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Title **In the Best Interests of the Child: An Analysis of Judgements on Involuntary Adoption in the Norwegian Judicial System**

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**Abstract** Adoption without parental consent is one of the most invasive interventions a state can make into the private sphere. Such strong measures need to be justified in order to be perceived legitimate and acceptable in society. In 2015, the Norwegian Supreme Court decided in two cases regarding the termination of parental responsibility and adoption of a foster child without parental consent. The Supreme Courts final decision was to uphold the decision made in the first instance, for both cases. Some legal scholars have questioned the decisions by the Supreme Court (cf. Sandberg, 2016), as the discourses on the best interest of the child do not appear consistent concerning the weighting and understanding of the child's interests. Even though one can argue that precedents in the field of child protection do not have the same status as for other areas of the law due to the inherently discretionary nature of the best interest decisions, these decisions do nonetheless provide clarity of the law and give guidance for the discretionary decision-making in the system.

In this paper, we follow the two specific proceedings throughout the Norwegian judicial system and undertake an examination of the arguments in eight individual judgments on involuntary adoption: two decisions per decision-making body; the County Social Welfare Board (the Board); the District Court, the Appeal Court, and finally; the Supreme Court. The aim is to improve our understanding of how children's best interests are viewed and balanced against the rights of others, and to add to the knowledge on how the best interest of the child is reasoned and justified in cases on child welfare adoptions. Moreover, we explore the reasoning for when and how welfare state intervention is considered legitimate and necessary.

The 'best interests of the child' is a guiding principle when decisions are made by the Norwegian Child Welfare Act (1992), and is furthermore legally established through the UN's Convention on the Rights of the Child (1989). Moreover, the principle is set as one of four

cumulative conditions for an adoption consent to be given by the Board or the courts. The best interest principle is an inherently value-based and ambiguous one, and decision-makers have been given considerable leeway in exercising discretion in giving weight to differing arguments and considerations when making decisions according to the principle. Previous studies (Skivenes, 2010) have uncovered comprehensive variation in the Supreme Court's assessments of the child's best interest, and a critical analysis display weakness in the argumentation and justifications of the dissenting involuntary adoptions. Within the framework of rational discourse theory (Alexy, 1989; Habermas, 1996), we aim to identify and evaluate the arguments used by the decision-making bodies when reaching a decision in cases on involuntary adoption.

Our analysis show that the weighting of arguments and assessments on whether an adoption is considered "necessary" varies between cases across case proceedings as well as within cases across decision-making instances, indicating differing exercise of discretion between individual and groups of decision-makers. This is particularly apparent when the decision-makers assess arguments relating to the child's lack of emotional connection and relations to its birth parents, as well as the child's need for permanency. Such considerations are deemed both applicable and in favour of adoption by the courts throughout the proceedings in both cases, but the arguments have been weighted differently.