



Services and support for mothers and newborn babies in vulnerable situations: A study of eight European jurisdictions

Katre Luhamaa, Amy McEwan-Strand, Barbara Ruiken, Marit Skivenes^{*}, Florian Wingsens

Centre for Research on Discretion and Paternalism, University of Bergen, Department of Administration & Organization Theory, Christies Gate 17, 5007 Bergen, Norway

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ABSTRACT

European countries have a legal obligation to provide services to vulnerable families, and children must not be removed from their parents' care unless no other viable measures are available. This paper examines whether and how eight jurisdictions provide necessary support and services to families with newborn babies who are considered to be at risk in the child protection system. The data consist of all judgments ($n = 216$) concerning care orders for 220 newborns for periods ranging from one to several years. The analysis shows that services are provided in an overall majority of the cases but with distinct differences between jurisdictions. These differences are not due to the type of child protection system. Furthermore, we cannot ascertain whether service provision follows parental problems, or identify similarities due to the special case of newborns. We conclude that there are huge knowledge gaps regarding both service provision and the effects of services.

1. Introduction

The [Convention of the Rights of the Child of 1989 \(CRC\)](#), to which all states in the world except the USA subscribe, obligates governments to intervene in the private family sphere, even with intrusive measures when necessary, to protect children from violence, abuse, neglect, maltreatment and exploitation (Article 19, CRC, 1989). However, it is equally clear from Article 8 of the European Convention of Human Rights ([ECHR, 1953](#)) that the state must restrict its intervention into family life and should select the least intrusive intervention (cf. [General Comment No 13 2011, p. 54](#); [Strand Lobben and others v. Norway \[GC\], 2019 para. 207](#)). Child protection, as laid out in CRC Article 19, underscores governments' obligation to establish "...social programmes to provide necessary support for the child and for those who have the care of the child..." ([Section 2](#)). States shall provide support as well as services to families, and this shall also prevent intrusive interventions such as removing a child from its parents' care. The difficulty for states is finding the right balance between supervision, intrusion and family privacy; this conundrum is at the core of all child protection systems. Evidently,

countries have chosen different thresholds for state intervention ([Berrick, Gilbert, & Skivenes, in press](#)). However, there is very little knowledge and research on state support for families in the child protection system ([Fuller & Nieto, 2014](#)). As the first step in a systematic examination of state assistance and support for families, we study one type of difficult case: mothers with newborn babies who are considered to be in high-risk situations. In such cases, we expect the government's obligation to provide services to be especially prominent, because an intrusive intervention may result in a permanent breach of family relations. The empirical material consists of 216 court judgments¹ in each jurisdiction on whether to remove a newborn baby from a mother's care. We have chosen eight high-income European countries² (Austria, England, Estonia, Finland, Germany (one region), Ireland, Norway and Spain (one region)) that have slightly different child protection systems ([Berrick et al., in press](#)). We test four hypotheses: H1) All states provide services to vulnerable families. H2) There will be differences in service provision due to the type of problems faced by the families/parent (e.g., parents with substance abuse problems, learning disabilities or mental health problems). H3) There will be country differences because of the

^{*} Corresponding author.

E-mail addresses: katre.luhamaa@ut.ee (K. Luhamaa), amy.mcewan.s@googlemail.com (A. McEwan-Strand), barbara.ruiken@uib.no (B. Ruiken), marit.skivenes@uib.no (M. Skivenes), fl.wingens@uib.no (F. Wingsens).

¹ Care order decisions are referred to as "judgments," although the name of the order differs from country to country. In the Online Supplementary Material, we outline the formal requirements of the content of the written judgments in each country: <https://discretion.uib.no/resources/requirements-for-judgments-in-care-order-decisions-in-8-countries/#1588242680256-00a159db-e96f>.

² For simplicity, we use the term "country," although for two countries we only have data from one large region with an independent jurisdiction.

type of child protection system in place (risk or service oriented). H4) Risks to a newborn are similar across countries and provoke similar responses across countries and problems.

Our data material consists of the written judgments in which a first-instance court, or a county board, justifies a decision whether to remove a baby from its birth parents' care (n = 216 judgments). From some countries, we have all judgments about newborn care order removals in one year (2016) (Norway, n = 76; Finland, n = 25), whereas for others, we have all judgments for two or three whole years between 2015 and 2017 (Austria 2016–17, n = 24; Estonia 2015–17, n = 17; Germany 2015–17, n = 27; and Spain 2016–17, n = 16). For two countries, we can only use cases published in national registers (for Ireland, 17 judgments for the years 2012–18, and for England, 14 judgments for the years 2015–17).

The following sections provide general information about obligations to provide services, the welfare state, the child protection systems and legal platforms in the eight countries. Thereafter, we present the methodology used in the paper. This is followed by findings, then a discussion section, and concluding remarks in the end.

1.1. Legal obligation to provide support

Article 19 of the CRC obliges member states to take appropriate measures to protect and support the child and its carers. In addition, CRC Article 26 recognizes the right of every child to benefit from social security, and Article 27 requires states to take appropriate measures to support and assist parents. The former obligation focuses on adequate standards of living but is not limited to the economic conditions as it refers to the child's physical, mental, spiritual, moral and social development. The same principles, but in a more condensed form, are included in Article 16 of the Revised European Social Charter (European Social Charter (Revised), 1996), which gives a family the right to economic, legal and social protection, including social and family benefits, housing and other appropriate resources. All of the eight countries in this study have accepted this obligation.

All service provision must adhere to the freedom of individuals not to have their private life interfered with. Although the state has an independent obligation to protect children, and thus the authority to limit parent's freedom, the right to respect for family life (cf. Article 8 of the ECHR) limits the state's authority and creates a potentially difficult balancing act between supporting the child and noninterference. In child protection, this balancing act is supported by the sentiment that services and support should prevent intrusive interventions such as removal of children from parents' care. This is formulated as a policy ambition, with the Parliamentary Assembly of the Council of Europe recommending that the states provide families with the necessary support to avoid removal decisions (PACE, 2015, secs. 5, 8.5). Although this resolution is not legally binding, it is understood to reflect the member states' understanding of their obligations in child removal cases (cf. Benoît-Rohmer & Klebes, 2005, pp. 33–34; Nußberger, 2018).³ The European Court of Human Rights (ECtHR) has used this resolution to stress that states have an obligation to provide appropriate assistance to the family before taking the child into care (Achim v. Romania, 2017, para. 74).

Case law from the ECtHR has reaffirmed the states' obligation to

provide social services to parents, and if the parent's circumstances can be accommodated by social services, these should be the primary steps of the state (Strand Lobben and others v. Norway [GC], 2019 para. 207). This is especially the case when the parents' difficulties are financial or economic and when they pose no risk of harm to the children (Savin v. Ukraine 2008, paras. 57–58)⁴ The unreasonableness of "...depriving a mother of her daughter for financial reasons alone..." (para. 92) is clearly stated by the court in R.M.S vs. Spain (R.M.S. v. Spain, 2013). The practice of providing services to families in vulnerable situations is evident in all ECtHR judgments concerning removal of newborns in the period 1959–2019 (Luhamaa, in preparation).

2. Welfare state models and child protection systems

Europe has a wide range of social policy programs, and European countries have different forms of welfare state and child protection systems. The sociologist Esping-Andersen established a welfare state typology in 1990 that has since become paradigmatic (Arts et al., 2010, p. 569). The typology has three welfare state models, the liberal, conservative and social democratic, with the US, Germany and Sweden, respectively, as prototypes (see Table 1). Several scholars have revised the typology, and Schröder (2009) places advanced capitalist countries into three groups (Anglo-American, Continental Europe and Scandinavian) using component and cluster analysis on data from recent years. This approach recognizes "how welfare and production regimes systematically reinforce each other's mode of functioning in the form of complementarities" (Schröder, 2009, p. 32). This puts Ireland and England (UK) in the Anglo-American group, which overlaps with Esping-Andersen's Liberal type. Austria, Spain and Germany are in the Continental Europe group, which corresponds to Esping-Andersen's Conservative group. The Esping-Andersen social-democratic type corresponds to the Scandinavian group, in which we find Finland and Norway (Arts et al., 2010; Schröder, 2009). Estonia is not included in either of these two typologies, but it has the characteristics of a Liberal/Anglo-American welfare state category (Burns, Pösö, & Skivenes, 2017), while being a post-communist system.

A Liberal/Anglo-American welfare state like Ireland or England is typically market based and shows low levels of decommmodification.

Table 1
Welfare state typologies and prototype country.

Esping-Andersen (1990) welfare state model and prototype country	Liberal (USA)	Conservative (Germany)	Social democratic (Sweden)	Not classified
	Ireland England (UK)	Germany Finland	Austria Norway	Estonia Spain
Schröder (2009)	Anglo-American Ireland England (UK)	Continental Europe Austria Spain Germany	Scandinavian Finland Norway	Not classified Estonia

³ This resolution was adopted unanimously with a vote.

⁴ The Court has not provided a comprehensive list of obligatory support measures. However, it has been noted that such measures include different social benefits, social housing or other means to overcome difficulties. The obligation to assist and support is especially important in state dealings with vulnerable people (Zhou v. Italy, 2014, para. 58), including people with disabilities (B. v. Romania (no 2), 2013, para. 86). The state should take special care of people who are not sufficiently familiar with the social welfare system (R.M.S. v. Spain, 2013, para. 86).

Benefits are generally means tested and provide a minimum level of welfare, while higher levels of welfare require the recipient to have insurance or private market solutions. In contrast, a conservative or continental welfare state shows a moderate level of decommodification, and social benefits mainly depend on previous contributions. Social services (apart from health) belong more in the private/family sphere than the public one. Compared with the social democratic/Scandinavian welfare state, the family has a stronger position, and the state will only intervene if the family cannot take care of its members. High levels of decommodification are found in a social democratic/Scandinavian welfare state with more power given to workers as well as universal benefits. Full employment and employment for as many as possible is a goal, and incentives to work are offered in the form of transfers (pensions) and taxes. The state takes direct responsibility for taking care of dependents (such as children or the elderly) and does not wait until the families' resources are drained (Arts & Gelissen, 2002; Esping-Andersen, 1990).

The eight countries in this analysis also differ in terms of the type of child protection system in place (see Table 2). Applying the Gilbert, Parton, and Skivenes (2011) framework, three of the eight countries (England, Ireland and Estonia), crudely speaking, represent a risk-oriented child protection system (Burns et al., 2017; Parton & Beridge, 2011; Strömpl, 2015). The thresholds for service provision and intrusive interventions are high, as the distinction between public and private responsibility for children is clearly marked. This is contrasted with the family service child protection orientation of Austria, Finland, Germany, Norway and Spain (Gilbert et al., 2011; Skivenes et al., 2015), in which the thresholds for interventions are low, and there are typically higher rates for removals of children. The system rests on a philosophy that services and treatment will support and facilitate change for parents and families, and thus avoid intrusive interventions.

2.1. Ranking on standard measures

Even though all eight nations are high-income countries, there are relatively large differences in living standards in terms of GDP per capita, which we assume has some impact on the citizens' welfare and/or the countries' ability to provide public services. According to the World Bank's overview of 2018, Norway is on top at about 82,000 USD, and Estonia close to a fourth that of Norway, at the bottom at 23,000 USD (see Table 2). The GDP per capita of three countries (Austria, Germany and Finland) is around 50,000 USD, that of Spain is around 30,000 USD and that of Ireland is the second highest at 79,000 USD (however, this ranking reflects the high number of multinational firms located in Ireland due to low corporate tax rates). There are several children's rights measures of adherence to the CRC and the general living conditions for children. The KidsRights Index measures how countries guarantee and protect children's rights. The ranking consists of five categories, namely, the rights to (1) life, (2) health, (3) education and (4) protection, as well as (5) enabling an environment for children's rights. Whereas the sustainable development goal (SDG) index reports on countries' overall SDG progress, UNICEF (2017) has focused on the nine goals that are crucial for children.⁵ The WHO Lancet report (Clark et al., 2020) recently published rankings of children's flourishing, combining various external indicators into two categories: surviving and thriving (see Table 2). Examining the infant mortality rate, we see variations across countries. Finland has the lowest mortality rate of 1.38 infants per 1,000 births, and England has the highest mortality rate of 3.63 per 1,000 births. Two (England and Ireland) of the three risk-oriented child protection systems included here are on the upper rung

⁵ (1) No poverty, (2) zero hunger, (3) good health and well-being, (4) quality education, (5) decent work and economic growth, (6) reduced inequalities, (7) sustainable cities and communities, (8) responsible consumption and production and (9) peace, justice and strong institutions.

together with Germany, which has a service-oriented system (see Table 2).

3. Removal proceedings and existing research

All countries experience and must address difficult situations in which a newborn baby is at risk and there are concerns that the parents cannot ensure the child's safety and well-being. Health personnel (and other professionals) in these situations have an obligation to report their concerns to the child protection authorities. There are no data available for European countries about the frequency of such referrals from hospitals, but based on the data we have collected for this project, relatively few care-order applications are presented to courts.⁶ All removals of a child must adhere to the legal requirements for such proceedings (see Burns et al., 2017). A typical process, as far as we can determine, for a newborn removal is that child protection authorities are notified by a hospital or by health care workers if there is a concern for a newborn's safety during pregnancy or at birth. Prebirth services and support are available, but require the mother's cooperation, except for Norway, which allows for involuntary services to protect the unborn child, for example, treatment of substance misuse problems (Health and Care Services Act, 2012; cf. Hestbæk et al., 2020).

From an examination of the child protection legislation of the eight countries included in this paper, it is clear that there are different procedures for removing children from their parents' care (cf. Burns et al., 2017), although they are based on the same principles. For example, all countries use a version of the principle of the best interests or welfare of the child (Skivenes & Sørsdal, 2018), and with the exception of Irish legislation, the explicit purpose of the laws is to protect a child from harm. Legislation in six countries (Austria, England, Estonia, Finland, Germany and Norway) uses the explicit criterion that the removal of the child must be the last option. This entails proving that all other available measures, including services to the child and the family, must have been tried or proven useless before a child can be removed. In Ireland and Spain, this obligation is implicit as the legislation stresses that removal of a child must be proportionate, prioritizing the child's rights in the family and providing services and support to the family and the child.⁷

3.1. Existing research on service provisions

European studies on parents in situations where there are already concerns for a child from birth or prebirth are relatively few, although some research groups from England (e.g., Rees Centre, Oxford University; Centre for Child and Family Justice, Lancaster University; School of Human and Health Sciences, Huddersfield University) and the USA (e.g., Chapin Hall, University of Chicago) have made some strong contributions to the literature on young children. The Born into care project of Nuffield Family Justice Observatory has a similar empirical focus to ours, with studies on newborn babies subject to care proceedings within the first two weeks of birth in Wales and England. These studies provide empirical information about the circumstances of these children and their families that were previously unavailable. However, these studies do not focus on service provision. An examination of the available systematic reviews, including scoping reviews,⁸ reveal around 30 studies on the effects of various services, but nothing about the prevalence of actual service provision. Thus, our study has an explorative purpose, and

⁶ Bilson & Bywater (2020) show that the number of children who entered state care in England before they are a week old was 44% higher than the rate shown by previous research if children "voluntarily" placed in care are included. The 10-year period examined was 2007–17.

⁷ Descriptions of country-specific newborn removal criteria and proceedings are available at <https://discretion.uib.no/resources/legal-frame-newborn/>.

⁸ The search was conducted through Web of Science (which includes law journals), Campbell and Epistemonikos, *in primo* May 2020.

Table 2
Overview of service- and child-relevant measures for eight countries.¹⁶

Country	Welfare state model	Child protection system	GDP per capita 2018 in USD (ranking)	KidsRights index 2020	UNICEF SDG report 2017	Child well-being 2020	WHO -UNICEF Lancet 2020	Mortality rate, infant (per 1000 live births, 2018)
Estonia	Liberal	Risk	23,266 (53)	31	17	23	27	2.52
England*	Liberal	Risk	42,943(30)	169	13	27	10	3.63
Ireland	Liberal	Risk	78,806 (10)	38	11	12	5	3.14
Austria	Conservative	Service	51,462 (21)	12	15	16	19	2.88
Germany	Conservative	Service	47,603 (26)	5	2	14	14	3.09
Spain	Conservative	Service	30,370 (44)	86	16	6	17	2.53
Finland	Scandinavian	Service	50,152 (22)	3	5	5	16	1.38
Norway	Scandinavian	Service	81,697 (7)	14	1	3	1	2.05

* Note: The KidsRights Index, GDP per capita, the SDG index, wellbeing index, and the mortality rate list the UK rather than England separately.

¹⁶ Sources: (Brazier et al., 2017; *Child Well-Being in Rich Countries*, 2013; United Nations Inter-agency Group for Child Mortality Estimation Hug, Sharrow, Zhong, & You, 2018; Skivenes & Sørdsal, 2018; *The KidsRights Index 2020*; *The World Bank*, 2019).

based on the human right obligations, knowledge of welfare states, child protection systems and research, we study the following four hypotheses: H1) All states provide services to vulnerable families. H2) There will be differences in service provision due to the type of problems faced by the families/parents (e.g., parents with substance abuse problems, learning disabilities or mental health problems). H3) There will be country differences due to the type of child protection system in place (risk or family-service oriented). H4) Risks to a newborn are similar across countries and provoke similar responses across countries and problems.

4. Method

The study reported here forms part of a larger project relating to decision-making in child protection funded by the European Research Council and the Norwegian Research Council. Our data consist of written judgments concerning removals of newborn children from the eight research countries: Austria, England, Estonia, Finland, Germany (one region), Ireland, Norway and Spain (one region).⁹ Removals of newborn children include children removed from their families for child protection reasons within 30 days of birth. The term “newborn” may also include a child who has not been moved home from the hospital after birth or has only stayed with their parents at a parent-child facility with close monitoring by staff. Cases were identified and collected using these inclusion criteria. The base year was 2016, but in countries where a sufficient sample from 2016 was unavailable, the time period was extended. The sample of 216 judgments, involving 220 children, comprises all the newborn removal judgments available from the eight countries in a specific year or years: 2016 (Norway, Finland), 2016–17 (Austria), 2015–17 (England, Estonia and Germany) and 2012–18 (Ireland) (see Table 3).¹⁰ Judgments not in English or the researchers’ native language have been translated into English.¹¹ All judgements have been coded to register basic case information.

4.1. Analysis and coding

The analysis of judgments followed a conceptual and analytical approach (Coffey & Atkinson, 1996) capturing the services received by families before and after the child’s birth, and assessments of the effectiveness of the services and the parent’s cooperation with

⁹ Information about ethical approvals is available here: <https://www.discretion.uib.no/wp-content/uploads/2019/12/INFORMATION-ABOUT-DATA-PROTECTION-ETHICS-AND-DATA-ACCESS.pdf>.

¹⁰ Details of the data collection processes are available at: <https://discretion.uib.no/projects/supplementary-documentation/newborn-judgements/>.

¹¹ See: https://www.discretion.uib.no/wp-content/uploads/2019/10/Translation-process_short-description.pdf.

professionals. Based on the laws, child protection systems and the hypotheses developed for the study, we established three code categories with a total of nine codes. First, we mapped the services provided, distinguishing between service aims. Second, we identified parental requests and cooperation, and identified any statements that services were not available. Third, we identified the court’s view and assessment of service provision. For categories one and two, the full written judgments were analyzed, and for the third category, only the judges’ reasoning and justification were analyzed. All codes are mutually exclusive.

4.2. Code description

4.2.1. Category I: Services¹²

For category I, the entire judgment is the basis for coding.

- General services prior:** This code includes statements about social services that parents or the family received prior to the pregnancy. Such services can relate to services received in relation to previous children, accommodation or other types of support received.
- Services targeting the parents’ risk.** This code includes statements about mental health services, services related to drug or alcohol misuse, services targeting violent behavior and different types of counseling, coaching, training or other support services. The code excludes medical services targeting the child.
- Newborn child services.** This code includes services targeting a specific newborn baby’s health and needs at the hospital, such as care in an intensive care unit, withdrawal care or premature care. This code excludes care orders or placement in emergency care (safe houses only for children).
- Parent-child services.** This code includes services related to the care of the baby together with the parents (often the mother): home visits, in-house services, family support or provision of stays in a mother-child unit or shelter. This also includes services that target the mother and the unborn child (before birth), such as a stay in a mother-child unit during preparation for birth. This code excludes supervised contacts with no additional services that go beyond mere supervision.

4.2.2. Category II: Service-related codes

- No services available.** This code includes statements that no services are available to support the particular parent/family, such as “we have nothing more to offer” and “we have nothing to offer.”

¹² **Definition of social services/child welfare services:** Any types of services provided by governments (or paid for by the government but other organizations such as civil society organization provide the services) to people targeting a particular need.

Table 3
Sample of newborn judgments.

Country/year(s)	Total	Austria2016–17	England2015–17	Estonia2015–17	Finland2016	Germany2015–17	Ireland2012–18	Norway2016	Spain2016–17
Judgments	216	24	14	17	25	27	17	76	16

6. **Parents' requests for services.** This code includes statements about services that parents have requested or suggested but which have not been accepted, granted or followed up by the child welfare agency or the court.
7. **Parents' cooperation.** This code includes all statements that relate to the cooperativeness of the parents, such as agreeing to a care order, leaving the country to avoid child protection system, denial of problems and subsequent denial of assistance or treatment. This code does not include compulsory treatment where the person was unable to make a decision (e.g., because they were psychotic). The code takes one of two values: "Parents cooperate" and "Parents do not cooperate."

4.2.3. Category III: Court's opinion

The codes in category III are applied to the parts of the written judgment that contain the court's opinion and assessment of a case.

8. **Analysis of effect of services.** This code includes statements about services and a positive or negative evaluation of the services provided. It describes an assessment of how services work to alleviate the concerns for the baby. We have three values: "The services did not improve the situation," "The services improved the situation sufficiently" and "Other services are available." The first value describes situations where the services did not improve the situation at all or not sufficiently, including a standard formulation in the judgment (without any case-specific information and with identical wording). The second value describes situations where the services improved the situation for the family and newborn sufficiently to avoid a care order. The third value describes situations where other services are available that could or should have been provided.
9. **Follow-up services.** This code considers a court's recommendations for the future. It includes statements about follow-up services for the parents that the court recommends or requires (e.g., a parenting course or urine tests for the parents to prove abstinence from substances).

We examined whether type of maternal problem (risk) is correlated with the type of service provision. In Appendix, Tables D and E, we have categorized cases based on code category I, in combination with maternal problems in these cases. Table D shows the distribution of risk factors by country, and Table E shows how service provision is distributed according to the risk factor in each of the eight countries.

Coding was performed using NVivo 12. The reliability of all coding results was tested by an external person. When inconsistencies in coding were discovered, this was discussed by coders and researchers. A log was made for the coding proceedings to ensure accountability.

In this paper, we label jurisdictions "countries," although for two countries, we have data from a region or only unrepresentative material from publicly available registers. We use the terms "court" or "judges," although for two jurisdictions a tribunal (Norway) or a commission (Spain) makes the decisions. Furthermore, we have given each judgment a code, indicating the type of case (N = newborn), country (ENG = England), case number and year, for example, NENG10-16. We present excerpts from judgments that illustrate our findings. In the Online Supplementary Appendix, we provide additional information about the cases (see: <https://discretion.uib.no/wp-content/uploads/2020/11/Luhamaa-et-al-in-press-Services-and-newborns.pdf>). The sample size from each country differs, with 35% of the cases from Norway and 6% from England, so the presentation of results for the total sample is

skewed.

5. Findings

The 216 judgments about care-order removals covered 220 children and mothers with various parental problems such as substance misuse, mental health problems, learning difficulties and physical disabilities. In 32 cases, there is no mention of any maternal problems. In 124 cases, only one parental problem is mentioned; in 50 cases, two parental problems are mentioned; and in 10 cases, three parental problems are mentioned (see Table A in the Appendix). A total of 103 cases involve maternal mental health problems, of which 49 mention only this problem. In 82 cases, the parental problems concern substance misuse, of which 45 mention only this problem. Fifty-seven cases involve parental learning difficulties, and 28 mention only this problem. Twelve cases mention physical problems, two of which mention this problem alone (cf. Table C in the Appendix).

Our findings reveal that the majority of the cases (88%) mention some form of service provision, and the court comments upon service provision in 80% of cases (see Table 4). There are country differences, with four mentioning services in all or almost all cases (England, Finland, Ireland and Norway), whereas for Austria and Estonia this exceeds three-quarters of the cases (76–79%), and for Germany and Spain this is around six out of ten cases (63–69%). Consequently, these findings also show a substantial number of judgments with no information about service provision. In 88% of the cases, services are considered (see Table 4), with a moderate score for Estonia and Germany, and the highest scores for Austria, Spain, Finland, Ireland, England and Norway. Courts cited service arguments in 80% of their justifications, with Spain and Austria at the lower end (cf. Table 4).

Eleven judgments in the sample (5%) did not mention whether the family has received services in the past (codes 1–4), whether services are available to remedy the situation (code 5) and the court (code 8).

5.1. Category I: Services

The first category, services, includes four types of service provisions. The most frequently mentioned service (57%, $n = 124$) is "General services prior to the child's birth" (see Table 5). The following is an example from an Irish judgment: "The mother has had a significant number of placements while in care herself, including high support residential care and placement with a private service specialising in providing care to young people with an intellectual disability" (NIRL10-14).

Across the eight countries of this study, almost half of the judgments (52%, $n = 113$) mention "Services targeting the parents' risk." The following is an illustrative example from an English judgment:

"MOTHER in her final statement indicates that she is engaging with mental health services. She indicates that she thinks the contact which she has with her Community Psychiatric Nurse and Consultant Psychiatrist provides her with the help she needs, and that she is willing to explore further therapeutic help but would prefer to organise this for herself" (NENG10-15).

Forty percent of the judgments mentioned "Parent-child services," as illustrated by an English judgment: "The arrangement that was put in place at that hearing was for CHILD and her mother to move to a mother and baby foster placement" (NENG06-17).

In a little over every third judgment (35%), there is mention of "Newborn child services," as exemplified by this Irish judgment: "The

Table 4
Categories I, II and III.

Code – Country (n)	Total (216)	Austria (24)	England (14)	Estonia (17)	Finland (25)	Germany (27)	Ireland (17)	Norway (76)	Spain (16)
I Services	191	19	14	13	25	17	17	75	11
	88%	79%	100%	76%	100%	63%	100%	99%	69%
II Service related	189	21	13	10	24	15	15	76	15
	88%	88%	93%	59%	96%	56%	88%	100%	94%
III Court's opinion	172	7	11	14	24	26	16	73	1
	80%	29%	79%	82%	96%	96%	94%	96%	6%

Table 5
Category I Services, total and per country. N = 216.

Code – Country (n)	Total (216)	Austria (24)	England (14)	Estonia (17)	Finland (25)	Germany (27)	Ireland (17)	Norway (76)	Spain (16)
Services^a	191	19	14	13	25	17	17	75	11
	88%	79%	100%	76%	100%	63%	100%	99%	69%
General services prior	124	16	3	6	9	6	8	71	5
	57%	67%	21%	35%	36%	22%	47%	93%	31%
Services targeting the parents' risk	113	6	10	6	16	11	16	45	3
	52%	25%	71%	35%	64%	41%	94%	59%	19%
Newborn child services	76	7	5	8	14	2	10	26	4
	35%	29%	36%	47%	56%	7%	59%	34%	25%
Parent-child services	87	6	8	4	15	3	5	43	3
	40%	25%	57%	24%	60%	11%	29%	57%	19%

^a Number of cases where parents received one or more services listed below, *not* the cumulative number of services provided.

child was born prematurely and required medical treatment" (NIRL16-16).

There are clear differences across the various countries, as well as within jurisdictions. In general, the Austrian and Spanish judgments seldom refer to any services that the parents have received. In England and Ireland, we find a sharp spike in service provision to parents during pregnancy or shortly after birth and in services for newborns. England also has parent-child services in over half of its judgments. In Estonia, we observe a strong focus on newborn child services received. Finland shows below-average provision of general services, whereas the provision of the three other services is above the average numbers for these eight countries. The parents in the Norwegian judgments received most general services.

5.2. Category II: Service related

In 38% of the cases, it was mentioned that no (further) services were available that could support the parents (see Table 6), as this example from a German judgment illustrates: "There are no services evident through which parenting capacity could be improved or restored" (NGER22-18).

In 30% of all cases, the parents unsuccessfully requested services, for example, such as in this Norwegian judgment: "The parents say they

wish for assistive services. But the hearing of evidence leaves a clear impression that the parents do not have a deep understanding/acknowledgement of the challenges they have had/have in relation to offering adequate care over time" (NNOR13-16).

In over half (62%) of cases where the parents requested services, it was mentioned that no services were available. In 80% of cases where the parents requested services, the court assessed that the services previously provided or available would be insufficient to remedy the situation (cf. Table F in Appendix 1).

Emphasis was placed on the cooperation of parents with social services, child welfare agencies and the courts (see Table 6). This was mentioned in 83% of all cases, including both positive (27%) and negative (56%) forms of cooperation. An illustrative example of a description of negative cooperation is the following: "The evidence of the various social workers in this case also demonstrates time and again that the parents are, in fact, unable to work with them" (NENG10-15). An example of positive cooperation is illustrated in Austrian judgment: "During which the mother was especially cooperative; however, she lacked a realistic assessment of the situation" (NAUT08-17).

There are again considerable differences across the eight countries. Not a single judgment in Spain mentioned that no services were available to support the parents. In Norway (71%), Finland (40%) and England (36%), child welfare service providers regularly stated that there

Table 6
Category II Service related, total and per country. N = 216.

Code – Country (n)	Total (216)	Austria (24)	England (14)	Estonia (17)	Finland (25)	Germany (27)	Ireland (17)	Norway (76)	Spain (16)
Service related	189	21	13	10	24	15	15	76	15
	88%	88%	93%	59%	96%	56%	88%	100%	94%
No services available	81	5	5	2	10	4	1	54	0
	38%	21%	36%	12%	40%	15%	6%	71%	-
Parents request for services	65	1	7	1	7	1	3	44	1
	30%	4%	50%	6%	28%	4%	18%	58%	6%
Parent's cooperation	180	19	13	8	23	14	15	73	15
	83%	79%	93%	47%	92%	52%	88%	96%	94%
- Parents do not cooperate	121	17	10	7	18	10	12	35	12
	56%	71%	71%	41%	72%	37%	71%	46%	75%
- Parents cooperate	59	2	3	1	5	4	3	38	3
	27%	8%	21%	6%	20%	15%	18%	50%	19%

would be no (more) services to offer to the parents or the child. In Austria (21%), Estonia (12%), Germany (15%) and Ireland (6%), courts and child welfare services also seem to have these types of statements in mind, albeit rarely.

The results for “Parents request for services” are similar, as we found relevant statements for England (50%), Norway (58%) and Finland (28%), while such statements were rather rare in Irish (18%), Estonian (6%), Spanish (6%), Austrian (4%) and German (4%) judgments.

Cooperation between parents and social services, child welfare agencies or courts was referred to in 83% judgments overall, including high rates for Norway (96%), Spain (94%), Finland (92%) and England (93%). Furthermore, Ireland (88%) and Austria (71%) frequently emphasized parental compliance or lack thereof, whereas under similar circumstances in Germany (52%) and Estonia (47%), these were mentioned in about half the judgments.

5.3. Category III: Court’s opinion

The third category specifically concerns assessments by decision-makers in court, excluding the statements made by those in social services or other parties. In 73% of all judgments, it is evident that the court assessed the effect of services received by the family (see Table 7). In 91% of those assessed cases, the court found that the received services either did not improve the situation sufficiently or could not accommodate the risks, as this excerpt from an Irish case indicates:

“I am satisfied that to make this order is proportionate in this case as despite the multiple supports offered to the parents to deal with their addiction, mental health difficulties, accommodation, domestic violence, aggression, and anger management problems. Their engagement with these services has been limited or refused and these problems continue to persist to such extent that the parents have not shown the ability or commitment to sustain consistent care and parenting to the infant Child 4 and there is no indication this is likely to change in the foreseeable future” (NIRL01-12).

In 4% of the cases, the services had improved the situation sufficiently, and in 5% of cases, the parent had not been provided sufficient services, as this excerpt from a German case illustrates:

“After speaking to the therapy coordinating institution X, information was provided that the start of the therapy had been delayed for reasons not related to the child’s mother. She currently is in rehabilitation treatment in hospital Y and waiting for the therapy to start. At the moment one can see a true motivation in her, which is different from the past” (NGER26-18).

There are country differences around the court’s assessment of the effectiveness of services. Austria and Spain are at one end of the spectrum, with this aspect mentioned in 6–25% of cases, and at the other end are Germany¹³ (96%), Finland (96%), England (50%), Ireland (59%) Norway (92%) and Estonia (76%). The majority of assessments concluded that the services were useless or could not improve the situation sufficiently.

Independently from their overall assessments, the courts recommended follow-up services in 31% of all cases, as this quote from England illustrates:

“I would urge them to try to understand and accept this in order to be able to move on and make real progress in tackling their difficulties in parenting. I would also encourage them to try to take on board the doctor’s [...] assessments of them and to seek the therapeutic help which she has identified they need” (NENG10-15).

6. Discussion

The analysis of judgments in eight jurisdictions shows that services to

parent and child are a theme in the majority of cases. However, a substantial number of judgments do not mention this, and there are clear country differences. We examine four hypotheses. The first hypothesis—that all judgments include information about service provision because it is a human right and an obligation for states to support and provide services to vulnerable families—is partially supported. We find that in some countries, all or almost all cases include this information (England, Finland, Ireland and Norway), whereas in others (Austria, Estonia, Germany and Spain) we learn less about service provision by the welfare state or the child protection system. We can now reveal that the differences between countries do not follow the types of child protection systems. Our analysis reveals that a seemingly clear and straightforward obligation to prevent child removal unless no other measure is available has not been given sufficient attention in Austria, Estonia, Germany and Spain. Austria, Estonia and Germany have an explicitly stated obligation to prove that services to the child and the family have been tried and proven useless before a child can be removed, and in Spain, this obligation is embedded in the system. We are not certain that these results reflect actual service provision in these four jurisdictions, but we do know that the ECtHR in the *R.M.S v. Spain* (2013) case harshly criticized Spain for lack of service provision in a child protection case:

“The care order in respect of the applicant’s child was made because of the applicant’s difficult financial situation at the time, without any account being taken of subsequent changes in her circumstances. The Court considers that the applicant had simply been faced with a shortage of funds, a situation which the national authorities could have helped remedy by means other than the complete break-up of the family, a measure of last resort to be applied only in the most serious cases” (para. 85).

In its review, the ECtHR will examine case material to see whether services have been provided and/or substantiate the view that services cannot sufficiently secure the child under parental care. Anecdotal evidence indicates that service provision in Austria and Germany is under pressure due to scarce resources, affected by regional differences and federalism as well as requirements to adhere to a neoliberal market mechanism (Egyed, 2011; Gabel, 2019; Kutter & Schlieter, 2014; Rammer, 2009; Radio Wien, 2012; Wolf, 2020). The difficulty in reaching families in vulnerable groups with assistive services has also been pointed out in these two countries (Datenreport Frühe Hilfen, 2018). In Estonia, services to families was in 2016 provided by the municipalities, and it is reported that practice varied substantially (Loom & Saarevet, 2020). In relation to Spain, Palacios (2005) points out that policy on fostering and adoption practice was delayed because of the country’s isolation in the dictatorship period, and possibly this also reflects on the general situation and policies on child protection services.

We examined the provision of four types of services (cf. Table 5). Norway stands out with the provision of general welfare services in 93% of cases. Next is Austria with 67%, and the remaining countries have fewer than half of the cases in this category. In Austria and Norway, the finding resonates with the welfare state ideology, and in Norway, similar findings come from a study on child protection provision (Juhász, 2020). However, based on its welfare state model, we expected Finland to have a high prevalence of general welfare services. A possible explanation for Finland (and other countries) may be that its judgments primarily focus on child protection services that are directly related to the situation and do not dwell on general services.

In terms of services targeting parental problems, four countries—England, Finland, Ireland and Norway—stand out, and around two-thirds of the cases refer to them. We believe there are two explanations for this. For the risk-oriented child protection systems in England and Ireland, it is of vital importance to address and fix the problems that hinder parental care for children. In service-oriented systems, there is a seamless overlap between general services for people and those addressing specific problems in relation to parenting. We

¹³ Included here is the following identical sentence in 15 judgments: “Less intrusive measures are not suited to avert the danger to the child.”

Table 7

Category III Court's opinion, total and by country. N = 216.

Code – Country (n)	Total (216)	Austria (24)	England (14)	Estonia (17)	Finland (25)	Germany (27)	Ireland (17)	Norway (76)	Spain (16)
Court's opinion	172	7	11	14	24	26	16	73	1
	80%	29%	79%	82%	96%	96%	94%	96%	6%
Analysis of effect of services ^a	157	6	7	13	24	26	10	70	1
	73%	25%	50%	76%	96%	96%	59%	92%	6%
The services did not improve the situation	143	6	5	11	23	22	9	66	1
	91%	100%	71%	85%	96%	85%	90%	94%	100%
- Other services were available	8	0	1	1	1	1	0	4	0
	5%	-	14%	8%	4%	4%	-	6%	-
- Services improved the situation sufficiently	6	0	1	1	0	3	1	0	0
	4%	-	14%	8%	-	12%	10%	-	-
Follow-up services	66	2	10	4	2	2	14	32	0
	31%	8%	71%	24%	8%	7%	82%	42%	-

^a This code consists of two subcodes: (1) The services did not improve the situation, and (2) Other services were available. The percentages for the two subcodes show the distribution in regard to the superordinate code *Analysis of effect of services I*.

can assume that some of these services are provided before pregnancy, as they are typically provided to citizens in need of support. The practice of providing mother–child units or other services targeting the parents and child together are most prevalent in cases from England, Finland and Norway, whereas services targeting the child are most common in Estonia, Finland and Ireland. Based on system characteristics, there is no obvious reason for these countries to stand out. The findings leave the general impression that services are less important in cases in Austria, Estonia, Germany and Spain, but this view changes somewhat when we examine the service-related themes in the cases.

The service-related themes include statements on services being unavailable, unfulfilled service requests from parents and parental cooperation. We notice that 88% or more of the cases in all countries except Estonia and Germany mention these themes. However, it is parental cooperation that drives the high prevalence, and it is primarily parents' lack of cooperation that is mentioned. Only the Norwegian judgments have equal mention of parental cooperation (50%) and lack of cooperation (46%). We believe the focus on the latter reflects the child protection system's dependence on parental capacities and a mutual understanding of a situation to make changes. This has also been pointed out in many studies (see, e.g., Brown & Ward, 2014), and lack of parental cooperation would typically be related to a chaotic lifestyle that can make use of services difficult, but also from fears of parents or a stigma from their contact with the child protection system (Collings & Llewellyn, 2012; Flacks, 2019; Kroll & Taylor, 2003; Mason, Robertson, & Broadhurst, 2019; Murphy-Oikonen, 2020).

In the cases, we analyze it is a newborn baby that is considered to be at risk, and given the vulnerabilities of a newborn, the situations the child protection system must address are highly critical (cf. Alrouh, Broadhurst, & Cusworth, 2020; Lushey, Barlow, Rayns, & Ward, 2018; Mason et al., 2019), and it must be clear that parents can provide secure care for the baby (Bedston et al., 2019; Harwin, Broadhurst, Cooper, & Taplin, 2019). Parental cooperation, or a minimum willingness to cooperate, is a prerequisite in all countries except Norway in the implementation of prebirth services, which suggests why parental cooperation is so visible in the judgments. Prebirth services have shown promising results in helping parents care for their child, and one feature that is imperative is the time required to facilitate changes for mothers (or parents) (see Lushey et al., 2018; Mason et al., 2019). Alarmingly, the discussion on service provision and parents' abilities to change is often focused on parents' individual traits but less on the adequacy of the services provided to help families. Research indicates that we do not have sufficiently good services. In a scoping review of in-home services, focusing especially on the Nordic countries, Christiansen (2015) shows that overall there is little documentation on the effects of services. In the English study Infants suffering, or likely to suffer, significant harm: a

prospective longitudinal study, by Ward, Brown, Westlake, and Munro (2010), the problems following delays in service provision and professional assessments are portrayed as well as variations between workers and agencies in service provision and consistent follow up of agreements and goals.

From specific examination of courts' assessment of services and service provision, unsurprisingly, the same pattern as for services (category I) emerges. Judgments in two countries—Austria and Spain—seldom refer to these themes, whereas the others frequently raise them. The courts evaluate the effects of services and assess whether services can prevent an intrusive intervention such as a removal. However, this does not happen in all cases (which probably cannot be expected given the range of cases and individuals involved).¹⁴

Hypothesis two, type of parental problems determines service provision, is not supported. We are unable to detect a pattern based on parental problems, as the countries with a large number of welfare services (cf. category I in Table 4) do this across the board regardless of parental problem type (see Table E, cf. Table D in the Appendix).

Our third hypothesis is partially confirmed, as we find differences between countries, but these differences do not accord directly with types of child protection systems. However, in terms of several categories and themes, the four countries may be rather similar. Austria, Germany and Spain all fall under the conservative welfare state model with their service-oriented child protection systems. It is possible there are some similarities in an institutional context that we capture in our findings, but based on the characteristics of their system (cf. Table 2), we would not expect these countries to be in the relatively lower rung of service provision. We cannot categorize Estonia as easily, as the literature on welfare state models has not given it a place in the typologies. We believe it to be a liberal model, but it may also be conservative. Its child protection system is risk oriented, and as such different from those of Austria, Germany and Spain.

Our fourth hypothesis about similarities between judgments within and between jurisdictions is not confirmed as we have shown clear differences.

6.1. Limitations

There are limitations to our study. Judgments from England and Ireland are based on publicly available cases and are thus not representative. Although the data are rich and for most of the countries

¹⁴ However, one may still expect the obligation to consider services to be mentioned by the court, even if only to note that it cannot improve the situation.

include all judgments ranging from one to several years, the analysis is based on the written judgments. We do not have access to the full case files, and we are dependent on the choices made by the deciding body when writing the judgments. However, we have no reason to believe that essential arguments or pieces of evidence are not mentioned, and anecdotal evidence from interviews with a handful of judges and academic lawyers indicates that decision-makers will be sure to include relevant arguments and evidence in the written judgments. One caveat concerns Spain, as a removal decision is made by the Child Custody Commission, which is an administrative decision-making body. The child protection agency typically prepares a casefile consisting of eight documents for the commission. To secure comparative data, we selected two of the eight documents: A technical report from the Child Protection Area, and Child Custody Commission decision. The technical report provides the background information and reasoning for the intervention, and the Custody Commission decision will approve or refuse it. As for the other countries, a case file includes all information that public and private parties deem relevant for the case, whereas the judgment or decision will include the decision-maker's justification for a decision. In Spain, it may be difficult to uphold a strict distinction between these two, as it is an administrative body that does not have the same burden of justification as a court, and may rely more on the underlying case file without explicitly referencing it.

The judgments from different countries vary in length and content. Another issue is that we do not know whether information about services in judgments is exhaustive, and even when services are mentioned, we do not have information about the quality of the services or their accessibility to service users. Differences in legal systems and legal practices complicate comparisons, but we accommodate this by following a consistent coding scheme and transparent reporting on research processes. We acknowledge that the judgments can only reflect what the parties in the case and the decision-maker deemed important, but nevertheless judgments must contain the relevant facts and reasons for a decision to justify its legality and accordance with supranational obligations, as they may be appealed and subject to legal review. Furthermore, cases can be filed with the ECtHR.

7. Concluding remarks

Service provision for vulnerable families with newborn babies is an understudied area in welfare state research as well as child protection research. There are knowledge gaps in terms of the proven effects of services and what is actually provided to the child and the parents. Our study shows variations across jurisdictions that cannot be easily understood given the obligation of every European state to prove that available services have been tried. A critical discussion following our study and findings is the inherent challenge of the least intrusion principle—the obligation to provide services—in relation to the principle of the child's best interests (welfare). It is a continuous dilemma to find the right point to terminate services or change direction in a case, whether it is to apply for removal or provide other services. The obligation to make all possible efforts to keep child and parent together may have huge disadvantages for a child. Empirically, there is solid evidence of the significant costs and disadvantages for the children if parents' capabilities and the situation do not provide a standard of adequate care. Although the obligation to consider whether services are helping and to find the right point at which to change the direction of a service belongs to frontline staff and judges, it is a policy matter to develop and provide sufficient services for this group of families. This is clearly formulated in the infant study by Ward et al. (2010):

“... if such children are to be adequately safeguarded with their birth parents, then much greater consideration needs to be given to the development of effective policies and practices to engage potentially abusive parents and to support them in reducing those factors that place their children at risk of being maltreated” (p. 7).

The strong emphasis placed on cooperation in the judgment shows the importance of effective relationships between parents and professionals, but our study echoes some with the study of Mason et al. (2019)—this is not consistently in focus. Policy developers should be aware of this. Another policy responsibility is to consider how to apply the principle of the least intrusive intervention when the child's best interests are at stake in child protection cases. In Denmark, an interesting policy change has recently been undertaken in the child protection area. Now, the principle of the child's best interests is set above the principle of the least intrusive intervention because an intervention shall be in the best interest of the child (Hestbæk et al., 2020). How this will be received by the ECtHR, for example, remains to be seen.

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Appendix A. Supplementary data

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