



# SUPREME COURT OF NORWAY

## J U D G M E N T

given on 2 March 2021 by a division of the Supreme Court composed of

Justice Jens Edvin A. Skoghøy  
Justice Ragnhild Noer  
Justice Arne Ringnes  
Justice Cecilie Østensen Berglund  
Justice Kine Steinsvik

**HR-2021-474-A, (case no. 20-140524SIV-HRET)**  
Appeal against Hålogaland Court of Appeal's judgment 26 June 2020

A  
B

(Counsel Geir Olav Pedersen)

v.

X municipality

(Counsel Frode Lauareid)

f

- (1) Justice Noer:

### **Issues and background**

- (2) The case concerns contact rights for a child in foster care and her biological parents following a care order.
- (3) C was born on 00.00.2014. Her biological parents are the mother B, born on 00.00.1976, and the father A, born on 00.00.1973.
- (4) A was born and raised in Norway and comes from a family with six children. Three of the children grew up in foster homes. In 2003, he started to receive disability benefits dating back to the age of 16 due to his mental status. He has previously been diagnosed with social anxiety, depression and avoidant personality disorder.
- (5) B is originally from the Philippines. She married A in 2013 and came to Norway in 2014. She has an education from the Philippines in business economics and as a teacher. She claims to have had a good childhood, and she currently works as an on-call employee at a hotel.
- (6) C was placed in foster care when she was seven months old, and has lived there since. She is now six years and five months old.

### ***Proceedings***

- (7) On 5 May 2015, the child welfare services decided that the girl should be placed in an emergency foster home with D and E. They had two children of their own, and are C's foster parents today.
- (8) The County Social Welfare Board (the County Board) in Troms and Finnmark upheld the emergency care order by a decision of 13 May 2015. On 1 July 2015, the County Board ordered that the girl be placed in the care of X municipality. Contact rights were set at three hours, four times per year, with a right for the child welfare services to supervise.
- (9) The parents brought the case before Trondenes District Court. By judgment of 16 March 2016, the District Court affirmed the County Board's order. Contact rights were reduced to two hours, twice per year.
- (10) One year later, in March 2017, the parents asked once more for a revocation of the care order, alternatively that the contact be extended. The County Board declined, but by a decision of 13 July 2017, contact rights were set at two hours, three times per year, with a right for the child welfare services to supervise.
- (11) In 2018, the parents made yet another request for a revocation, alternatively extended contact. The County Board chose to split the matter into two separate cases, one dealing with possible revocation and one dealing with contact rights.

- (12) The request for a *revocation of the care* order was dismissed with reference to section 4-21 subsection 2 second sentence of the Child Welfare Act, as the County Board found that no material changes to the child's situation had been documented. This decision was brought before Trondenes District Court, which set it aside by a judgment of 5 March 2019. The County Board reconsidered the case, and upheld the care order by a decision of 18 June 2019. The parents brought the decision before Trondenes District Court. By a judgment of 5 May 2020, the Court reached the same result as the County Board. The parents appealed to the Court of Appeal, but leave to appeal was not granted.
- (13) As for *contact rights*, the County Board decided on 27 November 2018 that they should still be set at two hours, three times per year. The parents brought the decision before Trondenes District Court. By a judgment of 22 November 2019, contact rights were set at two hours, four times per year, with possibility for the child welfare services to supervise.
- (14) The parents appealed to Hålogaland Court of Appeal, which, on 26 June 2020, ruled as follows:
- “A and B are to have contact with C, born 00.00.2014, three times per year, two hours each time. The child welfare services may supervise the contact.”
- (15) A and B have appealed to the Supreme Court. The appeal concerns the application of the law and the findings of fact.
- (16) Psychology specialist Elin Jørgensen has been appointed an expert witness in the Supreme Court. She was also an expert witness in the District Court and in the Court of Appeal. In addition to having submitted a written report, she has testified during the appeal hearing.
- (17) The case has been heard together with HR-2021-475-A and HR-2021-476-A.

### **The parties' contentions**

- (18) The appellants – *A and B* – contend:
- (19) The girl was removed from her home when she was seven months old. Practically no measures have been taken after that to facilitate reunification between her and her parents. When contact is limited to three times a year, it is difficult to maintain and strengthen the bonds between them.
- (20) According to case law from the European Court of Human Rights (ECtHR), contact must not expose the child to any “undue hardship”. The term indicates that the child must endure some discomfort during the contact sessions. The more limited the contact, the larger the potential negative consequences must be for the child in order for the interference with family life to be justifiable. The parents agree that the girl is a vulnerable child, but contend that the described reactions after contact are exaggerated.
- (21) The contact sessions have lately improved, and the foster parents say that the girl is looking forward to them although she has reactions afterwards. The foster parents wish to adopt her, which means that one must be careful not to over-emphasise their statements.

- (22) The girl's language is Norwegian, while her mother mainly speaks English. This too has been significant for how the contact sessions are carried out. The girl's linguistic, cultural and religious background must be safeguarded.
- (23) The parents do not oppose supervision, but want longer and more frequent contact sessions.
- (24) A and B asks the Supreme Court to rule as follows:
- “Contact rights for C and the parents B and A are to be set as the Supreme Court sees fit.”
- (25) The Supreme Court – *X municipality* – contends:
- (26) It is not realistic to have the girl returned to her biological parents, and this goal should be abandoned.
- (27) A contact arrangement of two hours, three times a year balances all interests in the case. The girl has a functional decline both before and after contact, and her development is delayed in many areas. Such reactions in the girl must be given decisive emphasis when determining the proper amount of contact.
- (28) The best interests of the child are paramount in these cases. The ECtHR primarily assesses the parents' interests. The children do not have an independent position as a party in cases in the ECtHR, and they are not heard.
- (29) Greater emphasis must be placed on psychological research. Children who are placed outside of their homes are often very vulnerable and have a particular need of a safe and sensitive care. They have a low tolerance for conflict between care persons, and should have less contact with their the parents when they undermine the foster home.
- (30) It is crucial that the child welfare services carry out a broad assessment of all aspects of the case and demonstrate that a fair balance has been struck between the interests of the child and those of its biological parents, see the Supreme Court ruling HR-2020-661-S paragraph 86.
- (31) X municipality asks the Supreme Court to rule as follows:
- “The appeal is dismissed.”

## **My opinion**

### ***The Supreme Court's jurisdiction***

- (32) The Supreme Court has jurisdiction to review all aspects of the case, see section 36-5 subsection 3 of the Dispute Act. The assessment must take place based on the situation at the time of the judgment, see HR-2020-662-S paragraph 42.

### *Contact rights – The law*

- (33) Section 4-19 of the Child Welfare Act states that the child and parents have a *right of access* to each other following a care order unless otherwise decided. The principle that the child and its biological parents have a right to respect for their private and family life also follows from Article 9 (3) of the Convention on the Rights of the Child and Article 8 of the European Convention on Human Rights (ECHR).
- (34) The general starting point for all decisions concerning a child is the *child's best interests*. This follows from Article 104 subsection 2 of the Constitution, from section 4-1 of the Child Welfare Act and from Article 3 of the Children's Convention. It is stressed several times in ECtHR case law.
- (35) Also the child's *right to be heard* is a prominent principle in cases concerning children. I refer to Article 104 subsection 1 of the Constitution, stating that children "have the right to be heard in questions that concern them, and due weight shall be attached to their views in accordance with their age and development". This also follows from sections 1-3 and 6-3 of the Child Welfare Act and Article 12 of the Children's Convention.
- (36) A number of judgments have been handed down by the ECtHR and by the Supreme Court in Norwegian child welfare cases. The key ruling by the ECtHR is the Grand Chamber judgment of 10 September 2019 *Strand Lobben and Others v. Norway*, which was followed up in the Supreme Court's three grand chamber rulings in 2020: HR-2020-661-S, HR-2020-662-S and HR-2020-663-S. In these cases, however, one did not consider contact rights where the aim of reunification between the child and parents has been abandoned, see HR-2020-662-S paragraph 128.
- (37) In HR-2020-662-S paragraphs 124 and 130, the Supreme Court emphasises that the ECtHR's has not laid down a standard for determining the extent of contact, but that this must be *assessed individually* based on the circumstances in each case. The starting point for the assessment is that the care order must be of a temporary nature, see paragraph 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."

- (38) At the outset, it is assumed to be best for the child to live with its parents, see HR 2020-662-S paragraph 51 and 116. Where the child's and the parents' interests come into conflict, the authorities *must strike a fair balance between these interests*, with particular importance attached to *the best interests of the child*, see paragraph 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."

- (39) As long as the goal is reunification between parents and child, there are requirements for the *quality and frequency* of the contact sessions, see HR-2020-661-S paragraph 144:

“As long as family reunification is the goal, the purpose of access is not only to ensure that the child knows who his or her parents are, but also to preserve the possibility of reunification. This requires a thorough assessment of the frequency and quality of the contact sessions. And even when reunification is not possible, it has an intrinsic value to maintain family bonds as long as it does not harm the child.”

- (40) In a new judgment from the ECtHR handed down on 22 December 2020, *M.L. v. Norway*, it is stated in paragraph 79 that “[f]amily reunification cannot normally be expected to be sufficiently supported if there are intervals of weeks, or even months, between each contact session ...”. The statement is included under “General principles” in the judgment and refers to a previous judgment from the ECtHR, given on 19 November 2019, *K.O. and V.M. v. Norway*. As I see it, here, the ECtHR highlights the general starting point that continuing and frequent contact is crucial to ensure reunification. At the same time, the ECtHR maintains that the best interests of the child “must come before all other considerations”, see paragraph 78 in *M.L. v. Norway*. In any case, the contact regime must not expose the child to undue hardship, see HR-2020-662-S paragraph 129.

- (41) According to ECtHR case law, the aim of family reunification may only be *given up* if the parents have proven particularly unfit or the measure will harm the child’s health and development, see HR-2020-661-S paragraph 129. In cases where the aim of reunification is unchanged, the contact must be arranged to *strengthen and develop family ties*, see HR-2020-662-S paragraph 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. ... 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.”

- (42) The contact regime must be founded on *an adequate and updated basis for decision-making*, see HR 2020-661-S paragraph 171:

“Orders issued under the Child Welfare Act must be founded on an adequate and updated basis for decision-making, reflect a fair and sufficiently broad balancing of interests and have a satisfactory reasoning. The exact requirements depend on the circumstances in each case and the nature of the relevant measures.”

### *Summary*

- (43) As long as the aim of family reunification has not been abandoned, contact rights must be granted to the extent possible without compromising the best interests of the child. Although an absolute minimum cannot be applied, see HR-2020-662-S paragraph 134, as little as three to six contact sessions a year is at the outset not suitable to strengthen and develop the bonds

between the parents and the child. Such limited contact *must be necessary* based on consideration of the best interests of the child.

- (44) At the same time, contact must not be facilitated that exposes the child to *undue hardship*, see HR-2020-662-S paragraph 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 be 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.”
- (45) In two subsequent judgments from the Supreme Court, it is emphasised that the expression “undue hardship” does not mean that the extent of contact should be close to this limit, see HR-2020-1967-A paragraph 61 and HR-2020-2081-A paragraph 74. This is because measures must not be taken that would harm the child’s health and development, see *Strand Lobben* paragraph 207. I stress that there is no necessary contrast between limited contact for a certain period and family reunification, when the latter is not realistic in the short term. The contact may be increased when deemed proper out of consideration for the child.
- (46) Case law singles out circumstances of particular importance for the determination of access.
- (47) First of all, case law distinguishes between cases where *the aim of family reunification* persists and cases where reunification is no longer considered possible, see for instance HR-2020-661-S paragraph 144.
- (48) Although such a distinction is necessary, there is no sharp line. There will be a sliding transition between cases where it is clear that the children should be returned to their biological parents within a short period of time, and cases where such a return is unrealistic in the short term. Whether one finds oneself in one or the other situation, will depend on how the circumstances develop. The extent of contact can thus not be determined solely based on the likelihood of family reunification, see HR-2020-661-S paragraph 145. Where the consideration for the child clearly suggests limited contact with the parents, this cannot be overturned by a superior and general aim of family reunification.
- (49) Secondly, there may be a difference between what is in the best interests of the child *in the short term* and what is best *in the long term*. This consideration may imply that contact should be limited in the light of the current situation, even if the long-term goal is family reunification.
- (50) It is also not an automatic effect of abandoning the aim of family reunification that contact rights are reduced to a minimum or even lost. Maintaining the family ties, even if the goal of reunification has been given up, still has a value in itself, see HR-2020-661-S paragraphs 134 and 146. In some cases, it may be in the child’s best interests to have extensive contact with the parents, also when reunification is no longer an option.
- (51) Against this background, I will now turn to the more individual factors to consider when determining the extent of contact.

***Factors in the individual determination of contact rights***

- (52) The extent of contact in the individual case must be determined based on a broad assessment. Without the intention of providing a complete overview, I will highlight some of the considerations that are often referenced in case law.
- (53) The *child's vulnerability* and reactions to contact with its parents are crucial in determining the proper extent of contact. Each child must be assessed separately, and one must bear in mind that regular contact sessions also may be profitable for the interaction between children and their parents. The *child's needs* on a more general level and how he or she copes after the care order are significant. The same is the strength of the child's *bonds* with its biological parents. Depending on maturity and age, *the child's own opinion* carries great weight – to which I will return.
- (54) The *functioning of the parents* and whether one is dealing with a *short-term or long-term placement* are important. Both the reason for the care order and the parents' subsequent development are relevant. The same applies to *the quality of the contact sessions* and the possibility to *offer guidance to the parents*. The child welfare services are responsible for arranging good contact sessions and assist the parents, see section 4-16 of the Child Welfare Act, but the parents must also demonstrate an ability to change where necessary. However, contact sessions may also be demanding on the parents, particularly when supervised. Contact should therefore be facilitated even where the parents are struggling to comply with guidance. Regard must also be had to whether there is a *strong conflict* between the biological parents and the child welfare services/foster parents, and if the children are caught in loyalty conflicts. The adults have a responsibility for rational collaboration and for protecting the children from conflicts in the case.
- (55) *Whether the foster parents have a different language or cultural background* than the biological parents may be significant, see HR-2020-1967-A paragraph 96. The children's right to know about their culture must be respected regardless of the cultural background of the foster parents and the biological parents, see HR-2021-475-A paragraph 46.
- (56) I finally mention *the consideration of giving the child a safe and trusting relationship with its foster home*. The foster parents have an important task in facilitating contact sessions and attending to the child's emotional needs afterwards. At the same time, the overall burden on the foster family may become so heavy that it can no longer manage the task of caring for the child.
- (57) As mentioned, *the child's own opinion* will be a key factor. The report "It's about us – 100 children aged 7–18 on contact in the child welfare services" was issued by *Forandringsfabrikken* in 2021 and contains statements by 100 children who have been in the child welfare services' care. The children stress the importance of receiving correct information, of having the chance to speak freely and be heard, and of respect for their privacy. On page 60 of the report, this is summarised as follows:

"To find out what is in the best interests of the child, the child welfare services must ensure that the child receives sufficient and comprehensible information, that it may freely express its opinions, and that its right to privacy is safeguarded. These are fundamental rights of a child during a legal process, which must be fulfilled before it can be established what is best for the child."



- (58) At the same time, the children express that it is sometimes difficult to speak freely. On page 27, the report reproduces the experiences of some of the children:

“Many of us have not had the chance to be honest to the child welfare services about what is important to us when it comes to contact. For many of us, it has been uncomfortable to talk about these things, and we have been unsure about who else were informed of what we said. Some of us have not wanted our biological parents to know, out of fear that they would be upset and disappointed, or out of fear of being yelled at or punished.”

- (59) I will now turn to the facts in the case at hand.

### ***The individual determination of contact rights***

#### *The aim of family reunification*

- (60) Before the Supreme Court, X municipality has made a new contention that the aim of reunification between the child and its biological parents can no longer be maintained. The girl has now lived in her foster home for nearly six years. Her parents’ claim to have the care order revoked was last dismissed by Trondenes District Court’s judgment 5 May 2020. I take as my starting point that contact rights must be determined as if the aim of family reunification has not been given up, although a revocation of the care order is not realistic in the short term.

#### *The reason for the care order*

- (61) The child welfare services first came in contact the family when the girl was barely three weeks old. The parents had been with her at the child health clinic, where the personnel refused to send them home until the child welfare services had made further inquiries. The father held the crying infant at arm’s length and would not hold her close.

- (62) The child welfare services found the situation critical. Already on the next day, the family were relocated to Y, a centre for parents and children. There, they stayed for six weeks and received guidance on how to care for the child. This is described as follows in the County Board’s order of 1 July 2015:

“During the stay at Y and in the time that followed, there have been serious concerns related to the parents’ caring skills, including their lack of closeness towards C. She was often left unattended on the sofa, and after a while, the parents claimed that she did not like close contact. The parents had to be instructed in detail on how to hold their baby close. The father in particular kept her at a distance, even during feeding, and she received little close contact and eye contact with her parents. A has stated that he had a low tolerance for close contact. The child welfare services and the nurse also observed that C turned away if someone tried to hold her close, and she did not maintain eye contact for more than brief moments.”

- (63) The family moved back home early December 2014. They received daily follow-up from the child welfare services, which tried to teach the parents how to provide the best care for the girl. When a physiotherapist and the child health clinic also started to pay weekly visits, the child welfare services reduced their follow-up to some extent.

- (64) The concerns for the girl grew. The parents were distant towards her, and, in the child welfare services' view, she did not receive the help to develop as small children need. The girl eventually became passive, expressionless and quiet. The physiotherapist who had followed the family estimated the girl to be around two months behind other children of the same age. Because of this delayed development, the child welfare services issued an emergency care order on 5 May 2015, and the girl was placed in the foster home.
- (65) The foster parents have stated that when the girl came to them, she gave no eye contact and resisted physical closeness and consoling. She made few sounds. Her neck was weak, and she struggled with holding her head up.

*The girl today*

- (66) The girl is now six years and five months old. She is described as a lively and charming girl. However, she has large linguistic and social difficulties compared to other children.
- (67) A test taken of her in 2019 revealed a language comprehension around one year and nine months behind normal development. Moreover, the girl struggles emotionally. Psychology specialist Elin Jørgensen references in her report of 5 August 2019 the kindergarten's information that "C becomes very easily angry or upset". When this happens, she needs the help of adults to calm down and move on. This is one of the reasons why she struggles in interaction with other children. She is also somewhat behind motorically. It has been decided that her school start be postponed by one year.
- (68) It has not been clarified what causes the difficulties. However, one of the experts in the case, psychologist Jørn Søvik, mentioned in his report of 1 April 2020 that the lack of care during a child's first months may disturb the learning of "basic interaction skills". This may in turn affect the child's ability to learn and understand language.

*Evaluation of the contact sessions by the expert and the previous instances*

- (69) The first expert witness, psychologist Gitte Wiel Dalan, wrote in her report of 5 February 2016 that the child had probably been subjected to seriously deficient care by her parents. Trondenes District Court, which handed down its judgment on 16 March 2016, described the problems as follows:
- "The parents were unable to see, interpret, understand and act adequately in relation to the signals that C gave. Signals of hunger and tiredness were not taken in, and they did not understand the need for C to be stimulated. Interaction, closeness and stimulation/training were observed only in glimpses, which is not sufficient to characterise the care as sufficient."
- (70) The District Court supported the expert's recommendation that there should be "few and short contact sessions". The Court mentioned the girl's negative reactions to the contact sessions, and that she "relapses into previous behaviour, suppresses her own needs and becomes nervous and unsafe."

- (71) The second expert, psychology specialist Elin Jørgensen, has written three reports in the case. In the first one, from 5 August 2019, she recommended after a thorough assessment that the contact be held at a minimum or cease altogether until C is old enough to grasp the purpose of the contact sessions. The expert's argument was that the girl is sensitive and needs calm, stability and predictability. The quality of the contact sessions, the girl's reactions afterwards and "the limited effect of the extensive guidance provided to the parents" were contributing causes.
- (72) In its judgment of 22 November 2019, Trondenes District Court stated that there must be extraordinary and compelling grounds for limiting the contact sessions to less than three per year. The access granted was two hours four times per year.
- (73) Psychologist Jørn Søvik considered the possibility of revoking the care order on 1 April 2020. He concluded that the parents would not be able to properly care for the girl in the event of a possible return. It is set out in the report that C had reactions after contact both in the form of unsafety and anxiety, and previously also in the form of bodily reactions as she started to wet herself.
- (74) Psychology specialist Jørgensen issued an additional report on 1 June 2020, where she concluded that the contact sessions "should not be increased in either frequency or duration".

*The Court of Appeal's assessment of the extent of contact*

- (75) In its judgment from June 2020, the Court of Appeal gives the following summary of the contact sessions and the girl's reactions to them:

"Overall, the contact sessions seem thus far to have been very tiring for C. To make C feel more secure, one of the foster parents is present. However, the parents show a consistently negative attitude towards the foster parents during visits. This clearly has a negative effect on the contact sessions. The parents also try to correct C when she calls her foster parents mum and dad, which must be confusing for her. They have also shown no interest in C's daily life and friends. She was rebuffed when she wanted to tell about a holiday with her foster parents. The child welfare services have suggested that visitation could take place in the foster parents' home, but this has been flatly rejected by the parents."

*The expert's testimony in the Supreme Court*

- (76) In psychology specialist Jørgensen's report to the Supreme Court from 15 January this year, the same is described as in the Court of Appeal's judgment. In addition, she mentions that the mother speaks partially English during the contact sessions, which causes communication problems. The father too has had a tendency of speaking English.
- (77) The relationship between the foster parents and the child is described as loving and good. In the report, it is stated that the foster parents consider it important to speak kindly of the biological parents and to show that they are positive about C visiting them. The foster parents also express that the more recent contact sessions have been more successful. Previously, the girl did not want to go, but she has been more excited prior to the recent contact sessions.

“Lately, C has been looking forward to meeting her parents. She recently had her birthday, and she knows that she gets many presents from them. The foster parents say they emphasise the importance of always speaking positively about the parents and show that they too are looking forward to C visiting them. They see that C is controlled by others’ feelings and that their feelings of joy help C to enjoy the visits.”

- (78) Nonetheless, the girl still needs a long time to recover after the contact sessions. The foster parents have even been forced to keep her home from kindergarten, and she is still insecure afterwards:

“She still gets tired after visits, but does not fall asleep like before. Yet, she needs several days to recover, she has reactions in the sense that she gets more easily angry, is more impatient and needs a lot of time with the adults. She tends to be afraid of the dark and of the house, and the foster parents notice that this increases during a period after each contact sessions...”

- (79) When asked by the expert about the contact sessions, the girl replies that “it’s fine”. She does not want to talk about or respond to whether she wants more contact. She says that she wants one of the foster parents join her on her visits to her parents.
- (80) The parents on the other hand, has told the expert that they find that the girl is more at ease than before during contact. They also find that the flat where the sessions take place is “perfect for us now”.
- (81) Specialist Jørgensen maintains in her report and to the Supreme Court that three contact sessions per year are optimum. Too much contact may, in the expert’s view, create resistance in the girl and possibly obstruct her development. Contact up to six times per year may harm her development in several areas, as she needs a long time to recover afterwards.

### *Overall assessment*

- (82) When determining the extent of contact, I base myself on the principle that a child and its parents have a right to contact, and that it is assumed to be in the child’s best interests that this contact is of a scope that strengthens and develops the bonds between them. However, it may also be necessary, out of consideration for the child, to limit the contact, typically in cases where the child is vulnerable and the established contact arrangement is not functioning particularly well.
- (83) In the grand chamber judgment HR-2020-662-S, the Supreme Court set the contact rights for a three-year-old child and its parents at eight times per year. When assessing the proper extent of contact, the Supreme Court emphasised the child’s particular vulnerability and the deficiencies in the parents’ ability to care for her, see paragraph 141.
- (84) Although the child in that case was younger than the girl in ours, I believe there are similarities that give the grand chamber some relevance to our case. The girl’s vulnerability is particularly related to delayed development, and her reactions after contact sessions seem more limited than those described in the grand chamber case, see paragraph 142.
- (85) Both the expert witness and the Court of Appeal have concluded that extended contact will expose the girl to undue hardship. However, the expert’s report to the Supreme Court is

poorly reasoned on this point, which the Expert Commission of Children has also remarked. The information that has emerged in the Supreme Court supports that previous contact has been difficult for the girl. However, the report also describes a positive development during the more recent sessions, and a gradual improvement during the years of the expert's involvement with the case. The foster parents express that the girl has looked forward to the latest contact sessions, and particularly the mother responds better to guidance from the child welfare services. Against this background, I find – with some doubt – that it would be correct to increase the contact to two hours, six times per year.

- (86) Nonetheless, the child welfare services must assess on a continuing basis the future extent of contact.
- (87) The parents have not opposed supervision, and I agree with the Court of Appeal that the child welfare services should be given the opportunity to supervise during the contact sessions.

### ***Conclusion***

- (88) Against this background, I vote for the following

### **J U D G M E N T :**

Contact rights for C and her parents, A and B, are set at six times per year with a duration of two hours each time. The child welfare services may supervise during the contact sessions.

- (89) Justice **Ringnes:** I agree with the justice delivering the leading opinion in all material respects and with his conclusion.
- (90) Justice **Steinsvik:** Likewise.
- (91) Justice **Østensen Berglund:** Likewise.
- (92) Justice **Skoghøy:** Likewise.
- (93) The Supreme Court gave this

### **J U D G M E N T :**

Contact rights for C and her parents, A and B, are set at six times per year with a duration of two hours each time. The child welfare services may supervise during the contact sessions.