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The Rights of Children Placed in Out-of-Home Care

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1 Introduction

The aim of this chapter is to shed light on how children's rights in out-of-home care are met, exemplified through a study on 11- to 17-year-olds living in out-of-home care. For practical reasons the group is labelled 'young people' throughout the chapter.

Being placed in out-of-home care interferes with fundamental elements of a young person's life—relationship to parents, peers, siblings, as well as with schooling, leisure, health, and educational planning. On a more general level, placement of young people by the child protection services (CPS) interferes with the development of a young person's identity.

According to the Convention on the Rights of the Child (CRC), any child must be credited certain rights, whether in care or not. Furthermore, the child is entitled to protection and a secure base for development. But

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is it at all possible to implement the intentions of the CRC, given the structural conditions of public care? In this chapter, the implementation of CRC in everyday life in care will be exemplified in the context of unique data from a study of young people in out-of-home care (Lausten and Jørgensen 2017; Ottosen et al. 2015). According to this study, young people in care, on average, feel loved by the parents they are removed from. A great many of them also feel that they are placed with the right foster family or at the right institution¹—the two main archetypes of placement milieus in many welfare states.

In general, young people placed in residential care often display more serious problems than those referred to foster care, which is why they are referred to professional care in institutions. However, Danish data finds serious challenges since the experiences of young people in residential homes and group care homes differ negatively from those in foster care. Significantly more often, they do not feel heard, do not feel safe where they are living, and do not feel loved by the adults around them to the same extent as do other young people in care. Last, but not least, only a third consider their residential home a very good place to grow up. To what extent are these findings in accordance with the intentions of providing children with rights through the CRC? In this chapter, Denmark serves as an example of a probably more general welfare state challenge in child protection, rather than a specific country with a specific problem to be studied.

Both from a rights perspective and a social investment perspective, it is questionable whether the relatively low level of well-being and satisfaction is acceptable. In most Western countries, 24-hour care in residential and group care homes is very costly, which of course renders expectations of high-quality interventions, with a high degree of user satisfaction, and with positive developmental perspectives. It is well documented in research that growing up in out-of-home care is itself a risk factor. Young adults who were in care earlier in life are significantly worse off than other young adults who had similar social problems in childhood but who did not enter care (Backe-Hansen et al. 2014; Egelund and Hestbæk 2003; Hestbæk and Henze-Pedersen 2017; Olsen et al. 2011).

Thus, research provides evidence that raising discussions on how we can improve residential 24-hour care for young people from a rights-based perspective is important.

2 Background: The Danish Out-of-Home Care Landscape

The share of children in out-of-home care in Denmark has during the last four decades been close to around 1 per cent of the 0- to 17-year-old child population, with a slightly downward trend in the past few years (0.917 per cent at the end of 2016). During the same decades, there has been a significant increase in the use of preventive measures, reflecting a slowly but steadily changing intervention prioritization. Research evidence on the importance of family-like settings on the one hand, and heavy budget cuts on the other hand has encouraged local governments to limit the number of children in residential care. Therefore, in line with international trends, foster care now plays a dominant role in the out-of-home care landscape, while several residential homes have been shut down due to decreasing demand. Ten years ago, 47 per cent of all children 0 to 17 years old in care were placed in, respectively, foster care and residential settings. Today, foster care represents more than 65 per cent of all children 0 to 17 years old in care, mirrored by a corresponding decrease in residential care.

During the same period of time, child protection social work in Denmark has faced large reforms (Hestbæk 2011). From an overall perspective, these reforms have quite a few aspirations in common with the CRC. First of all, there has been a predominant focus on *continuity for the child*, with a stronger child protection perspective. The parents' right to take home a child placed with consent has been restricted. The local government may decide that a child in foster care must stay in the foster family for up to three years—or for the entire adolescence, if the child has developed a close attachment to a foster family—without the consent of the parents, even if the criteria for using forcible measures are not fulfilled (Karmsteen et al. 2018).² Another focal point in the latest child protection reforms is the aim of a stronger involvement of the child and the parents. Young people are a party to their own case from age 15. Furthermore, they must be heard as early as possible, but at a minimum from the age of 12.

3 The CRC as a Standard

The CRC has not been fully incorporated as Danish law. However, children's rights and the child's perspective were strengthened significantly when the provision from the CRC on *the best interests of the child* was incorporated in the Consolidation Act on Social Services in 2001 (Hestbæk 2011). The concept of 'the best interests of the child' is pretty abstract, however, and the political discourses in Denmark mainly focused on *continuity* as mentioned above, on the *participation* of children and young people, and on the *involvement* of the child's close network (Hestbæk et al. 2006). The overall aim of safeguarding the well-being, health, and development of the child or young person was not that visible in Denmark. The incorporation of the Convention is done with a varying focus and to a varying degree across countries, and Denmark is no exception to that.

Articles 3 and 6 in the CRC establish the fundamental requirement for protection and development, framed in, for example, the principles governing the best interests of the child, the overall aim of protection and well-being, and that institutions responsible for the care of children must meet certain standards for development. In this chapter I will restrict the focus to five articles of relevance to young people in out-of-home care (Articles 12, 19, 20, 25, and 27) listed in Table 7.1.

The billion-dollar question is to what extent governments succeed in establishing conditions for children and young people in care that, from an overall perspective, seem to meet these CRC's requirements. To shed light on this, we will explore a study in the next section that has collected a huge amount of data in this field, discussing the five articles with this project as our context.

4 Growing Up in Out-of-Home Care: Methods and Data

The analysis will mainly rely on data of children and young people in publicly subsidized out-of-home care in Denmark, yielding a huge amount of survey data, giving a unique opportunity for insight into a

Table 7.1 CRC articles and out-of-home care

Articles from the UN CRC of relevance to problems in out-of-home care targeted in this chapter	
Article	Main content
12	States Parties shall assure the child's right to express his or her own views freely. The child's views must be given due weight in accordance with the age and maturity of the child. The child shall be heard in any, for example, judicial and administrative proceedings affecting the child.
19	States Parties shall take all appropriate measures to protect the child from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse, no matter who takes care of the child.
20	A child deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. States Parties shall ensure alternative care.
25	The child placed for the purposes of care has the right to protection, treatment, and to periodic review of the treatment and all other circumstances relevant to the placement.
27	The child has the right to a standard of living ensuring adequate for the child's physical, mental, spiritual, moral, and social development.

field with scarce evidence. It is a plausible hypothesis that the study mirrors dilemmas and challenges of relevance to many countries.

The TABU study³ was conducted among young people placed in out-of-home care. The respondents' age span (11, 13, 15 and 17 years) implies that they should obviously have been included considerably in the decision on where to live while in care, in the organization of their everyday life and in other important aspects. In 2014 and 2016, more than half of young people 11 to 17 years old in out-of-home care (a sample of *c.*2500 out of a population on 4600 young people) were invited to take part in the nationwide survey. Children 11 and 13 years old were interviewed personally in their care facility by a trained interviewer. Young people 15 and 17 years old were invited to participate in a web-based survey. In case they did not respond, they were contacted again and offered a face-to-face interview, which was accepted by a third of the eldest informants (Lausten and Jørgensen 2017; Ottosen et al. 2015).

The questionnaire was pretty long (interviews lasted about 45 minutes) and was centred around everyday life in the care facility, well-being, health and leisure, contact with family, network and peers, schooling, risk behaviour and delinquency, and the involvement of the young people themselves.

5 Rights of Young People in Out-of-Home Care

In the following sections, the CRC articles in Table 7.1 will be used as the basis for a discussion of data about the living conditions of young people in out-of-home care, in order to shed light on the extent to which the CRC's aspirations seem to be realized.

5.1 Participation: Giving the Child's Views 'Due Weight'

CRC Article 12 describes the child's right to express his or her views freely, and that the views of the child *must* be given so-called 'due weight' in accordance with his or her age and maturity. Furthermore, in judicial or administrative proceedings affecting the child, the child must be provided the opportunity to be heard.

As mentioned, the participation of children and parents has been a specific aim in several Danish child protection reforms. The Consolidation Act on Social Services of 2017 (CASS) states that the child or young person must always be involved adequately in accordance with age and maturity (§ 46.3). Before any decision of importance to the child, the caseworker must talk closely with the child or young person and explain what is going to happen, facilitating a dialogue about his or her opinion on the issue as a matter of professional practice (CASS § 48).

Does this legal demand for a dialogue with the child ensure that the child's view is given due weight as prescribed by the CRC? When we ask

young people in out-of-home care to what extent they have been involved, the results are not overwhelmingly positive. Regarding the decision on where to live when placed in out-of-home care, only around *a third* (35 per cent) felt that they were consulted. The majority (55 per cent) did not feel involved or consulted. However, the older they were, the more involvement they experienced, which is a common finding in this kind of study. Even among young people placed during the last year, whom you might expect to remember the level of involvement rather precisely, less than 60 per cent felt involved in the decision (Lausten and Jørgensen 2017).

A report based on qualitative interviews with impartial assessors involved in cases with children being placed in care found that the child's perspective was given far too little attention (Child Helpline 2017). However, it is interesting to note that, when social workers were asked the reverse question in another study, more than 90 per cent found that they *did actually involve* the child in the hearing process following the decision on out-of-home care. And 80 per cent found that they talked with children across all age groups specifically about the placement. Only for a very limited number of cases was this talk not obtainable due to, for example, the age of the child or severe disability (Christoffersen et al. 2005). It is plausible to hypothesize that *both* perspectives are true. In most cases, a representative from the local authorities *has actually talked* with the child. And in most cases, the child or young person does not experience this as involvement or participation—an unsolved paradox.

5.2 Protection from, for example, Violence, Abuse, Neglect

The state must take all appropriate legislative, administrative, social and educational measures to protect the child against all forms of physical and mental violent behaviour (cf. Article 19). Further, a child that cannot remain at home shall be entitled to special protection and alternative, suitable care (Article 20). While Article 19 is mainly directed towards

violence, abuse and neglect at home, in the present context we examine protection whenever young persons are in custody of child protection authorities.

On average, 80 per cent of the 11 to 17 year olds in care feel safe where they are living. However, the differences depending on type of care are obvious. More than 50 per cent of the young people in residential care agree fully on feeling safe—for young people in foster care, it is almost 95 per cent (Ottosen et al. 2015). Conversely, around 10 per cent of young people in residential care do not at all feel safe where they live. This is only true for 1 per cent in foster care. The results about foster care are very positive—but we are left with a challenge concerning safety when in residential care, where the most vulnerable young people live.

The young people were also asked about whether they have experienced any kind of violation from peers or adults while in care. In general, the prevalence of violence is low. Almost 90 per cent have never experienced any kind of violence from peers where they live. While about 1 per cent in foster care have been exposed to violence or sexual assaults from peers one or more times while in care, this is true for 12 per cent of the youngsters in residential settings. If we look at violence from adults, we find a somewhat lower level. In total, 7 per cent have experienced some form of violence exerted by adults, where the young person lives. This accounts for more than 13 per cent of the youngsters in residential care and for 3 per cent of those in foster care. However, data does not allow us to distinguish between inappropriate violent behaviour from adults on one hand, and what the young person may experience as violence, but which—from a professional point of view—might also reflect a need to protect either the young person or his or her surroundings on the other hand.

All in all, it seems that we face a challenge of how to make residential care a safe place to live for young people placed in these types of caring milieus. It is quite a *paradox* that public, strictly professionalized institutions, with regular inspections, that work *in loco parentis* in order to provide the most vulnerable young people a safe and sound environment for upbringing, in some cases do not succeed in fostering basic security for all residents.

5.3 Risk Factors Characterizing Young People in Care

Articles 25 and 27 both touch upon the overall requirements for high living standards that are adequate for physical, mental, spiritual, moral and social development. From former research we know that young people who have been placed in out-of-home care differ from other young people as concerns health and risk behaviour (Hestbæk and Henze-Pedersen 2017). As is evident from Table 7.2, young people 15/18 years old in care are significantly more often exposed to risk indicators. While 54 per cent of the young people in care had had sexual intercourse at the age of 15, this is true for 31 per cent of other 15 year olds. The relatively early sexual debut is reflected in a significantly higher level of abortions (18 per cent of 18-year-old women previously in care have had abortions, compared to 4 per cent in general).

Further, 39 per cent of young people with out-of-home care experiences had tried hashish, compared to 12 per cent in general, and 39 per cent of the young people in care had been involved in different types of delinquent behaviour, which is true for 10 per cent of 15 year olds in general.

Another risk indicator concerns the extent to which young people in care have been exposed to rape. This applied to 34 per cent of the young people interviewed (mostly young women), compared to only 6 per cent of young persons in general. Lastly, it is sad to note that *more than every*

Table 7.2 Risk indicators in out-of-home care

Risk indicators with 15/18 years old, in out-of-home care and never in care (percentage)		
Indicator of health and risk behaviour	Teenagers in care	Teenagers never in care
Sexual intercourse (15 years old)	54	31
Had an abortion (18 years old)	18	4
Tried hashish (15 years old)	39	12
Delinquency (15 years old)	39	10
Exposed to rape (18 years old)	34	6
Tried to commit suicide (18 years old)	28	5

Sources: Lausten et al. (2013), Olsen and Lausten (2017), Ottosen et al. (2015)

fourth young person (28 per cent) previously in care at the age of 18 had tried to commit suicide. Suicidal behaviour accounts for 5 per cent of other youngsters at the age of 18. Young people who have primarily been placed in residential care have an even higher rate of suicide attempts (c.45 per cent) than those with mainly foster care experiences (18–26 per cent; cf. Olsen and Lausten 2017).

We know that children and young people in residential care, on average, belong to the most vulnerable groups in the youth population, having been exposed to intensive risk factors during adolescence and exerting predominant risk behaviour themselves—which is part of the reasons for being in residential care. But even so the data might direct our attention towards how we can develop caring environments that both compensate the young person for consequences of insufficient or harmful care during his or her upbringing, and simultaneously constitute protective living conditions that are ‘adequate for the child’s physical, mental, spiritual, moral and social development’, as mentioned in Article 27.

5.4 Everyday Life in Care and Life Satisfaction

While Sects. 5.1 and 5.2 focused on the right to participation and the right to protection, this section concerns the right to a development-oriented living standard. Here we will discuss the factors related to young persons’ rights in everyday life when placed in out-of-home care. The young persons were posed questions that touch upon this aspect in a wider perspective.

Regarding the overall satisfaction with the care home where they are living, almost two thirds consider it to be a very good place to live. However, the discrepancy between foster care and residential care is striking. While only 34 per cent of the young people in institutions agree that it is a good place to live, this applies to 77 per cent in foster care. Some 40 per cent of the young people in residential care consider the place where they live to be only tolerable or even not so good. Are these figures inevitable due to structural barriers, or is it possible to achieve positive changes?

The same trend can be seen when we look at freedom to decide. Almost two thirds (62 per cent) feel free to decide how to live their life. While 70

per cent of the young people in foster care agree, the same pertains to 51 per cent in residential care, and, conversely, 24 per cent in residential care disagree or disagree fully.

One of the basic conditions for healthy development is to be loved—that a child or young person actively experiences being loved. As mentioned initially, almost 90 per cent of the young persons in out-of-home care always or often feel loved by the foster parents or by the professionals or in the residential unit. For young people in foster care, as many as 95 per cent always or often feel loved by the foster family, while 72 per cent of the young people in institutions feel loved. On the one hand, there is quite a difference between the two groups. On the other hand, is this what is realistic to expect given the group of very vulnerable young persons and given the conditions of residential care?

In this respect, it is also very interesting to note that more than 90 per cent of all young persons in care feel loved by their parents no matter the problems they have been exposed to (Ottofen et al. 2015). This finding underlines the importance of supporting a continuous relationship between young people in care and their parents, as is also one of the aims of the CRC (Article 9).

The last statement from the Danish study to be included here is a question designed to measure overall life satisfaction on a scale from 0 to 10. On average, more than half of the young people 11 to 17 years old in care (53 per cent) answered in the range 8–10, interpreted as a high life satisfaction score. This is true for 37 per cent of the young persons in residential care and 64 per cent of the young people in foster care—almost twice the rate.

It is also interesting to look at the lower part of the scale. The amount of young people with very low life satisfaction (0–3) is three times higher in residential care (15 per cent) than in foster care (5 per cent; cf. Table 7.3). Even though the figures for the most negative scores are relatively low, it is sad to conclude that 15 per cent of the participants in the study of all young people in residential care consider their life satisfaction that low. When CRC recommends states to strive for high living standards and environments that should create adequate conditions for the child's physical, mental, spiritual, moral and social development, based on the findings in Table 7.3 we have to confess that there is still quite a potential for improvement. In this regard it is important to mention that

Table 7.3 Satisfaction with life in out-of-home care

How satisfied are you with your life on a scale from 0–10? (0 expresses the worst life possible, 10 the best life possible)			
	Foster care	Institution	Total
Low score (0–3)	5	15	8
Medium score (4–7)	32	49	39
High score (8–10)	64	37	53
Total	101	101	100

Source: TABU study (Ottosen et al. 2015)

CRC signals an implicit priority to foster care as the first-mentioned alternative to growing up in the family environment, while residential care is mentioned as the last alternative: ‘or if necessary placement in suitable institutions for the care of children’ (Article 20).

6 Challenges in Measuring CRC Rights Enforcement

From a rights-based perspective, the analysis gives rise to reflections about to what extent we provide satisfactory conditions for adolescents in publicly financed residential care. And we are left with many questions, of which two will be discussed here: First, from a methodological perspective is it at all possible to measure quality of life in out-of-home care in the context of CRC through surveys? Second, how can we, from a rights-based perspective, improve processes around care and life satisfaction in residential 24-hour care?

6.1 Measuring Life Satisfaction and Implementation of Rights in Out-of-Home Care

Acknowledging the quite critical views on residential out-of-home care revealed in this chapter, it is interesting to question to what extent it is possible to examine, how basic rights are met in care through standardized survey questions.

First, it is not possible to establish an average cut-off, a simple measure or threshold, distinguishing satisfactory rights-based conditions from unsatisfactory conditions. Most of the figures presented in this chapter may be subject to discretion and discussion, while only a few results point directly to an acceptable versus an unacceptable level of rights. For example, we find a surprisingly large group of young people who do not feel involved in the process when entering care. This is even true among 60 per cent of those who had entered care within the last year. We do not need academic analyses to conclude that this is unacceptable and not at all in alignment with the intentions of participation in the CRC, and that this result calls for action. Munro suggests (see Munro and Turnell 2018: Chap. 5 in this book) that we develop the processes around child protection enabling a better and 'deeper' involvement of young people on young people's grounds.

Second, we must acknowledge that it is not reasonable to strive for 100 per cent 'consumer satisfaction' with young people, neither in residential care nor in families in general. This is partly because young people in care come from highly disadvantaged backgrounds that leave mental scars that may not disappear fully, even after long-term placement, and partly because we know that teenagers in general become more and more critical as they come of age, being in care or not. The older the teenagers, the more they dislike their everyday life, the more critical they are of their surroundings—parents and carers included—and the lower they rate their health, life satisfaction and so on. But how do we then set a threshold for adequate satisfaction with rights-based conditions when living in out-of-home care?

A basic methodological reflection concerns what kind of knowledge we may expect to find when using standardized survey questions to shed light on complex conditions, such as life satisfaction or the feeling of being loved. The survey data used for this analysis are of a high quality and collected by professional interviewers among a relatively large sample. However, as any survey data the data used here lack the more complex narratives behind the simplified figures. What do young persons mean when they answer that they have been subject to violations from peers? What made them feel uninvolved, when most social workers find

that they always talk with a child before deciding on care? We cannot answer these questions precisely from survey data; in these matters qualitative in-depth studies could yield a significant contribution.

Finally we acknowledge that the data used for analysis in this chapter are generated in a Danish context. It is plausible to assume that some of the problems revealed also are relevant in residential settings in other welfare states. However, the data only allows for Danish generalizations.

6.2 Pathways for Strengthening the Rights Perspective

Research shows unequivocally that, on average, growing up in care itself reinforces the stigmatizing process that children and young people from the most vulnerable families are exposed to throughout adolescence. Therefore, during the last decades, great effort has been directed towards how to compensate disadvantaged children better and how to develop and target interventions in order to achieve better outcomes. However, we still lack evidence. In many—perhaps most—respects, we cannot point out exactly which intervention and which type of care will contribute to which effects for a given child.

The analysis in this chapter reveals quite a few discouraging results as concerns the rights of young people in care, the processes around care and their self-reported satisfaction in selected domains. Also, some young people in residential care seem to live with ‘impaired’ life conditions. It seems quite *paradoxical* that professional residential units acting *in loco parentis*, and aiming at providing the most vulnerable young people with a protective and sound environment for upbringing, do not succeed in implementing basic rights.

An important question is *why* the living conditions and life satisfaction of young people in care in the areas mentioned appear so relatively poor. Would rights be improved if we transformed all placements into foster care? Most likely it would be an inadequate—perhaps even a detrimental—strategy to let foster care fully replace residential units for the eldest teenagers and the most complex cases. There is an obvious need for the competences and overall treatment facilities in residential settings (Whittaker et al. 2016).

However, the analysis indicates that the rights perspective may not be given adequate priority, neither in the child protection agencies, nor in the residential milieu. From a rights-based perspective it is necessary to examine the most important barriers and potentials. Which steps could be taken and which procedures and specific criteria might contribute significantly to establish a stronger environment that, to a greater extent, will support the rights of young people, especially in residential care?

7 Conclusion

Participation seems to be a field where there is considerable room for improvement. Listening to the messages from this chapter, we first and foremost need to establish procedures and methods that put more emphasis on involving children and young people and giving their voices due weight in accordance with age and maturity. This is true for both the social work processes, but also for everyday life in residential care.

As concerns the *social work processes*, central organizational changes might be needed. Municipal autonomy leaves room for large variations in services. A Danish study found that 45 per cent of the local authorities did not have any systematic guidelines for how to involve children and young people. Further, the local governments were not that concerned about it, and only a few local Governments had regular reports about the statutory participation of children (Hestbæk et al. 2006). Thus, an example of a rights-based request is that there are adequate mandatory processes for participation and the monitoring hereof, supervised by management, and that social workers in the child protection agencies become even more skilled in practicing involvement, performing more responsive processes.

Involvement is also crucial in *everyday life in residential settings*. Despite the fact that most institutions have skilled staff, such as social pedagogues and psychologists, many of the young people in residential care do not feel adequately seen, heard and respected. Through data we get an impression that rights are not always adequately respected, and quite a few do not develop their full potential. Presumably, changes require both development of pedagogical and treatment methods; it requires training and

supervision of professionals; and it requires a striving for new relations between carers and the young people being cared for, characterized by the involvement, protection and personal development and integrity of the young individual.

Notes

1. 'Institution' includes residential homes, residential treatment facilities, group care homes and other types of 24-hour residential care. Foster care includes common foster care, kinship care, network care etc.
2. We know from research that the implementation of these measures is pretty rare; however, see Baviskar et al. (2016) and Karmsteen et al. (2018).
3. TABU is an acronym for Trivsel hos Anbragte Børn og Unge, meaning the well-being of children and young people in out-of-home care. The study was conducted by VIVE, the Danish National Centre for Welfare Research and Analysis, and financed by the Ministry of Children and Social Affairs.

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