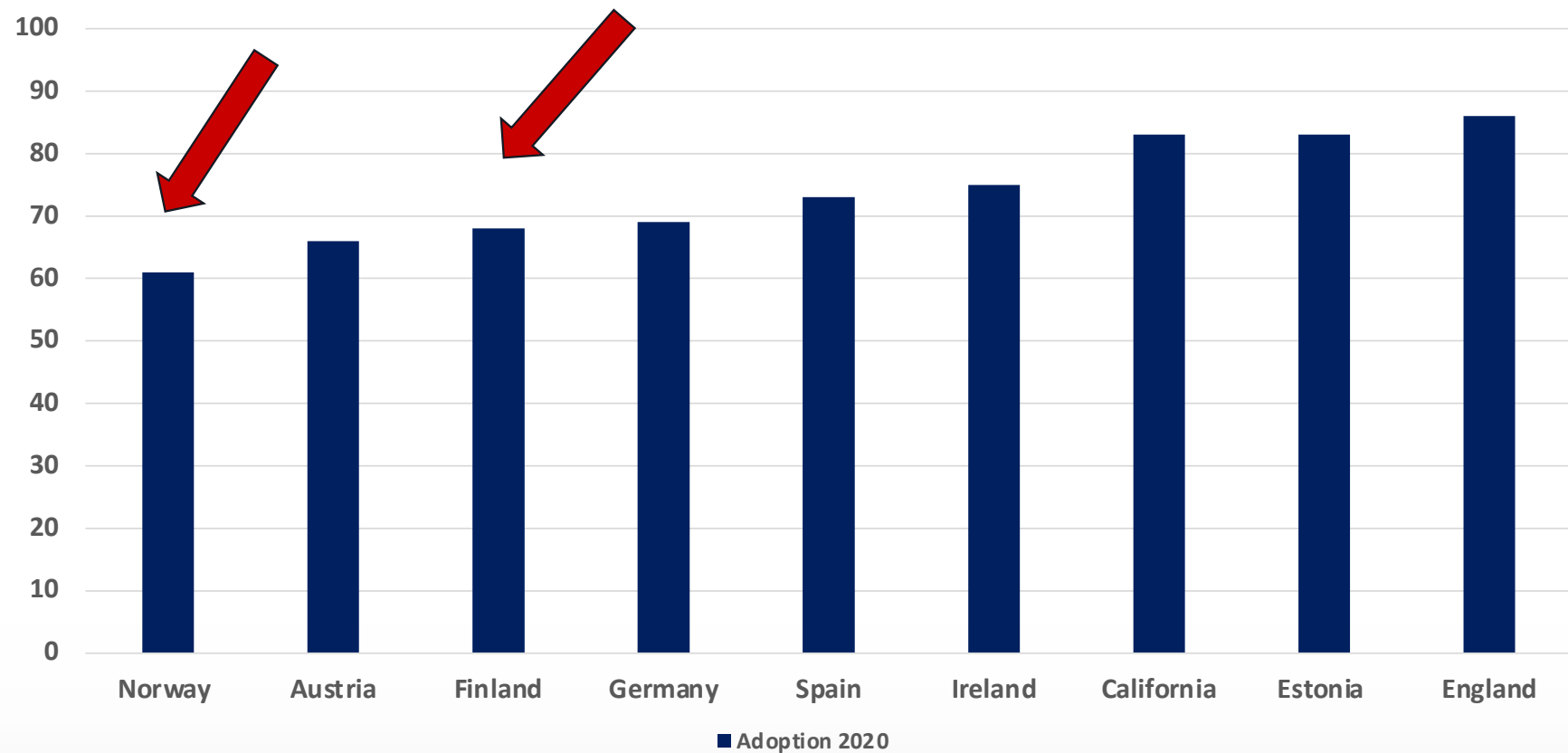
Used vignett method and presented respondents with a short, but realistic child protection scenario for a boy, 2 year old.

We asked:

«Based on the summarized information above, would you, as you see it, suggest adoption or placement in foster care?»

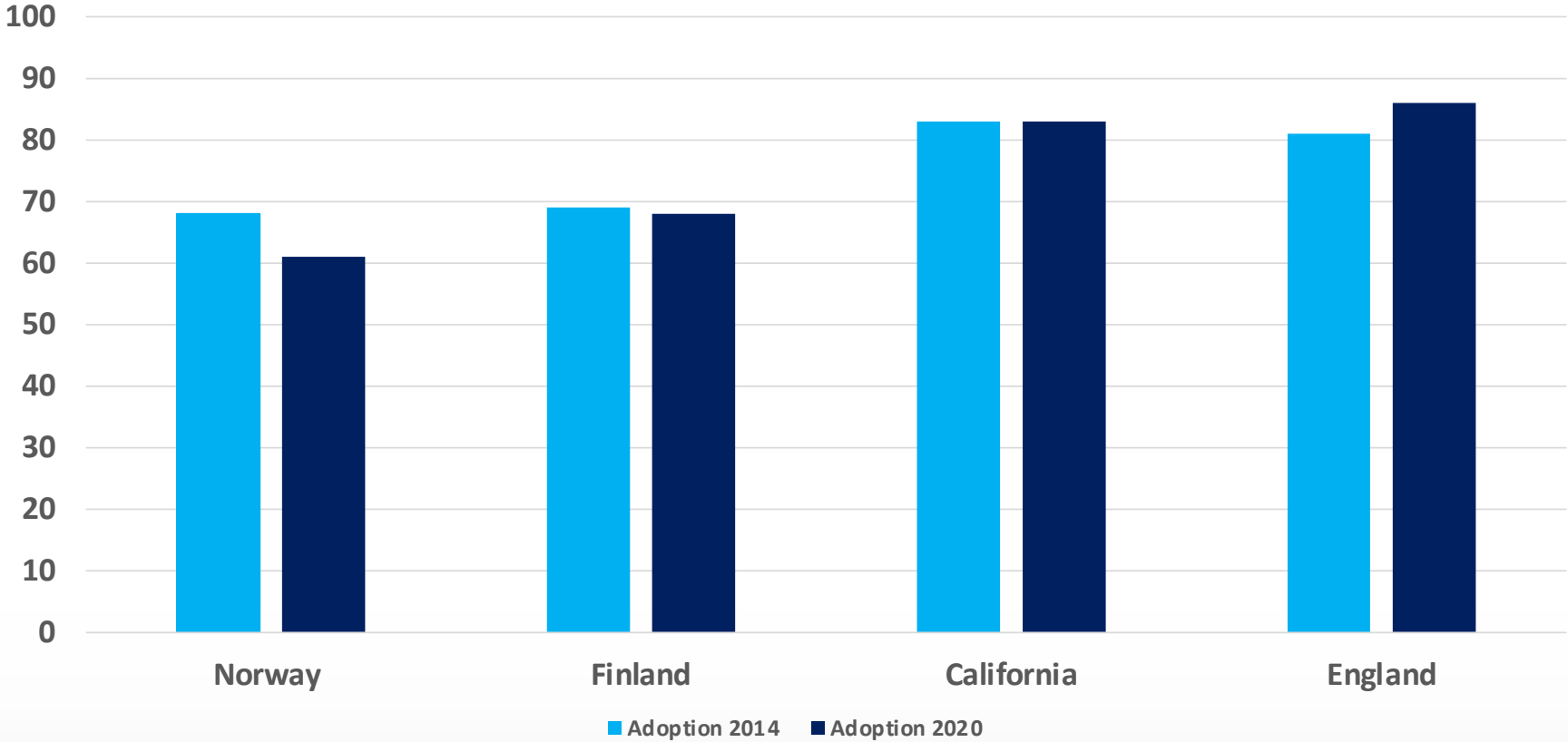


A large majority of populations recommend adoption over foster care (2020). 8 countries + CA, USA





Consistency in citizens opinions. Results on same question, 2014 & 2020. 4 countries. Displaying adoption.




How do peoples across the globe think about family relations for a child?

We have studied representative samples of the population in 60 countries in all regions of the world.



Please consider the following situation



A two-month-old baby was removed from the birth mother because of neglect and inadequate care. The child has now lived with another family for two years and has little contact with the birth mother. The child has developed strong family ties with the new family. The birth mother has now turned her life around and is capable of caring for a child. What do you think should happen in such a situation?

Two answer categories: The child should be returned to the birth mother (1), The child should permanently stay with the new family (2) (or I don't know/ don't want to answer).

We have studied representative samples of the population in 60 countries in all regions of the world. **But.....sorry, Finland is not included**



Proportion that answers that the child should stay permanently with new family after 2 years

51%



75%



55%



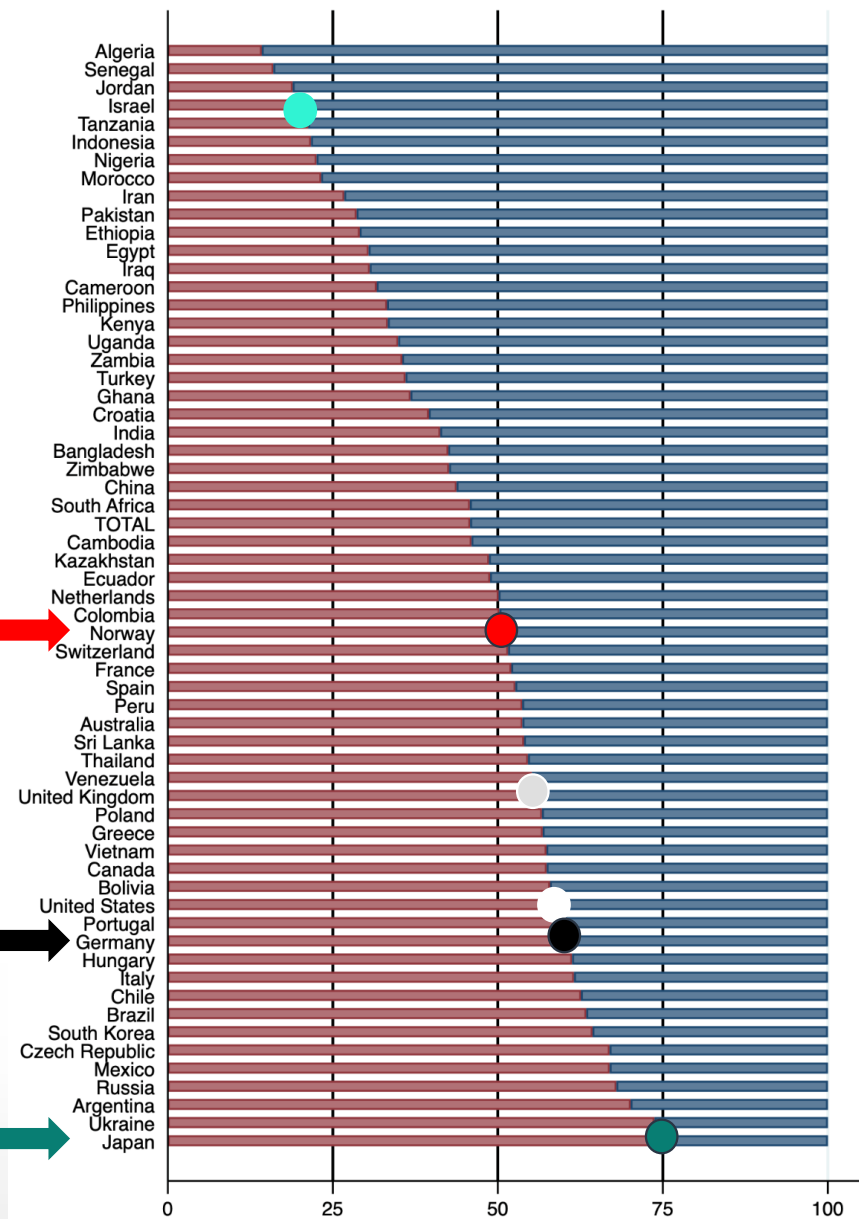
20%



After 2 years in the new family, the child has established strong family ties.

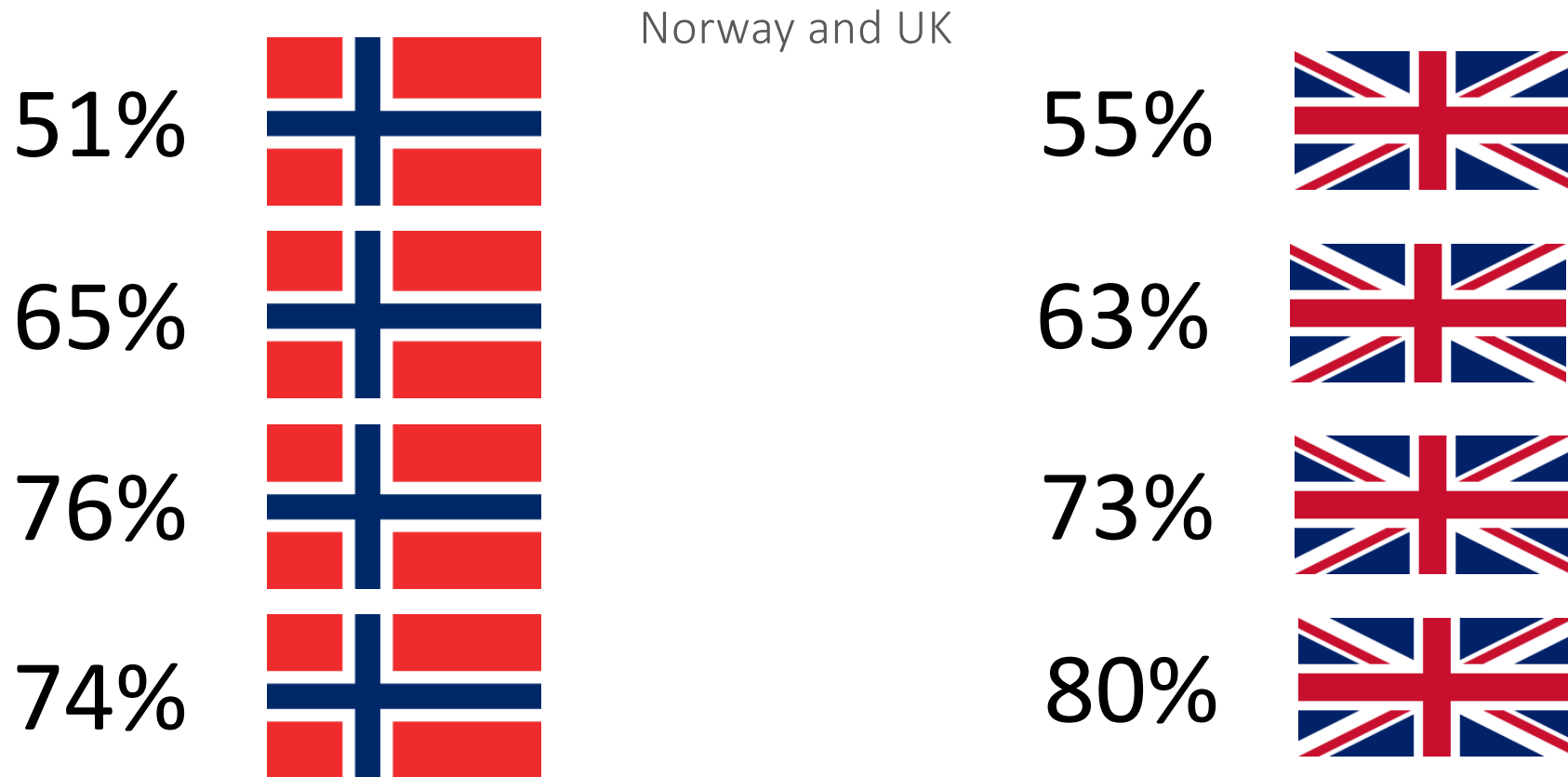
Little contact between mother and child.

The mother has gotten her life back on track and can provide care for the child





Proportion that answers that the child should stay permanently with new family after 2,4, 6, 8 years




What if the contact frequency had
been once a month?

We have studied representative samples of
the Norwegian population





Proportion that answers that the child should stay permanently with new family after 2,4, 6, 8 years

Country	Years	Little contact	Monthly contact
Norway 	2	51%	41%
	4	65%	60%
	6	76%	72%
	8	74%	74%

Legitimacy as quality of services and performance – how do the child protection system fare in terms of:

1. How citizens – voters – regards and are in moral alignment with a system.
2. How service users experience the system/agency.
3. How well the system performs according to goals and standards set in legislation, conventions and professional norms.



Norwegian child protection Act – § 1-4 The child's right to participate

A child who **is capable of forming their own views** shall have the right to participate in all matters concerning the child under this Act.

Children have the right **to express their views** to child protection services independently of their parents' consent, and without the parents being informed of the conversation in advance.

The child **shall be provided with adequate and appropriate information** and shall have the right to **freely express their views**.

The child shall be **listened to**, and their views **shall be given due weight** in accordance with the child's age and maturity.

The Norwegian case:
System reactions on the ECtHR critique?



Rapid changes in Norwegian child protection

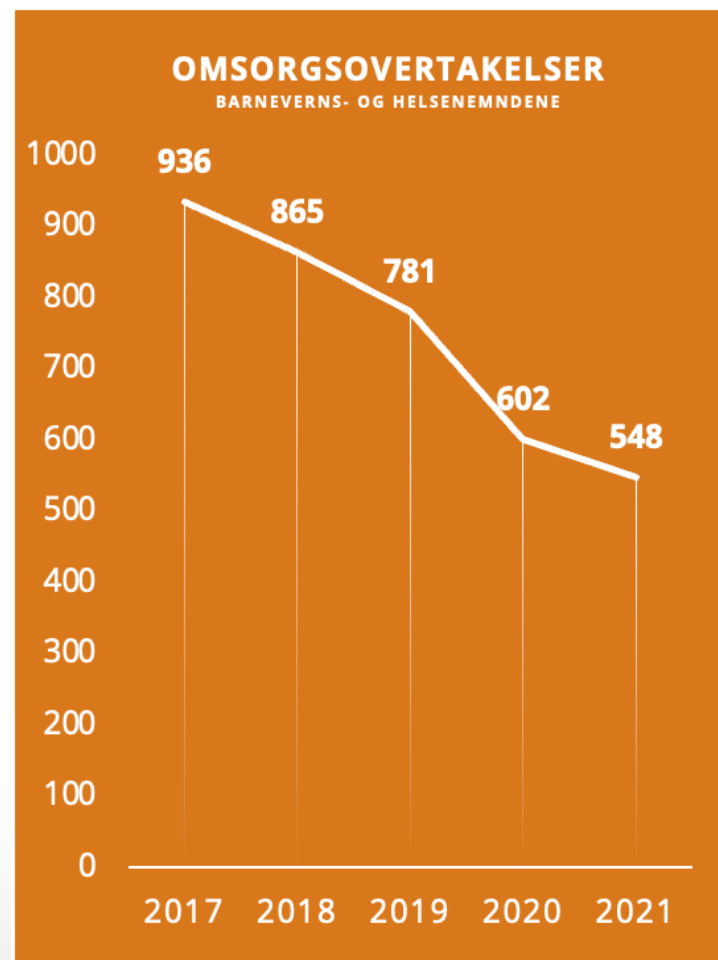
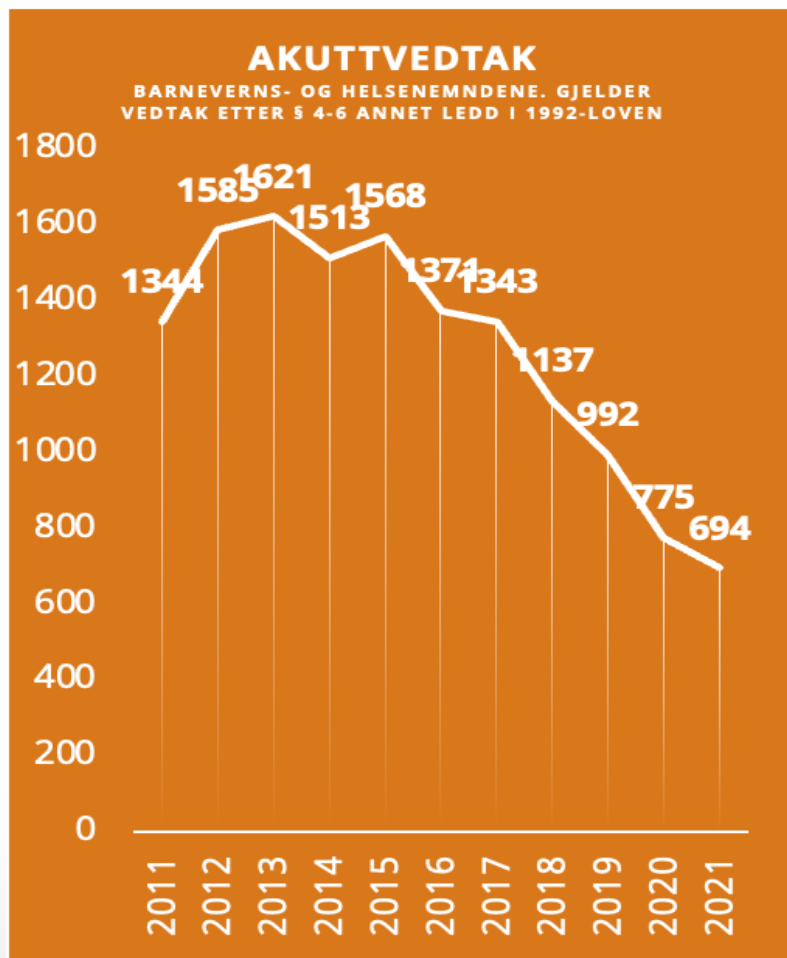
- **Significant reduction in care orders**
In 2017, care orders were issued for 926 children, in 2022 it was 548 children.
- **Significant reduction in in-home services**
According to the latest KOSTRA figures as of 31.12.22, there has been a decrease of 25 percent from the end of 2017 to the end of 2022 in the number of children receiving in-home-services.
- **Significant decrease in the number of adoption from care**
In 2018, there were 65 adoptions from care; in 2021 it was 20 adoptions.
- **Significant decrease in the number of emergency cases.**
In 2017, there were 1343 emergency decision cases, and in 2021 it was 694.
- **Significant increase in consent to care orders**
In 2018, around 25 percent of care orders were with parental consent, while in 2021, it was around 40 percent.



Wrong direction for the Norwegian child protection?

Source: Skivenes, 2023.

Rapid changes in Norwegian child protection





Thank you for your attention!



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Iceland
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