



**TECHNIUM**  
SOCIAL SCIENCES JOURNAL

**Vol. 79/2026**

**A New Decade for Social Changes**



**PLUS P**  
COMMUNICATION



International  
Communication & PR

## Care Orders in Child Protection: A Human-Rights Based Approach

Patrick AGYARE<sup>1</sup>

<sup>1</sup>*UiT The Arctic University of Norway*  
ORCID: <https://orcid.org/0000-0003-1968-1793>

**Abstract.** This paper develops a thorough doctrinal and analytical framework for assessing the conditions that justify *care orders* in child-protection practice. It maps substantive and procedural thresholds for compulsory removal by integrating core human rights standards, statutory criteria, and recurring patterns from international jurisprudence, thereby constructing a coherent taxonomy of requirements. The framework is based on three core principles: *necessity*, *proportionality*, and the *child's best interests*. It also explains how these principles work at different points in the decision-making process, such as when assessing the initial risk, considering supportive and less intrusive responses, setting evidentiary thresholds for removal, and reviewing and overseeing the process after removal. The analysis sets out a structured, multi-factor *necessity test* that combines objective risk indicators, the availability and adequacy of family-support interventions, and the temporal and evidentiary conditions needed to justify removing a child from parental care. Procedural protections are treated in parallel: the paper specifies standards for timely notice, meaningful participation by the child and family, access to independent representation, and adjudicative review proportionate to the seriousness of state intervention. The framework illustrates the relationship between protective measures and family preservation, demonstrating how *proportionality* serves as a balancing mechanism that constrains discretionary authority and administrative practices. Comparative jurisprudential patterns are synthesized to substantiate recurring solutions, without imposing rules tailored to specific jurisdictions. The resulting model improves predictability, supports consistent decision-making, and identifies targeted reforms to align protection goals with rights-based constraints on state action. It provides practical guidance for lawmakers, child-protection practitioners, and adjudicators by mapping decision points, evidentiary benchmarks, and remedial pathways, thereby informing evidence-based reform, strengthening accountability, and reducing arbitrary or disproportionate removals while preserving *family life* where possible.

**Keywords:** Care Orders, Child Protection, Necessity, Proportionality, Jurisprudence

### 1. Introduction

Decisions to remove a child from parental care represent some of the most far-reaching interferences a state may undertake. These interventions sit at the intersection of multiple, sometimes competing, legal and moral imperatives: the child's right to protection from harm, the parents' and child's shared right to *family life*, and the state's duty to intervene where serious threats jeopardize the child's development. The gravity of such decisions lies not only in their immediate impact—separating a child from their primary caregivers—but also in their long-term consequences for identity, belonging, and emotional stability. As such, *care orders* are among the most scrutinized measures within child-protection law, requiring a delicate balance between safeguarding welfare and respecting *family life*. Child-protection

legislation establishes the necessary conditions for the issuance of *care orders*. These statutory conditions, however, cannot be applied in isolation. They must be interpreted in light of international human rights norms that have been broadly incorporated into domestic legal systems. International jurisprudence has consistently emphasized that interventions of this magnitude must be extraordinary, evidence-based, and strictly necessary. The principle of *necessity*, coupled with *proportionality*, functions as a safeguard against arbitrary or excessive interference. It demands that removal be considered when less intrusive measures have proven insufficient or are unlikely to secure the child's safety and development. This doctrinal framework guarantees the pursuit of the *child's best interests* while maintaining the fundamental importance of *family life*.

Domestic adjudicative bodies, while applying national statutes, have increasingly embedded human rights *proportionality* analysis into their reasoning. This convergence between international and domestic approaches reflects a shared commitment to ensuring that child-protection decisions are not only legally valid but also normatively justified. However, despite this alignment, conceptual ambiguities remain. These ambiguities often arise in the interpretation of *necessity*. *How should adjudicators weigh the availability of supportive measures against the risks of continued parental care? How should the child's evolving capacities and expressed views be integrated into the assessment of long-term prognostic risks? And how should the principle of proportionality be applied when the harm feared is not immediate but potential, unfolding over time?* The complexity of these questions illustrates the importance of analytical clarity. The principle of *necessity* is not a static threshold but a dynamic evaluative standard. It requires decision-makers to engage with both substantive and procedural dimensions: *substantive*, in terms of the evidence of harm and the adequacy of protective measures; *procedural*, in terms of ensuring that the child and parents are meaningfully heard and that decisions are transparent and reasoned. The interplay between these dimensions reveals structural tensions within child-protection law. On one hand, the state must act decisively to prevent harm; on the other, it must avoid overreach that undermines *family life* without sufficient justification. This paper aims to clarify these ambiguities and advance new analytical tools for the consistent application of human rights in child-protection practice. By situating statutory conditions within the broader framework of international human rights, I seek to illuminate how *necessity* and *proportionality* can be operationalized in practice. The contribution is not only descriptive but also theoretical; it formulates a conceptual model that synthesizes supportive measures, the child's developing abilities, and long-term risk assessments into a unified evaluative framework. In doing so, I aspire to strengthen the doctrinal foundations of child-protection practice and to provide guidance for future decision-making that is both legally sound and normatively resilient.

## 2. Hermeneutics of Protective Intervention

The foundational premise of this paper rests on a doctrinal jurisprudential approach, moving beyond the descriptive cataloging of statutory provisions toward a synthesized conceptual architecture. This approach is concerned with the discovery and exposition of doctrines and principles derived from juridical sources. In the realm of child protection, this technique involves systematic analysis of primary materials, including international treaty obligations, general comments issued by supervisory bodies, domestic statutory provisions, and recurring patterns within international jurisprudence.<sup>1-9</sup> This approach maintains methodological rigor by confining the analysis to the universe of codified texts. The contribution of this paper lies in its commitment to analytical advancement rather than mere description of existing rules. This objective necessitates the analytical process of synthesis, central to juridical discourse, whereby customary principles are derived through the systematic integration of jurisprudential precedents, statutory provisions, and regulatory frameworks. Synthesizing the underlying normative logic embedded across disparate child-protection decisions, this paper abstracts unifying principles necessary for the doctrinal innovation of child-protection jurisprudence.

While comparative jurisprudence traditionally seeks to understand how different systems address similar issues, a purely descriptive comparison of rules risks creating sterile constructions that fail to capture local factors, resulting in a conceptual chasm between theory and on-the-ground reality. To

address this epistemological dilemma, the analysis concentrates on discerning persistent jurisprudential patterns—the structural challenges and points of tension—that universally influence jurists implementing human rights-based child protection directives. This paper posits that the shared framework provided by international law, specifically the Convention on the Rights of the Child (CRC)<sup>1</sup> establishes fundamental norms that transcend national borders. The positivist tradition in jurisprudence asserts that general legal principles, when rooted in social facts and institutional practices, can be discerned across various jurisdictions and are consequently acknowledged by jurists worldwide. Moreover, child-protection ordinances incorporates fundamental guarantees (such as due process and family rights), international legal norms (including the CRC<sup>1</sup>) and social policy frameworks, making it a uniquely interdisciplinary domain. Within this field, the development of new conceptual tools serves to harmonize these diverse inputs, facilitating doctrinal coherence and normative innovation. By concentrating on these structural tensions, this paper seeks to generate models possessing trans-jurisdictional legitimacy, applicable wherever the state intervenes to protect children.

A core conceptual contribution of this paper is the hermeneutic integration of the human rights framework into the interpretation of domestic child protection statutes. Rather than treating human rights obligations as external constraints upon state action, this paper views them as intrinsic interpretive principles that define the scope and meaning of protective measures. The interpretation of statutory conditions for intervention must begin with the primary consideration of the *child's best interests*, as articulated in instruments like General Comment No. 14 of the Committee on the Rights of the Child.<sup>2</sup> This interpretation dictates that the protective and preservative measures must align with maximizing the child's survival and development. This lens illustrates that any governmental measure interfering with *family life* must satisfy tests of *necessity* and *proportionality*, situating them within a continuum of protective measures. When the government becomes involved in family life, it often puts the safety of children at odds with the basic rights of parents to care for and keep their children. A democratic society often views this freedom as fundamental. International law affirms that the family is the natural and fundamental group unit of society, entitled to protection by the State, and that parents have the primary responsibility for the upbringing and care of their children, consistent with the *child's best interests*. This conflict between the State's protective mandate and the right to *family life* constitutes a structural tension in *care orders*. A fundamental legal principle asserts that no legal right is absolute; consequently, the child's right to protection and the family's right to preservation must be harmonized through meticulous doctrinal analysis. The substantive due process requirement, based on the idea of democratic legitimacy, says that any state deprivation must have a beneficial and legal reason. In this context, *necessity* is not merely about identifying risk but demonstrating that the severe remedy of removal is the only viable means to mitigate harm.

This paper synthesizes jurisprudential approaches to *necessity* by defining it against a tiered prevention framework. This framework consists of *Primary Prevention* (universal support), *Secondary Prevention* (targeted services aimed at *family life*, such as home-based models), and *Tertiary Prevention* (intervention post-maltreatment, often involving removal). The requirement of *necessity*, when applied to *care orders*, mandates the stringent application of the *Least Restrictive Means Test*. Removal is justifiable when secondary, less intrusive preservation measures have been demonstrably exhausted or proven incapable of mitigating the risk of future harm. *Proportionality* serves as the ultimate test, ensuring that the means used—state interference—are not excessive given the legitimate objective of protection. The standard of scrutiny applied must escalate dynamically in proportion to the severity of the intervention. When balancing rights, judicial review must be most rigorous where the intervention involves balancing a certain, immediate harm (the trauma of separation) against an uncertain prognostic harm (the likelihood of future maltreatment). Therefore, the quality of evidence supporting the *necessity* claim and the demonstration that the least restrictive measures were exhausted must meet a correspondingly high justificatory standard. The jurisprudential inquiry undertaken herein provides a rigorous reevaluation of the foundational doctrinal principles underlying statutory child-protection mandates. This analytical endeavor culminates in the articulation of a precise, high-resolution normative schema designed to standardize judicial determinations concerning mandatory *care orders*. Critically,

this schema ensures consistent adherence to the requirements established by international human rights instruments and the jurisprudence interpreting them. The synthesis facilitates the systematic clarification of conceptual ambiguities inherent in the statutory framework governing child protection. In doing so, it delineates the *substantive* and *procedural* requirements of *care orders* in a manner that enhances consistency and aligns with established human rights standards. In addition, this paper advances the *Continuum Model* to clarify the requisite judicial metrics. It mandates that adjudicators must systematically demonstrate why child removal is necessary, compelling robust scrutiny of alternatives.

### ***Continuum Model***

Intervention Level	Primary Prevention (Universal Support)	Secondary Prevention (In-Home Services)	Tertiary Intervention (Removal / Care Order)
<b>Level of Intervention</b>	Population-wide, non-stigmatizing support	Targeted intervention for at-risk families	Coercive state intervention
<b>Primary Goal / Focus</b>	Societal and community strengthening	Risk mitigation and family preservation	Immediate safety and recurrence prevention
<b>Required Necessity Test (Doctrinal Metric)</b>	Proportionality to public welfare objectives	Least restrictive means test	Strict scrutiny of proportionality and necessity
<b>Corresponding Justification Standard</b>	Rational basis review	Demonstrable efficacy of less intrusive alternatives	Prognostic or immediate risk of irreversible harm

*Developed by the author.*

The *Continuum Model* illustrates a graduated framework for state intervention in families, moving systematically from *Primary Prevention* to *Tertiary Intervention*. At the primary stage, the focus is on universal support and broader community strengthening, guided by a *proportionality* requirement tied to public welfare and justified through a reasonable basis review. The secondary stage deals with specific risks by providing in-home services. This phase requires decision-makers to show that the alternatives they are considering are effective before they take further action. The tertiary stage—reserved for recurrence, imminent danger, or situations requiring immediate safety measures—triggers the strictest scrutiny, compelling adjudicators to establish both *proportionality* and *necessity* as well as the presence of an imminent risk of irreversible harm. Collectively, the model ensures that each escalation is rigorously justified, requiring authorities to demonstrate why intrusive action, particularly child removal, is warranted only after all less restrictive options have been considered and shown inadequate.

### ***2.1. Procedural Legitimacy and the Technocratic Challenge***

The legitimacy of *care orders* is doubly contingent upon not only substantive justification (*necessity* and *proportionality*) but also the rigor of the procedures employed. Due process requires that decisions be made in a clear and logical way. Jurisprudence shows that just following the rules isn't enough; if the decision's substantive basis is unclear or if important inputs are given too much weight, the decision isn't legitimate. A basic procedural protection is the child's right to voice their opinions on issues that affect them and to have those opinions taken seriously, considering their age and maturity (Article 12 of the CRC<sup>1</sup> and General Comment No. 12<sup>3</sup>). This right necessitates genuine incorporation of the child's perspective, not merely perfunctory consultation. Failure to adequately account for the child's perspective constitutes a procedural legitimacy deficit, particularly given that the child's experience often illuminates the practical effectiveness of protective measures. A recurring structural challenge across jurisdictions is the growing reliance on technocratic decision-making tools, particularly predictive risk models.

Predictive risk models employ high-level predictive analytics on historical data to estimate a probability score for future maltreatment. While intended to assist caseworkers in synthesizing complex information, this technocratic focus introduces a tension with the subjective human rights requirement of individualized justice. Adjudicative reliance on statistically derived risk scores risks diluting the individualized voice of the child. The high predictive certainty of an algorithmic score can implicitly trump the subjective, qualitative input regarding the child's expressed wishes or their relationship with the parents. Predictive risk models, which are meant to help people make decisions, have been shown to provide inconsistent results when used in sensitive areas like child welfare and criminal justice. In criminal justice, research has found that some risk assessment systems disproportionately classify

minority defendants as high-risk, even when their actual reoffense rates are lower, raising concerns about racial bias in sentencing and parole decisions.<sup>10</sup>

Similarly, in child welfare, predictive analytics have been used to identify families considered at risk of neglect or abuse but studies indicate that reliance on incomplete or generalized socioeconomic data can unfairly target low-income households, leading to unnecessary state intervention.<sup>11</sup> These examples highlight how accuracy flaws and biased datasets can translate into real-world consequences, reinforcing the need for transparency, accountability, and oversight in the use of such models. If administrative authorities relies on an abstract risk score, the decision may fail the substantive due process requirement of providing an individualized and sufficient justification for removal. Furthermore, judicial decisions that frame complex child protection scenarios, such as those involving domestic violence, merely as conflict discourse between parents effectively disregard underlying factors and reduce the possibility of genuine individualized assessment. To address this recurring jurisprudential conflict, this paper introduces the *Conflict Matrix* designed to test the methodological legitimacy of decisions. The *Conflict Matrix* ensures that technological expediency does not undermine the fundamental procedural right to agency and individualized justice, requiring that the subjective views of the child are weighted appropriately against prognostic, generalized risk assessments.

#### ***Conflict Matrix: Decision-Making Tensions in Child Welfare Interventions***

Dimension	Element of Decision-Making	Assessment Basis	Legal Relevance	Mitigation Strategy
Epistemic Orientation	Technocratic Input (Risk Assessment)	Prognostic risk scores, statistical correlations, and risk matrices	Justification for intervention intensity (Substantive Necessity)	Requirement for transparency and auditability of algorithms
Participatory Dimension	Subjective Input (Child's Voice)	Expressed wishes, evolving capacities, and lived experience	Fulfilment of Article 12 CRC (Right to be Heard)	Requirement for independent and procedurally structured hearing
Normative Tension	Potential Conflict / Tension	Disregard of lived reality due to statistical generalization and norm-driven accuracy biases	Balancing "Best Interests" versus "Best Interests as Practiced" and "Interests as Articulated by the Child"	Risk of formalistic compliance without genuine substantive consideration

*Developed by the author.*

The *Conflict Matrix* provides a structured framework for evaluating how judicial and administrative decisions balance technocratic risk assessments with the child's subjective input. It maps the core elements of decision-making—risk algorithms, expressed views, and lived experience—against their evidentiary basis, legal relevance, and appropriate mitigation strategies. By highlighting tensions between predictive metrics and individualized agency, the model requires decision-makers to justify how each input is weighted, ensure compliance with substantive *necessity* standards, and apply safeguards such as transparency, methodological rigor, and checks against algorithmic bias. The *Conflict Matrix* functions as a diagnostic tool to prevent overreliance on generalized prognostic data and to ensure that children's voices remain central to fair, proportionate, and rights-compliant determinations. Therefore, the doctrinal synthesis provides a thorough framework for generating abstract legal knowledge through the examination of structural tensions and recurring jurisprudential patterns. The primary contributions are two interdependent models for evaluating the legitimacy of *care orders*: the *Continuum Model*, which operationalizes the *Least Restrictive Means Test* through a tiered system of judicial scrutiny, and the *Conflict Matrix*, which diagnoses the legitimacy deficit arising from the uncritical application of predictive risk models. Both the *Continuum Model* and the *Conflict Matrix* offer models for testing the *substantive* and *procedural* soundness of state interventions in *family life*.

### **3. Necessity and Best Interests in Care Orders**

The foundation of the human rights framework governing the removal of a child rests upon the inherent right to respect for *private and family life*, enshrined in Article 8 of the European Convention on Human Rights (ECHR).<sup>4</sup> State intervention into the fundamental relationship between a child and their parents,

or primary caregivers, constitutes a severe interference with this right. The European Court of Human Rights (ECtHR)<sup>5</sup> jurisprudence establishes a broad interpretation of *family life*, recognizing the protected bond even when parents are no longer cohabiting or their relationship has ended, provided the relationship was established prior to birth or through a deliberate decision. Consequently, compulsory child removal is recognized universally as an act of profound gravity, mandating the highest degree of legal scrutiny. Any interference must satisfy three cumulative criteria: *it must be in accordance with the law, pursue a legitimate aim, and be deemed necessary in a democratic society*. While child protection, encompassing the child's health, development, and safety, is readily accepted as a *legitimate aim*, the legal analysis invariably hinges upon the other conditions such as the requirement of *necessity*. The *necessity test* imposes a stringent burden of proof on the intervening state. It requires that state action correspond to a pressing social need and that the means employed be *proportionate* to the *legitimate aim* pursued. In situations involving the irreversible severance of familial connections, especially when considering permanent placement such as adoption, the state's discretion is markedly limited. The judiciary must ascertain whether the protection order decision was based upon relevant and sufficient reasons, scrutinizing not only the initial justification for removal but also the continued maintenance of the *care order*. Doctrinally, the legal standard is inverted: a *care order* and subsequent removal are, by definition, a violation of Article 8 of the ECHR<sup>4</sup> unless the state can satisfy the rigorous demands of the *necessity* and *proportionality* calculus.

To meet the high threshold of *necessity* in *care orders*, international jurisprudence requires authorities to establish four simultaneous substantive preconditions. These function as a comprehensive framework, necessitating objective factual accuracy, predictive risk assessment, thorough evaluation of less intrusive alternatives, and a rights-based balancing process that prioritizes the *child's best interests*. The validity of a *necessity* analysis depends on the reliability of its underlying factual premises; if those premises are inaccurate or unsupported, the analysis cannot be sustained. This mandates robust evidentiary standards in the investigatory stage. A significant portion of child protection work concerns allegations of neglect. In such cases, the factual inquiry must exhibit epistemic rigor, distinguishing between risks stemming from parental incapacity or deliberate maltreatment and those associated with material deprivation or poverty-based hardship (e.g., inadequate housing or food). While risk factors often include complex behavioral health issues such as parental substance abuse, domestic violence, and mental infirmity, investigators must ensure that interventions targeting fundamental liberties are based on demonstrable harm or risk of harm, rather than the effects of socioeconomic disadvantage alone. A failure of effective investigation fundamentally undermines the evidence, jeopardizing the state's capacity to prove the pressing social need required for justified interference.

The requisite assessment of harm must be demonstrably forward-looking, focusing on the likelihood and severity of future risk rather than solely dwelling on past incidents. This temporal dimension requires predicting future family functionality and parental capacity. The methodology for this predictive analysis must be tailored to the child's individual characteristics, including age, gender, maturity, and specific vulnerabilities such as a disability or refugee status, as these factors may inherently heighten the child's risk profile. A fundamental principle of *proportionality* requires the state to reserve removal as the ultimate measure. The state bears the obligation to proactively exhaust all less intrusive alternatives and supportive measures, actively working toward *family life*. Before seeking a *care order*, authorities must document that they have attempted intervention or that available less intrusive measures cannot establish satisfactory conditions. Given that jurisdictions often lean towards removal, the current practice poses a significant systemic risk. This tendency frequently omits a necessary step: the rigorous, documented consideration of the profound, long-term emotional and psychological trauma that separation itself inflicts upon the child. A thorough balancing exercise, therefore, must weigh the trauma of remaining against the trauma of removal, ensuring that the intervention itself does not inflict greater or equivalent harm than the risk it seeks to mitigate.

### **3.1. Balancing Competing Interests: The Child's Best Interests as Precedence**

The conclusive stage of the *necessity* assessment requires a balancing of the competing rights of the child and the parent, with the *child's best interests* taking precedence. This mandates a transparent

judicial determination regarding the *proportionality* of the *care order*. Accordingly, the *Integrated Necessity and Proportionality Matrix* summarizes the substantive requirements imposed by international human rights directives for lawful interference with *family life*.

#### ***Integrated Necessity and Proportionality Matrix***

Dimension	Substantive Pillar (Necessity)	Core ECHR / CRC Mandate	Integral Procedural / Factual Condition	Vitiating Factor (Violation Risk)
<b>Justification Threshold</b>	Pressing social need to protect health or morals	Legitimate aim requirement under ECHR and CRC	Sufficiently reliable factual foundation	Failure of effective investigation (epistemic deficit)
<b>Means Calibration</b>	Least intrusive measure as a last resort	Principle of proportionality and subsidiarity	Mandatory documentation of exhausted alternatives	Failure to adequately explore supportive or preventive measures
<b>Decision Integrity</b>	Child's best interests as a primary consideration	Article 3 CRC (Best Interests Principle)	Explicit justification and weighing of competing rights and interests	Tokenistic participation or arbitrary exclusion of the child's views
<b>Duration of Process</b>	Necessity limited in time and scope	Requirement of timeliness and legal certainty	Expedition in administrative and judicial proceedings	Excessive delay producing uncertainty and risk of secondary harm

*Developed by the author.*

The *Integrated Necessity and Proportionality Matrix* sets out the full sequence of legitimate and procedural conditions that must be satisfied before the state may lawfully interfere with *family life*. It links four core dimensions: the substantive necessity threshold, the human-rights mandate, the required factual foundation, and the types of violations that invalidate the decision. Across these tiers, the model clarifies that *care orders* must address a pressing social need, rely on the least intrusive measure, document exhausted alternatives, and prioritize the *child's best interests*. It also requires timely, well-reasoned decisions grounded in reliable evidence. When these standards are breached—such as through investigative failures, exclusion of the child's voice, or unjustified delays—the *care order* becomes disproportionate. Overall, the matrix functions as a comprehensive legality test, ensuring that *care orders* meet both *substantive* and *procedural proportionality* requirements.

The CRC<sup>1</sup> establishes the principle of the *child's best interests* as a cornerstone of international child law. Jurisprudential analysis and the authoritative interpretation of the Committee on the Rights of the Child<sup>2</sup> confirm that this principle operates in three distinct but complementary dimensions: as a *substantive right*, as an *interpretive principle*, and as a *procedural rule*. As a *substantive right*, the *child's best interests* confer upon every child a legally enforceable entitlement to decisions and outcomes that secure the realization of their rights and promote their optimal development. This dimension ensures that the child's welfare is not merely aspirational but recognized as a binding right within the legal order. As an *interpretive principle*, the *child's best interests* function as a guiding lens through which all provisions of the CRC<sup>1</sup> and related legal instruments must be understood and applied. In cases where rights appear to be in tension, or where contextual application is required, this principle directs interpretation so that the child's welfare remains central. It thereby harmonizes statutory provisions, jurisprudential precedents, and administrative practices, ensuring coherence in child-related decision-making. As a *procedural rule*, the *child's best interests* impose a duty on judicial and administrative authorities to explicitly document and justify how this principle has been assessed in every decision affecting a child, including *care orders*. This requires a reasoned determination that demonstrates how the child's individual circumstances—such as age, disability, cultural identity, or other relevant factors—were considered and how they informed the outcome. However, in situations involving the deprivation of the family environment, particularly those leading to adoption, the threshold elevates, sometimes reaching the status of a paramount consideration. In such instances, the *child's best interests* become the determining factor. The decision-making authority must demonstrate particular sensitivity to the long-term effects of removal, reflecting the heightened scrutiny required when quasi-permanent severance of parental rights is sought. The assessment of the *child's best interests* is mandated to be a unique activity tailored to the individual child, taking into account their unique circumstances, including level of maturity and experience. *Procedural legitimacy* requires an explicit justification in every

decision, demonstrating how competing considerations—such as the parent's right to *family life*—were balanced against the child's protective needs. This detailed accounting is essential for judicial transparency. Thus, the *child's best interests* play a highly integrated role, necessitating consistent application across policy and case adjudication.

#### *Tripartite Model of the Best Interests of the Child*

Dimension	Conceptual Definition	Primary Function	Legal / Normative Basis	Risk if Isolated or Misapplied
<b>Best Interests as a Substantive Right</b>	The child has an individual right for their best interests to be assessed and treated as a primary consideration in all actions affecting them	Sets a binding normative standard guiding outcomes	Article 3(1) CRC; ECtHR child-centred proportionality doctrine	Reduction to abstract welfare rhetoric without concrete protection
<b>Best Interests as an Interpretative Principle</b>	Legal norms must be interpreted in a manner that most effectively realises the child's interests	Resolves ambiguity in law and policy in favour of the child	CRC General Comment No. 14; purposive interpretation principles	Instrumentalization to justify predetermined outcomes
<b>Best Interests as a Procedural Rule</b>	Decision-makers must follow fair, transparent, and child-inclusive procedures when determining best interests	Ensures legitimacy, accountability, and due process	Articles 12 & 3 CRC; procedural fairness under ECHR	Formalistic compliance without genuine consideration of the child's situation

Developed by the author.

The *Tripartite Best Interests of the Child* translates the abstract best interests' standard into three practicable functions recognized in international child law. A *substantive right*, which entitles the child to outcomes that optimally realize their rights, necessitates an assessment of long-term consequences, such as separation from family or potential institutional harm. A *fundamental legal principle* guides the interpretation of all directives and policies concerning children, ensuring that child protection legislation prioritizes the child's welfare over parental convenience or administrative efficiency. A *procedural rule* requires transparent due process in decision-making, including an explicit demonstration of how competing interests (e.g., parental rights versus child safety) were weighed. In *care order* proceedings, these functions require administrative authorities to evaluate the risks of separation, interpret statutes in a child-centered manner, and document a reasoned balancing of parental rights against the child's safety.

#### **3.2. Procedural Fairness and Substantive Legitimacy**

A pivotal area of human rights jurisprudence in this domain is the integral relationship between *procedural fairness* and the *substantive legitimacy* of the *necessity test*. International human rights jurisprudence views procedural safeguards—such as thorough investigation, timely decisions, and meaningful participation—not merely as technical requirements, but as essential components of the *substantive necessity* assessment. This paper contends that noncompliance with essential procedural duties leads to an epistemic deficit, which significantly influences the substantive decision. The compromise of key procedural guarantees vitiates the state's ability to provide a reliable factual basis for a *care order*. Consequently, poor investigation or lack of parental or child participation can render a *care order* disproportionate even if the substantive reasons otherwise appear weighty. This connection is so profound that failures in procedure may blur into substantive violations, suggesting that inadequate process undermines the state's capacity to fulfill its positive obligation to protect children. The absence of a sufficiently thorough investigation represents a serious breach of the state's duty to safeguard children's rights. This failure directly attacks the foundational requirement of the *necessity test*: the establishment of a sufficiently reliable factual foundation. If the initial evidence of risk is not meticulously gathered and objectively verified, the decision to interfere with *family life* lacks the authoritative basis required by Article 8 of the ECHR.<sup>4</sup> The outcome may be found disproportionate because the decision-making body failed to establish the requisite degree of evidence to justify so severe an interference. *Timeliness* is equally critical. Judicial delay in child protection proceedings is recognized as a direct violation of ECHR Article 8<sup>4</sup> because it prolongs uncertainty, impedes healing, and destabilizes the child's prospects for permanency. Reports indicate that the justice system work[s] too slowly while children suffer.<sup>6-8</sup> Furthermore, excessive delay fundamentally corrupts the forward-

looking risk assessment that underpins the *necessity* argument. A judicial review based on factual findings that are several years old necessarily diminishes the confidence in the judgment's assessment of current or future risk, potentially subjecting the child to secondary victimization and rendering the ultimate decision unsound in relation to the prevailing pressing social need.

Complementing procedural safeguards, robust accountability and oversight mechanisms are essential to translate *procedural integrity* into *substantive legitimacy*. Independent review bodies, clear remedial pathways, and enforceable standards for investigation and case management create institutional incentives to gather reliable evidence and to act promptly. Systematic data collection and regular audits of removal decisions enable empirical assessment of patterns of error or bias, while mandatory, competency-based training for administrative authorities reduces variability in risk appraisal and intervention choices. Transparency measures—such as reasoned written decisions, accessible case records subject to privacy protections, and routine publication of aggregated outcomes—support external scrutiny and public trust without compromising confidentiality. These measures operationalize the positive duty to protect by aligning organizational practices, resource allocation, and accountability structures with the procedural benchmarks that underpin a defensible *necessity* assessment.

### **3.3. The Child's Right to be Heard and its Proportionality Role**

The CRC<sup>1</sup> mandates that States Parties assure the child the right to express views freely in all matters affecting them, provided the child is capable of forming his or her views. This right, established in Article 12 of the CRC,<sup>1</sup> is not merely a formality; it serves as a fundamental determinant of *substantive fairness* and *proportionality*. The child's views must be given due weight in accordance with their age and maturity. This evolving capacities principle requires administrative authorities to undertake a cultured, individualized assessment of the child's ability to understand the issues and potential consequences involved. It is imperative that the evolving capacity principle is not used as a pretext to dismiss the views of younger or vulnerable children. The obligation extends to ensuring accessibility, requiring special materials for children with disabilities and consideration for those in vulnerable situations, such as refugees or children already in care. Meaningful participation requires structured steps in judicial and administrative proceedings, including preparation, a proper hearing environment, assessment of capacity, and crucially, feedback detailing the weight given to the views of the child.

The child's voice possesses substantive power; it provides essential contextual data that can fundamentally change what an adult considers to be in a *child's best interests*. By illuminating the child's perspective on relationships, distress, and desired outcomes, the view directly impacts the calculation of risk and the determination of which measure is truly proportionate. The *necessity* and *proportionality* assessment necessitates a definitive connection between the ultimate decision and the child's articulated perspectives, accompanied by an explanation of how the assigned weight was modified in accordance with maturity and context. Where this link is absent, participation is reduced to tokenism, violating Article 12 of the CRC<sup>1</sup> and vitiating the ultimate determination of *proportionality*. When the views of a child capable of forming them are genuinely incorporated, the exercise moves beyond procedural compliance, directly shaping the *substantive decision* regarding the *necessity* of the *care order*.

Empirical evidence shows that meaningful participation improves decision quality and leads to more proportionate outcomes.<sup>4, 9</sup> Systematic reviews of child welfare practice demonstrate that when children's views are elicited through structured participatory processes, case plans more accurately reflect their developmental needs and correspond more closely to their expressed priorities.<sup>4, 9</sup> Operationalizing Article 12 of the CRC<sup>1</sup> therefore requires more than opportunity to speak; it requires procedures that translate expression into evidentiary weight—for example, standardized interview protocols, recorded capacity assessments, and documented explanations showing how the child's input altered risk appraisals or service choices. Guidance from major child-rights bodies emphasizes practical tools—preparation sessions, child-friendly information, and feedback loops—that increase the reliability and relevance of children's contributions and reduce the risk that participation becomes symbolic. Models that disaggregate participation into opportunity, facilitation, and influence provide a replicable template for agencies seeking to demonstrate that the child's voice affected *proportionality* judgments. Routine monitoring of participation outcomes—such as whether expressed preferences led

to different placement or support decisions—creates an empirical basis to evaluate whether participation is functioning as a substantive constraint on intervention rather than a procedural formality.

### **3.4. From Lex Ferenda to Lex Lata: Divergence in Child Protection Jurisprudence**

Despite the convergence of standards established by the ECtHR<sup>5</sup> and the CRC,<sup>1</sup> implementation across democratic jurisdictions reveals critical challenges and substantive divergence. The case law concerning states like Norway,<sup>6-8</sup> frequently reviewed by the ECtHR,<sup>5</sup> highlights a persistent tension between national jurisprudence and international human rights mandates, especially regarding the long-term imposition of severe restrictions, such as limited contact rights for biological parents following a *care order*. Although national judicial authorities may recognize and call for systemic reforms, operational practice on the ground often shows modest change. This gap demonstrates that incorporating international human rights standards often faces systemic resistance at the level of child welfare services and regional decision-making bodies. Significant doctrinal inconsistency exists regarding the crucial, immediate decision to remove a child. Domestic standards for emergency removal vary widely, ranging from allowing removal based merely on the suspicion of abuse or neglect to requiring the strict standard of imminent danger where all other options have been exhausted.

The use of a low threshold, such as mere suspicion, undermines the last resort principle mandated by international child law. Additionally, the time frame for judicial review after an emergency removal is very different from one jurisdiction to the next. In some cases, decisions are made in just one day, while in others, they take weeks. Protracted periods without judicial oversight prevent parents from participating in critical decision-making, compromise the integrity of the factual record, and constitute an excessive interference that is highly likely to fail the timeliness and *proportionality tests* under the ECHR.<sup>4</sup> Inherent inconsistencies within the ECtHR's<sup>5</sup> own jurisprudence compound the implementation challenges. The ECtHR<sup>5</sup> case law on child protection is often confusing because it *lacks consistency in positive obligations, procedural safeguards, proportionality, and the best interests of the child* standard, making it difficult for States Parties to know exactly what is required of them. This lack of uniform clarity regarding the nexus between *substantive* and *procedural* violations contributes to uncertainty in domestic legal systems, potentially leading to repetitive applications to the ECtHR<sup>5</sup> by similarly situated victims seeking vindication of their rights.

Child protection interventions must meet a lawful, necessary, and proportionate standard under Article 8 of the ECHR<sup>4</sup>, which protects the *right to family life*. This requires states to demonstrate a rigorous and cumulative justification before interfering with family integrity. The core contribution of this jurisprudence is the doctrinal synthesis of ECHR<sup>4</sup> *necessity* and CRC<sup>1</sup> *best interests*, demanding that *procedural fairness* function as a non-negotiable precursor to *substantive legitimacy*. Lawful intervention is contingent upon the simultaneous satisfaction of all cumulative preconditions: a clear basis in domestic law; a legitimate protective aim; the demonstration of a robust, non-epistemically flawed factual foundation; a comprehensive, age-sensitive, forward-looking risk assessment; the documented exhaustion of all less intrusive, supportive alternatives; and a proportionality assessment that places the child's views and best interests at its center. Domestic systems require methodological reform to bridge the persistent gap between established international doctrine (lex ferenda) and operational implementation (lex lata). Specifically, there is an urgent need to firstly, standardize the threshold for emergency removal to the higher benchmark of imminent danger and last resort, aligning local policy with international obligations. Secondly, mandate transparent judicial reporting that explicitly details the weight assigned to the child's view and justifies the selection of removal over less intrusive alternatives. Lastly, ensure that legislative and administrative timelines preclude the possibility of excessive procedural delay, thereby safeguarding the veracity of the evidence base and protecting the child from secondary victimization. Such methodological rigor is essential to ensure that compulsory child removal remains an act of last resort, justified only by compelling and objectively verified *necessity*.

#### 4. Care Orders in Domestic Child-Protection and the Principle of Proportionality

Domestic child protection law establishes stringent thresholds for involuntary state intervention, requiring a cumulative assessment across three fundamental questions before a *care order* can be issued. Firstly, it determines if one of the statutory grounds for serious concern is satisfied. Secondly, it determines whether removal is strictly necessary or if supportive measures can remedy the situation. Lastly, it determines whether the intervention aligns with the *child's best interests*. These conditions operate sequentially, meaning a failure to satisfy the criteria at any one stage defeats the state's application. This cumulative structure ensures that the profound infringement on *family life* is legally justified and procedurally sound. The domestic tripartite test is fundamentally governed by international human rights obligations, particularly Article 8 of the ECHR,<sup>4</sup> which guarantees the right to *respect for private and family life*. ECHR<sup>4</sup> jurisprudence mandates that state intervention in *family life* must be essential in a democratic society and must achieve an equitable balance between the interests of the parents and the child. This *proportionality* principle elevates the domestic concepts of *necessity* and *best interests* into mandatory, legally justiciable standards of *proportionality* review. Consequently, the finding of statutory grounds (*Condition I*) provides the basis for intervention; the actual justification for removal must be proven through *Condition II (necessity)* and *Condition III (best interests)*. This confirms the principle of subsidiarity: the state may intervene coercively only when absolutely required to protect the child from serious harm.

Moreover, statutory grounds typically encompass alternative bases for intervention, reflecting judicial fact patterns observed in national practice. These frequently involve severe physical or emotional neglect, serious violence or abuse (including indirect exposure), or an inability to provide adequate care for children with significant functional needs. Child neglect, the most common form of maltreatment reported to protective services, is often characterized by chronic omissions in care rather than single acute events. These omissions result in actual or potential harm, impacting the child's physical and cognitive development. Judicial findings often involve long-standing, multifactorial problems, where interacting deficiencies—such as parental mental health issues coupled with substance use—demonstrate a chronic failure to meet basic developmental, nutritional, or relational needs. Due to the fundamental nature of the family rights involved, a high standard of proof, such as clear and convincing evidence, is typically required to substantiate the grounds for a *care order*. This high threshold serves as a critical protective mechanism for parental autonomy, legally prioritizing the minimization of *Type I Errors* (false positives), which involve the unjust finding of abuse or neglect, causing undue trauma and unwarranted interference with *family life*. The consequence of maximizing protection against *Type I Errors* is the unavoidable increase in the possibility of *Type II Errors* (false negatives), or the failure to intervene when abuse or neglect has occurred. This inherent judicial dilemma—balancing high certainty (due process) against the uncertainty of assessing future child safety—necessitates the development of highly precise, expert-driven prognostic assessment models, rather than relying on observational fact-finding, to satisfy the demanding evidentiary burden.

#### Standards of Proof and Protection Errors

Standard of Proof	Burden Level	Effect on Judicial Outcomes	Risk of Type I Error (False Positive)	Risk of Type II Error (False Negative)
Preponderance of the Evidence	Low (more likely than not, >50%)	Favors intervention and state action	<b>Higher</b> – increased risk of unjustified intervention (e.g., unnecessary removal or intrusion)	<b>Lower</b> – decreased risk of failing to intervene when protection is needed
Clear and Convincing Evidence	High (highly probable or reasonably certain)	Favors parental or individual autonomy	<b>Lower</b> – reduced risk of unjustified intervention	<b>Higher</b> – increased risk of failing to intervene in necessary cases

Developed by the author.

The *Standards of Proof and Protection Errors* contrasts how different evidentiary thresholds shape judicial outcomes and error risks. A preponderance of evidence standard lowers the bar for state intervention, increasing the chance of *Type I Errors*—unjustified intrusions into *family life*—while

reducing the likelihood of failing to intervene when protection is needed. In contrast, a clear and convincing evidence standard raises the threshold, strengthening parental autonomy and reducing false positives, but correspondingly heightening the risk of *Type II Errors* by making necessary protective action less likely.

#### **4.1. Condition I: Prognostic Risk Assessment for Future Harm**

When a *care order* is sought on the basis of a prospective risk of serious harm, decision-makers must conduct a forward-looking prognostic assessment that examines parental functioning, substance use, and mental health stability to estimate the likelihood, severity, and probable developmental impact on the child. A clinical diagnosis alone is insufficient; the determinative question is how specific parental impairments affect the child's daily care and developmental trajectory. Because the statutory threshold requires a high standard of proof, findings should be supported by evidence-based risk modeling informed by specialist evaluations and principles from developmental psychology. Assessments must therefore rely on empirically grounded methods, multidisciplinary expertise, and clear linkage between parental limitations and foreseeable harm to the child. The analytical distinction between *Predictive Incapacity* and *Contingent Developmental Risk* serves this function by differentiating the nature of the parental deficits and the mechanism of harm.

*Predictive Incapacity* refers to static, chronic deficits in parental functioning that are fundamental and intractable (e.g., severe, unmanaged intellectual or functional disability, or entrenched personality disorder). When incapacity is demonstrated, the probability of future harm remains high regardless of supportive services, suggesting a low potential for sustainable parental change, a key factor in the *necessity* analysis. *Contingent Developmental Risk* refers to dynamic, interactional risks where the harm is conditional upon external factors or the failure of specific, available supports (e.g., episodic mental health crises managed by medication, or temporary housing instability). This type of risk implies that supportive measures (*Condition II*) are potentially viable solutions, shifting the judicial analysis to assessing the system's viability to manage the contingency. This distinction compels administrative authorities to articulate the mechanism of future harm in legally discernible terms, making the evidence transparent and challenging under the high standard of proof. The ECtHR<sup>5</sup> emphasizes that prognostic risk assessments must be rooted in objective, evidence-based criteria rather than speculative assumptions. The ECtHR<sup>5</sup> assert that child removal based solely on parental lifestyle or past difficulties, without a demonstrable link to future harm, violates ECHR Article 8.<sup>4</sup> The case underscores that risk forecasting must consider both cumulative adversity and resilience factors, as children exposed to chronic instability are significantly more likely to experience long-term impairments in attachment, emotional regulation, and educational attainment. This evidentiary standard requires authorities to demonstrate not only the presence of parental deficits but also their foreseeable impact on the child's developmental trajectory, supported by longitudinal data and expert testimony. Adjudicators can avoid overinclusive interventions and ensure that they address genuinely high-risk cases with proportionate urgency by distinguishing between predictive incapacity and contingent developmental risk.

#### **4.2. Condition II: Necessity and the Exhaustion of Supportive Measures**

When assessing *necessity* under Article 8 of the ECHR,<sup>4</sup> decision-makers must determine whether a child's circumstances can be remedied by supportive measures before removal is considered. The *proportionality* review requires a careful appraisal of parental responsiveness to interventions, whether available supports have been meaningfully tried and adapted, and the realistic prospects that further measures will address the identified harms. Repeated or prolonged assistance that fails to produce substantive change—especially where chronic deficits persist—strengthens arguments that removal is necessary. Temporal factors are central to this inquiry. For very young children, and infants in particular, developmental windows are narrow and delays in achieving stability can produce lasting harm. Administrative authorities must therefore weigh the urgency of the child's need for a stable caregiving environment against the potential benefits of continued intervention. This balancing exercise must respect parents' opportunity to demonstrate sustainable change while prioritizing the child's right to timely stability and secure attachment. A thorough review examines not only formal participation but also the quality and effect of engagement: consistent attendance, compliance with tailored plans, and

demonstrable behavioral or environmental change. Support measures must be targeted, proportionate to the risks identified, and responsive over time; generic or poorly implemented assistance does not satisfy the obligation to exhaust alternatives. Evaluators should explicitly consider whether further interventions have a realistic chance of success within a timeframe compatible with the child's developmental needs. Even where removal becomes necessary, efforts toward reunification should continue when feasible. Permanently intrusive outcomes, such as adoption, require heightened scrutiny and exceptional justification because of their irreversible consequences. Thus, *necessity* under ECHR Article 8<sup>4</sup> demands documented exhaustion of appropriate, developmentally calibrated supports and a realistic appraisal of parental capacity for change, with the *child's best interests* as the decisive consideration.

In line with the jurisprudence of the ECtHR,<sup>5</sup> the *necessity* requirement under ECHR Article 8<sup>4</sup> is interpreted to mean that authorities must demonstrate both the substantive and procedural adequacy of supportive measures before resorting to removal. The ECtHR<sup>5</sup> stresses that interventions to protect children must be fair and that less intrusive steps should be taken before permanent separation, especially when parental shortcomings can be fixed. Similarly, the ECtHR<sup>5</sup> further emphasizes the value of considering the child's long-term development and the irreversibility of adoption or long-term foster care. This highlights that *necessity* is not satisfied by the mere availability of services; rather, authorities must show that interventions were individualized, sustained, and adapted to the family's needs, and that parents were afforded genuine opportunities to participate in the process. This evidentiary burden requires documentation of the scope, intensity, and outcomes of supportive measures, including whether parental engagement was facilitated through accessible formats and culturally sensitive practices. Failure to provide such evidence risks violating both the *proportionality* principle and the child's right to *family life*, thereby rendering removal decisions legally vulnerable.

#### **4.3. Condition III: The Paramountcy of the Child's Best Interests**

The *child's best interests* constitute the paramount consideration in care decisions. However, Article 8 of the ECHR<sup>4</sup> requires a *proportionality* balancing exercise, permitting interference with parental rights only where necessary to protect the child. Adjudicators must evaluate both the nature and severity of the risk and the likely long-term consequences of state intervention, rather than focusing solely on past harm. A thorough *Condition III* analysis includes placement stability, continuity of care, attachment security, cultural and linguistic identity, and long-term safety. The best interests' principle is a substantive right, obliging administrative authorities to weigh competing interests with particular sensitivity to children's developmental needs and their rights under the CRC.<sup>1</sup> Where prior stages have established high *Risk Density* and low *Change Potential*, the best-interests calculus justifies permanent alternative placements. The procedure involves predictive judgments, such as the likelihood of sustained parental change, and the use of structured decision-making tools to reduce arbitrariness and error.

Administrative authorities are urged to document the evidentiary basis for forecasts, including expert developmental assessments, longitudinal data, and clear causal links between parental deficits and foreseeable harm. To satisfy the *proportionality* requirement under Article 8 ECHR,<sup>4</sup> adjudicators must ensure procedural safeguards: access to independent expert opinion, time-sensitive assessment of developmental windows, and review mechanisms for reunification prospects. These procedural safeguards help authorities turn clinical and social work evidence into legally useful findings while reducing the number of *Type I (false positives)* and *Type II (false negatives)* errors. *Condition III* requires administrative authorities to assess the long-term impact of *care orders*, considering placement stability, continuity of care, cultural identity, and security. Where the preceding stages (*Grounds and Necessity*) have established high *Risk Density* and demonstrated that parental deficits are intractable (low *Change Potential* or *Predictive Incapacity*), the best-interests' assessment will invariably favor a permanent, stable alternative placement over prolonged and uncertain reunification efforts. The ultimate legal test of *Condition III* is whether the proposed state intervention secures a proportionate outcome for the child's sustained welfare. This standard demands not only evidence of historical harm (*Grounds*) but also a clear demonstration that the state has exhausted all less intrusive measures (*Necessity*) and that removal is the only path to securing the child's long-term paramount best interests (*Condition III*). The

*Predictive Incapacity* and *Contingent Developmental Risk* underscores the judicial imperative of achieving higher evidentiary precision. These tools are indispensable in managing the tension between protecting parental autonomy (through adherence to a high standard of proof) and ensuring child safety (by predicting and articulating future risk). Irreversible measures require exceptional justification and explicit findings explaining why less intrusive options cannot secure the child's long-term welfare.

Forecasting parental change is inherently uncertain. To mitigate this risk, adjudicators should rely on multidisciplinary, longitudinal evidence derived from expert assessments and sustained observation. Judicial decisions must acknowledge the limits of prediction, recognizing that no forecast is infallible. Delaying removal to allow parental interventions may itself cause significant harm to infants during critical periods of attachment and development. Placement decisions must therefore weigh developmental urgency against the preservation of parental rights, ensuring that the child's timeline remains paramount. To guarantee *judicial transparency* and *proportionality* in child protection cases, written decisions should be mandated, containing evidence-based findings that address three interrelated dimensions. First, adjudicators must provide a comprehensive analysis of risk density, examining the cumulative risk factors present within the family unit alongside any protective elements that may mitigate those risks. Second, they need to look at how likely the parent is to change by looking at both their ability to improve and the progress they have made, all of which must be done in a timely manner because the child's critical developmental window is closing. Lastly, the principle of *proportionality* requires a clear and reasoned justification for why removal is deemed the least intrusive and most proportionate measure available to secure the child's enduring welfare and safety. These dimensions form the evidentiary foundation of a transparent judicial decision, ensuring that the paramountcy of the *child's best interests* is upheld through rigorous, balanced, and legally defensible reasoning.

#### *Developmental Typologies of Necessity (Illustrative Case Typologies)*

Case Typology	Conceptual Construct	Legal Justification (Necessity Threshold)	Underlying Developmental Mechanism
Newborn / Drug Exposure (Example A)	Acute Developmental Urgency	Intervention required during the critical neonatal period to secure attachment and neurodevelopment	Neuroplasticity; hypothalamic-pituitary-adrenal (HPA) axis dysregulation; disrupted early attachment
Chronic Neglect (Example C)	Cumulative Harm / Allostatic Load	Necessity arises from the aggregate and compounding effects of prolonged neglect and adversity	Toxic stress; structural dissociation; risk saturation and cumulative neurodevelopmental harm
Early Trauma / Violence (Example D)	Complex Developmental Trauma	Failure to intervene exponentially increases harm, even when maltreatment is intermittent	Prefrontal cortex (PFC) and amygdala dysregulation; disrupted emotion regulation; irreversible stress imprinting
Adolescent Preference (Example B)	Socio-Legal Deference / Autonomy	Necessity is mitigated by the mature, sustained participation of the adolescent in decision-making	Evolving capacities; rights-based self-determination; increasing cognitive and moral autonomy

Developed by the author.

The *Developmental Typologies of Necessity* categorizes child-protection cases by the developmental logic that justifies state intervention. Acute newborn *care orders* may reflect urgent neurodevelopmental needs that make early separation necessary to prevent irreversible harm. Chronic neglect cases meet the *necessity* threshold through cumulative, compounding adversity that produces toxic stress and risk synergy over time. Early trauma or violence cases involve complex developmental trauma, where severe injury and limited parental change potential justify intervention. In contrast, adolescent-preference cases emphasize autonomy: when a mature young person consistently expresses a preference, the *necessity* for removal is reduced because their evolving capacities and participation rights carry legitimate weight.

#### 5. The Integrated Necessity Matrix

To advance the *proportionality* assessments, this paper introduces the *Integrated Necessity Matrix*, which formalizes a principled, evidence-based methodology designed to ensure that *judicial necessity* under ECHR Article 8<sup>4</sup> is interpreted through objective, developmentally informed, and dynamic

criteria. The *Integrated Necessity Matrix* fundamentally reframes *necessity* by imposing a temporal modifier derived from the developmental notion, specifically leveraging Bronfenbrenner's chronosystem.<sup>9</sup> The chronosystem refers to the element of time and how the timing of events (such as trauma or intervention) intersects with a person's life stage to shape development. This framework includes both the individual's personal timeline and the micro-time continuity or discontinuity of daily experiences. The *Integrated Necessity Matrix* demands that *necessity* be interpreted as a dynamic function of risk severity multiplied by temporal urgency. The high rate of brain development and neuroplasticity in early childhood (birth to two years) means that the identical risk profile applied to a toddler generates significantly higher *chronosystemic necessity* for intervention than for an older child, whose developmental windows may be broader. This conceptual integration challenges judicial inertia by asserting that an administrative authority's delay during a critical period of development is not merely procedural stagnation but rather constitutes an active developmental harm. This formalization strengthens the judicial mandate to adhere to statutory timeframes for permanency planning.

The *Integrated Necessity Matrix* establishes stringent criteria for evaluating parental change, requiring that efforts transcend subjective sincerity or temporary compliance. The evaluation must demonstrate evidence of sustainability—meaning enduring behavioral stability, successful relapse prevention, and structural changes (e.g., addressing high-risk factors such as substance abuse and employment integration). Initial willingness to engage in treatment is insufficient if long-term caregiving capacity remains questionable. Furthermore, demonstrated sustainability must be achieved with timeliness—that is, the period of parental instability and rehabilitation must align with the child's specific developmental timeline. Parental improvement that is ultimately successful is deemed inadequate if the child has already spent critical developmental years in temporary, unstable placements, thereby missing the essential window for securing a lifelong attachment. This constraint recognizes that children experience time differently than adults, and the judicial process must accommodate the child's developmental clock.

### ***Integrated Necessity Matrix***

Component	Analytical Focus	Link to Legal Principle
<b>Developmental Urgency</b>	Speed and sensitivity of the child's needs (e.g., critical period for attachment)	Assessment of imminent and irreversible potential harm
<b>Change Potential</b>	Measurable and sustainable capacity of the parent to achieve required improvements	Core determination of remediability versus Predictive Incapacity
<b>Risk Density</b>	Accumulation, interaction, and complexity of documented risk factors (multifactorial problems)	Determines the intensity and sustainability of intervention required
<b>Systemic Viability</b>	Practicality, sufficiency, availability, and likelihood of success of community-based supportive measures	Tests the state's fulfillment of the subsidiarity requirement

*Developed by the author.*

The *Integrated Necessity Matrix* outlines the key factors decision-makers must evaluate when determining whether intrusive state intervention is justified. It links four components to their legitimate foundations: *Developmental Urgency*, which examines time-sensitive needs and the risk of irreversible harm; *Change Potential*, which assesses whether parents can sustainably improve and thus distinguishes remediable situations from predictive incapacity; *Risk Density*, which considers how multiple, interacting risks shape the level of intervention required; and *Systemic Viability*, which evaluates whether community-based supports are practical and sufficient, thereby testing the state's duty to exhaust less intrusive alternatives. This matrix demonstrates that *necessity* emerges from the convergence of factors: high *Risk Density* coupled with low *Change Potential* means removal is likely necessary, as the systemic supports are unlikely to mitigate intractable risk sufficiently to protect the child within the required developmental timeframe.

#### **5.1. Interactional Risk Assessment and Multivariate Proportionality**

To satisfy the highest standards of the ECHR Article 8<sup>4</sup> proportionality test, the *Integrated Necessity Matrix* requires a multivariate approach to risk calculation that accounts for the complexity of family dynamics, moving beyond linear assessment. *Proportionality* must incorporate the concept of *Risk Density* through the analysis of risk synergy—the exponential harm created by the simultaneous

existence of multiple, interrelated family deficits. For instance, the co-occurrence of parental substance use, domestic violence, and financial neglect does not result in an additive risk but a multiplicative one, as the interactive effects undermine protective factors and amplify negative outcomes. When this calculated interactional risk density reaches a critical, empirically defined threshold, the necessary interference (removal) is justified, as the risk of non-intervention becomes disproportionately high. This methodological shift strengthens the empirical basis for *care orders*, making the balancing exercise under ECHR Article 8<sup>4</sup> more transparent and legally defensible.

#### *Interactional Risk Assessment Table*

Dimension of Necessity	Core Concept	Assessment Criterion	Function in ECHR Article 8 Proportionality
I. Child-Specificity	Developmental Time ( <i>Chronosystem</i> )	Alignment of intervention trajectory with the child's critical developmental periods (e.g., 0–2 years)	Establishes dynamic, age-indicated necessity, mitigating harm caused by judicial inertia
II. Parental Change	Sustainable Timeliness	Demonstrated, stable behavioral modification achieved within the child's narrow developmental window	Rejects superficial compliance, demanding evidence of enduring stability and alignment with developmental clock
III. Risk Analysis	Risk Interaction and Density	Multivariate assessment of co-morbid risk factors and their synergistic impact on the child's neurobiological and relational development	Formalizes non-linear risk, justifying state interference based on exponential harm

*Developed by the author.*

The *Interactional Risk Assessment* outlines how *necessity* is evaluated through three interconnected dimensions. Child-specificity focuses on aligning interventions with the child's developmental timetable, ensuring decision-makers account for the harm caused by delay. Parental change examines whether parents can achieve stable, lasting improvements within the child's limited developmental window, guarding against short-term compliance. Risk analysis evaluates how multiple risk factors interact and amplify one another, recognizing that combined risks can create exponential developmental harm. These dimensions' structure *proportionality* under ECHR Article 8<sup>4</sup> by linking intervention decisions to developmental timing, sustainable parental capacity, and the density of risk.

The application of the *Interactional Risk Assessment* provides a unified approach to determining the legitimacy of state intervention. By systematizing the evaluation of *necessity*, the framework bridges the traditional gaps between child protection mandates, family preservation efforts, and international human rights law. A crucial theoretical element of the *Interactional Risk Assessment* is the recognition that procedural safeguards are not merely prerequisites for due process but function as substantive preconditions for achieving a proportionate outcome under ECHR Article 8.<sup>4</sup> Jurisprudence from ECtHR<sup>5</sup> indicates that systemic defects, such as a lack of transparency in reasoning or inadequate fact-finding, serve to compound a finding of substantive disproportionality. This heightened focus means that the quality and integrity of the decision-making process are intrinsic to the legitimacy of the ultimate *care order*. To meet this exacting procedural standard, the *Interactional Risk Assessment* mandates that child welfare investigations must include formalized *Impact Assessments*. These assessments must demonstrably weigh the specific advantages and disadvantages of state-mandated care—including the potential for transfer trauma or system failure—against the risks presented by the natal home environment. This openness, along with complete records of the investigation and strict adherence to children's rights to participate, turns the decision-making process into a legally accountable system. The absence of these demonstrable procedural safeguards inherently renders the resulting substantive decision vulnerable to challenge as disproportionate. By formalizing these procedural demands, the *Interactional Risk Assessment* strengthens the evidentiary basis upon which decision-makers operate, reinforcing the legitimacy of state action and protecting the state's jurisdiction margin of appreciation.

#### 6. Conclusion

*Care order* adjudication occupies a demanding intersection of statutory grounds, human rights obligations, and developmental psychology. Article 8 of the ECHR says that any state interference with

*family life* must pass a test of *necessity* and *proportionality*. The ECtHR has said many times that decisions about removal and long-term placement must be based on a pressing social need and be the least restrictive way to protect the family. This paper further clarifies that authorities must actively pursue family reunification when feasible, ensure robust procedural safeguards, and critically appraise less intrusive alternatives before resorting to measures that sever or substantially restrict parental ties. The CRC complements this framework by mandating that the *best interests of the child* be a primary consideration, coupled with the child's right to be heard in proceedings affecting them, thereby aligning adjudication with developmental and participatory standards. In this context, transparent reasoning that integrates legal doctrine with empirically anchored psychological assessment is not a stylistic preference but a structural necessity for rights-compliant decision-making.

This paper contributes to that structural necessity through the conceptualization of the *Integrated Necessity Matrix*, which defines the determinants of *necessity* and *proportionality* across three dynamic criteria: *Chronosystemic Necessity*, *Sustainable Timeliness*, and *Interactional Risk Density*. *Chronosystemic Necessity* situates judicial analysis within the child's developmental time, recognizing that delays in protective or reunificatory action have irreducible effects on attachment security, neurocognitive maturation, and socio-emotional functioning. By embedding ecological perspectives and developmental milestones into legal reasoning, adjudicators can more precisely calibrate how the timing and sequencing of interventions either safeguard or erode the child's relational and psychological stability. *Sustainable Timeliness* extends the analysis beyond prompt action, requiring evidence that decisions initiate durable trajectories—minimizing placement instability, reducing re-entry to care, and supporting enduring family or kinship solutions—thereby ensuring temporal alignment between immediate protective needs and long-term permanency outcomes. *Interactional Risk Density* synthesizes the cumulative and interactional nature of risk and protection across relational systems, including parental capacity, exposure to maltreatment, availability of supportive networks, and therapeutic engagement, requiring that risk be evaluated not as discrete events but as patterned configurations that amplify or mitigate harm over time.

By interpreting the *necessity* principle through the lens of developmental time and relational security, the *Integrated Necessity Matrix* strengthens administrative authorities' capacity to deliver decisions that are methodologically sound and comprehensible to appellate scrutiny. It operationalizes *proportionality* as a reasoned pathway: first, a demonstrable exploration of less restrictive alternatives; second, a substantiated account of how intervention timing and duration align with the child's developmental needs; and third, a transparent synthesis of interactional risks and protective factors that justifies the chosen measure as the minimal effective interference. This analytic structure also clarifies the relationship between positive obligations under the ECHR and the best interests mandate of the CRC, emphasizing that reunification is a default orientation only where safe and developmentally coherent, and that permanence decisions must be anchored in verifiable indicators of attachment continuity, caregiving sensitivity, and environmental stability. In so doing, the *Integrated Necessity Matrix* elevates judicial reasoning from descriptive narrative to evaluative analysis, enhancing legitimacy, predictability, and rights conformity in child-protection decision-making.

Future socio-legal research should prioritize empirical validation of the *Integrated Necessity Matrix* through comparative, cross-jurisdictional designs capable of linking doctrinal rigor to measurable child outcomes. Longitudinal studies using advanced *proportionality* assessments can test whether the judicial adoption of the *Sustainable Timeliness* criterion correlates with improved permanency trajectories, including fewer placement disruptions, reduced time to stable family settings, and enhanced psychosocial and educational attainment. Methodologically, multi-level modeling, quasi-experimental designs utilizing policy or practice variations, and inter-rater reliability studies can determine if the *Integrated Necessity Matrix* produces consistent adjudicative quality across courts and regions. Measurement frameworks should incorporate validated indicators of attachment security, caregiver sensitivity, placement stability, and child well-being, alongside procedural markers such as the fidelity of alternative exploration and the documented alignment between intervention timing and developmental benchmarks. Such evidence would provide the empirical weight necessary to embed the

*Integrated Necessity Matrix* as a standard methodology for defining proportional state interference in *care orders*, consolidating a jurisprudence that is simultaneously faithful to the ECHR and the CRC.

### References

- [1] United Nations. (1989). *Convention on the Rights of the Child: Resolution / Adopted by the General Assembly*. <https://digitallibrary.un.org/record/80135?v=pdf>
- [2] United Nations Committee on the Rights of the Child. (2013). *General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013*. <https://www.refworld.org/legal/general/crc/2013/en/95780>
- [3] United Nations Committee on the Rights of the Child. (2009). *General Comment No. 12: The Right of the Child to be Heard, CRC/C/GC/12, 20 July 2009*. <https://www.refworld.org/legal/general/crc/2009/en/70207>
- [4] Council of Europe: European Court of Human Rights (2020). *Guide on Article 8 of the European Convention on Human Rights - Right to Respect for Private and Family Life*, 31 August 2020. <https://www.refworld.org/jurisprudence/caselawcomp/echr/2020/en/123516>
- [5] Council of Europe/European Court of Human Rights. (2025). *Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence*. [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_8\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng)
- [6] European Court of Human Rights. (2019a). *Strand Lobben and Others v. Norway, no. 37283/13, Grand Chamber Judgment of 10 September 2019*. <https://hudoc.echr.coe.int/eng?i=001-195909>
- [7] European Court of Human Rights. (2019b). *A.S. v. Norway, no. 60371/15, Judgment of 17 December 2019*. <https://hudoc.echr.coe.int/eng?i=001-199381>
- [8] European Court of Human Rights. (2019c). *Abdi Ibrahim v. Norway, no. 15379/16, Judgment of 17 December 2019*. <https://hudoc.echr.coe.int/eng?i=001-214433>
- [9] Rosa, E. M., & Tudge, J. (2013). Uri Bronfenbrenner's theory of human development: Its evolution from ecology to bioecology. *Journal of Family Theory & Review*, 5(4), 243-258. <https://doi.org/10.1111/jftr.12022>
- [10] Greene, T., Shmueli, G., Fell, J., Lin, C.-F., & Liu, H.-W. (2022). Forks over knives: Predictive inconsistency in criminal justice algorithmic risk assessment tools. *Journal of the Royal Statistical Society: Series A (Statistics in Society)*, 185(Supplement\_2), S692–S723. <https://doi.org/10.1111/rssa.12966>
- [11] Greene, Rahman, Z., & Keseru, J. (2021). *Predictive analytics for children: An assessment of ethical considerations, risks, and benefits (Innocenti Working Paper WP 2021-08)*. UNICEF Office of Research – Innocenti. [https://www.unicef.org/innocenti/media/5161/file/UNICEF-Predictive-Analytics-Working-Paper-2021.pdf?utm\\_source=copilot.com](https://www.unicef.org/innocenti/media/5161/file/UNICEF-Predictive-Analytics-Working-Paper-2021.pdf?utm_source=copilot.com)