SUPREME COURT OF NORWAY

J U D G M E N T

given on 27 March 2020 by a grand chamber of the Supreme Court composed of

Chief Justice Toril Marie Øie
Justice Magnus Matningsdal
Justice Erik Møse
Justice Wilhelm Matheson
Justice Aage Thor Falkanger
Justice Kristin Normann
Justice Henrik Bull
Justice Knut H. Kallerud
Justice Arne Ringnes
Justice Espen Bergh
Justice Cecilie Østensen Berglund

HR-2020-662-S, (case no. 00-0000001SIV-HRET)
Appeal against X Court of Appeal's decision 24 June 2019

A B	(Counsel Anders Brosveet)
v.	
Y municipality	(Counsel Mette Yvonne Larsen) (Assisting counsel Bendik Falch-Koslung)
KS (third-party intervener)	(Counsel Frode Lauareid)
Attending in accordance with section 30-13 of the Dispute Act: The State represented by the Ministry of Justice and Public Security	(The Office of the Attorney General represented by Marius Emberland) (Assisting counsel: Henriette Lund Busch)

(1) Justice **Falkanger:** The case concerns an appeal against the Court of Appeal's judgment in a case regarding a care order and contact rights. Among other things, it raises questions regarding the right to respect for family life under Article 8 of the European Convention on Human Rights (the Convention), particularly in light of the Grand Chamber judgment 10 September 2019 by the European Court of Human Rights (the Court) in *Strand Lobben and Others v. Norway* and subsequent rulings from the Court.

Issues and background

(2) B and A were 21 and 23 years old when their daughter C was born 00.00.2017. They have no other children.

(3) Due to notes of concern from the midwife and the local mental health services, the child welfare services contacted the parents before the child was born. On 11 December 2017, upon request, the family moved into a local parent-child institution, directly from the hospital. The plan was for them to stay there until 7 March 2018.

(4) Due to new notes of concern from the parent-child institution, the home municipality issued an interim care order on 12 February 2018 in accordance with section 4-6 subsection 2 of the Child Welfare Act, placing the child in emergency foster care. The parents were allowed to visit their child one hour per week under supervision.

(5) On 9 July 2018, the County Social Welfare Board (the County Board) – consisting in accordance with section 7-5 subsection 1 of the Child Welfare Act of one chair, one expert and one ordinary member – issued the following care order:

> **"1. Y municipality takes over the care of C, born 00.00.2017.**
>
> **2. C is to be placed in an approved foster home.**
>
> **3. B and A are allowed to visit C for two hours, four times per year.**
>
> **4. The child welfare services may supervise the sessions."**

(6) The County Board found that the parents – both individually and together – lacked the personal abilities to give the child proper care in the present situation, even with assistance measures. From an early age, the child showed clear signs of uneven development (*skjevutvikling*), which would require extra sensitivity from the care persons in the future. The limited access was mainly justified by the assumption that the care order would not be lifted anytime soon.

(7) On 9 August 2018, the child was moved from the emergency foster home to a more permanent foster home, where she still lives. Until this date, the parents had had weekly contact with her, in line with the municipality's decision. After the moving to the foster home, contact sessions were held in line with the County Board's order as a, but to a much-increased extent.

(8) The parents brought an action on 10 July 2018, demanding lifting of the County Board's care order.

(9) The District Court appointed a psychologist as an expert witness, who submitted a written statement.

(10) The main hearing was conducted over three days. Statements were given by the mother and the father, by representatives from the municipality, by 13 witnesses and by the expert.

(11) On 8 February 2019, Z District Court – composed in accordance with section 36-4 of the Dispute Act of a professional judge, a psychologist and an ordinary judge – concluded as follows:

> **"The County Board's care order in case FXX-0/0 is set aside.**
>
> **The ruling will not take effect until it is legally binding, see section 36-9 (2) of the Dispute Act."**

(12) The District Court was convinced that the mother alone could not provide the child with adequate care and that the father had to "come forth as the primary care person for [the child] to ensure that she receive proper care". The District Court found that the father understood this, and that he – together with the mother – would be able to provide the child with proper care.

(13) Y municipality appealed the judgment to X Court of Appeal, which granted leave to appeal under section 36-10 subsection 3 (c) of the Dispute Act.

(14) The same psychologist was appointed as an expert to the Court of Appeal, and he submitted a written supplementary statement.

(15) The appeal hearing in the Court of Appeal was conducted over three days. The municipality's representative and the parents testified. In addition, the Court of Appeal heard statements from 12 witnesses and the expert.

(16) On 24 June 2019, the Court of Appeal – composed in accordance with section 36-10 subsection 4 of the Dispute Act of three professional judges, one psychologist and one ordinary lay judge – concluded as follows:

> **"The County Board's care order 9 July 2018 in case FXX-0/0 is upheld."**

(17) The Court of Appeal's judgment was given with dissenting opinions. All judges found that, at the time of the interim care order, it had been too early to establish that the parents, with necessary assistance measures, would not be able to provide their daughter with such care that she could continue to live with them. However, a majority of three judges – one professional judge, the expert psychologist and the ordinary lay judge – did not consider this a decisive factor, as the conditions for a care order were nonetheless met at the date of the judgment. The minority – two professional judges – found that the interim care order was "too hasty and based on partially incorrect information", and that the conditions for a care order had not been met at any time, nor at the date of the judgment.

(18) The mother and father have appealed the Court of Appeals' judgment to the Supreme Court. The appeal concerns the weighing of evidence and the application of law.

(19) On 22 October 2019, after the Supreme Court's Appeals Selection Committee had granted leave to appeal, the Chief Justice decided (HR-2019-1950-J) to refer the case to a grand chamber, see section 6 subsection 2 third sentence of the Courts of Justice Act, and to hear it together with case no. 00-000000SIV-HRET, case no. 00-000000SIV-HRET and case no. 00-000000SIV-HRET. The two latter have been joined. A ruling in case no. 00-000000SIV-HRET, HR-2020-661-S, was handed down earlier today, while the joint cases will be decided later today.

(20) According to the Supreme Court's rules of procedure adopted on 12 December 2007 in accordance with section 8 of the Courts of Justice Act, a grand chamber of the Supreme Court is, in addition to the Chief Justice, composed of ten justices, all of whom are selected by drawing of lots. In the Supreme Court's order 16 January 2020, Justice Falch was recused from participation, see HR-2020-83-S.

(21) On 14 November 2019, the Office of the Attorney General declared that the State represented by the Ministry of Justice and Public Security would participate in the case to safeguard the State's interests, see section 30-13 subsection 1 of the Dispute Act 30-13. On 13 January 2020, the Supreme Court's Appeals Selection Committee consented to KS (the Norwegian Association of Local and Regional Authorities) acting as third-party intervener for the respondents in the three cases, see section 15-7 subsection 1 (b) of the Dispute Act (HR-2020-46-U).

(22) Psychologist Bjørn Solbakken has been appointed a new expert to the Supreme Court. In addition to submitting a written statement, he has testified during the hearing. Some new evidentiary documents have been presented. Furthermore, new judgments have been handed down by the European Court of Human Rights since the Court of Appeal decided the case, of which two on 10 March 2020, after the hearing in the Supreme Court was adjourned. The parties have been given the chance to submit comments as to the relevance of these judgments to the case at hand. Apart from that, there have been no substantive changes to the case since the Court of Appeal.

The parties' contentions

(23) The appellants – *A and B* – contend:

(24) According to section 4-1 of the Child Welfare Act, decisive importance must be attached to the child's best interests, but this provision is interpreted too narrowly in Norwegian administrative decisions and case-law. Although the child's best interests are an important consideration, it is only one of out of several that must be balanced against each other in an overall assessment.

(25) The European Court of Human Rights maintains that, at the outset, it is best for the child to grow up with its biological parents, and that there must be particularly strong reasons to decide otherwise. Article 8 of the Convention implies that the assessment of the best interests of the child must place greater emphasis on biological ties than what has been the tradition in Norwegian child welfare practice.

(26) Both the interim care order and the subsequent care order were at the date of the interference incompatible with the right to respect for family life under Article 8 of the Convention, and this should be confirmed by the Supreme Court. The interference was neither necessary nor

proportionate, and neither the District Court nor the Court of Appeal considered it well founded. The interim care order was issued without any prior assessments by psychology professionals. There were serious flaws in the factual basis for both orders, and these flaws must be given weight in the assessment of whether the conditions for continued foster care are met today.

(27) The family had been granted a stay at the parent-child institution, and they had lived there since the childbirth. When the interim care order was issued, there were three and half weeks remaining of the stay. When such a suitable relief measure was available, there was no reason to issue an interim care order. This is particularly true since at this stage of the stay, adequately adjusted guidance had not been offered.

(28) Although time has passed and the daughter has been in foster care for a total of approximately two years, the conditions under section 4-21 the Child Welfare Act are not met. When the future prospects are so uncertain, one must be careful not to speculate in disfavour of the biological family. The parents are prepared to receive assistance, cooperate with the foster home and the child welfare services and otherwise do whatever it takes to obtain a smooth family reunification.

(29) The child's vulnerability, if any, is caused by the actions of the authorities. The parents' interests should therefore be given more weight in the overall assessment.

(30) When it comes to the alternative issue of contact arrangement, the current practice – a very strict visiting regime – is incompatible with the Convention and case-law from the European Court of Human Rights.

(31) A care order is meant to be a temporary measure, and the authorities must actively work towards reunification. Contact rights must therefore be fixed to allow the child and parents to develop their relationship further with the aim of reunification as a starting point. This suggests that contact sessions should be held at least twelve times per year, and preferably without supervision.

(32) A and B have invited the Supreme Court to pronounce the following judgment:

> **"Principally:** **The County Board's care order is lifted.**
>
> **Alternatively:** **Contact rights will be fixed in the Supreme Court's discretion, based on the aim of family reunification."**

(33) The respondent – *Y municipality* – contends:

(34) The care order was correct when issued, and the conditions for continued placement are currently met.

(35) No procedural or substantive errors were made during the initial phase of case, in either the municipality's interim care order or the County Board's care order. The case was sufficiently clarified, and the conditions for a care order under the Child Welfare Act were met. Under any circumstance, such errors would have been irrelevant since decisive importance must be attached to the child's best interests today.

(36) It is well documented that the child is particularly vulnerable, and there are serious deficiencies in the parents' ability to care for her, in the short run and in the long run. The care they are able to provide – both individually and together – is not adjusted to the child's needs. Despite comprehensive guidance and extensive assistance from the child welfare services, their parenting skills have not improved much.

(37) Although at the outset, it is best for the child to live with its parents, it is not the case here. A care order and placement in foster care are in the best interests of the child in the case at hand. The care order is not a violation of the child's or the parents' right to respect for family life under Article 8 of the Convention.

(38) The Court of Appeal's fixing of contact rights at four times a year is correct. Although the goal may be to have the care order lifted, the placement will be long-term. The child's reactions to visits thus far have demonstrated that there should be restricted access. The goal of reunification does not prevent this. The contact sessions must be adjusted to the parents' limited competence in contact situations.

(39) The goal of family reunification cannot justify that the child is exposed to hardships that causes undue unrest or that may harm her development. Moreover, too much contact will undermine the purpose of a care order, which is to break the close contact.

(40) Y municipality invites the Supreme Court to pronounce the following judgment:

> **"Principally:**
> **The appeal is dismissed.**
>
> **Alternatively:**
> **1. The County Board's care is order upheld as regards items 1 and 2 of its conclusion.**
>
> **2. Contact rights will be fixed in the Supreme Court's discretion."**

(41) As for the contentions of the State and KS, I refer to reproductions in the Supreme Court judgment HR-2020-661-S paragraphs 47 to 54. The State has not requested any judgment, while KS has requested that the Supreme Court dismiss the appeal.

My opinion

(42) As mentioned, the case concerns a care order and contact rights. When hearing the appeal, the Supreme Court is to examine all aspects of the case, see section 36-5 subsection 3 of the Dispute Act. The court is only bound by the parties' procedural actions to the extent that these are compatible with public considerations, see section 11-4 of the Dispute Act. The assessment of whether the conditions for a care order are met must be based on the circumstances at the date of the judgment, see HR-2016-2262-A paragraph 53.

Care order – legal starting points

(43) I will start with the care order and first address the legal starting points.

(44) The appellant has stated that the assessment of whether a care order is to be upheld must be based on section 4-21 of the Child Welfare Act on revocation of a care order. I do not agree. Admittedly, the care order has been executed, which means that the question is whether it is

to be lifted with the effect that the child and the parents are reunited. Nevertheless, it is a generally accepted legal position that the assessment must be based on section 4-12 of the Child Welfare Act, see HR-2016-2262-A paragraph 53. An assessment under section 4-21 is only to be made if the conditions in 4-12 are not met or this is considered unlikely, see the judgment's paragraph 54.

(45) The care order in the case at hand was issued with a legal basis in section 4-12 subsection 1 (a) of the Child Welfare Act, which reads:

> **"A care order may be issued**
>
> > **(a) if there are serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development, ..."**

(46) According to subsection 2, a care order may only be issued "when necessary due to the child's current situation", and such an order may thus not be made "if satisfactory conditions can be created for the child by assistance measures under section 4-4 or by measures under section 4-10 or section 4-11".

(47) When assessing whether a care order should be upheld, "decisive importance shall be attached to finding measures which are in the child's best interests", see section 4-1. The principle that the best interests of the child is a primary consideration is also set out in Article 104 of the Constitution and Article 3 of the UN Convention on the Rights of the Child.

(48) A care order does not entail an absolute separation of the child and its parents, but a material weakening of the family ties. Therefore, a care order is an interference with both the child's and the parents' right to respect for family life under Article 8 of the Convention.

(49) An interference with the right to respect for family life under Article 8 may only take place if it is in accordance with the law, has a legitimate purpose and is necessary in a democratic society. In this case, it is a question of whether the latter condition is met. A number of interests must thus be balanced against each other, but the best interests of the child are paramount also when applying Article 8 of the Convention. This has been emphasised several times and in various manners by the European Court of Human Rights, including in the Grand Chamber judgment 10 September 2019 *Strand Lobben and Others v. Norway*. The following is stated in paragraph 204:

> **"In so far as the family life of a child is concerned, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance … . Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations … ."**

(50) The importance attached to the best interests of the child here is in line with long-standing case-law from the Court.

(51) At the outset, it is assumed to be best for the child to live with its parents. This is emphasised by the Court in many cases, including in *Strand Lobben* paragraph 207:

> **"Generally, the best interests of the child dictate, on the one hand, that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that family ties**

may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to 'rebuild' the family … ."

(52) That view that this principle is not absolute, is also reflected in the Court's further deliberations:

"On the other hand, it is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development … . In addition, it is incumbent on the Contracting States to put in place practical and effective procedural safeguards for the protection of the best interests of the child and to ensure their implementation (see the United Nations Committee on the Rights of the Child General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration …)."

(53) Where the child's and the parents' interests come into conflict, the Court stresses in paragraph 206 that the authorities must strike a fair balance between these interests. However, the Court also stresses that "particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents". Hence, among all of the conflicting interests, those of the child are the most important.

(54) In the Supreme Court' order HR-2020-661-S – issued earlier today – Justice Møse states in paragraph 94 that the quoted paragraphs 206 and 207 in *Strand Lobben* provide "the general principles for the fair balance that must be struck between the interests of the child and those of the parents". The following is set out in paragraph 95:

"As set out in the two quoted paragraphs in *Strand Lobben*, particular importance should be attached to the best interests of the child, which according to paragraph 204 are of paramount importance. According to paragraph 207, the best interests of the child generally dictate, on the one hand, that the child's ties with its family must be maintained, unless the parents have proved particularly unfit. Family ties may only be severed in very exceptional circumstances. On the other hand, the parents cannot request measures that may harm the child's health and development. These two main factors are part of the consideration of the best interests of the child. In addition, the Contracting States are obliged to give procedural guarantees that in a practical and efficient manner protect the child's interests."

(55) As for care orders, he emphasises the following in paragraph 96:

"For a *care order*, this implies that interference based on the substantive conditions in section 4-12 of the Child Welfare Act must be in accordance with the requirement of very exceptional circumstances. I mention that the States have a wide margin of appreciation in connection with care orders, but that it is not unfettered, see for instance *Strand Lobben* paragraph 211."

(56) Care orders must thus be in accordance with the requirement of "very exceptional circumstances" and only be issued exceptionally. This is also set out in the Court's judgment 10 March 2020 *Hernehult v. Norway* paragraph 62. As I see it, this requirement is in line with the care order provisions in the Child Welfare Act.

(57) In *Strand Lobben* paragraph 205, the Court emphasises that regard for family unity and family reunification are inherent considerations in the right to respect for family life under Article 8. In the case of imposition of public care, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible. More importantly, it must be considered whether less far-reaching measures may be applied instead.

(58) In addition, both Norwegian law and the Convention require that a care order must be based on an adequate basis for decision-making, a sufficiently broad balancing of interests and a satisfactory reasoning. I refer to HR-2020-661-S paragraph 149 et seq. and the summarising remarks in paragraph 171.

The care order – individual assessment

Starting points

(59) I will now turn to my assessment of whether the conditions for a care order are met in this case.

(60) As mentioned, this must be assessed based on the situation at the time of the judgment. Thus, the Supreme Court is to consider whether the conditions for a care order are met today. Any procedural errors made at an earlier stage may be significant if they are relevant for the assessment of the current situation, see HR-2020-S paragraph 135 et seq. and 153. However, the Supreme Court does not need to consider whether errors have been made that are not relevant to the current situation. This must also apply to possible violations of the Convention.

(61) Hence, I do not agree with the parents that the Supreme Court, when assessing whether the conditions for a care order are met, must consider whether there have been violations of Article 8 of the Convention earlier in the case regardless the relevance for the current situation.

The interim care order

(62) As mentioned, the Court of Appeal has criticised the child welfare services' proceedings early in the case, particularly in connection with the interim order to place the child in an emergency foster home. The Court of Appeal's minority was more critical and found that this amounted to a violation of Article 8. Therefore, before I consider the current situation, I will address the interim measure and the circumstances leading up to it.

(63) Already before the child was born, the child welfare services received several notifications regarding the mother. The notifications expressed that the mother had functioned poorly for years, and that there was great concern as to whether she would be able to care for her child. The child welfare services therefore offered the family to stay at a parent-child institution immediately after birth, and the parents accepted the offer.

(64) The parent-child institution offers full-time stays of three to six months for families with children, at which the families are examined, guided and followed up. In the minutes of the information meeting held for the parents on 15 November 2017, the programme is described as follows:

> **"The parents have the main responsibility for their children during the stay and they are the ones to fulfil the children's need of care. The families have their own flat at disposal during the stay, but meals and other activities primarily take place in common areas. Social workers are present 24 hours a day to give support and help, but the parents themselves must carry out the tasks. The purpose of the stay is to make the parents able to care for their child. During the two first weeks after their child is born, the parents are exempt from their mandatory tasks such a kitchen service and cleaning of common areas, so that they have time to get to know their child.**

...

All families arriving at [the institution] get a team leader and a social worker who will be responsible for them during the stay. The family institution uses various methods in its work for the families, such as mapping and observation, various weekly talks with the social worker, team leader and a psychologist; daily social work, guidance and training, both through individual talks and through individual interaction guidance."

(65) The team that was set up for the parents and their child in this case included an external psychologist. Under the agreement with the institution, the psychologist was to participate in the work process with the family, have talks with the parents, take an active part in the team's discussions and, moreover, give guidance to the staff. The other team members also had professional backgrounds.

(66) Despite the continuous guidance that the parents received at the parent-child institution, the concern grew for the daughter's care situation and for whether the parents were able to provide her with adequate and proper care. The concerns related to everything from the child's need to be fed and nursed to the lack of stimulation, emotion regulation and interaction. The mother's inability to care for her daughter on her own was apparent, as well as the father's frequent absence despite repeated requests. During the periods he was present, he was unable to compensate for the mother's lack of caring skills. The daughter was strongly affected by this and showed signs of stress. There was also concern as to the daughter's problems with feeding.

(67) During a responsibility group session at the parent-child institution on 12 February 2018 – approximately three and half weeks before the programme was scheduled to be terminated – the child welfare services was notified of the deterioration of the situation. The child welfare services therefore issued an interim care order in accordance with section 4-6 subsection 2 of the Child Welfare Act. The order was justified as follows:

"When the child welfare services arrived at [the institution], it quickly became clear that the situation for [the child] was so aggravated that she was in urgent need of a new care base. [The institution] had observed that the mother had handled her roughly, almost shaken her, while trying to give comfort. It had also been observed on several occasions that [the child] had started crying when reaching eye contact with her mother. Through the entire weekend, the family had increasingly withdrawn from the staff, and travelled to the child's grandmother on Sunday against [the institution]'s recommendations. When [the institution] asked about their return, they received no concrete answer from the parents. It was concluded that [the institution] could no longer compensate for the parents' deficiencies."

(68) Based on "how the situation developed" at the institution, the Court of Appeal found that – at this point in time – it "was too early to say whether the parents, with the appropriate assistance measures, would be unable to provide [the child] with the care required for her to continue to live with them". The Court of Appeal also found that the institution's strong concerns relating among other things to her "weight development – and the mother's lack of caring skills in all areas", were not based on "sufficiently clarified and correct facts". Moreover, the majority held that it was "unfortunate" that an interim care order had been issued so early, while the minority went even further and found that the measure amounted to a violation of Article 8 of the Convention.

(69) I do not endorse the Court of Appeal's view on this point.

(70) The child welfare services based their actions on several concerns. Some of them are less relevant today, but the main justification for the interim care order was the parent's lack of caring skills. As I will return to, posterity has proven that this was correct. The concerns regarding the mother's general functioning manifested themselves already before the childbirth, and the stay at the parent-child institution had enhanced them. The reports prepared by the institution showed that the mother, at the date of the interim care order, lacked sufficient parenting skills and that the there was no reason to assume that she alone would be able to provide her child with proper care. Moreover, it turned out that the father could not make up for these deficiencies. Despite repeated requests, he was much absent and reluctant to receive help and guidance. His lack of interest, availability and commitment towards his daughter was considered a large risk factor in her development. As I will return to, two attempts were made to leave him alone with her, but both sessions turned out badly.

(71) The final report from the institution expressed that it had not succeeded in making the parents sign the action plan. The parents have submitted that this was an error that should be taken into account. Of course, it would have been best if the plan had been signed, but an oral introduction thereto had been made during the admission meeting on 11 December 2017. The written version was given to the parents for signing, but this never happened despite several reminders. Against this background, I cannot see that the lack of signature is relevant.

(72) As the case developed until the interim care order, the situation for the child became untenable. Her parents withdrew more and more from the staff, and they had also left the institution despite clear recommendation to stay. When, in addition, the mother was observed giving the child a rough handling – much like shaking – the municipality had to take action. I have difficulties seeing which measures other than a care order the municipality could have applied in such a situation. A stay at the parent-child institution was the most comprehensive support the family could have been offered, and it is understandable that the institution could no longer be responsible for the situation. It is true that the stay was not a success, but I cannot see that this was due to deficiencies in the institution's programme or execution. The expert in the Supreme Court has stated that the parents received "an offer of comprehensive and adjusted guidance" while they were staying at the institution, and from the presentation of evidence, I cannot assume otherwise.

(73) Under these circumstances, I find that there was a clear basis for issuing an interim care order under section 4-6 subsection 2 of the Child Welfare Act, as there was reason to believe that the child would "suffer material harm by remaining at home".

(74) The parents have also criticised the process of placing the child in an emergency foster home before placing her in an ordinary foster home six months later. They contend that this was an error to be taken into account by the Supreme Court. I cannot see that it was. When a care order is executed, it is desirable that the child is given a stable framework as soon as possible, but in an emergency – like here – it may be difficult to find a suitable foster home immediately. Therefore, it is often unavoidable that children in such situations are first placed in an emergency foster home while waiting for a suitable and more permanent foster home.

(75) In light of what I have said about the situation before and after the interim order, I can also not see that the County Board had an insufficient factual basis for issuing the care order.

The current situation

(76) I will now turn to the central issue in the care order matter, namely whether the conditions in section 4-12 of the Child Welfare Act are met today.

(77) A care order under *section 4-12 (a)* – which is the relevant provision here – may, as mentioned, only be executed "if there are serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development".

(78) As I have already addressed, the case revolves much around whether the parents lack basic and intuitive caring skills. In such cases, the European Court of Human Rights has stressed the importance of "a sufficiently broad and updated factual basis for far-reaching decisions", see the Court's judgment 17 December 2019 *A.S. v. Norway* paragraph 66. I my opinion, the case has now been clarified in a sufficiently broad and updated manner before the Supreme Court.

(79) Both the mother and the father currently lead orderly lives. They have housing and employment, and they appear to function well as a couple. They seem to have a network around them, and to want what is right for the child.

(80) However, the question is whether they are able to provide the child with proper care. Crucial here are the child's care needs, and whether the parents – individually or together – may fulfil them in an appropriate manner.

(81) When assessing whether this is the case, I largely support the expert in the Supreme Court. He has carried out extensive and thorough work, based on conversations with the parents and a number of other persons, own observations during contact sessions and a broad selection of other sources, including previous reports in the case. The assessments and conclusions have been presented in a balanced manner, both in his written submission and in his supplementary oral statement. In the following, I will largely refer to his report.

(82) The expert in the Supreme Court has assessed the case largely in the same manner as the expert in the District Court and the Court of Appeal. Admittedly, the expert in the District Court expressed some doubt, but in the Court of Appeal, he was more firm in his opinion.

(83) Currently, the child is almost two and half years old. The expert has stated that she follows a normal development pace and functions well in most areas. At the same time, she has "a particular vulnerability that regularly manifests itself through a low tolerance for stress and periods of short or long duration with considerable regulation difficulties". In his oral statement before the Supreme Court, the expert concretised this by describing an inconsolable child that could cry relentlessly for a long time. It is also clear that the child has challenges related to eating and vomiting, but the expert stresses in his report that the exact causes of and possible connection between these problems are not well known. In his oral statement, he stated that the vomiting problems occurred during stress. Regardless of what the causes might be, the expert held that this demands a lot from the care person's ability to read the child's signals and to be flexible in the way of meeting her.

(84) The expert has found it to be "well documented that the child has special care needs", and that the failure to fulfil these "is assumed to entail a risk of emotional and relational uneven

development which may have negative consequence for her future health, functioning and quality of life". In his oral statement before the Supreme Court, he maintained and detailed these findings.

(85) Against this background, I take it that the child – in line with the expert's findings – is vulnerable and needs special care.

(86) I will now turn to whether the mother and the father – individually or together – are able to fulfil the child's special need of care. I start with the mother.

(87) An issue at stake is whether it is – or has been – correct to diagnose the mother as intellectually disabled. The diagnosis depends on the fulfilment of two criteria: First, the general mental capacity expressed in IQ must be below the suggested level of 70. Secondly, the actual functioning in everyday life must be so poor that it equals the actual level for intellectual disability. The mother was once considered to fulfil both criteria, with an IQ of 64 and with weak adaptive skills, i.e. skills for adjustment to and handling of challenges in everyday life. She has contended that this test, at the relevant time, did not express her real intellectual capacity, and that her situation today at any rate is different. The expert for the Supreme Court has measured the mother's IQ to 72, and expresses that her adaptive skills have improved. This strongly suggests – he stresses – that the diagnostic criteria for slight intellectual disability are not fulfilled.

(88) The mother's possible diagnosis is not relevant to my assessment of her parenting skills. The key issue is how she functions as a care person, and not whether or not such a diagnosis is medically correct. In the following, I will therefore not elaborate further on that.

(89) Based on the expert's report, among other sources, one must assume that the mother has general learning disabilities. She has special needs in learning situations, and there are limitations as to what kind of knowledge she is able to acquire. According to the expert, it is also expected that she will have a reduced capacity to transfer her knowledge to new situations and use it there. These limitations are assumed to affect her parenting skills and ability to avail herself of assistance.

(90) With regard to caring for the child, the expert holds:

> **"It is hard to see how the mother with her capacities is to perceive the child's complex and contradictory signals, interpret them realistically and respond with the necessary degree of sensitivity, clarity and flexibility. The mother would likely have had the same problems with a child with a stable and predictable functioning, as the child's development requires that the care person is able to adjust to perpetual change. One risks that the mother is constantly behind when it comes to the shifts in the child's needs, so that the child at best, somewhat simply put, is offered the care she needed yesterday. When something occurs that does not fit the memorised schedule, the mother will have problems adapting."**

(91) Against this background, I must conclude that the mother alone – independent of the child's vulnerability – does not possess the skills to give the child proper care.

(92) I will now consider whether the father alone has adequate caring skills or if he, at least, may compensate for the mother's lack of the same, so that they together may provide their daughter with proper care.

(93) The notes of concern received by the child welfare services before the childbirth, and which gave the parents the chance to stay at a parent-child institution, were mainly about the mother. However, the purpose of the stay was not just to equip the mother with sufficient caring skills. The father's parenting skills also had to be improved. The goal was for him to acquire necessary insight and qualifications to provide his child with proper care. It was therefore made clear at the initial meeting that he had to be present at the institution as much as possible, so that he could receive the same guidance as the mother. If the father was absent during daytime, it would be difficult to carry out the guidance that the institution had arranged.

(94) The stay at the institution did not have the desired effect. From the documents presented, it appears that the father was rarely present. The institution has described him as distant and nonparticipating in the family life. When he was present, he was perceived as uninterested and passive. In light of the purpose of the stay and the fact that his participation had been required by both the child welfare services and the institution, this is striking.

(95) From information provided it seems that the father handles his job as a seller well. However, as pointed out by the expert, this employment is within a relatively fixed and predictable regime. The father's ability to handle this type of employment "is not of much help to him as a care person for a two-year-old child with special needs".

(96) I also mention that the father has good references from a trainee period some years ago at a sporting facility, where his task was to arrange activities for children down to the age of two to three. This is positive and must be included in the assessment, but it cannot be given decisive weight. Although the job involved small children, the tasks were completely different from – and far more limited than – having the daily care of a child. It is not necessary for me to elaborate on the significance of the reference being given by someone close to the father and his family.

(97) The expert has expressed that the father's reflections on the child's needs consist of "formulations acquired through guidance without his being able to express any deeper understanding of what they mean and how they can be applied in the daily care". The father is absorbed in "concrete techniques, but often misjudges what the child understands and how his use of the techniques in fact works on the child". To the question of what is wrong with the father's caring skills, the expert answered in his oral statement before the Supreme Court that the father seems to lack natural caring instincts.

(98) This is supported by the two contact sessions held with only the father and the child in May 2018 – during a phase where the parents had access slightly more often than once a week. In the child welfare services' report from the visit on 9 May 2018, the following is stated:

> **"The interaction is marked by the father's insecurity towards [the child]. The father manages to a very small extent to adjust his conduct to [the child], to see and respond well and quickly to her signals. The father is constantly behind, and [the child] is uneasy and cries a lot. During the entire session, the child is solemn and quiet and does not make much noise except when she becomes insecure and expresses clearly that she is dissatisfied and her needs are not fulfilled. Also during this contact session, the father has a bland appearance. His facial expression is flat, his voice is on the whole slightly too high and his attempts to comfort seem mechanical and poorly adjusted to [the child]."**

(99) The father interrupted this contact session on his own initiative to collect a car. The second session took place on 14 may 2018, and then it was the supervisors' turn to interrupt. In a

subsequent assessment, the field manager of the child welfare services held that this was the correct decision "as the [the child]'s reactions and behaviour pattern indicated that it was not safe for her to continue being observed as planned".

(100) In his written submission to the Supreme Court, the expert sums up his findings regarding the father as follows:

> **The father is generally able to give practical and material care, but he is considered to have serious shortcomings in his ability to receive and understand the child's signals and her general and special needs. When he does not perceive this, he will also be unable to face it in an appropriate manner. This implies that the father is not assumed to be able to provide proper care to the child, nor will he be able to compensate for the mother's lacking caring skills."**

(101) Against this background, I conclude that the condition in section 4-12 subsection 1 (a) of the Child Welfare Act is met. Neither the mother nor the father is able, individually, to provide the child with proper care, and they are also not able to do so together. If the child is reunited with her parents, there will be "serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of [her] age and development". This is also set out in the expert's final prognosis, to which I will return.

(102) I now turn to *section 4-12 subsection 2 of the Child Welfare Act*. As mentioned, it follows from subsection 2 first sentence that a care order may only be issued "when necessary due to the child's current situation", and according to the second sentence, a care order may only be issued if satisfactory conditions cannot be created for the child by other measures.

(103) Already before the childbirth, efforts were made to prepare the parents for the care situation. Quite specifically, this included planning that the family were to stay at a parent-child institution. Such a stay is, as mentioned, the most comprehensive and supportive assistance the child welfare services may offer. I refer to what I have previously said about the competence and work methods at the institution.

(104) Also after the care order, the child welfare services have attempted to facilitate possible family reunification in the future. I refer in particular to the extensive contact that has been arranged between the parents and their child. Admittedly, the County Board stipulated a minimum contact of four times a year, but it is undisputed that the parents have had 28 contact sessions with their daughter since the care order two years ago. Among these, twelve were held during the six months the child was in the emergency foster home. The sessions have taken place under supervision and guidance. Attempts have been made to improve the quality of the contact by trying out whether or not the foster mother should be present. The sessions have also been held at various places. Upon the parents' wish, the contact sessions during the autumn of 2019 were held in their home. During the same period, increased contact was tried to see if this would make the parents benefit more from the guidance.

(105) Already the expert in the District Court established that massive assistance measures had been implemented. In its supplementary statement to the Court of Appeal, however, he expressed uncertainty as to whether extensive guidance would be helpful to the parents' challenges. The expert in the Supreme Court has maintained the same. According to him, the parents received extensive and adjusted guidance during the stay at the parent-child institution. He also pointed out that a supervisor had been present during the contact sessions and tried to give guidance to

the parents to strengthen the interaction between them and the child. However, it has proven difficult for the parents to adjust to the knowledge they receive through the guidance to new situations. The expert finds that this is related to their cognitive functioning.

(106) I mention that the parents have submitted that they wanted guidance through video recording of them in contact situations, but that the child welfare services allegedly refused this due to lack of resources. The municipality, in turn, has submitted that this is not correct. The objections related to an arrangement that gave the parents more access to their child than what was advisable. Based on the evidence presented on assistance measures in general – and what the expert has stated regarding the parents' ability to receive and avail themselves of guidance – I find it difficult to attach too much weight on this submission from the parents.

(107) The expert sums up his statement by this prognosis:

> **"Although a certain positive development will be possible, the expert deems it unlikely that the parents in the future will be able to provide the child with proper care adjusted to her needs. The deficiencies are presumably rooted in stable characteristics of the parents that are unlikely to change and that cannot be sufficiently compensated by assistance measures and/or the use of networks. If the child were to be reunited with her parents, the result would be strong and lasting reactions from her. The parents are struggling even with everyday interaction, and it is highly unlikely that they will be able to handle such a demanding situation that is then presumed to arise."**

(108) The expert's findings are compatible with the impression of the staff at the parent-child institution.

(109) Against this background, my conclusion is – should the care order be revoked now – that satisfactory conditions for the child cannot be created by other measures. The care order is thus "necessary due to the child's current situation", see section 4-12 subsection 2.

(110) When making decisions under chapter 4 of the Child Welfare Act, decisive importance must, as mentioned, be attributed to finding the measures that are in the child's best interests, see section 4-1 of the Child Welfare Act. This also applies to care orders.

(111) The assessment of what is the child's best interests must be based on the principle that it is best for the child to live with its parents. The parents' and the child's interests are thus normally concurrent. However, if the parents – like in the case at hand – lack the ability to provide proper care, the situation is different. The child's interests must then be given more weight. This interpretation does not amount to a violation of the right to respect for family life under Article 8 of the Convention. On the contrary, the Court has repeatedly emphasised that the child's interests must override those of the parents, see for instance my earlier quote from *Strand Lobben* paragraph 204 that the "child's best interests are of paramount importance".

(112) I reiterate that the care order does not entail a complete severance of the ties between the parents and their child. As I will come back to, the ties are to be maintained and, if possible, developed through contact arrangements.

(113) Against this background, my conclusion is that the conditions for a care order under the Child Welfare Act are met. The care order also meets the requirement of "very exceptional circumstances", which the European Court of Human Rights has laid down for such interference.

Contact rights – legal starting points

(114) I will now turn to the determination of the extent of access between the parents and the child.

(115) Section 4-19 of the Child Welfare Act contains rules on contact rights after a care order. The parts of the provision that are case relevant to our case read:

> **"Unless otherwise provided, children and parents are entitled to access to each other.**
>
> **When a care order has been made, the County Social Welfare board shall determine the extent of access, but may for the sake of the child also decide that there shall be no access."**

(116) Section 4-1 is also instructive with regard to the application of section 4-19. Hence, in order to determine the extent of access, the best interests of the child are crucial. As a starting point, it is best for the child to have contact with its parents that strengthens and develops the bond between them.

(117) What the Supreme Court is to determine, is the minimum access. In addition, the Supreme Court may give guidance as to how the contact sessions are to be carried out. However, the child welfare services may grant more, or more flexible, access as long as it complies with the conditions set forth in the judgment.

(118) I mention here that, under section 4-19 subsection 5, the parents may demand that the access issue be dealt with again twelve months after it was last dealt with by the County Board of the courts.

(119) When fixing the contact rights, the starting point must be that a care order is meant as a temporary measure, and that the child is to be reunited with his or her parents as soon as the circumstances permit, see section 4-16 last sentence of the Child Welfare Act: "unless the child's best interests suggest otherwise, the child welfare services shall facilitate family reunification". With regard to this provision, the following was stated in Proposition to the Storting 169 L (2016–2017) on page 144:

> **"Care orders are as a starting point temporary and the child welfare services shall facilitate reunification where this is feasible and in the child's best interests. In these cases, it is important that the bonds between the child and its parents are maintained to the extent possible. These bonds must be emphasised when determining the extent of access and contact, among other things."**

(120) Moreover, the prominence of the aim of reunification when fixing the contact rights has been stressed in a number of Supreme Court rulings, including Rt-2004-1046 paragraph 48, Rt-2014-976 paragraph 35 and 36 and HR-2019-788-U paragraph 24. It is also strongly emphasised in HR-2020-661-S paragraph 120 et seq.

(121) The Supreme Court stated in Rt-2012-1832 paragraph 31 that when determining the extent of access, one must distinguish between "temporary placements and long-term placements". Based on the context, it must be assumed that "temporary" refers to cases where family reunification may be facilitated within reasonable time, i.e. in the near future. In that particular case, it was clear that reunification could not be facilitated within reasonable time. The foster home placement therefore had to be assessed in a long-term perspective. On the further assessment in this regard, the following is stated in paragraph 34:

> **"The extent of access must consequently be determined so that it does not prevent the establishment of a safe and good relation to the foster parents. At the same time, it must safeguard the consideration of creating and maintaining the child's knowledge and understanding of its biological origin."**

(122) I paragraph 37, a description is given of the standard applied in case-law when it comes to the extent of access:

> **"Although no clear lines may be drawn for how much access children should generally have to their parents, it is interesting to look at the level applied in case-law. The Supreme Court has heard several cases regarding contact rights, and the number of visits during long-term foster care has generally varied between three and six per year. This applies to cases where access is only determined for one parent or joint access for both. In Rt-2006-1672, the Supreme Court heard a case where the parents demanded contact rights individually. The result thereof was six annual visits for each of the parents of six hours each."**

(123) As it will appear in the following, it is necessary to elaborate on and specify these statements to a certain extent.

(124) Although it is stated in paragraph 37 that no clear lines may be drawn for the extent of access between children and parents after a care order, the judgment has been perceived as a type of standardisation. Hence, there is reason to stress that it should not be understood in that way. The extent of contact must be determined individually in each case. This is also set out in HR-2020-661-S paragraph 125.

(125) The individual assessment must start with the assumption that a care order – whether relatively short-term or more long-term – will be temporary. The goal must be that the child is returned to its parents as soon as the circumstances permit, and the contact must be arranged to safeguard this objective in the best possible manner.

(126) The European Court of Human Rights has also repeatedly maintained that care orders are temporary. In *Strand Lobben and Others v. Norway* paragraph 208, it is stated that a "guiding principle is that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child".

(127) The Court has also established that the domestic authorities have a positive duty to facilitate family reunification as soon as possible. In *Strand Lobben* paragraph 205, it is stated that "in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible", see also the Court's judgment 19 November 2019 *K.O. and V.M. v. Norway* paragraph 60. This duty also involves ensuring that the contact is of a good quality. If the contact sessions do not work well, adjustments or alternative arrangements must be tried out, see *Strand Lobben* paragraph 221. Furthermore, it follows that the force of the authorities' duty to take measures to facilitate family reunification increases as time goes by, "subject always to its being balanced against the duty to consider the best interests of the child", see *Strand Lobben* paragraph 208. Access will be a key measure towards obtaining family reunification.

(128) Contact must be facilitated in order to strengthen and develop family ties, see *K.O. and V.M.* paragraph 69. When it is stated in the Supreme Court judgment Rt-2012-1832 paragraph 34 that the access must "safeguard the interest of creating and maintaining the child's knowledge and understanding of its biological origin", it must be specified that such a limitation of the

purpose of the contact may only be made in the cases where the aim of reunification is abandoned. Such an abandonment – with the effect that the contact is strongly limited or completely removed – requires exceptional and strong reasons, see the Supreme Court judgments Rt-2014-976 paragraph 36 and HR-2017-2015-A paragraph 56. Since this is not an issue in the case at hand, I will not elaborate further on how this criterion should be understood. In cases where the aim of reunification is firm, the contact must be arranged to strengthen and develop the bonds between the parents and children.

(129) The domestic authorities cannot facilitate contact exposing the child to undue hardship, see *K.O. and V.M*. paragraph 69. Both the child's need of stability and continuity in the care situation and the parent's lack of caring skills may, after an individual assessment, suggest that the access is limited. However – irrespective of the assumed length of the foster care – the authorities must regularly check whether the circumstances have changed and assess the importance thereof for the extent of access.

(130) As I have stressed, Norwegian case-law does not provide any standard for determining the extent of access. This is compatible with Article 8 of the Convention. Rulings by the European Court of Human Rights show that an individual assessment must be made where the considerations I have pointed at are included.

(131) A particular issue is whether one may stipulate a minimum level of access. The appellants have in this regard referred to the following passage in *K.O. and V.M*. paragraph 69:

> **"The Court emphasises that family reunification cannot normally be expected to be sufficiently supported if there are intervals of weeks, or even – as in the instant case – as much as months, between each contact session."**

(132) It is contended that this means that a minimum level of access applies, and that even intervals of weeks between each contact session are too seldom. I agree that the quote, considered in isolation, may suggest that. However, it must be read in the context it was made. It is not part of the Court's account of the general legal principles, but of the individual assessment of the case. Moreover, it must be seen in context with the next sentence, where contact exposing the child to undue hardship is excluded. The case concerned a well-functioning child, and the contact sessions with the parents had been good. At the time of the Court's ruling – upon the initiative of the child welfare services – the child had been reunited with its parents. Contact sessions of four, and later six, times per year demanded under these circumstances a more thorough explanation than referring to the child's need of stability.

(133) The view that the mentioned formulations in *K.O. and V.M.* do not stipulate a minimum level of access, is supported by the Court's acceptance of much less contact being arranged after individual assessments. I refer in particular to the Court's rulings 11 October 2016 in the cases *J.M.N. and C.H. v. Norway* and 4 April 2017 in *I.D. v. Norway*, which were both declared inadmissible. In those cases, contact sessions were to be held three and six times per year, respectively. I also refer to the Court's judgment 15 March 2012 *Levin v. Sweden* paragraph 62–69, where four contact sessions per year were accepted.

(134) Although the quoted passage in paragraph 69 in *K.O. and V.M.* is unlikely to support that an absolute minimum level applies, it demonstrates that the aim of family reunification requires as much contact as possible without setting aside the best interests of the child.

(135) It should be stressed that contact between the parents and the child may not take place solely because it facilitates family reunification. Even if this aim is abandoned, particular regard must had to the intrinsic value of access – unless it exposes the child to undue hardship. This is expressed in the Court's judgment 17 December 2019 *Abdi Ibrahim v. Norway*, where it is stressed in paragraph 57 that

> **"regardless of the applicant's stand on continued foster care in the course of the adoption proceedings – and of whether the domestic authorities at that time might have been justified in concluding that the foster care placement, if X were not adopted, would be long-term – she and her son still had the right to respect for their family life. Accordingly, although the applicant did not apply for family reunification to the domestic authorities, those authorities were nonetheless under the positive duty to take measures to facilitate the applicant's and X's continued enjoyment of a family life, at the minimum by maintaining a relationship by means of regular contact in so far as reasonably feasible and compatible [to] X's best interests."**

(136) I summarise the legal starting points for the stipulation of contact as follows:

(137) The extent of access must be determined individually in each case. In the assessment, the best interests of the child are the primary consideration. At the outset, it is best for the child to live with its parents. The purpose of the contact must therefore be to facilitate family reunification. Moreover, contact has a value in itself regardless of the prospects of family reunification, but must not expose the child to undue hardship.

(138) Only when exceptional and strong reasons are present, the aim of family reunification may be abandoned, and on those grounds, the parents' contact rights may be strongly limited or completely removed.

Contact rights – individual assessment

(139) I will now turn to the individual assessment of the amount of contact to be determined in this case.

(140) As I have emphasised, the starting point must be the ultimate aim of reuniting the child with its parents. For this to succeed, there must be enough contact to strengthen and develop the family ties. However, the contact must not be so extensive as to harm the child.

(141) In the assessment of what is the correct amount of contact, one must consider the fact that the child is particularly vulnerable and that there are deficiencies in the parents' ability to care for her. The expert in the Supreme Court has explained the latter by the parents having "few natural instincts when it comes to interaction with children". He also stresses that when these instincts lack to begin with, they are hard to acquire later.

(142) Importance must also be attached to the child's apparent negative reactions during several of the contact sessions that have taken place. The expert has expressed that the reactions have occurred gradually in the following week. Most striking is her nightly unrest. The child wakes up two to four times before midnight, and normal measures for calming her are not sufficient. The expert has seen examples of this through video recordings made by the foster mother, and he has described a child screaming relentlessly for 15–20 minutes. When attempts were made to approach or touch the child, the screaming escalated, and she rejected contact. These reactions suggest that there must be a certain lapse of time between the contact sessions.

(143) On the other hand, it is possible that a certain frequency will make the contact sessions work better than if they are held more rarely. It cannot be excluded that the parents and child then may become more comfortable in the contact situations. The parents have felt that they are "sitting an exam" during the sessions, and it may be that a small increase in the frequency may reduce the stress created by this feeling. As mentioned, the parents and the child have had extensive contact without this seeming to have improved the quality of it – despite various measures. However, the situation may be become another now, after the very care order case has been decided.

(144) The expert in the Supreme Court has suggested that the contact sessions may possibly improve for both the parents and the child if they are held in a more natural setting. I trust this to be the case. Such a relationship must, however, develop over time, and as I understand the expert, monthly contact sessions – which have been held for a while – is currently too frequent out of consideration for the child. In his oral statement before the Supreme Court, the expert expressed concern that frequent contact would result in persistent hardship for the child. Seen in context with the written report, it must be assumed that frequent contact means between six and twelve times a year. However, it must be clear that the hardship will be greater if closer to twelve contact sessions are held per year. Here, I refer once more to his description of the child's reactions to the sessions. To start with, the child needs slightly longer periods of stability before a possible extension of the contact with her parents. As far as I can see, this must also be in the parents' interests in the long run.

(145) When balancing the interests of the child against those of the parents, eight contact sessions per year seem to be a correct level considering the current situation.

(146) Experience thus far suggests that the quality of the contact sessions is notably reduced after a couple of hours. A duration of two hours each time will therefore be suitable.

(147) However, I emphasise that the child welfare services may increase the amount of contact and the scope of each session if this is considered appropriate after an individual assessment. Such an assessment must be made on a regular basis. Particularly if the contact sessions are held in a more natural setting than they have been until now, an increase may eventually be possible.

(148) In light of the current situation, the contact sessions should be held under supervision. Supervision may indeed be a burden to the parents, and according to the Court's case-law, permanent supervision will only take place if justified on special grounds, see *K.O. and V.M.* paragraph 69. Experience from earlier contact sessions – particularly the child's reactions afterwards – suggests, however, that such special grounds are present here. The expert has also expressed that the parents "are currently not considered to have sufficient competence in contact situations to be left alone with the child". Hopefully, such supervision may also contribute to facilitating extended contact rights for the parents after a while, possibly also without supervision.

(149) I agree with the municipality that the foster mother should not conduct the supervision, as that may place both her and the parents in difficult roles. It is for the municipality to decide who will supervise the contact sessions, and in which manner. However, the objective must be to facilitate improved and perhaps extended contact.

(150) Consequently, the appellants have partially succeeded, as more access is granted than what was done in the Court of Appeal.

Conclusion

(151) I vote for this

J U D G M E N T :

1. In the Court of Appeal's judgment, the extent of access is changed to 8 – eight – contact sessions per year.

2. Apart from that, the appeal is dismissed.

(1) Justice **Matningsdal:** I agree with Justice Falkanger in all material respects and with his conclusion.

(2) Justice **Møse:** Likewise.

(3) Justice **Matheson:** Likewise.

(4) Justice **Normann:** Likewise.

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

(6) Justice **Kallerud:** Likewise.

(7) Justice **Ringnes:** Likewise.

(8) Justice **Bergh:** Likewise.

(9) Justice **Østensen Berglund:** Likewise.

(10) Chief Justice **Øie:** Likewise.

Following the voting, the Supreme Court pronounced this

J U D G M E N T :

1. In the Court of Appeal's judgment, the extent of access is changed to 8 – eight – contact sessions per year.

2. Apart from that, the appeal is dismissed.