TAKING A CHILD INTO CARE
Research of decision making in administrative courts

This research is an empirical study of how administrative courts function in the field of child protection. The study is based on different research evidence. All administrative courts in Finland were asked for documentary material of all care orders during the time period of 15.2.–14.5.2010. Seven oral hearings, in cases where a child had been taken into care, were observed in administrative courts. In addition, 41 experts in the field of administrative procedure and child welfare were surveyed. Also four families, in which the child had been taken into care, were surveyed. By using different research evidence, the study aims to create a comprehensive picture of decision making in care orders in administrative courts.

1 Duty to take a child into care and provide substitute care

Taking a child into care is always the last resort in child protection. Its aim is to change the child's and his or her family's situation for the better. The Municipal Social Welfare Board has the responsibility to take a child into care if the child's health and development are seriously threatened or endangered, and if open-care services have proven inadequate for improving the child's life circumstances. Taking a child into care has to always be in the child’s best interest.

If both the child and his or her custodian/s accept taking the child into care (voluntary care order), the municipal officeholder makes the decision to proceed. If a child is over 12 years of age and his or her custodian/s oppose the taking into care (involuntary care order), the decision is made by the administrative court on application by a municipal officeholder.

The Child Welfare Act was reformed at the beginning of 2008. One of the key reforms focused on the decision making in involuntary care orders. Earlier, the decision was made by the Municipal Social Welfare Board and the Board’s decision had to be approved by the administrative court. Since the reform in 2008, administrative courts make the decision on application by a municipal officeholder. Decisions by administrative courts may be appealed to the Supreme Administrative Court. This means that there is only one opportunity to appeal for care orders.

The main purpose of the reform was to improve children’s and their custodians’ legal safety in the decision-making of care orders. In improving legal safety, the administrative courts were considered more effective than Municipal Social Welfare Boards.

3 The function of administrative courts in the light of the empirical data

Administrative courts function reasonably satisfactorily in making decisions in care orders, but there are also defects. The way administrative courts handle the case may differ depending on where the case is being handled, and this might endanger the equality of the parties. There are also defects in the conduct of the proceedings and in the reasons of administrative courts decisions.

*Oral hearings in administrative courts.* The procedure in administrative courts is usually written. When needed, and especially when a private party asks for it, an oral hearing must be held. Preparatory oral hearing is also possible.

The number of oral hearings in administrative courts has increased in recent years, especially in child protection cases. However, this is not a result of the Child Welfare Act Reform because it did not amend the sections dealing with oral hearing. According to the study, it seems that when private parties use a legal adviser, it is more likely that oral hearing is being held.

One aim of the Child Welfare Act Reform was to increase the amount of preparatory oral hearings. They are considered important as means of establishing the case by judge’s active conduct of the proceeding. According to the study, preparatory oral hearings are remarkably rare and thus the intention of law reform has not been realized.
**Legal advisers.** The right to use a legal adviser in court is considered to be one requirement of due process, although in Finland there is no obligation to use a legal adviser but one can represent him/herself in court. Especially in administrative courts people have, by tradition, not used legal advisers. However, in child protection cases the use of legal advisers has increased in the last years. Using legal advisers appears to have an influence on the outcome of these cases.

Firstly, the study shows that oral hearings are more common when private party or parties have a legal adviser. Secondly, appeals are more common when a lawyer participates in the case. In this research there was a lawyer present in all cases where the application to take a child into care was dismissed. Finally, it seems that reasons for the administrative court’s decisions were more thorough if private party had a lawyer. One can thus say that the use of a legal adviser has influence on legal safety of the parties.

**A child in legal procedure.** The majority of regulation concerning children in the child protection process was valid even before the reform but there was a need to clarify and expand the existing regulation. By doing so, the aim was to improve children’s position in the court procedure. For example, it was considered important that children could increase their chances of having a guardian or they own legal assistant. The other aim was to ensure that every child has an actual chance to be heard in the court.

Unfortunately, it seems that children very rarely have a lawyer or a guardian. Especially young children (under 12 years of age) are in danger of being left without attention in the procedure. Overall it appears that there is no such instance in child protection that would truly focus on children’s wellbeing. Besides that, the roles of the guardians and legal advisors are quite unclear. In this respect, the regulation needs to be made more precise.