



SUPREME COURT OF NORWAY

O R D E R

issued on 20 May 2025 by a division of the Supreme Court composed of

Justice Bergljot Webster
Justice Henrik Bull
Justice Cecilie Østensen Berglund
Justice Erik Thyness
Justice Christian Lund

HR-2025-942-A, (case no. 25-023621SIV-HRET)
Appeal against Gulating Court of Appeal's order 19 December 2024

A	(Counsel Ingrid Lauvås)
v.	
B	(Counsel Thor Harald Eike)

(1) Justice **Østensen Berglund:**

Issue and background

- (2) The case concerns the question of whether a coercive fine may be imposed to enforce a contact arrangement between a father and his children, where a step-up plan for contact has not been followed as intended, see section 65 of the Children Act.
- (3) A (father) and B (mother) married in 2012. They have three children together: a daughter born in 2013 and two sons born in 2017 and 2020, respectively. Following a turbulent relationship, the parties separated in 2021. The children remained living with the mother. Initially, the father had supervised contact. Disagreements later arose regarding the extent of the contact, and the father brought the matter before the court. For the two youngest children, whom this case concerns, the proceedings concluded with Gulating Court of Appeal's judgment dated 9 November 2023. Due to a prior interruption in contact, the judgment established a step-up plan under section 43 a of the Children Act, providing for monthly supervised contact over an eight-month period ending on 1 August 2024. After that, contact was to follow the "standard arrangement" under section 43 of the Children Act, with visits every other weekend from Thursday afternoon to Monday morning, as well as during holidays. This judgment, which forms the basis for enforcement in the present case, became final and enforceable when both parties were denied leave to appeal to the Supreme Court on 9 February 2024.
- (4) Upon the father's request, contact was initiated through the Office for Children, Youth and Family Affairs (*Bufetat*). Supervised visits were held in January and May 2024, but no other contact took place. In May 2024, the father applied to the District Court for the imposition of a coercive fine on the mother under section 65 of the Children Act, due to her failure to comply with his contact rights. Unsupervised weekend visits were held twice in August 2024.
- (5) On 1 September 2024, Haugaland and Sunnhordaland District Court ruled as follows:
- "1. For a period of one year from the service of this order, B is to pay a coercive fine of NOK 10,000 to the State Treasury for each time A is prevented from exercising his contact rights with C, born 00.00.2017, and D, born 00.00.2020, in accordance with Gulating Court of Appeal's judgment dated 9 November 2023. If one of the children appears, the fine will be reduced by half.
 2. B is to compensate A's costs of NOK 10,000 within two weeks from the service of this order."
- (6) The District Court proceeded on the basis that contact between the father and the children could be carried out if the mother cooperated in good faith.
- (7) B appealed against the order. At the same time, ordinary contact was partially carried out in line with Gulating Court of Appeal's judgment dated 9 November 2023.

- (8) On 19 December 2024, Gulating Court of Appeal ruled as follows:
- “1. The application for enforcement of the order concerning contact rights is denied.
 2. Costs before the District Court are not awarded.”
- (9) The Court of Appeal held that, since the initial phase of the step-up plan had not been followed, the subsequently established contact arrangement could not be enforced through coercive measures. In the Court of Appeal’s view, it was immaterial that the mother, following the District Court’s order to impose a coercive fine, had facilitated ordinary contact.
- (10) As a consequence, no contact was carried out.
- (11) A appealed to the Supreme Court, challenging the Court of Appeal’s interpretation of the law. By decision dated 24 February 2025, the Supreme Court’s Appeals Selection Committee referred the case to a division of the Supreme Court, under section 5 subsection 1 second sentence of the Courts of Justice Act.
- (12) Since that time, there has been regular contact between the father and the children.
- (13) The children’s views on the matter, see 65 subsection 4 of the Children Act, have not been specifically obtained for the Supreme Court hearing. However, during the hearing in the District Court, the judge conducted a conversation with the eldest child. The children’s opinions also emerge from recent conversations with court-appointed experts in connection with a new dispute between the parents.

The parties’ contentions

- (14) The appellant – A – contends:
- (15) The Court of Appeal has misinterpreted section 65 of the Children Act and the corresponding provisions of the Enforcement Act. The rules on coercive fines must be interpreted in the light of children’s rights as set out in the Constitution, international conventions, and the Children Act. This means that the courts must be able to make necessary adjustments to the basis for enforcement when deciding on the imposition of a coercive fine. This interpretation is supported by earlier Supreme Court case law and more recent case law from the Court of Appeal. In any event, section 65 subsection 5 of the Children Act authorises the court to make minor, practical alterations.
- (16) The fact that a scheduled increase in contact has not been implemented does not necessarily preclude enforcement. The judgment’s conclusion must be interpreted in the light of its reasoning. If proceeding to the next phase is not dependent on completing the first one, a coercive fine may be imposed. This is particularly relevant where the step-up is due to a lack of prior contact between the children and one of the parents. In cases involving supported supervision with a defined timeframe, it may be necessary to reassess whether supervision remains appropriate. Under the Court of Appeal’s view, enforcement would then be excluded. In any case, supervision is not at issue in the present case, where the parties have already moved on to the next phase of the contact arrangement.

(17) A asks the Supreme Court to rule as follows:

1. B is ordered, for a period of one year from the service of this ruling, to pay a coercive fine of NOK 10,000 to the State Treasury for each instance in which A is prevented from exercising contact rights with C, born 00.00.2017, and D, born 00.00.2020, in accordance with the judgment of the Gulating Court of Appeal dated 9 November 2023.

In the alternative:

2. The Court of Appeal's order of 19 December 2024 is set aside.

In both cases

3. A is awarded costs before the Supreme Court."

(18) The respondent – B – contends:

(19) The Court of Appeal's interpretation of the law is correct. The court must rely on the enforcement basis without reviewing its substance, and cannot modify the contact arrangement set out in the underlying judgment. Step-up plans are established based on considerations of the child's best interests and are normally a condition for implementing regular contact. Therefore, an application for enforcement cannot be granted if the initial phase of a step-up plan has not been followed. This applies especially where the step-up plan has been significantly breached. Any agreement between the parties to proceed directly to the final phase does not constitute a binding basis for enforcement.

(20) Alternative solutions would be to apply for an interim court order, as set out in section 60 of the Children Act, or to transition to an agreement confirmed by the County Governor, under section 55 and section 65 subsection 2.

(21) The provision in section 65 subsection 5 of the Children Act does not authorise the court to modify the contact arrangement, but is limited to practical and less significant matters.

(22) Although this interpretation of the law may present challenges in enforcing contact, it does not contravene the Constitution or international conventions concerning the best interests of the child.

(23) B asks the Supreme Court to rule as follows:

- "1. The appeal is dismissed.
2. Costs are awarded to the public authorities."

My opinion

The Supreme Court's jurisdiction

(24) The appeal is a derivative appeal against an order and concerns the Court of Appeal's interpretation of the law. The Supreme Court's jurisdiction is thus limited to reviewing the

Court of Appeal’s “general interpretation of a written legal rule”, under section 30-6 (c) of the Dispute Act.

- (25) The case concerns the interpretation of section 65 of the Children Act regarding the use of a coercive fine to facilitate contact between a father and his children. This, the Supreme Court may review, while it cannot review the individual application of the law to the facts.

The legal scope

- (26) Before addressing the relevant enforcement provisions in cases concerning contact with children, I highlight Article 104 subsection 2 of the Constitution, which states that the best interests of the child are a fundamental consideration in all actions and decisions affecting children. The same principle follows from Article 3 of the UN Convention on the Rights of the Child and section 48 of the Children Act. The issue of contact also engages Article 102 of the Constitution and Article 8 of the European Convention on Human Rights (ECHR), concerning respect for family life. These provisions are based on the premise that it is generally in the child’s best interests to maintain contact with both parents. The State is therefore obliged to ensure a holistic protection of contact rights and to take positive measures to secure their enforcement, see for instance judgment of the European Court of Human Rights (ECtHR) in *L.D. v. Poland*, 13 February 2025, paragraph 115.
- (27) According to section 42 of the Children Act, children have the right to contact with both parents. Where the parties are unable to agree on a contact arrangement, proceedings may be initiated under section 56 of the Children Act. While the case is pending before the courts, an interim order on contact may be made under section 60. According to section 65, both interim decisions and final judgments are enforceable. These provisions are supplemented by the Enforcement Act, which sets out rules on enforceability in, for example section 4-12, which requires a final and enforceable judgment, and section 4-4, which concerns due dates and breach. In the case of interim orders, enforceability is not a prerequisite, see section 65 subsection 1 final sentence of the Children Act.
- (28) In the present case, the basis for enforcement is the breach of a final and enforceable judgment.

Section 65 of the Children Act

- (29) The relevant passages from section 65 of the Children Act read:

“Chapter 13 of the Enforcement Act applies to the enforcement of rulings on and other special grounds for enforcement relating to parental responsibility, custody and contact rights. A ruling by the County Governor on the enforcement of agreements under section 55 constitutes a special ground for enforcement. An interim ruling under section 60 is enforceable even if the order is not legally binding.

Enforceable rulings or agreements concerning parental responsibility and permanent residence may be enforced either by retrieving the child or by imposing a coercive fine. Enforceable rulings or agreements concerning contact may only be enforced through coercive fines. The District Court may impose a recurring fine that applicable for a specified period each time the right of contact is not fulfilled.

...

A coercive fine shall not be imposed if fulfilment of the right of contact is impossible,

...

Before a ruling is made, the child shall be given the opportunity to express his or her opinion. The child's views shall be given weight in accordance with the child's age and maturity. Enforcement shall not take place against the child's wishes, unless the court determines that it is necessary in the child's best interests.

To facilitate the implementation of the established contact arrangement, the court may make practical adjustments to the ruling where appropriate, such as altering the times for collecting and returning the child.

..."

- (30) The provision establishes the legal basis for enforcing rulings concerning parental responsibility, residence, and contact rights. In cases involving enforcement of contact rights, a coercive fine is the only enforcement mechanism available, see subsection 2. A coercive fine may not be imposed if the fulfilment of the right of contact is "impossible". As both parties agree that this is not the case in the present matter, I will not further address the interpretation of this term.
- (31) Subsection 4 sets out that the child's opinion must be heard before a ruling is made. However, the case before the Supreme Court is limited to the interpretation of section 65 of the Children Act, and the children's general views on contact have recently been established through the District Court hearing and other pending cases. The children's views have therefore not been recorded specifically for the Supreme Court hearing.

The basis for enforcement in conjunction with section 65 of the Children Act

- (32) The general principle in enforcement proceedings is that the basis for enforcement shall not be subject to review. This applies equally to enforcement under section 65 of the Children Act, see Norwegian Official Report 1977: 35 point 11.3. The Report states that this principle is grounded in established Supreme Court case law, which is proposed to be continued. The rule that the enforcement basis must be relied upon without substantive review is justified by the need to maintain clear boundaries, ensuring that substantive issues – such as parental responsibility and the granting of contact rights – remain separate from the enforcement issue. Furthermore, it is emphasised that this approach is "best suited to prevent the initial judgment from being undermined". The Report also notes that the party opposing enforcement should be referred to initiate a new case.
- (33) The proposal is not further addressed in Proposition to the Odelsting No. 62 (1979–1980).
- (34) As I interpret the preparatory works, the purpose of the provision is to ensure that a ruling on contact rights, based on the best interests of the child, is effectively complied with. The focus is placed on the child and on the party who has found it necessary to seek enforcement. Accordingly, the extent or nature of the contact should not be subject to re-litigation.

- (35) At the same time, the starting point – that the judgment shall be relied upon without review – cannot be interpreted as absolute. This is supported already by the provision in subsection 4, concerning the right of the child to be heard, as the child’s opinions may affect the substantive issue of contact.
- (36) The Supreme Court ruling in Rt-1960-1214, which is referenced in the preparatory works, also supports this interpretation. There, the Appeals Selection Committee pointed to aspects of imposing coercive fines that are now directly regulated in section 65, highlighting the importance of having practicable rules on enforcement in cases concerning contact. However, the question of whether an independent assessment of the enforcement basis could be conducted, was not explicitly addressed.
- (37) In Rt-1997-1387, the Appeals Selection Committee held that enforcement was permissible even though the parent entitled to contact was unable to carry out all scheduled visits due to work shifts. It was noted that while section 4-2 subsection 1 (b) of the Enforcement Act requires a clearly defined object of enforcement, this cannot be stretched so far as to exclude natural modifications within the enforcement basis. The Committee further observed that the visits that could be carried would not be any less beneficial to the child than if the standard arrangement had been followed.
- (38) The ruling is followed up in HR-1999-231-K. In that case, the father had maintained contact with the children in accordance with a judgment. When the mother relocated to another city, the established arrangement could no longer be complied with as intended, resulting in a disruption of contact. The Appeals Selection Committee held that, upon a subsequent enforcement application, the court had jurisdiction to “establish a transitional arrangement based on a gradual increase in contact”, even though this was not included in the original judgment, as the father had maintained regular contact at the time it was given. The court could also impose a coercive fine for reduced contact, but it could not modify the contact arrangement itself. The ruling also references Rt-1992-892, where the Committee similarly held that a step-up plan could be established.
- (39) In my view, case law has consistently affirmed since the 1960s that a coercive fine may be linked to more limited contact than that provided for in the enforcement basis. In connection with enforcement, a step-up plan may also be established in consideration of the children in cases where contact has not been carried out as intended. This reflects a pragmatic approach to interpreting the enforcement basis, aimed at ensuring that contact is implemented in accordance with what has already been finally determined.

Section 65 subsection 5 of the Children Act

- (40) Section 65 subsection 5 of the Children Act entered into force on 1 January 2018. It authorises the court to make practical adjustments to the enforcement basis where appropriate to facilitate the implementation of contact. As an example, both the statutory text and the preparatory works – Proposition to the Storting 161 L (2015–2016), page 75 – refer to the possibility of modifying the times for collecting and returning the child.
- (41) Based on the wording of the provision and the preparatory works, it appears to tighten the case law that existed at the time of its adoption. However, the legislature has not commented on the application of previous case law. On the contrary, the legislature seems to have

assumed that it was necessary to “introduce a provision in Norwegian law that authorises the courts to supplement or modify decisions concerning the practical implementation of contact”, see the Proposition, page 75.

- (42) In my view, such authority already existed. I therefore place somewhat less emphasis on the specific examples provided in the statutory text and preparatory works, and highlight that the purpose of this amendment, too, was to ensure the implementation of contact in a manner that reduces conflict and conserves both procedural and judicial resources. The Proposition presupposes that it is not possible to conduct a new assessment of the “main issues that have been finally decided, such as the extent and/or nature of contact”, see page 75. Consequently, it cannot be determined that “the established contact must take place under supervision, or that overnight contact must be changed to daytime contact”, see the same page. This would constitute a restriction of contact rights, which must be resolved by initiating a new case under section 64 of the Children Act. These limitations are affirmed by long-standing case law, which, in my view, provides sound guidance for interpreting section 65 subsection 5.

Possible interpretation under the premises

- (43) Based on the legal framework I have outlined, my view is that the court, in consideration of the best interests of the child, may modify an already established step-up plan in connection with enforcement, for example by changing the start date when appropriate to accommodate the child’s need for adaptation.
- (44) Similarly, the enforcement of contact does not necessarily require that a step-up plan has been followed. For example, if the parties have accelerated the plan, enforcement may be based on the stage of the plan that has actually been reached. In such cases, the court must assess whether it is in the best interests of the child to revert to the original step-up plan, or whether contact may continue as it has been practiced, possibly with certain adjustments. In the light of the submissions before the Supreme Court, I note that where a ruling establishes a contact arrangement, which the parties have modified, the starting point must still be that the ruling constitutes the basis for enforcement, see Rt-2000-90. It is therefore not the case – as argued by the respondent – that the parties are then deemed to have entered into a voluntary agreement requiring confirmation by the County Governor in order to be enforceable, see section 55 and section 65 of the Children Act. Whether a later agreement may give rise to objections against the enforcement basis under section 4-2 subsection 2 of the Enforcement Act, is a different question.
- (45) Often, no step-up plan is included in the enforcement basis – typically because the children had regular contact at the time the arrangement was established. However, if contact has been interrupted by the time enforcement is sought, it may still be necessary to implement a step-up plan. In my view, the court is authorised to do so, as supported by long-standing case law dating back to 1960.
- (46) As set out in the statutory text and preparatory works, and in addition to what follows from earlier case law, the court may also regulate practical matters – either because they are not addressed in the judgment or because circumstances have changed, typically due to relocation or the need to adjust routines for collecting and returning the child.

- (47) A particular issue arises when there is a step-up plan for contact under the supervision of a publicly appointed person. Before a judgment on supervised contact is given, an assessment must be obtained from the municipal child welfare services or the Ministry, as prescribed in section 43 a subsection 4 of the Children Act. No corresponding provision is included in section 65, which means it is not a statutory requirement to obtain such an assessment at the enforcement stage. In my view, the court must be able to adjust any dates set for supervised contact when considering the enforcement application. Otherwise, a residential parent could obstruct enforcement of contact by withholding the child until the scheduled supervision period has expired.
- (48) During the proceedings in the Supreme Court, it was argued that HR-1987-142-K may require the court to determine whether, for example, a step-up plan or supervised contact for a certain period or for a certain number of visits was a *condition* for contact. I do not consider this necessary. The court having established the contact arrangement will normally have intended such conditions to serve as prerequisites for transitioning to ordinary contact. However, the situation may be different at the enforcement stage, for example, where parts of the initial step-up plan have been followed, or where circumstances have otherwise changed. In such cases, the enforcement court must determine what is in the best interests of the child. It must assess whether contact may be carried out in accordance with the basis for enforcement, or whether the contact arrangement must be temporarily modified to be more appropriate for the child. However, the court may not go beyond the basis for enforcement by establishing a permanently altered contact arrangement.
- (49) *In summary*, I take the view that the purpose of section 65 of the Children Act is to ensure that a ruling on contact rights based on the best interests of the child is implemented as intended. To achieve this, the conclusion of the judgment must be interpreted in the light of its reasoning. As long as the scope and nature of the contact remain unchanged, the court is relatively free to establish practical arrangements in the child's best interests. Such an approach is consistent with Article 104 of the Constitution and safeguards international conventions by preventing a parent from undermining the possibility of enforcement.

The Court of Appeal's order

- (50) It was set out in the Court of Appeal's order that
- “... it is not permissible to enforce the latter part of the contact arrangement when the preceding step outlined in the judgment has not been carried out. In doing so, the Court of Appeal would have exceeded its jurisdiction, as the step-up plan it established as a condition for overnight and holiday contact would, in effect, be set aside.”
- (51) This is an incorrect interpretation of the law, and the ruling must therefore be set aside.

Conclusion

- (52) The Court of Appeal's order is set aside.

Costs

(53) A has prevailed and is, as a general rule, entitled to full compensation for costs from B in accordance with section 20-2 subsections 1 and 2 of the Dispute Act. However, the case has raised issues of principle that the Supreme Court, sitting in division, has not previously considered. It also carries significant welfare-related implications for both parties. I therefore find that compelling reasons make it reasonable to exempt B from liability for costs, see section 20-2 subsection 3 of the Dispute Act.

(54) I vote for this

O R D E R :

1. The Court of Appeal's order is set aside.
2. Costs are not awarded.

(55) Justice **Lund:** I agree with Justice Østensen Berglund in all material respects and with her conclusion.

(56) Justice **Thyness:** Likewise.

(57) Justice **Bull:** Likewise.

(58) Justice **Webster:** Likewise.

(59) Following the voting, the Supreme Court gave this

O R D E R :

1. The Court of Appeal's order is set aside.
2. Costs are not awarded.