



English summary
of Fafo-rapport 2022:16

On hearing children in expulsion cases

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This report focuses on the right of children to be heard in expulsion cases. Expulsion is one of the government's tools for regulating and controlling the entry, exit and residence status of foreign nationals in Norway. The government can only expel a person when this is a necessary and proportionate reaction to a breach of the Norwegian Immigration Act or the Penal Code. When a child is involved in a case, they have a right to be heard in matters that concern them, and the immigration authorities are obligated to take the best interests of the child into consideration when determining whether it is proportionate to expel a person.

This report is the result of a project carried out by Fafo in collaboration with the lawyer, Cecilia Dinardi, on behalf of the Norwegian Directorate of Immigration (UDI). The aims of the project are to describe the legal framework for consulting children in expulsion cases, evaluate the current practices of the UDI and the Norwegian Immigration Appeals Board (UNE) in Norway, obtain knowledge about practices in other countries and make recommendations on how the Norwegian authorities can best facilitate the consultation of children in such cases.

Cecilia Dinardi has carried out a legal review of Norway's obligations under international law and how these are incorporated into current legislation, in order to clarify the current legal framework and identify how the children's right to be heard in expulsion cases can be strengthened. Fafo has examined current Norwegian practices for consulting children in such cases by reviewing a selection of cases that have been processed by the UDI and UNE, and by carrying out qualitative interviews with employees in immigration administration, lawyers who work with immigration cases and organisations that understand the situation of the families involved. Unfortunately, we were unsuccessful in recruiting affected children for interviews, partly because this target group is very difficult to contact and partly because those we asked declined. Fafo has also examined practices for consulting children in expulsion cases in Denmark, Finland and Sweden, using a strategic literature review and qualitative expert interviews.

The following is a summary of the main findings. We refer to more exhaustive discussions and recommendations for changes in the concluding chapter of the report.

The obligation to consult children in expulsion cases

The government has an obligation to protect children's rights. Children have a right to be heard in matters that affect them, and in expulsion cases involving one of the child's parents the interests and general situation of the child will

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potentially be affected to a large degree. The presentation of the legal aspects in the report indicates that children's right to be heard should be interpreted broadly and that the right applies to both verbal and non-verbal expression. The child's ability to express a view must be assessed, and the child must be given the opportunity to exert influence in matters that concern them. There must therefore be ample opportunity to ask the child if they want to exercise the right to be heard and, if so, how they would like to do this. This applies to both the UDI and UNE during case processing.

On the basis of the legal review, we see that children have a right to freely express their views in all matters that affect them, and that their views shall carry due weight in accordance with their age and level of maturity. The Committee on the Rights of the Child has specified that a child should be heard directly, providing that they want to express themselves and it is possible to do so. This counteracts the argument that it should be possible to safeguard the right to be heard on a general basis using written expression; the form of expression must be assessed individually in each case. The right to be heard is closely linked to the principle of the child's best interests, which should be weighted heavily when determining proportionality in expulsion cases. One of the aims of the principle is to adapt human rights to the child's needs, including needs they may have due to being more vulnerable than adults. In expulsion cases involving children, the immigration authorities should make an assessment of the child's best interests, paying special attention to the child's rights. In determining proportionality, the child's right to a family life will be a key element and the best interests of the child will be a fundamental consideration. The assessment of the child's best interests should be based on the child's individual needs and situation, and should be specific and oriented towards the future. Of particular relevance is how the child's rights and interests will be protected in relation to the possible outcomes of the case. The child's views will be relevant to this assessment, and consequently the child's right to be heard will have great potential significance in this context.

The need to strengthen children's right to be heard in laws and regulations

The legal review indicates that recognition of children's right to be heard in matters that affect them has been strengthened in Norwegian legislation, but that there is still a need to strengthen the legal status of children in expulsion cases. The way in which the current rules, regulations and guidelines address the right of children to be heard does not fully correspond with Norway's obligations under international law. For example, children's right to be heard directly by the decision-making authority in expulsion cases if they so desire has not been sufficiently incorporated into legislation. Currently, there are no rules that mention giving children ample opportunity to be asked if they want to exercise their right

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to be heard and, if so, how, and it is not clear how children are to be provided with information so that they can express themselves in an informed way. First and foremost, there is a need to strengthen children's right to be heard; subsequently, children must have the opportunity to be informed about the case in a proper manner and in keeping with their best interests.

For expulsion cases under the Norwegian Immigration Act, the best way to safeguard children's right to be heard is to make this a statutory right. It will strengthen children's right to be heard in expulsion cases if laws, regulations and guidelines explicitly state that children must be given the opportunity to express themselves directly to the decision-making authority if they so desire. This corresponds with Article 12 (1) of the UN Convention on the Rights of the Child (UNCRC) and the comments of the Committee on the Rights of the Child concerning the understanding of children's right to be heard.

Expulsion cases have deep implications for several of the fundamental rights of the children involved in a way that can be compared to cases under, for example, the Children Act, the Child Welfare Act and the Penal Code. Within these areas of law, children's right to be heard and children's rights in regard to proceedings are clearly established in law under special statutory provisions. The considerations that indicate that within these legal areas it is not considered sufficient to refer to the Public Administration Act also apply to children's right to be heard in expulsion cases under the Immigration Act. Consideration for the harmonisation of applicable laws across legal areas, as well as the protection of children's right to non-discrimination, lend support to the establishment of such legislation. Furthermore, consideration should be given to creating a specific provision in the Immigration Act regarding the consultation of children in expulsion cases.

Immigration administration rarely consults children directly

Our study shows that the UDI does not consult children directly in expulsion cases and that UNE only consults children directly and verbally in exceptional cases, either at an administrative interview or in a meeting of the Immigration Appeals Board. The extent to which children may express their views in writing or via other representatives also varies. In many cases, no information is provided regarding the children's view of the case, or whether they have been given the opportunity to express themselves. In some of these cases, the children are young, but this also occurs in cases where children are considered to be able to form their own views and express them.

We see that in some instances, children have consultations with other public agencies, such as child welfare services or the school health service, and that these agencies may be able to contribute by providing written information about the children's views to the immigration authorities. The extent to which children are given the opportunity to express themselves verbally in this way seems to

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depend primarily on their contact with different public agencies independent of the immigration authorities' work. Therefore, it cannot be said that children have equal access to this form of consultation. We also see that in some cases, children express themselves in writing directly to the immigration authorities, or the lawyer or the children's parents provide a written account of the children's views regarding the expulsion case.

When children express themselves in writing or via other services, the immigration authorities have little influence on how the consultation is conducted, what information the children receive about the case and which topics are addressed. There is also a great deal of variation concerning what such forms of consultation bring to light. While some people provide expansive descriptions of children's views, desires, feelings and interests in relation to a range of topics, others provide very limited information, briefly summed up in one or two sentences.

Barriers to direct consultation of children

Our study shows that the way in which work on expulsion cases is organised in the UDI and UNE represents a barrier to the direct consultation of children. The UDI only carries out case processing in writing, and work related to expulsion cases is not organised in a way that allows employees to carry out interviews with children. In exceptional cases, the police have carried out interviews on behalf of the UDI, but having the police act as a proxy seems to deter children who have otherwise expressed a desire to express themselves. We therefore consider the delegation of this task to the police to be a barrier to the direct consultation of children by the immigration authorities, rather than a way to facilitate access to direct consultation. UNE also carries out case processing primarily in writing, and direct consultation is only carried out in cases that are decided at meetings of the Immigration Appeals Board or, under exceptional circumstances, in case preparation interviews. Therefore, the immigration authorities do not give all children involved in expulsion cases the opportunity to express themselves in the way they desire.

The reasons why immigration authorities seldom consult children can also be traced back to the fact that children's right to express themselves freely is not sufficiently explicit in the immigration regulations and accompanying guidelines for the consultation of children in expulsion cases. But when we compare Norwegian practices with those in Denmark, Finland and Sweden, we find that realising general rights such as children's right to be heard in matters that affect them is a challenge throughout the entire Nordic region, even though children's rights are gradually being strengthened. It should be pointed out that it requires more than legislation to ensure that the authorities interpret, apply and realise children's rights in accordance with the intentions of the UNCRC. It requires facilitation

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and systems that can guide and ensure the practical realisation of children's theoretical rights.

The immigration authorities' practices for consulting children during case processing of expulsion decisions appears to be fairly similar across the Nordic countries, in the sense that children are rarely consulted verbally and directly. No special arrangements have been made to enable such consultation of children in relation to expulsion cases in any of the countries we have examined. Case processing is primarily carried out in writing, with the exception of court hearings in criminal cases in countries where the court also makes the expulsion decision.

Consulting children to help clarify the child's best interests

Consultation of children can provide a source of information to ascertain what effect the expulsion of a parent will have on the child. The employees at the UDI and UNE that we interviewed find that the current consultation practices contribute little in this respect, but point out that the information a child offers can help to provide insight into the situation for the child or the family that the immigration authorities should examine more closely. The fact that consultation of children at present is only considered slightly useful for shedding light on a case may be connected to the fact that children are very rarely consulted directly by the immigration authorities, and the amount of information provided by other forms of consultation varies greatly.

The immigration authorities' duty to investigate and provide information, in accordance with Section 17 of the Public Administration Act, indicates that the direct consultation of children or the use of a special spokesperson to represent them should be facilitated to a greater extent. More extensive use of verbal consultations conducted by people with expertise in the areas of interviewing children and expulsion cases would help enable children to better express themselves in ways that provide relevant and useful information for assessing what is in the child's best interest in expulsion cases.

However, consultations of children are not a substitute for the professional assessment of the potential consequences of an expulsion case for an individual child. The assessment of consequences for children is currently a weak point in case processing. The immigration authorities do not have the option to appoint a specialist to assess key factors such as the child's vulnerability, the child's parental attachment and the ability of the parents to care for the child. This stands in strong contrast to the expectations and options that exist for assessment in other case processing areas in which decisions may have a similar impact on a child's life, such as child welfare and criminal cases.

In our review, we see that the degree to which such factors are elucidated by expert authorities depends on which other public agencies a family is in contact

with, and whether the foreign national/lawyer helps inform the case by forwarding written documentation from such agencies. This means, for example, that some children are separated from their parents on the basis of a well-researched case, while other children experience the same consequences without such a thorough assessment.

In other countries where courts determine expulsion cases, there is greater recourse to engage others to assess the consequences for children than is the case for the Norwegian immigration authorities. In Sweden, for example, the courts can request that social services assess a child's need to have contact with a foreign national parent, what the contact between child and parent has been like and how the child may be affected if the foreign national is expelled. However, we do not know how often this is carried out in practice.

How best to facilitate the consultation of children

There is broad agreement that children are vulnerable when they are in a situation where their right to be heard may be exercised. Therefore, it is important that the consultation is carried out in an accommodating and child-friendly way that protects the children as much as possible, for example by helping them to understand what the hearing is about and that it is not the comments of the child that decide the case.

Children's right to be heard can be practised in many ways: in writing, verbally, directly and indirectly. How the individual child's right is to be practised should be based on a specific assessment in each case, and should take the child's wishes into consideration. When children want to exercise this right, it is important that they are given the opportunity to give informed and relevant responses to questions that are of significance for the expulsion case. This means that they will require some guidance from an adult with sufficient insight into the expulsion case to be able to help them. Without guidance, the possibility that a child's comments can have a real bearing on the case is diminished, and a consultation under these circumstances does not serve the purpose of children having this independent right to the same extent.

In order for children to have a real opportunity to influence the case through their comments, it would be more effective if the immigration authorities were to play a larger role in the consultation of children. Consultations of children under the auspices of the immigration authorities would also provide a better foundation for allowing children to help elucidate the case through their comments. This may involve offering to hold a consultation with a person who has the necessary expertise in immigration law and interviewing children. It may also involve providing more guidance when children want to comment indirectly – via other people or in writing. Such guidance should preferably be adapted to the individual case. The information that the immigration authorities currently pro-

vide concerning children's right to be heard is fairly general and says little about the topics that may be relevant for the individual child to comment on.

Our study shows that it is important that the immigration authorities themselves attempt to consult all involved children who want to express themselves directly and indirectly to the UDI and UNE. The opportunity to do this should not be limited by any doubts the immigration authorities may have about the outcome of the case or whether the child will be able to help solve the case. The immigration authorities already possess a great deal of expertise in dealing with children, and the board leaders in UNE and the case officers at the UDI who work with asylum cases are trained in interviewing children. This expertise is highly transferable to case processing in expulsion cases.

Good alternative measures could include establishing a spokesperson scheme for children involved in cases under the Immigration Act, using the spokesperson scheme that already exists throughout the country in relation to this target group, or for the immigration authorities to establish their own system to allow children to be heard by an external actor. Irrespective of who it is that consults children in expulsion cases, they should have expertise in both immigration matters and interviewing children. The immigration authorities should draw up clear guidelines regarding how consultations of children by a third party should be conducted, and how the consultation should be further communicated to the immigration authorities. The police should no longer be used to consult children in expulsion cases, as this may prevent the child from daring to exercise their right to be heard.