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**NORWAY**

**Submission by:**

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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on Norway’s failure to respect the rights of parents and children to private and family life, as well as Norway’s failure to promote and defend the right to conscientious objection for medical professionals.

### (a) Parental rights and the rights of children

3. International law is very clear that when it comes to the removal of children from the custody of their parents, it is a grave interference that can only be justified in the most compelling of circumstances.
4. Article 12 of the Universal Declaration of Human Rights ensures the right to privacy and family life, and Article 9 of the Convention on the Rights of the Child provides that: “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”
5. Interpreting the first paragraphs of Articles 7, 9 and 18 of the Convention on the Rights of the Child, the European Court of Human Rights has stated that: “there is no doubt that it is in the “best interest” of every child to grow up in an environment that allows him or her to maintain regular contact with both parents.”<sup>1</sup>
6. Furthermore, Article 8 of the European Convention of Human Rights, which protects the right to private and family life, has been interpreted by the European Court of Human Rights to include a positive duty to facilitate family reunification:

“...it is an interference of a very serious order to split up a family. Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child ... Taking a child into care should normally [be] regarded as a temporary measure to be

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<sup>1</sup> *Neulinger and Shuruk v. Switzerland*, Application No. 41614/07, at § 91.

discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child.”<sup>2</sup>

7. Concerns have been raised about the Norwegian child welfare system being excessively interventionist for many years. As far back as 2011, a high-profile diplomatic storm broke out when two young children were taken away from their Indian parents, who were living in Norway on a work visa. The child welfare services had cited cultural practices, such as feeding children with their hands, as evidence that the parents were unfit to look after their children.<sup>3</sup> These concerns have increased in recent years in light of a number of high-profile cases.
8. Marius and Ruth Bodnariu – a young Norwegian-Romanian couple – had all of their five children, aged 3 months through to 9 years old, taken into emergency custody without any warning in November of 2015. While the child welfare services initially justified the removal on reports of occasional use of physical discipline (which is illegal in Norway), lawyers later discovered troubling statements from the local child welfare services which expressed concerns over the Bodnariu’s Christian faith, suggesting the children were being indoctrinated by their parents’ beliefs.<sup>4</sup>
9. After a period of intense international pressure, including large protests outside of Norwegian embassies around the world, the case was closed in June of 2016 and the Bodnariu children were released back into the care of their parents. However in the wake of the Bodnariu case, news organizations including the BBC, Deutsche Welle, and SBS undertook investigative documentaries and discovered many instances of similar cases where children had been taken away from their parents in circumstances that did not appear to warrant such extreme intervention.<sup>5</sup>
10. In response to these concerns, the Parliamentary Assembly of the Council of Europe initiated a report entitled ‘*Striking a balance between the best*

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<sup>2</sup> *R.M.S. v. Spain*, Application No. 28775/12, at § 71.

<sup>3</sup> TV2 Norway, *Diplomatisk drakamp etter barnevernsak i Stavanger*, last accessed on 25 September 2018, available at: <https://www.tv2.no/a/3690722>; The Telegraph, *India and Norway in diplomatic spat over children taken into care*, last accessed on 25 September 2018, available at:

<https://www.telegraph.co.uk/news/worldnews/asia/india/9035776/India-and-Norway-in-diplomatic-spat-over-children-taken-into-care.html>

<sup>4</sup> Norwegian government seizes children, citing parents’ Christian ‘indoctrination’, last accessed on 25 September 2018, available at: <https://www.washingtontimes.com/news/2016/may/11/norwegian-government-seizes-children-citing-parent/>

<sup>5</sup> BBC, *Norway’s Barnevernet: They took our four children...then the baby*, last accessed on 25 September 2018, available at: <https://www.bbc.co.uk/news/magazine-36026458>; SBS, *Norway’s Stolen Children?*, last accessed on 25 September 2018, available at: <https://www.sbs.com.au/news/dateline/story/norways-stolen-children>; Deutsche Welle, *Child services under fire in Norway*, last accessed on 25 September 2018, available at: <https://www.dw.com/en/child-services-under-fire-in-norway/av-19105346>

*interest of the child and the need to keep families together*. The report looked into the European framework on child removal, adoption, placement and reunification, with a particular focus on the situation in Norway, and was published on 6 June 2018.<sup>6</sup>

11. While the Council of Europe report acknowledged that the practice varied between each municipal child protection agency in Norway, the rapporteur highlighted a number of specific areas of concern that had arisen during the course of his investigations:
  - a. The reasons given for removing children from the family home were often problematic, particularly as Norwegian law provides wide scope to child protection services to intervene, and in some instances could arise from cultural misunderstandings;<sup>7</sup>
  - b. There was a disconcertingly large number of “emergency” placements removing children from their home, often without any warning or prior engagement;<sup>8</sup>
  - c. Where children were removed from the family home, the subsequent visitation time allowed was extremely short and infrequent, as well as often being supervised, which severely hampered the prospects of family reunification;<sup>9</sup>
  - d. There was often a failure to comply with the “biological principle” (which is enshrined in Norwegian law) to keep children within the wider family where it is possible to do so;<sup>10</sup>
  - e. There appeared to be an imbalance in the ensuing legal proceedings that unduly favored the child welfare services over the parents where children have been removed from the home;<sup>11</sup> and
  - f. There were concerns about the experience and approach of the social workers employed in the Norwegian child welfare services.<sup>12</sup>

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<sup>6</sup> Striking a balance between the best interest of the child and the need to keep families together, PACE document 14568, 6 June 2018, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24770&lang=en>

<sup>7</sup> Ibid, paragraphs 16, 19, 21, 50, 53 & 54. Also note that according to government statistics, the most common cause cited for child protection measures being imposed is “parents’ lack of parenting skills” – last accessed on 25 September 2018, available at: [https://www.bufdir.no/Statistikk\\_og\\_analyse/Barnevern/Barn\\_og\\_unge\\_med\\_tiltak\\_fra\\_barnevernet/#heading13546](https://www.bufdir.no/Statistikk_og_analyse/Barnevern/Barn_og_unge_med_tiltak_fra_barnevernet/#heading13546)

<sup>8</sup> Ibid, paragraphs 28, 29 & 52

<sup>9</sup> Ibid, paragraphs 33 & 51.

<sup>10</sup> Ibid, paragraphs 31 & 52.

<sup>11</sup> Ibid, paragraphs 19 & 35.

<sup>12</sup> Ibid, paragraph 30.

12. The report led to Plenary of the Parliamentary Assembly adopting PACE Resolution 2232 (2018)<sup>13</sup> on 6 June 2018 which sought to address the concerns highlighted above, as well as proposing recommendations to protect the rights of parents and children where child welfare services intervened.
13. Furthermore, the European Court of Human Rights is also considering a number of cases against Norway in respect of possible violations of Article 8 of the European Convention on Human Rights where Norwegian child welfare services have intervened.
14. In the recent decision of *Jansen v. Norway*, the European Court of Human Rights found that Norway had violated Article 8 of the European Convention by failing to take steps to facilitate family reunification.<sup>14</sup>
15. The case of *Lobben v. Norway* – which concerns the removal of a mother’s parental authority and the adoption of her infant son – was recently accepted for consideration by the Grand Chamber of the European Court after an initial finding of no violation of Article 8 at first instance.<sup>15</sup> There are 5 further cases that have been communicated by the European Court to the Norwegian Government concerning the actions of its child welfare services that are yet to be determined.<sup>16</sup>

## **(b) Freedom of Conscience**

16. In January 2015, Norway introduced new regulations which prohibit doctors from refusing to provide any method of ‘birth control’, with serious and negative implications for freedom of conscience in the country.<sup>17</sup>
17. Article 18 of the Universal Declaration of Human Rights and Article 18(1) of the International Covenant on Civil and Political Rights guarantee the right to freedom of thought, religion, and conscience to everyone.
18. The Human Rights Committee confirmed in its General Comment No.22:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in

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<sup>13</sup> PACE Resolution 2232 (2018), 6 June 2018, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25014&lang=en>

<sup>14</sup> *Jansen v. Norway*, Application no. 2822/16, judgment of 6 September 2018, last accessed on 25 September 2018, available at: <http://hudoc.echr.coe.int/eng?i=001-185495>

<sup>15</sup> *Strand Lobben and Others v. Norway*, Application no. 37283/13.

<sup>16</sup> *A.S. v. Norway*, Application no. 60371/15; *Pedersen and Others v. Norway*, Application no. 39710/15; *Abdi Ibrahim v. Norway*, Application no. 15379/16; *Hernehult v. Norway*, Application no. 14652/16; *K.O and V.M. v. Norway*, Application no. 64808/16.

<sup>17</sup> ADF International, Court to Norwegian health authority: stop violating conscience rights of doctors, last accessed on 25 September 2018, available at: <https://adfinternational.org/news/court-to-norwegian-health-authority-stop-violating-conscience-rights-of-doctors/>

article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.<sup>18</sup>

19. Paragraph 1 of the UN General Assembly Resolution on the Elimination of All Forms of Religious Intolerance reaffirmed that: “freedom of thought, conscience, religion and belief is a human right derived from the inherent dignity of the human person and guaranteed to all without discrimination.”<sup>19</sup>
20. While this is most commonly discussed in the context of military service, the same principle applies to medical practitioners.<sup>20</sup>
21. Dr. Katarzyna Jachimowicz, a doctor with over 20 years of experience, lost her employment with a Family Clinic in the municipality of Sauherad on 3 December 2015. She had refused to insert intrauterine devices (IUDs), which prevent the implantation of the fertilized embryo into the womb and, as a result, can cause the death of an unborn child.
22. Dr. Jachimowicz was dismissed because she failed to comply with an obligation that she considered to be morally wrong. While she won her case at the Norwegian Appeal Court, the municipality appealed the decision to the Supreme Court of Norway, which heard the case from 28-30 August 2018.<sup>21</sup>
23. Major world religions oppose abortion.<sup>22</sup> Medical professionals should not be forced to choose between their faith and their profession. Imposing a requirement to participate in morally objectionable conduct robs healthcare systems of caring practitioners and would be a regressive step away from the Norway’s international obligations to protect and promote the right to freedom of thought, conscience, and religion.

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<sup>18</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: <http://www.refworld.org/docid/453883fb22.html>.

<sup>19</sup> Elimination of all forms of religious intolerance, A/RES/48/128, 20 December 1993, 1, available at: <http://www.un.org/documents/ga/res/48/a48r128.htm>

<sup>20</sup> Note the decision of the European Court of Human Rights in *Bayatan v. Armenia*, Application no. 23459/03, which indicates that the right to consciously object applies equally in contexts other than military service. See in particular §§ 124 – 126.

<sup>21</sup> ADF International, Norwegian top court hears case on conscience rights for medical staff, last accessed on 25 September 2018, available at: <https://adfinternational.org/news/jachimowicz/> As of 25 September 2018, the Supreme Court of Norway has not handed down judgment in the case.

<sup>22</sup> Moira Stephens, Christopher F.C. Ian H. Jordens, et al., Religious perspectives on abortion and a secular response. *Journal of Religion and Health*. 2010;49:513–35.

**(c) Recommendations**

24. In light of the aforementioned issues raised, ADF International suggests the following recommendations be made to Norway:
- a. Ensure that the right to private and family life is duly recognised and respected, in accordance with the European Convention on Human Rights and the Convention on the Rights of the Child;
  - b. Ensure that family integrity is not arbitrarily undermined, and that parental rights are not unjustly deprived, by the activity of child welfare services;
  - c. Ensure that the right to freedom of thought, conscience, and religion is duly recognized and respected in accordance with the Universal Declaration on Human Rights and the European Convention on Human Rights;
  - d. Ensure that medical professionals have a robust right to object to participating in the provision of abortifacients, abortion services, and other procedures on the grounds of conscientious objection; and
  - e. Consider introducing legal provisions regulating and protecting the right to conscientious objection.





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