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Human rights and child protection
In Norway and Sweden

An examination of reports by psychological experts

Report

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Part I Background

Page 4-13

Introduction

Fylkesnemnda (Norway)

Child legislation in Sweden

The role as a psychological expert

Neutral and impartial experts?

Part II Research question, theoretical perspective, method and sample

Page 13-17

Research question and theoretical perspective

Method: criticism and control of sources

Sample of psychological expert reports from the period 2000-2004 (n=37)

Critical informants

Part III The use of methods in psychological expert examinations – an analysis Page 17-31

Introduction

Inadequate documentation of care failure

Pathologic description of parents

Insufficient clarification of concepts

Insufficient criticism of sources

Decontextualizing

Attribution errors

Reproduction errors

Tendentious reproductions and representations

Summary

Part IV Psychological experts, judicial security and human rights

Page 31-50

Introduction

The CPS's examinations and the role of psychological experts

The psychologist's professional power

Judicial security and human rights

Psychological experts as a judicial guaranty

Summary

Part I Background

Introduction

This report is about psychological expert work in CPS cases in Norway and Sweden. Due to shortage of time and lack of access to cases from Sweden, the examination is restricted to scrutinizing psychological expert examinations in Norwegian CPS cases.

Part I in the report offers a short description of current Child Protection Services legislation in Norway and Sweden and the role of psychological experts. Part II accounts for research question, theoretical perspective and method, where the research question focuses on methods applied in psychological expert examinations. The theories that I apply is Abbot's theory of professions (1988) and Dawes's science-methodical criticism of clinical psychology. Part III deals with an examination of a sample (n=37) of psychological expert examinations from the period 2000 – 2004, where I concentrate on scrutinizing the use of sources. In the last part (Part IV), I discuss the role of psychological experts in child protection cases, highlighting legal security and human rights.

Fylkesnemnda (Norway)

The law on Child Protection Services 1992 replaced the former law on Child Protection Services, a law that placed municipal committees in charge of CPS decisions. These committees had a summoned judge, who was in charge of deciding whether the conditions for deciding an involuntary measure were present.

The municipal CPS committees were replaced by a county committee – The County Committee for Social Cases (Fylkesnemnda). Fylkesnemnda consisted of one jurist, two summoned psychological expert members and two lay members. The new CPS law was intended to render priority to the children's interests, and maintain legal security (Falck and Havik 2000). Implementing the new CPS law from 1992 has caused CPS decisions to become a function of professional considerations, more than laymen's consideration and political considerations. The main aim of the new law has been strengthening the judicial and

professional foundation for the decisions. The new law has had the consequence that *psychologists* - who represent an important part of the professional knowledge – have been *more* involved in the process leading to a decision. Psychological experts conduct their own examinations based on their professional knowledge when they shall give their opinion on whether the CPS shall take over the care for the child. When the decisions are made, the expert's considerations are given considerable weight. A survey of 50 cases of care takeover, where the CPS had presented a case for Fylkesnemnda in Sør-Trøndelag County, shows that 84,2 % of the cases were decided in accordance with the CPS's proposal, a proposal that was identical with the result of the examination by the appointed psychological expert (Iversen, 1998:4). From a judicial security point of view, it is problematic that Fylkesnemnda and the court as the institution in charge of the decision, and the CPS as a party to the case, appoint a psychological expert. The CPS decides the mandate for the examination. An institutional practice like this raised doubt about the independence of psychological experts.

Juridical experts describe the way Fylkesnemnda is organised and put together as a progress compared to the municipal CPS committee when it comes to judicial security: "*When Fylkesnemnda was introduced as the institution in charge of deciding involuntary measures in CPS cases, the initiative functions were divided between two independent institutions (...) The purpose was to avoid that the same institution was in charge of making the final decision. The experiences with the municipal CPS committee showed that the decisions were often taken prior to the meeting where the formal decision was made. When Fylkesnemnda gets a case, no one of the members knows the case from their own involvement in the case, so that Fylkesnemnda bases its decision on the case documents and what is said in the negotiation meeting, just like in a case for the courts.*" (Kjønstad, 2002:61).

The function of psychological experts in Fylkesnemnda and the court has not been problematized. For example, there has been posed no questions about what kind of relations there are between the CPS and psychological experts. Both court, Fylkesnemnda and the CPS

engage psychological experts from the same lists. The same psychological experts usually take assignments from both the CPS and the court. Contrary to the private party, the CPS is responsible for furthering the case for Fylkesnemnda, and therefore responsible for clarifying the case (CPS law § 7-3). In practice, Fylkesnemnda seldom appoints psychological experts (Havik, 2000:67), and The Children and Family Department has recommended that Fylkesnemnda appoints psychological experts only in exceptional cases, when “*the chairperson finds the case inadequately examined regarding questions that demand special professional competence*” (Circular January 5th 1993 in NOU 1995:23:15). Hence, the CPS gains a different position than the private party to cases of care takeover.

Considering the private party’s opportunity to engage a psychological expert, this opportunity is described by authorities and psychological experts as a subjective opportunity to strengthening one’s own case (Reigstad 1994, NOU 1995:23, Backe-Hansen 2003). A relevant question is whether the same thing could be said about the CPS’s use of psychological experts.

CPS legislation in Sweden

The CPS in Sweden is currently regulated by The Law of Social Services, SoL (1980:620, SoL), which regulate voluntary measures, and The Law on Certain Regulations of Care of Young Persons (LVU), (1990:52, LVU). The SoL is mainly a law providing material standards for the municipal social services. It contains few rules regarding how the social services should be designed, or more specifically about the CPS (Strömberg, 1999:127). The handling of involuntary measures is for the largest part regulated by specific procedural laws

for the public services courts. Regulations of involuntary measures within the CPS were transferred to LVU in 1988. This entailed a clearer distinction between voluntary and involuntary measures. The reform was founded on a so-called holistic viewpoint. That entailed that the different municipal committees that had been handed the fields of each of the old laws, were fused to one committee, Socialnämnden, which now handled all kinds of cases. This was, however, changed with the new Municipal Law 1991 (kommunallagen, 1991:900), which introduced a larger degree of municipal autonomy. As long as the municipal responsibilities are carried out, the municipalities are free to organize the committees, as they want (Hammar, Norström and Thunved, 1998:9).

Socialnämnden usually consists of 15-20 members. The municipal council decides the number of members. At least one-half of the members must be present in order to make a valid decision. Each member has one vote, and simple majority is sufficient to make a decision. The committee members may further cases on their own initiative and the committee gathers when the chairpersons finds it necessary or one third of the members demand so. During the meeting, the committee members go through the documents in the case. The private parties to the case, possibly assisted by lawyers, are entitled to be present before the committee makes a decision. It is not usual that children below 15 are present. If the private parties are present, they are asked if they have anything to add. If so, they can give an oral statement to the committee. The parties' lawyers, or representatives – as the CPS usually is represented with one of its civil servants (Socialstyrelsen, 1995:30) – choose which parts of the case to highlight or mention during the meeting. According to a survey of cases from 1993 done by Socialstyrelsen, Socialtjänsten was represented by a jurist at one specific court level (Kammarrätten) in 31 out of 238 cases. There were large regional differences. In Stockholm, the public party had a lawyer in 69 % of the cases, while the numbers for

Gothenburg was 12 % (Socialstyrelsen, 1995:68). The same survey from 1993 shows that in four County Courts that were examined, Socialtjänsten on average won the case in 80 % of the cases. There were large variations between the courts –from 50 % to 97 % (Socialstyrelsen, 1995:70).

The role as a psychological expert

The purpose of the role as an expert in a case for the court or another deciding entity is to provide an entity the adequate background for making a decision, because the entity itself lacks sufficient professional knowledge in a specific field as for example child protection. Psychological methods and concept, especially within clinical psychology, cannot be transferred without difficulties to expert examination within the court system, which traditionally have stricter demands for evidence. The professional education in psychology (cand.psykol) contains no specialisation in psychological expert work for the courts.

Psychological expert work in CPS cases is a rather new phenomenon. A source that can enlighten us on the development is Tidsskrift for norsk psykologforening (Periodical for the Norwegian Psychologist's Association). In the periodical for the year 1979, the following is said about psychological expert work: *“On June 10th 1977 a written notification was sent from statsfysikus to all psychiatric institutions in Oslo, all family protection offices and all private practicing psychologists and psychiatrists concerning the assignment of psychological experts in cases of child distribution and the right to contact. The letter asked whether the recipients were willing to be contacted by the court with the question whether they wished to be a psychological expert in such cases. On November 25th 1977 the City Court received a letter from which one easily sees that those contacted did not want such tasks.”* (Backe-

Hansen and Breder 1979:215). The resistance was equally large when it came to psychological expert work in care takeover cases. The most frequent justification for a negative reply was built on professional ethics. Such assignments would entail taking part in a conflict between two parents or between parents and society. Twenty years after the question was asked, a national survey shows that psychologists were engaged as experts in 48 % of the Fylkesnemnda cases (Næss, Havik, Offerdal, Wærness 1988): Grinde's examination of cases for Fylkesnemnda that were tried in court in 1995, from four Fylkesnemnda offices, show that 39 % of these were underpinned by statements from appointed psychological experts. Psychologists' attitudes towards psychological expert work seems to be considerably altered. Current legislation gives no restrictions on who can be appointed or engaged as a psychological expert. It is presupposed that the appointed person is an expert in his or her field, but it is up to the administration or the court to decide if he or she is qualified for as a psychological expert in the specific case (NOU 1995:23). Current regulations only demand that psychological experts have a professional exam in psychology, and hence formal competence as a public authorised psychologist, to take assignments as a psychological expert.

The psychologist have gained their knowledge through a six and a half years long study where they have gained a relatively extensive introduction to theory, research methods and results in various branches of psychology and bordering sciences as sociology and neuro-science (Norsk Psykologisk forening, interactive sources). The professional study in psychology (cand.psykol) is a clinical study, giving priority to a practical education in clinical treatment. Unlike a master in psychology with a cand.polit degree (no clinical education), the professional study gives less priority to education in scientific method and science theory. Clinically educated psychologist are not educated in use and criticism of sources. The

psychologists' professional discretion represent a wider spectre of choices due to the legitimacy of the professional title. Their discretion allows more space for indeterminacy and ambiguity as they are educated to trust their own "*clinical experience*" (Freidson 1988, Ramsøy and Kjølørød 1986).

Unlike their Swedish colleagues, Norwegian psychologists are not offered specialisation in methods of examining. In Norway, there is no professional environment in examining methods among psychologists, while Sweden uses psychologists who are specialists in examining methods within historical sources criticism, social psychology, witness psychology and attribution psychology.

In 1999, The Children and Family Department created a register of professional children's psychological experts for use by courts and administration. In order to be listed in the register, the psychologist must have gone through a biannual education program and have documented five cases within child protection and five cases within child distribution. The model builds on a professional education in psychology and gives no special competence like the education of the Swedish professional group represented by docent Bo Edvardsson. The organisation Forum for sakkyndige psykologer (FOSAP, Forum for Psychological Experts) has publicly stated that their specialists have competence in source scrutiny, attribution psychology and witness psychology. Complaints on psychological experts is overrepresented in the Psychologists' Association's committee on professional ethics, compared to complaints on therapeutic work.

Neutral and impartial experts?

Norwegian politicians have discussed the issue of psychological experts' neutrality and impartiality on the background of single cases, like for example the Adele case and the Svanhild case. The role of psychological experts has been criticised in the Norwegian parliament. With the Svanhild case as background, MP Finn Kristian Martinsen (Christian Democrats) asked the following question to the Children and Family Minister on November 13th 2003: *“Several ((psychological experts)) take assignments to examine cases for the CPS and are members of Fylkesnemnda. This juggling between different roles, even though it does not happen within the same case, is often seen as problematic. The confidence in expert members of Fylkesnemnda is weakened when these also take assignments for the CPS, and the impartiality is threatened. How does the minister view this problem, and will the minister do something in order to secure the confidence in the expert members of Fylkesnemnda.*

The minister promised considering new routines for qualifying, where Fylkesmannen (the state's representative in the counties) could appoint psychological experts in cases with disagreement between the municipality and the private party in CPS cases. The minister also promised to appoint a committee that should consider measures to secure quality of the psychological experts' reports in CPS cases. Among other things, this committee was meant to look into whether there should be created a specific controlling entity in charge of subsequent controlling and quality control of psychological expert reports in CPS cases. Two years later, MP Ulf Erik Knudsen (Progress Party) asked a question with the same wording as the question from Finn Kristian Martinsen to the Minister for Equality and Consumer Affairs. The background was media revelations of false psychological expert reports in cases concerning pardon or postponing of atonement.

The Minister of Equality and Consumer Affairs, Karita Bekkemellem (Labour Party) said the following on November 14th 2005 concerning the criticism of psychological experts in CPS cases: *“I do, however, know that criticism is raised from time to time against the psychological experts and the quality of their examinations and the authorities’ use of psychological experts. It is said that the psychological experts who take assignments for the municipality, cannot be viewed as neutral, as they are engaged and paid by the municipality. There is also criticism against psychological experts’ work and methods, evaluations and conclusions. In order to make sure that the psychological experts who are assigned to examine cases for the municipal CPS gain confidence as independent and neutral by the private party, the department will establish a system where fylkesmannen appoints psychological experts when the municipality and the private party disagree. The Children and Family Department has also appointed a committee that has started a process to consider quality control of the psychological experts’ reports in CPS cases. One of the things the committee shall consider, is whether there should be established a specific control entity in charge of subsequent quality control of psychological experts’ reports in CPS cases. As I see it, both these measures will contribute to create the necessary confidence in the psychological experts’ statements (...).”*

With the criticism of the psychological experts as a background, minister of Health and Care, Sylvia Brustad, after talks with Minister of Justice Knut Storberget, appointed a committee (“Sakkyndighetsutvalget”), that got the task to revise the system of experts in the judicial sector. On March 28th 2006, the Children and Equality Department presented a report. According to the press release from the department, Sakkyndighetsutvalget has proposed to establish a “Children expert commission”, modelled on The Forensic Medicine Commission, *“where all reports from psychological experts in CPS cases shall be sent by routine to the*

commissions to be evaluated before they are applied to make a final decision - both in administration and in courts. The commission also proposed changes in the CPS law and related guidelines.

Part II Research question, theoretical perspective, methods and sample.

Research question and theoretical perspective.

Because psychologists possess a knowledge that largely is highly regarded in society, not the least by the courts and the CPS, it is of great interest to examine their role as psychological experts and role in CPS cases. Psychologists' views in this area represent interesting research questions because psychologists in CPS cases are more visible to the public compared with psychologists in more traditional practice. Research on psychologists' work in society constitute a research tradition in sociology (Abbott 1988). Psychologists have to a little extent been subject to empirical research (Abbott 1996:325). There are relatively few studies of psychologists' work as experts. We know little about psychologists' role in CPS cases. Robyn Dawes's "House of Cards" is the most extensive and competent criticism of fundamental and traditional thesis in clinical psychological profession. Parts of Dawes's research is relevant when examining psychologists' expert role in CPS cases.

Professions are characterised by their legitimate access to handling certain tasks in society (Abbott 1988), as psychologists have access to work as experts in CPS cases. They have a licence, which is permission to do certain tasks for payment that others cannot do or are not allowed to do. This means that society both allows and expects that the professionals do something that others are not allowed to do. They will point to a right to speak on behalf of society about conditions related to their field of speciality. Abbott (1988) points at the professions' institutionalised control of certain tasks in society being in effect jurisdiction, that is, it is their field of responsibility or authority. Because of their theoretical knowledge and practical skills, they can obtain more or less exclusive control of a sector of society. Their formal competence gives the psychologists a legitimate power to define reality and influence it. This formal professional competence gives the psychologists real opportunities to obtain

hegemony of the CPS sector. Clinical psychologists' lack of competence in examining sources and examining methods constitutes the background for the research question.

Karen Hassel, one of the members of Forum for sakkyndige psykologer (FOSAP) describes "*Psychological experts in CPS cases*" in the book "*CPS and care takeover*" (Tjomsland 1997). One of the things Hassel states, concerns the available information that the CPS gets: "*The psychological expert gets all the papers in the case sent to him/her. Sometimes it is complained that the expert knows the case when he/she meets. It is said that the expert should be impartial. As an answer to this, one can say that knowledge of the factual information in the case, both regarding procedure and different conditions, is necessary in order that the psychological expert shall be able to plan the task and not do unnecessary duplicate work. Being able to resist influence by a certain way of understanding, a way of viewing the case is just one of the requirements that one must demand from a person being appointed as a psychological expert.*" (Hassel 1997:193).

The way Hassel expresses herself about the available information from the CPS, "*knowledge of the factual information in the case, both regarding procedure and different conditions, is necessary in order that the psychological expert shall be able to plan the task and not do unnecessary duplicate work*", it is reasonable to infer that she finds the information provided by the CPS as unproblematic. It is so called positively given – objective regarding "*different conditions*".

Information is not a positively given objective substance, but a part of reality that is constructed socially by different people with different interests (Berger and Luckmann 1967).

The research question is to examine *methods used by psychological experts in CPS cases*. The main emphasis in this examination is methods used by psychological experts when it comes to examining sources (especially how psychological experts in CPS cases handle information from different public entities), use of informants and observations in cases regarding care takeover that has been tried in different court instances. The analysis concentrates most of all on psychological expert examinations presented for Fylkesnemnda.

Method: Criticism and control of sources

Psychological experts' examinations are subject to source criticism. The method is historical source criticism (Dahl 1967), where the purpose of the examination is evaluating if the sources are reliable (correct and exact information) and relevance for the actual case. A fundamental question of source criticism regards how reliable statements/informations are and how relevant they are for what is examined. This includes questions about to what extent it is possible for informants and reproducers to observe and reproduce correctly. Some important questions regarding reliability is: Who receives the information? Whom does the examiner try to convince/persuade? This is where power and interests become relevant. Who are the persons involved, and which interests may be involved among the persons involved? Do the information come from the original source, or are they a second hand reproduction?

It is important to discern between *primary and secondary* sources. A primary source means the most original preserved and known source in a dependence chain of written sources. The derived sources in the same dependence chain are called secondary sources.

First-hand information is information from an informant who has himself/herself informed, perhaps participated in, what he/she tells about. Secondary information is information from a person reproducing information from others.

The information is second hand since it is a version of the original version (primary source). Secondary material means that what is written down is interpreted by someone who was not witness to the conduct that is written down/reported. Psychological expert often base their examinations on available material. In instances without source control, information may have error sources that may cause wrong decisions. Source criticism can also involve evaluating how reliable informants are. It is not given that good cooperation partners from other administrative entities (for example BUP (Children and youth psychology), PPT (Pedagogical Psychological Service) and Social Services) provides correct information. Lack of primary sources makes it necessary to scrutinize how information is made available. If the source has got a motive when it comes to interests in seeking certain informations (focus), it is important

to clarify that. Was the informant present – did he/she observe himself/herself or refer to what spectators have told. What did they know, and what kind of attitude did he/she have towards what happened. The source examination build on clients' information based on interviews that are confronted with information given in the CPS's reports and psychological experts. This is especially access to background material in CPS reports (for example reports from case handlers, PPT, BUP). In addition, parents have given me permission to interview informants from kindergartens, lawyers, doctors and nurses. I have interviewed nine persons in order to control quotes from interviews by psychological experts appointed by the courts. The analysis focuses mainly on the following methodological questions: correct reproduction from informants, clarifying of concepts (central concepts are clarified so that the premises in the background for conclusion(s) are have a clear content), the impact of context, attribution and observation. I have not examined the impact of variables like for example class background and gender on the psychological experts' work.

Sample of psychological expert examinations from the period 2000-2004 (n=37)

37 cases were decided in Fylkesnemnda. Fylkesnemnda decided care takeover in all the cases. A total of 21 psychological experts were involved in these 37 cases: One psychologist examined 5 cases, two psychologists examined three cases each (6), eight psychologists examined two cases each (16) and ten psychologists examined one case each (10)

Of these cases, 19 cases were later tried in court during the period 2000-2004. In one of the cases, the court repealed the decision in Fylkesnemnda. The decision to repeal the decision in Fylkesnemnda was in accordance with the view of a new appointed psychological expert. Of the 19 cases that were tried in local courts, 12 cases were tried in High Court. Out of these 12 cases, High Court repealed one decision of care takeover, in accordance with the view of a new appointed psychological expert. Is it possible to know to what extent the sample consisting of 37 cases is representative of such cases generally? The sample is not random. The parents themselves contacted me to present their cases. Such a self selection indicates that we cannot expect them to be representative of the group of parents who have been subject to an evaluation of whether their ability to provide care is sufficient to take care of their children now and in the future. The fact that the informants themselves have contacted the author about their case entails that they most likely represent a so-called subgroup of biological

parents who have lost the care for their children. A likely bias like this is not very relevant to the research question in this examination – where the focus is the methods psychological expert apply in their examinations. However, what about the psychological experts? Are the 21 psychologists who conducted the 37 psychological expert examinations representative of psychologists who are chosen for psychological expert work in CPS cases and take this assignment?

Critical informants

I have interviewed psychologists, lawyers and critics affiliated with organisations like “*Gruppen til Familiens Selvstendige Rett*” and “*The Nordic Committee for Human Rights*” (NCHR). The purpose of the interviews was gaining an overview of views on current practice in CPS cases in Norway and Sweden. What the critics have in common is a focus on legal security and human rights for children and parents.

I have talked with three psychologists (two men and one woman) who have been conducted psychological expert examinations in CPS cases they have 8-24 years of experience as psychologists. They are clinical specialists and have had between 4 and 29 psychological expert examinations in eastern Norway.

Part III Use of Methods in psychological expert examinations – an analysis

Introduction

What most psychological experts have in common is that they more or less base on the CPS's documents, and that "positive" informants (employers, colleagues, neighbours and family) regarding the parents' ability to take care of their children, in most cases are excluded from the sample of interviews. This is also in accordance with most of the mandates for the examinations, where one finds wordings as: "*The examination should contain a conversation with BUP and municipal doctor N.N.*"

The following presents the main findings in my investigation with examples of different kinds of use of methods and methodical errors. There are plans to publish a more detailed presentation later, highlighting many examples later (the background material)

Lacking documentation of care failure

Out of the 37 examinations that recommended care takeover, nine examinations were based on a conclusion that there were no other option than care takeover. Five of these nine examinations did not contain any clear descriptions and evaluations of what constituted the care failure, that is, what kind of conditions caused that the children were in an insufficient care situation. There was no concrete documentation of which burdens the children were subject to, that constitute a situation that is described as care failure. There are few cases (two examinations) commented what kind of needs the children have, that must be fulfilled, and what kind of resources that are present in the family and the parents' network, and what kind of resources the children themselves have got.

Pathologising parents

Twenty-five examinations contained descriptions of parents having mental personality deviance. Furthermore, the conclusion in three examinations was based on descriptions of cognitive shortcomings, mostly moderate mental retardation.

In these cases, the intelligence test WAIS was the main source. In 15 cases, descriptions of mental pathology was one of the main reasons for Fylkesnemnda's decision of care takeover. In seven cases, there was no documentation of mental illness/suffering by standardised criteria. In 11 examinations, there was no attempt to give alternative explanations or focus on contextual explanations. When the experts attempted to describe a pathological person, examinations lacked a scrutiny of information/observed data from different contexts. The main source was a psychologist/psychiatrist. In five cases only, the psychologist/psychiatrist had given a psychiatric diagnosis. Furthermore, the reports are characterised by insufficient examining of care competence based on observed data.

A common phenomenon in the examinations is tendentious description of person. One example is what a mother named Anne went through. The psychologist's report uncritically refer to a report by the CPS: "*Over time, conflicts with the kindergarten escalated.* This statement is not accompanied by any information about context. Instead, the psychologist repeats that the mother was a person who created conflicts in the next section: "*Conflicts escalated.*"

According to the mother, what the kindergarten could offer her son was clearly inferior. She said so to the psychologist, who did not mention that in the report. The psychologist did not examine the information that several parents took their children out of the kindergarten due to sanitary conditions. The mother also contacted the psychologist with information before the examination was closed. The kindergarten was closed down before negotiation meetings in the CPS case. None of this information was mentioned by the psychologist or discussed in Fylkesnemnda. The mother reported her neighbour for domestic noise. The psychological expert portrayed this incident as follows: "*Again, conflicts escalated. After some time, the mother got her own flat in E Kornveien. She experienced that her neighbour would not let her in peace. She experienced that they stalked her and wanted to destroy her situation. She reported her to the police in (...).*"

The psychological expert portrays the report to the police as exaggerated suspicion (The Norwegian word for “experienced” used in the report may give the impression that this was only something she felt). According to the mother, her neighbour had a severe alcohol or drug problem. She feared for her son. She denies that she felt stalked, but confirms that she told the psychological expert that she feared that the neighbour would harm her son.

The psychological expert concluded that the mother suffered from a psychosis, that is, her perception of reality failed, and she lacked insight to her disease. The main source to the portrayal of the mother as a psychotic person was an interview with a specialist in clinical psychology. The source is in this instance *second hand*, as the reference to the psychologist is not a reproduction of statements from the psychologist, but from the psychological expert who refers to his conversation with the psychologist: “*N.N. has experienced her as (...) He experiences her as clearly paranoid (...) N.N. experiences that her lacking perception of reality...*”. The psychological expert repeat these speculations in the examination before its conclusion, where the psychologist states: “*form my own conversations with the mother, information in case documents and conversation with psychologist N.N., I find that N.N. (That is mother – author’s comment) today suffers from a severe paranoia. This paranoia has been developing for a long time, and this makes the process worse (...)*. The psychological expert adds: “*Diagnostically, acoustic hallucinations may be a token of a development towards schizophrenia. According to the current list of psychiatric diagnosis ICD-10, one usually does not use the paranoia diagnosis when acoustic hallucinations dominate. It is then more applicable to consider forms of schizophrenia.*”

The psychological expert did not explain the background for the diagnosis. The psychologist has not explained how failing perception of reality, lacking insight to her own mental condition and function failure is documented. None of the symptoms is, by itself, sufficient for a certain psychosis diagnosis. The most common criteria for a diagnosis is disturbance in the perception of reality and insight (see for example Retterstøl 1999).

Lacking clarification of concepts

I have found lacking explanation of central concepts in 14 examinations. Some concepts are more frequently used in these 14 examinations. These concepts are not clarified. They are repeated several times in the same case. Such repetitions may cause that the concepts are taken as a truth or a fact. The concept care is an example of such a concept. The concept of care can be understood in quite different ways (Alvsvåg and Gjengedal 2000). Children's and adults' seemingly equal patterns of behaviour may have quite different consequences for the children and the family. When a psychological expert for example states that "*the father has no empathy and "the father does not see the children's needs and does not want to look into the matter, either"*", it is necessary to ask: Regarding what? In which context and to what extent? Which consequences does it entail for the children?

Lacking source criticism

There was a lack of source criticism in 32 out of 37 examinations. The methodical errors varied in character and extent. A trait of psychological expert examinations is a lack of source criticism regarding information from the CPS. The conclusion in 18 psychological expert examinations referred to second hand information from reports made by the CPS. 16 psychological expert report reports contained information based on gossip and rumours,

“bekymringsmeldinger” (notifications of concern). In 18 cases information that had not been checked, was uncritically referred to as facts. Here is one example of a mixture of unprovable allegation and gossip: *“Britt Bakken, who lives together with the father’s cousin, has observed that the mother held Tea’s hand around a cactus and pressed. When the child put her fingers in her mouth, the mother put her daughter’s fingers in her mouth and bit. She also observed that the children had blue bruises. The mother is also told to have pinched her children so that they cried. Some of the father’s relatives have also told that she have snapped one of her children on the child’s mouth when it leaned its mouth against the table. (...) An anonymous report of concern says that the mother some time ago hit Tea in her face at the beach. The parents shouted much at both children.”*

In an interview with the author, the mother denies that she has pinched and snapped the children. She also says that the cactus incident was an accident where Tea had been stuck when she touched a cactus by curiosity. The mother’s allegations can neither be confirmed nor refuted by other sources. It is a matter of ordinary truthfulness that an expert report conveys both parties version of events. That has not been done in this case or in 15 other cases. The psychological experts have not conducted source criticism of the CPS’s informants. Information based on an interview with the biological parents’ lawyer shows that the father’s family had a negative view of the children’s mother. The psychological expert has not considered any possible motives for the information given to the CPS.

It is a common trait in many expert examination that they refer to what allegedly is informed by other entities: *Several entities have remarked that it seems that the parents lack an understanding of children’s needs and problems.”* In such instances the psychological experts

most often refer to the CPS's reports, reports that directly and indirectly refer to BUP and PPT. A source criticism of ten randomly chosen reports show that psychological experts most likely base their reports on a failing fundament by basing their conclusion on the CPS's reports. One of the examples considered a boy who was temporarily placed in a children's institution. The psychological expert began his examination with the following words: *"I have had conversations with the employees at N.N. children's institutions and participated in the staff's evaluations and reflections. Psychological experts find that he has had a great functional progress, both socially and emotionally, after he arrived at the institution."* The examination did not offer concrete examples of what constituted the progress – only a remark that the boy was "nice".

Four of these ten examinations did not have a satisfactory coherence between what the CPS alleged while referring to BUP and PPT, and what actually was written in the reports from BUP and PPT.

Decontextualising

Decontextualising was present in 28 out of the 37 examinations. Among other things, decontextualizing can, consist in omitting information about situations when describing persons. It is not truthful presentation to describe a person as for example aggressive (aggressive person) if the truth is that the same person is observed as aggressive in some cases, but not in other cases. Decontextualizing can also consist in that the psychological experts removes parts of a text or an action from its context and thereby hinders the reader in seeing the context. This makes it impossible for a court as well as others to know what lies

behind a statement or an action. Such decontextualizing is unacceptable, both ethically and professionally. Such errors renders the examinations worthless as professional documents.

A statement does always depend on the situation. If the situation/context is not mentioned, the description may get a twisted meaning to the reader. Decontextualized information may lead to erroneous interpretations and evaluations. One kind of contextualisation consisted of using available information from the CPS' reports. One of these reports referred to a CPS report where the following was stated: *"The mother often let the boy sit a couple of hours alone"*. The CPS's source was helsesøster's (a nurse employed by the municipality) report. This report says, *"The mother says that it is better that he is in there (authors comment: playpen) than him hurting himself. He is there only when I do something that can be dangerous to him, or when I am washing or taking a shower."* Helsesøster's report also says, *"Then she says that he is in the playpen, as I have recommended. I answer that having a playpen is good at toddler age, but not now. I ask if she thinks that is good for him, and she answers: "It is better that he is in there than him hurting himself. He is there only when I do something that can be dangerous to him, or when I am washing or taking a shower"."*

The statement that the child was let alone was taken from a discussion between the mother and helsesøster about the use of playpen. Helsesøster's report informs that the boy happened to be in the playpen up to two hours a day, but he did not stay in the playpen for two continuous hours. In the trial, the municipality's lawyer said that the child was let alone for several hours each day. This allegation is unreasonable when related to information from the conversation between the mother and helsesøster, written down in helsesøster's report.

Attribution errors

Attribution errors shares some common features with decontextualizing. It is a cognitive twisting where attitude dependent on situation is generalised to a person's properties. Within social psychology, such a description of a person's properties is called attribution errors (Heider 1958), where the social context of the person observed is neglected. In 23 (n=37) examinations it happens more than once that problems one-sidedly is defined as caused by failures on the part of children and parents. Almost none of the psychological experts evaluate how children function in different social contexts. One example is Bård and his negative behaviour in a CPS institution. Bård's protests and negative behaviour was explained as a consequence of his problematic personality. An analysis of problematic behaviour is not attempted to be studied in connection with an interaction between a life in institution and personality traits. Another example is about observation situation and its background. The psychological expert describes parents' reactions to unacceptable behaviour: *The parents draw lines by verbal communications, but do not follow up with practical measures. When the children do not listen, the parents may become angry and intervene physically. Both mum and dad sometimes use a loud voice and become irritated when the children do not listen. It is understandable that parents are irritated when their children do not listen. Tea and Kristian, however, seem to need to get a far tighter follow up and drawing of lines than the parents offer.*

The examination does not explain whether this is a normal situation in the family. The context of the observation remains unexplained. The children had not seen their parents for five weeks. It has not been considered how the children reacted on the presence of a strange person (the psychological expert).

Reproduction errors

In one of the psychological expert examinations, the following is stated, *“The mother’s opinion is that the anonymous notifications are acts of revenge, and she does not understand that the CPS is worried. She says that they are lying.”* In the CPS’s papers the information has another character. In these papers, it is stated: *“The mother repeats that she does not understand that the CPS is worried when no one from the CPS has contacted her in two and a half month. The mother says that she wishes to know what the CPS is worried about. The case handler says that one of the things the CPS is worried about is the boy’s development of language and concepts. The mother says that these things have improved since he started in kindergarten.”* The issue of the CPS’s concern alters character when one is informed that the CPS had not contacted the mother in two and a half month, and that the concern most of all was about understanding of language –and not necessarily care failure. In another psychological expert examination, the issue was the mother’s cognitive difficulties. The psychological expert attempted to prove his assumption of cognitive difficulties by referring to mother’s *“quite weak results”* in public school. This was defined as *“general problems with achieving knowledge”*, which means the same thing as cognitive shortcomings. The psychological expert’s methods was to find out whether the marks at high school (children aged 12-16) were real. He interviews the teachers. Such an examination relies on the informants being correctly quoted. The conclusive “proof” was whether the mark NG (second least good out of five marks in Norwegian high school at that time)) in mathematics was real: *“The class contact teacher says that she got NG at the exam after he as examiner had to fit the exam for her.”* The statement from the psychological expert is nonsense. The mother had an ordinary written exam. This means that she did not have the right to an exam especially fitted for her. The mother did not get any special education, and that was never being

considered. The class contact teacher has denied that he has stated what the psychological expert quoted in his examination.

Tendentious reproductions and presentations

Tendentious reproductions is related to reproduction errors. The difference is that the reader quite unconsciously ignores that the presentation may be skew. Due to prejudice in the case, the psychological expert may seek what he/she expects to find. An expectation of what to find may steer the selection of information so that it becomes skew. This can happen for information from one's own examinations, like interviews and observations, or available information from other entities, like BUP and PPT.

The following example is from a psychological expert description of parents as incompetent as care persons for the child: *“Dr. Sara Larsen has experienced that the mother tends to become aggressive towards the children. When asked about the children’s development, she has focused on herself. Sara Larsen experiences the father as more participating and observing with the children. It seems like he does his best. In an interview with the author, the same doctor confirmed that she had found the mother aggressive towards the children, but she specifies that this happened at the doctor’s office, and that she had said the following to the psychological expert: The boy had fever and was tired. The mother said that she was sorry that she had little energy. The CPS case and examination had been demanding.”* The doctor does not agree with the presentation from the psychological expert. She had said that the father was more active playing with the children, but not that the mother was *“indifferent towards the children”*. The doctor makes it clear that *“the mother was present in other ways”*, and that the children’s development was not a topic, but that they talked about

different needs that the two children had. The doctor finds the psychological expert's reproduction is completely wrong regarding this point.

There is a tendency to describe parents in a negative way in almost all examinations. One example is the following statement: "*The father occupies the entire dining table with his hobby activities and it is quite untidy and somewhat dirty in the house.* The psychological expert observed this for a short time only (15 minutes, according to biological parents).

According to parents and neighbours, the children used to participate in the hobby activity – building of a model plane. The psychological expert had not examined this. I found linguistic discrimination in the description of the interaction between children and parents in nine examinations. One example is that biological parents do not interact with their children in an adequate way. There are many subtle ways to express this. The following example shows how linguistic manipulation can magnify differences and give a tendentious presentation: "*It was only when the father and the children were using Nabbi pearls that they sat together without any conflicts. The father and Kristian spent a lot of time blowing up balloons together. (...). Both Tea and Kristian have a serious need for stimuli, both linguistic and cognitive. The parents seem to give their children little stimuli. During the last contact meeting they were busy sawing wood for a long time. It seems like the children largely have to take the initiative to contact. The adults speak to them, but little with them.*"

Foster parents play with the children. Biological parents do not. They "do things". Sawing wood is found little stimulating. The psychologist has not evaluated different qualities in contact between children and adults. Stimuli encompasses more than direct verbal contact. It

should also be added that sawing wood demands communication and interaction, as father and son shared one saw.

Another example concerns use of observations to demonstrate that the parents do not manage drawing lines for the children: *“I experienced a considerable difference in Tore’s behaviour at home and in his foster home. Especially during his first visit at home, he was quite restless. He ran around and jumped in the chairs and the beds in the children room. He did not listen when talked to.*

This example concerns a contact situation where the children could spend time with their children after being separated from them for three months. Consequences of such a separation are not discussed. Neither the effect of the observer’s presence.

A recurring theme in the expert examinations is descriptions of differences between the parents’ and foster parents’ qualities as care persons. *“The parents do not seem to be able to create the kind of structure and predictability that the children need in order to develop optimally. The result is that they are more restless than they are in foster home.* The description is one-sided, favouring the foster parents. They have to be regarded as tendentious, as the examination does not consider that the children observed in the foster home after the observation together with biological parents and/or that the children had been separated from their parents for a long time. Eight examinations concluded that the parents were not good at drawing lines and providing stimuli. Hence, they were not competent to take care of their children.

Summary

The examination of use of methods in 37 cases about care takeover shows several kinds of methodological errors. Eighteen out of thirty-seven reports were based on the CPS's reports. These second hand sources were not subject to source criticism. The lack of methodical critical control of observations, tests and interpretation of statements, scrutinizing the reliability and validity, is a recurrent pattern in most of the examinations. This pattern is strikingly similar to what Bo Edvardsson found when he was a witness in a Norwegian CPS case, the Adele case", in 2001 (Borgarting High Court, a trial open to the public). At that occasion, he went through several psychological expert examinations from several psychologists affiliated to FOSAP. These reports had tragic consequences for a young mother who lost the care for her child on reasons that the ECHR in Strasbourg later found not to fulfil the legal requirements (Johansen vs. Norway). In Edvardssons criticism of the Norwegian psychological experts' examinations ("*Sammanfattning beträffande sakkunnigsyttrande med flera frågeställningar I fallet Adele Johansen, 23.05.00*"), the following words were part of his summary of what he found: "*in order to evaluate the mother's mental condition, one needs a conversation which encompasses the entire life situation. It cannot be seen that there has been such a conversation, and in any case there is no evaluation of her entire situation.*

In order to evaluate the need for treatment, one needs a conversation as mentioned above – nothing like that has been referred to.

It is said that the psychologist on one occasion observed the mother (and the son) at his office while talking to mother and son. This is a quite unnatural observation situation. No other

observation is referred to. Neither does the psychologist refer to any observation at his office. Neither anything said about observation methods, which would make it possible to check the reliability.

There are considerable deficiencies in referrals to, and criticism of, sources. As an example, information cannot be regarded as trustworthy when it is not linked to a controllable source. The mother is accused of not having been able to cooperate with the authorities, but the other possibility, that the authorities have not been able to cooperate with the mother, is not considered at all.”

Bo Edvardsson found similar conditions after an analysis of psychologist statements in Swedish CPS cases (“Misbruk av psykodynamisk teori” (Abuse of psychodynamic theory) in Lennart Hane’s book *Rättvisan och psykologin* (Justice and psychology), Contra Förlag, Stockholm) Edvardsson found that arbitrary opinionising, contradictions, unclear and imprecise use of language, erroneous and invalid use of theory, illogical reasoning and a lack of alternative hypotheses was the rule rather than the exception.

Part IV Psychological expert work, judicial security and human rights

Introduction

The following describes several connections between the CPS and psychological experts, emphasising professional power and judicial security.

The CPS's examinations and the role of psychological experts

The Police's task of investigation in criminal cases can remind one of the examination conducted by the CPS worker. Both shall find out what is the factual conditions: Whether the indicted person shall be convicted or acquitted, or whether the child shall be removed from its family. The role of the police investigator is thoroughly regulated in the Criminal Procedure Code (straffeprosessloven) and regulations: No one have the obligation to explain themselves to the police, they shall be told which rights they have, and the indicted person has the right to be assisted by a lawyer. The content of the interrogation is read through, and one can make corrections and clarifications, rectify misunderstandings etc.

This is different in CPS cases. There are no rules for how information shall be found. Each CPS worker is free to decide whether to have conversations with those implicated by phone or a meeting face to face. To a large extent, phone calls are made use of. The person with whom the CPS works talks, is not told about any rights or possible consequences of the case. In many cases, it is not even mentioned that the given information is written down and used in the case. What the case handler writes down, is not read to the other person, and the information is often written down without any control questions being asked. The information that the CPS worker gathers is written down in a way that seems to have a strong subjective tendency, marked by the views of the actual case handler.

The information is also to a large degree sorted according to what each case handler considers relevant. Even in the most simple criminal cases, like a car robbery or drunken driving, the guaranties for judicial security are far better than in CPS cases. There are many factors that indicate that the lack of judicial security furthers abuse in CPS cases in Norway and Sweden. Psychological expert have considerable discretion in interpreting the facts in the case.

Therefore, arguments without root in psychological science will influence the judgement. This is especially relevant for the scientific standard for the judgements – especially the use of methods and the demonstrated lack of source criticism. Psychological experts are central in Fylkesnemnda, as hired examiners of the parents' care properties. They are engaged by the CPS, which also determines the mandate for the examination. The CPS decides which psychological expert they will use.

Psychologists are often expert members of Fylkesnemnda. Psychological experts who arrive at conclusions contrary to the CPS's view, are seldom engaged by the CPS again. The parents in the 37 care takeover cases do not recognise themselves in the descriptions of themselves in the psychological experts' examinations. The judicial security seems to be on its weakest in Fylkesnemnda, due to the system in Fylkesnemnda, allowing for a wide use of written material, contrary to the system in the courts that is based on oral negotiations. Contrary to criminal and civil court cases, written "witness statements" can be used excessively. What the case handler writes down – however badly reproduced – often becomes an important proof in itself. The psychologist reports are usually in accordance with the CPS report and based on information from this report. Therefore, CPS cases often base on second, third and fourth hand information – and not seldom anonymous notifications. It is impossible to defend oneself against anonymous notifications, as one does not know who the source is, whether the source is reliable, whether the source has first-hand information or has just heard some rumours, if there are conflicts between the source and the parents, etc.

In a criminal case, it is illegal to use anonymous notifications in this way. In a circular, the Chief Prosecutor has strongly warned against the use of anonymous sources, and he mentions that these are often influenced by revenge, envy or malice, and that the most correct approach is assuming that it is so.

Psychological experts are appointed by the CPS, without preceding contact with the parents. Psychological experts affiliated with the CPS, or psychological experts enlisted in lists made by the CPS, are often used. These psychologists may be persons who depend economically on the CPS or are closely affiliated with the CPS. Parents, who refuse to cooperate with the CPS,

can be offered an appointed psychologist. A letter from Oslo municipality (The CPS in Old Oslo district, 4/4-2002) exemplifies that: *“Although the CPS has understood that you do not wish contact, we find it reasonable that you are given the opportunity to voice your opinion and be evaluated by an impartial source. The CPS will hereby offer you an examination related to your ability to provide care for Arne, conducted by a psychologist. It will be important that you find a psychologist who will feel safe. The CPS will cover the expenses. We also recommend that you are assisted by a lawyer who can maintain your rights”*

Arne’s father did not reply to the CPS’s offer. He received a new, and short, letter from the CPS on March 03 2002: *“At the meeting held on April 29th, it was agreed that the CPS sends a copy to psychologists who can examine your care abilities. The CPS will pay for this.”*

A search at Lovdata (Norwegian data base containing among other things laws, regulations, case law and decisions by several governmental entities) demonstrates that on the list of psychologists whom the CPS recommended to the father, no one had concluded against care takeover during the last two years.

Psychologists who have several psychological expert assignments in CPS cases often attain meetings with the CPS, without the private part present. Thereby, they get rather one-sided information. In this way, they enter the task with a negative view of the private party – before the examination has commenced. Psychological experts might thus build on a factual incorrect fundament.

In criminal cases and child custody cases, it is obvious that it is the court that appoints experts, when the parties have had the opportunity to speak. It would have caused an outcry if the police were in charge of unilaterally appointing experts because they possessed the economical means, or if the richer party to a child custody could decide whom should be appointed as an expert – because the other party does not possess the economical means. In CPS cases, it is the CPS that have the means and therefore often entitle itself to appoint psychological experts to its likings.

The CPS submits its recommendation, which often is a summary of negative information about the parents. In many instances, CPS workers utter themselves on some of the most difficult topics within medicine, psychology, pedagogics and law with a shallowness that every now and then is tantamount to unlimited.

The case handling in Fylkesnemnda is a procedural bastard. It may seem that one applies the rules from civil procedure law “as far as they are fit”. This means that the process in Fylkesnemnda varies among the 12 Fylkesnemnda offices – a procedural anarchy blending presentation of evidence, loud reading of documents that in reality are written pieces of opinion, written witness statements that are mixed with oral testimonies. Sometimes, Fylkesnemnda wants the psychological experts to be present, sometimes they do not. Sometimes, the CPS present new information, information that the CPS has possessed over time, without sharing this information in advance. One encounters written notifications from anonymous witnesses – that in many cases are nothing but gossip and rumours – presented as truths. Norwegian democratic and legal principles imply that it is the accusing party that bears the burden of evidence. It is therefore a misconduct to present undocumented allegations as truths when the accused party denies the allegations. It is not the accused party who shall prove his/her innocence, but the accusing party that has to prove his/her accusations.

The psychologists’ professional power

Professions do not exist independently of each other. They constitute a system. Within the system, areas of professional competence are continuously challenged and altered (Abbot 1988). The borders between the different professions’ jurisdiction are subject to an ever present competition among the professions and are decided by the actual work done by the professions, and the legitimacy this work has in society – in the laws, in the public and within the single working organisation. The system is also influenced by exterior forces. Different exterior changes may entail that tasks disappear or are altered, or that new tasks become available, and the professions and their jurisdictions are altered conforming with these changes (Abbott 1988:35). When new tasks are available, new jurisdictions may evolve as a result of government delegating responsibility (Ramsøy og Kjølørød 1986). Demand for

psychological expert assistance in CPS has extended psychological experts' jurisdiction. This also concurs with an increasing tendency in society to recommend professional assistance in solving intrapersonal problems. Within the CPS sector, one can regard the professionalising as an answer to a strong professional criticism of the CPS in media (Ericsson 1994, Falck 2000).

A fundamental purpose of the new CPS law was strengthening the CPS's legitimacy through strengthening the juridical and professional background for the decisions. Psychologists as psychological experts constituted an important contribution to achieving this. Based on formal guidelines authorized by the law, and the psychologists' professional competence, the psychologists' considerations of what is to the child's best, should secure correct decisions. Even though abstract psychological knowledge renders legitimacy to professionalism and psychological expert work, it is not given that the practical use of the professional discretion in psychological expert work is underpinned by professional knowledge only. Special traits of the decision process in the CPS makes it probable that the psychologists' judgement in the single case may be influenced by factors that have no legitimate function in their evaluations. Among other things, it has already been demonstrated that the Fylkesnemnda system gives the CPS a role in delivering premises for the mandate for psychological expert assignments.

Psychological experts who arrive at conclusions contrary to the CPS's view are seldom reengaged by the CPS. Furthermore, one may in case A in one municipality meet one psychologist as a psychological expert examiner. Then, the next week, the same psychologist is an associate judge in Fylkesnemnda, in a case to which the self-same municipality is a party.

Psychologists' evaluations are given considerable weight when they act as psychological experts in CPS cases. Their evaluations do often have pivotal influence on the outcome of the single decision. A smaller group of psychologists, especially psychologists within FOSAP (Forum for Psychological Experts) seem to have gained an ideological hegemony when it comes to the perspective on what can, and should, be defined as care failure. These psychologists seem to have obtained an autonomy as psychological experts. This implies the

freedom and independence to control the content of their own work. This freedom is being justified by their professional status. Their evaluations are steered by a kind of knowledge which differs from lay forms of thought and understanding. It is too esoteric and diffuse for the public to grasp or take part in. Nonetheless, the same psychological experts' reports display a recurring lack of critical methodology. Most of all, there are several errors that are caused by a lack of source scrutiny. In concrete cases, this has most probably determined the outcome in another direction than what a sound methodology would justify. Dawes (1994:139) states that a system for public authorising of psychologists does not guarantee professional quality. The reason is that there are no means for controlling that the applied theories and methods are scientific. The schooling that is required is not necessarily a schooling in something that is scientifically valid, or something that works, or something that is not detrimental. It is all about learning the opinions of someone with a high status in the field. Therefore, a system of public authorising most of all serves to protect the professions themselves, more than protecting the public, as it is claimed to do. The consequence is that one as an authorised psychologist poses as an "expert" in everything that is "psychology", and that this might strengthen one's failure to acknowledge and express what one does not know.

Robyn Dawes, book "House of Cards" (1994) contains a harsh criticism of the psychologists' mandate in society. This criticism is most of all directed towards psychologists' role as psychological experts in the court system. Dawes is of the opinion that the court system borrows the psychological experts' apparent legitimacy in order to render legitimacy to decisions. Dawes claims that authorities with a long clinical experience are false. He demonstrates that clinical professionals are unfit for understanding and predicting individuals' behaviour. Dawes refers to the discretionary evaluations of nearly 90 clinical psychologists, and finds an almost unambiguous tendency that mechanical procedures to combine information is superior to the psychologists' judgement. Dawes documents that long experience does not improve the quality of the judgement. He thinks that one reason for this is a lack of feedback on one's work, in the sense that it takes long time before one knows, for the example's sake, how good or bad the children's situation became over time.

Several conditions can explain how the psychologists' authority increased from the beginning of the nineties. Among these are: 1) A shift in focus on problems within the CPS, a shift in orientation from "external" to "internal" problems. Traditionally, the CPS field has been a practically oriented field of action and public management that has been concerned with social and material want. Consequently, it has been a field that has not been much based on theoretical knowledge. During the latest 20 – 30 years, we have witnessed a growth of "new" problems, as for example sexual abuse. The psychological want has gained more importance in CPS cases. Nevertheless, this development is clearly two-sided. Among today's CPS clients, one finds material problems and "*marginalising*" (NOU 2000:12). The problems that the CPS encounter, can be connected to structural conditions (Ericsson 1994). This is stressed, among other places, in the Befring committee's review of the CPS (NOU 2000:12).

According to the Befring committee, this is not mirrored in the CPS's models of understanding. The committee holds that this is all about a reluctancy towards admitting poverty problems in Norway. Such a reluctancy is easily combined with a psychologising and individually oriented perspective on children's problems (NOU 200:12:27).

Practical problem solving is still an important part of CPS work, but the need for special competence and theoretical knowledge has become more pronounced (Grinde 1993, NOU 1995:23).

(2) There has been a large increase in the number of trials in CPS cases since the early 80s. During the period 1970-1979, there were on average 190 cases nationally. In 1995 there were on average 190 cases nationally (Grinde 1996:26 and 2000). This increase has in turn contributed to an increase in the use of psychological experts within the CPS (Backe-Hansen and Øvereide 1999). There has been an equivalent increase in the use of experts in child custody cases. The increase in the number of divorces, broken cohabitant relations and a larger consciousness and will among fathers to take part in the care for children, also after a breakup, has most probably led to more numerous and more complicated custody cases (Backe-Hansen and Øvereide 1999).

(3) A new CPS law (1992) and the introduction of Fylkesnemnda as a new agency in charge of decisions in CPS cases can be viewed as an extension of the domain of authority for the academic professions, including jurists, doctors and psychologists. For the psychologists' part, the establishing of Fylkesnemnda as deciding agency has implied that they have been more directly involved in the decision process by taking part of the decision as expert members of Fylkesnemnda. Meanwhile, the use of psychological experts in the case preparation has increased after the new CPS law was implemented, which in turn has rendered the psychologists a large informal power in CPS cases (Backe-Hansen 1992 and 1994, Grinde 1997, Hassel 1997). One can conclude that psychologists have gained a cultural control within the CPS's domain.

Another area where psychologists have their societal licence extended is mental health care. A regulation of January 1st 2001 warranted by the Law on mental health care (July 1st 1999) authorises specialists in clinical psychology to be in charge of decisions warranted by that law. This means that psychologists now share a responsibility that hitherto has been doctors' (specialists in psychiatry) responsibility. This means that psychologists can be in charge of hospitalisations, voluntary and coercive, in mental institutions.

Psychologists are bearers of a professional subculture. Their self-esteem and identity is related to being able to exercise their profession according to professional standards within this subculture (Aubert 1976:293). As psychologists, they constitute a professional community. The establishing of Forum for Psychological Experts (FOSAP) in 1994 and authorising procedures as mentioned in part I is a good example. FOSAP psychologists possess a special role as psychological experts in CPS cases (and custody cases) and constitute one special subculture. Out of Norway's about 4000 practicing psychologists, about 100-150 are enlisted in the department's register of psychological experts in children and family cases. An example of a powerful group of psychologists is a group of psychologists within FOSAP consisting of the following 11 members: Elisabeth Backe-Hansen, Terje Galtung, Turid Vogt Grinde, Kjell Hagen, Karen Hassel, Otto Heramb, Arne Holtet, Katrin Koch, Fredrikke Lynum, Anne Poulsson and Knut Rønbeck. These 11 persons have authored a note addressed (Backe-Hansen 2002) to the department concerning "*The background for evaluation in serious CPS cases*". Among the group's conclusions, one can quote the following: "A too

heavy weight placed on the biological principle in the most serious cases? It is the group's opinion that the biological principle gains too much weight at the expense of the children's best in some of the most serious cases, contrary to the wordings in Law on the CPS § 4-1. We will therefore recommend that the legal possibility to derogate from the biological principle is made more pronounced in this section."

What is quoted above, contradicts what is stated in the legal preparation to the latest Norwegian CPS law from 1992: *"It is a fundamental principle in our society that the parents themselves take care of their children. Even though care failure on the part of the parents is demonstrated, maybe even serious problems, the clear main rule is that one shall primarily seek to remedy the problems by helping measures. Another main rule would constitute a radical break with current societal norms."* (NOU 1985:18:157).

Ot.prp. no. 44 (1991-92) is based on the thoughts expressed in the quote above, but continues emphasising: *"The committee wishes to stress that this by itself does not entail a lower priority given to children's interests and will remind of the strong ties that exist between children and parents"* (NOU 1985:18:41).

Legal security and human rights.

Torstein Eckhoff has given a concrete and good definition of the concept of legal security within public management: *"The individual shall be protected against abuse or arbitrariness from the authorities, and he/she shall have an opportunity to calculate his/her judicial position and defend his/her judicial interests. The goals of equality and justice are often included in the ideal of judicial security. In order to pursue these goals, there are certain demands to the material rules, and demands on the case handling."* (Eckhoff, 1966:86).

Siv Westerberg is a Swedish jurist and doctor specialising on medical-legal problems. When questioned about how she considers the judicial security in Norwegian and Swedish CPS, she replies as follows:

“One could maybe believe that I would say that when it comes to CPS cases, everything is better in Sweden. That would be far from the truth. The problems in Sweden and Norway, with the near total lack of judicial security for children and parents who are targeted by the CPS, are clearly the same in Sweden and Norway. I know that after a long cooperation with persons in Norway who fight against this lack of judicial security. I think it was only luck that a sensible police chief was in charge in Gothenburg, who decided to end the police chase of the 14 years old Norwegian girl. Even in Sweden, people have to flee the country to escape from the CPS, or the social service, as the corresponding authority is called in Sweden. I know cases where families have moved to the US, Germany and even the former Yugoslavia. They fled from Sweden to a country at war to protect their children from the CPS. Then the legal security has bad conditions.

I have the teenager C as a client. At the age of 15, she managed to hide for several months in Sweden after the social services had moved her from one institution or foster home to another for years. After C had been on the run for almost half a year and lost seven kilos of weight, the social services gave up and let her go back to her parents and start attending school again. A responsible child, daughter of responsible children. The cause behind the care takeover was, as in many other cases, false incest accusations against the father.

It is an unjust situation in a welfare country when people have to run away from the authorities.

We have to improve the judicial security.

How?

First, parents should be entitled to a lawyer and legal assistance at an earlier point of time. Already the first time that the CPS/social service contacts them. In addition, the parents and their lawyer should have just the same possibilities, as the CPS/social service to engage their own psychological experts, and these psychological experts should be paid by the legal assistance. Own psychological experts is important. The CPS/social services tries to “medicalise” this sector and often claim that children or parents are mentally disturbed when it comes to quite normal reactions to the targeting by the CPS. In the case of the teenager girl, who committed suicide, and which I have described above, the situation was the opposite. The CPS wrongly interpreted the girl’s symptoms as caused by conditions in her family home. This demonstrates how important it is that the parents are allowed to hire their own psychological experts. On the other side, I have personally almost exclusively bad experiences with the appointment of special spokespersons for the children. The majority of these “children’s lawyers” merely repeats everything that the CPS/social services say”.

Furthermore, we must bring to an end those huge economical compensations that foster parents and institutions get. When people are allowed to earn money on children, it will

usually lead to disaster for the child. Those few children who really need a foster home, should be placed in their near relatives' home and these relatives should by and large only get compensated for their expenses."

Sverre Kvilhaug has long experience as a lawyer in CPS cases. In Norway, he is considered as one of the most profiled critics of the role of psychological experts in CPS cases. Kvilhaug has published critical articles about this and related topics in press and magazines. One of the topics he is concerned with is what he speaks of as the psychologists' "change of hats" in CPS cases. As Kvilhaug sees it, this raises the question about whether there is a just legal process.

"The Human Right Convention article 6 demands that everyone is entitled to a just legal process. This also goes for CPS cases in Fylkesnemnda and the courts, regarding care takeover, transferring children back to their parents and contact. In these cases, the psychologists have a quite special role. They are paid by the CPS to give an expert examination of children, parents and the care situation. In addition, the same psychologists are appointed as expert members of Fylkesnemnda and the courts in order to take part in the decisions. In this way they change hats frequently. The extent and economic implications makes it reasonable to ask whether the psychologists' report and votes are influenced by their economic interest in securing new assignments by the CPS. Strangely enough, this issue does not seem to have bothered Fylkesnemnda, the courts or the department. In criminal cases, such a change of hats would not have been accepted and not even thought of."

Kvilhaug continues with an example:

“I will illustrate the extent: A psychologist in Nordfjordeid informed in 2001 that she had received about 40 cases as a paid psychological expert for the CPS and about 50 cases as an expert member of two different Fylkesnemnda offices. About one year later, she had eleven more assignments for the CPS and five for Fylkesnemnda. In addition, she had been an expert member of the court. Can we trust that a psychologist, which have so many assignments for the CPS as in this example, assignments of great economic importance for the psychologist, is willing and capable of giving the private party to a CPS case a professional and just treatment? Would not most of us tend to expect that such psychologists support the CPS in nearly 100 % of the cases, and is it not what these psychologists do? Does someone believe that a psychologist who votes against the CPS, has a fair chance to get missions from the CPS later?”

Kvilhaug suggests a measure to improve the private party’s judicial security: *“In order to give the private parties to a CPS case a chance to get a fair case, it is necessary to create a watertight wall between those psychologists who take assignments for the CPS and those who are expert members of Fylkesnemnda or the courts. The quarantine period should be at least ten years in both directions. The psychologists have to choose between taking assignments for the CPS or being expert members of Fylkesnemnda and the courts, and they should not be allowed to change their mind. In this way, it is possibly also a chance that the expert members of Fylkesnemnda and the courts act as real experts, something that they rarely do today. Then, maybe they will start considering the scientifically based fact that that there is a correlation between separation between children and parents and later physical and/or mental problems for the child, possibly when the child has reached adulthood. Fylkesnemnda also has got to start doing neutral evaluations when the municipality’s lawyer is not a*

psychologist that the leader of Fylkesnemnda frequently has as a colleague in Fylkesnemnda and may think of as a colleague even when he/she is engaged by the CPS”

In St.meld. (report to the parliament) no. 39 (1995-96) it is said on page 17, second column: *It is important to acknowledge that openness and a continuous focus on the CPS’s work is necessary in order to make sure that the CPS does not develop a culture that is in conflict with ordinary citizens’ values and view on justice.”*

In order to secure this, it is stated in article 10 in The Universal Declaration of Human Rights: *“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”*

Marianne Skånland, a critic of the CPS, has examined case law from the European Human Rights Court in Strasbourg. She found one sort of cases that involved Turkey and the Kurds, where the military was prosecuting authority. Turkey lost the case in ECHR each time the Kurds could demonstrate that there was a military person among the judges. The ECHR then found that the Turkish court did not fulfil the strict requirements of independent courts that exist in international law. There are several signs that Norwegian CPS cases represent a parallel. In CPS cases, one has a special court that in addition to a jurist and lay members also contains so-called expert members. The relevant question is whether these fulfil the requirement for independence that one finds in international law. Many of them work for the CPS and are close friends or colleagues of the CPS workers who function as prosecuting authority in this kind of cases.

In Norway, international law is implemented in the national laws. In order to secure a just case treatment for the citizens, it is stated in The Public Management Law (forvaltningsloven) § 6, second subsection:

“He shall also be regarded as partial when there exist other special circumstances that may weaken the confidence in his impartiality; among other things, one shall consider whether the decision in the case may cause a benefit, loss or burden of importance for him or someone to which he has got a close personal relationship.”

When confronted with the issues discussed above, politicians have in most cases reacted by ignoring parents’ rights, as they have regarded the expert judges as impartial representatives for the child. However, according to international law, it is not possible to restrict one person’s rights to the benefit of another. This is clearly seen from article 29 in The Universal Declaration of Human Rights and in article 3, 2nd subsection of the Convention of the Rights of the Child:

“States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”

In an appeal (lawyer Annette Lilleengen, lawyer firm Kvande et al, November 23 2003) to Supreme Court (case number for Hålogaland High Court: 03-00310 A/08) it is stated that the premises for the decision were based on false information: *“To a large extent, the decision consists of reproduction from the CPS’s documents and quotes from the CPS’s psychological expert and the psychological expert appointed by the court. During the main hearing in High Court, the appealing party highlighted documents and witnesses in order to present the correct information and presentation of the pre-history of the case. High Court has neglected this, and has clearly stated that the appealing party’s witnesses – twelve – lack problem understanding. When it comes to the psychological experts engaged by the private party, High*

Court writes that it has given little weight to their examinations. It is remarkable that High Court exclusively quotes negative descriptions given by the public party without mentioning the private party's counter arguments before the court concludes."

Witnesses from the local community (neighbours, teachers, employers) were treated as cases, as the court found that they lacked problem understanding. Statements from the witnesses were not discussed at all. Dag Hiåsen, leader of the Norwegian organisation Folkeaksjonen mot psykiaternes overgrep (FAMPO) comments the decision as follows: *During the period between Local Court and High Court handling of the case, Svanhild Jensen became employed at Gargo nursing home in her municipality. Her supervisors at this institution stated during the court negotiation in High Court that she (Svanhild) had demonstrated ability to take care of the sick and draw lines. She had showed these skills especially when working with the most demanding (suffering from Parkinson) patients). But witness statements from "cases" who show "lacking problem understanding" – have to be met by silence."*

Two High Court judges were partial. One of the expert judges was the head of the CPS in a municipality in the same county as the CPS that was a party to the case. The other partial judge was a High Court judge who was a member of the same tribunal as the CPS's appointed psychological expert the week in advance. This self-same judge had to consider serious accusations of professional incompetence towards this psychological expert.

Psychological experts as a guarantee for judicial security?

The purpose behind the Fylkesnemnda system was bringing other fields that law into care takeover cases and enlighten and clarify facts in the case. This examination has attempted to shed light on what functions psychological experts may have. A psychological expert shall be objective and neutral in his/her evaluations. Karin Hassel, associated the leading group within FOSAP, writes that the municipally appointed psychological expert should be viewed as an advisor to the municipality whose main mission is helping the CPS in its case examination (Hassel 1997:188). She continues writing that it is not the municipal psychological expert's mission to overrule the CPS's evaluations. Such an opinion might entail that the CPS only uses loyal psychological experts. The examination becomes commissioned. Critical

groups/organisations in Norway and Sweden hold the following opinion: The CPS wants its own psychologists – in order to secure the result they wish – and a smaller circle of psychologists are secured new assignments. The empirical material in this examination supports such allegations at several important points. This goes for the sample of examinations with conclusions that are the same as the CPS's conclusions – “commissioned”. It is problematic that psychologists can be both conduct examinations for the municipalities and be expert members of Fylkesnemnda. In respect to the same municipality, one psychologist can both conduct examinations in one case and be a decision maker in Fylkesnemnda in another. In this way, psychologist alternate between roles as judges and psychological experts. By searching at the Norwegian data base Lovdata, jurist Herman Berge found the following pattern with one of the 11 central FOSAP psychologists:

“When examining the 33 examinations at Lovdata, one finds no decisions where Poulsson has not concluded in favour of the agency that appointed her. One can therefore safely conclude that Poulsson consequently concludes in favour of the appointing agency's wishes and opinion. Thereby, Poulsson's work has – in my opinion – no value as professional material, and is – unfit, not to say detrimental – in CPS cases (Berge 2004).

The methodology, perhaps especially the lack of source criticism regarding the CPS's information is illustrating. The criminologist Dag Ellingsen found a resembling unsatisfactory methodology in forensic psychiatric examinations that were used to legitimise long term confinement of humans (Ellingsen 1985).

Findings from Lovdata and certain websites indicate that there are close ties between the CPS, psychological experts and the legal system. Some psychologists within FOSAP have economic interests in the CPS system. One prominent psychologist in Western Norway is both chairperson in CPS institutions and a member of workgroups within the CPS. This psychologist has had many expert assignments for both the CPS and the courts as examiner and expert member of the court. Out of the 21 psychologists who conducted examinations in the 37 care takeover cases, seven psychologists were tied to the “inner group of 11” within FOSAP. These seven psychologists were psychological experts in 18 cases. It turns out that

some psychological experts have their own websites. The following demonstrates the profile of one of the psychologists in the “inner group of 11 within FOSAP:

Many years of experience – from 1977 – of doing examinations and work with children and families.

- *Broad experience as a psychological expert for the courts in CPS and custody cases.*
- *Many assignments for municipal CPS offices doing psychological expert examinations in CPS cases.*
- *Extensive experience as an expert member of Fylkesnemnda (CPS cases) in three counties, since 1993*
- *Expert co-judge in both Local Court and High Court in a large number of cases, mainly CPS cases.” (Last time updated April 19th 2006 www.mamut.com/Holtet/).*

The psychologist milieus are small. Most of them know each other. In many cases, psychological experts are not external professionals, but part of a network with close ties to the CPS. The legal system supports this practice. It seems that there in many cases develops a “partnership of the elites” among psychological experts, CPS and courts. Such relations can influence psychologists’ methodology, not the least when it comes to the evaluation of so called authoritative sources. Information from public agencies is not necessarily factual in the sense that it is controlled by comparison with independent sources.

Summary

Human rights and the child protection services in Norway and Sweden. An analysis of the relationship between psychological expertise and the courts.

The study consists of an analysis of 37 expert opinions in child protection cases in Norway, 2000 - 2004, all of which recommend taking the children into care - a conclusion which was also the verdict of the Courts. Only five cases had

neglect/abuse as the reason for the report to the investigation.

18 of the 37 expert investigations which were built on reports from child welfare system were brought to decision by the committee for Social

Cases (“Fylkesnemnda for sosiale saker”): The psychological expertise employed lacked any method of critically assessing sources. Most of the information in their investigation was based on second hand sources which were not controlled against bias. Use of observations and tests lacked critical control of reliability, validity and ascertainable facts.

The testimony of laymen; family, friends and colleagues was stigmatized and overruled compared to that of the professionals (professional groups within and attached to the child protection services).

One cannot determine in what ways the investigations are and are not representative of the population of expert investigations in welfare cases resulting in the placing of children in foster homes and child welfare institutions.

However, the findings give important information about the premises on which the expert opinions were based and on the function of the court system, since 50 % of the psychologists functioning as experts in the cases concerned were linked to the child welfare in different ways. According to critics of the system in Sweden, the pattern in Sweden resembles the practice in Norway.

Appendix 1. Law on Child Protection Services (barnevernloven) – Chapter 4

Special measures.

§ 4-12. Decision to take over the care for a child.

A decision to take over the care for a child can be made

- a) If there are serious lacks in the day to day care that the child receives, or serious shortcomings with respect to the personal contact and security that the child needs after its age and level of development,
- b) If the parents do not make sure that a sick, disabled or especially needy child gets its needs for treatment and education satisfied,
- c) If the child is mistreated or subject to other kinds of serious abuse in its home, or
- d) If it is very likely that the child's health or development may be seriously damaged if it stays in its home because the parents cannot take care of the child.

A decision as mentioned in this section's first subsection can only be made if it is necessary in the child's situation. A decision to take over the care for the child can therefore not be made if one can create satisfactory conditions for the child by helping measures as mentioned in § 4-4 or measures as mentioned in § 4-10 or § 4-11.

A decision as mentioned in the first subsection shall be made by Fylkesnemnda, governed by the rules in chapter 7.

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