



SUPREME COURT OF NORWAY

J U D G M E N T

given on 2 March 2021 by the Supreme Court composed of

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

HR-2021-475-A, (case no. 20-137359SIV-HRET)
Appeal against Eidsivating Court of Appeal's judgment 18 June 2020

A

B

(Counsel Pirashanthi Sivabalachandran)

v.

X municipality

(Counsel Frode Lauareid)

(1) **Justice Steinsvik:**

Issues and background

- (2) The case concerns contact rights for children and their parents after a care order.
- (3) The mother B and the father A are parents to their son C, born 00.00.2009, and their daughter D, born 00.00.2013. The parents also have two sons born in 2004 and 2006, respectively. A came to Norway in 1997 as an unaccompanied minor asylum seeker, at the age of 15. B came to Norway in 2003 after having married A. They are both Sri Lankan Tamils.
- (4) The child welfare services' first interaction with the family was in the autumn of 2006, after a report of concern regarding A's drinking. The child welfare services launched an investigation into the family that revealed recurrent alcohol abuse by A and domestic violence. Between November 2006 and June 2007, B and the two children were placed in a crisis shelter, then at the family centre Y, where the children's care situation was systematically examined.
- (5) During the eight years that followed, the child welfare services implemented extensive measures to improve the family's situation, including kindergarten for the children, a municipal flat, and guidance and supervision of the parents. Nonetheless, several reports of concern were submitted by agencies during the period, primarily concerning A's persistent drinking and the children's development.
- (6) In February 2014, the child welfare services engaged psychologists Judith van der Weele and Terese Kim Ramnefjell to investigate the children's care needs and the parents' caring skills. To make the study culturally sensitive, a cultural interpreter was used to facilitate the communication between the experts and the parents. According to the report, the interpreter also contributed by providing the experts with a "background to assessments of the investigation and the care the children receive in the light of the parents' language, way of communicating and the distinctions between common caring practices in their home country and Norwegian practices". In the report of 5 May 2014, the experts concluded that the children's care situation had been "marginal and to some extent harmful throughout their childhood" and that the children had "developed a vulnerability to mental and physical stress due to their father's alcohol abuse and the consequences thereof". The experts also concluded that the children were dependent on receiving "extraordinary care in order to prevent harmful development". The final remarks of the recommendation to the child welfare services read:
- "It is recommended that the child welfare services, for a period of one year, implement adjusted and culturally sensitive measures, such as therapy for the father for his substance abuse, financial support, resource homes, Norwegian language training for the mother, ICDP courses, and an environmental therapist who speaks Tamil. The measures should be revised within a year."
- (7) A new action plan was drawn up in collaboration with the parents, and in October 2014, the initiative Minority Consult started its work advising and guiding the family.
- (8) In April 2015, the child welfare services received a new report of concern from X Educational-Psychological Service (PPT) after C had told them his mother beat him. At the

same time, the two elder brothers told the child welfare services that both their mother and their father beat them. The parents denied having used violence towards their children, while insisting that the welfare services' measures were not working. At an unannounced home visit on 1 May 2015, A was heavily intoxicated and aggressive, and the police were called. Later in May 2015, he was observed clearly intoxicated in the home on several occasions, by each of the cultural interpreter, the child welfare services and the police, and both B and the police reported concerns about his excessive drinking.

- (9) On 27 August 2015, the child welfare services issued an interim order for emergency placement of all four children. The reason was that the three eldest on the same day had repeated before a judge that they had been subjected to violence by both parents.
- (10) After a stay in an emergency foster home, C and D moved into their current foster home on 14 October 2015.
- (11) Next, on 16 December 2016, the County Board for Child Welfare and Social Affairs in Oslo and Akershus (the County Board) decided that the children should be placed in foster homes. Contact rights were set at three hours, six times per year. The child welfare services were given the opportunity to supervise.
- (12) The care order was affirmed by Nedre Romerike District Court's judgment of 15 July 2016. Contact rights were reduced to three hours, four times per year. As justification, the District Court stated that the placement would be long lasting due to the children's functioning and needs combined with the functioning of the parents. The District Court also stressed the children's need to establish a good connection with their new care persons, and that the contact sessions thus far had been of varying quality because of the parents' behaviour.
- (13) The children's testimonies of violence lead to criminal proceedings. Both parents were convicted by Eidsivating Court of Appeal's judgment 13 March 2018, and sentenced to suspended imprisonment of 45 days for several incidents of bodily harm against their three eldest children. The children were also awarded NOK 30 000 each in aggravated damages.
- (14) On 6 July 2018, the parents filed for a revocation of the care order. The municipality brought the matter before the County Board, and the parents' claim was dismissed by a decision of 31 January 2019. For C and D, the arrangement with four annual contact sessions of three hours each was continued.
- (15) The County Board's decision was brought to court. It was upheld by Nedre Romerike District Court's judgment of 23 September 2019.
- (16) The parents appealed to Eidsivating Court of Appeal. On 20 January 2020, the Court of Appeal agreed to hear the part concerning a possible return of the eldest child and the contact regime established for all four children.

- (17) Eidsivating Court of Appeal ruled as follows on 18 June 2020:
- “4. Contact rights for C and his parents, B and A, are set at three hours, four times per year.
 - 5. Contact rights for D and her parents, B and A, are set at three hours, four times per year.
 - 6. The child welfare services are given the opportunity to supervise during the parents' contact sessions with C and D.”
- (18) The request for a revocation of the care order for the eldest child was dismissed.
- (19) The parents have appealed to the Supreme Court. The appeal challenges the application of the law and the findings of fact. The Supreme Court's Appeals Selection Committee has granted leave to appeal for the part concerning contact rights for C and D.
- (20) Psychologist specialist Eva Steinbakk has been appointed as a new expert in the Supreme Court, and she has submitted a report. Steinbakk also testified in the Court of Appeal. Updated reports from contact sessions, minutes of the child welfare services' meetings with the parents, and minutes of follow-up sessions to the foster home, have also been presented. The circumstances of the case are otherwise similar to those in the Court of Appeal as regards the issue of contact rights for C and D.
- (21) The case has been heard jointly with HR-2021-474-A and HR-2021-476-A.

The parties' contentions

- (22) The appellants – *A and B* – contend:
- (23) Following a care order, children and parents are mutually entitled to access to each other.
- (24) A care order is a temporary measure. The child welfare services have a duty to maintain and strengthen the personal bonds between the children and their biological parents, and to work continuously for family reunification. There is a clear presumption that it is in the best interests of a child to grow up with his or her biological parents. Contact rights must be determined based on that.
- (25) The aim of reunification between children and their parents cannot be abandoned. That requires exceptional and strong reasons, and the goal cannot be abandoned simply because the placement has been long lasting. The circumstances that previously justified the care order are no longer present. The problem with A's alcohol abuse has been solved, and both parents are now in permanent employment and have bought a new home. The child welfare services must follow up the children's and the parents' development and ensure that the children receive necessary trauma therapy. Measures must also be taken to improve the parents' competence in contact situations.
- (26) The child welfare services also have a duty to offer minority children in foster care the chance to live in harmony with their culture, and to learn their native language and enjoy their own culture in accordance with Article 30 of the UN Convention on the Rights of the Child.

Article 20 (3) of the Convention also requires due regard to the child's cultural background when considering solutions.

- (27) The contact must be increased. When the aim of family reunification has not been abandoned, minimum contact must be once per month. Restrictions on contact beyond this require exceptional and strong reasons.
- (28) There is no need for supervision during contact. The foster father's presence must also be phased out.
- (29) The appellants ask the Supreme Court to rule as follows:

“Contact rights are to be set as the Supreme Court sees fit, based on the aim of family reunification.”
- (30) The respondent – *X municipality* – contends:
- (31) Contact rights for children and their parents after a care order must be determined individually and in accordance with the children's best interests. There is no basis in case law from the European Court of Human rights (ECtHR) for setting a minimum standard for contact, nor in its judgment of 22 December 2020 *M.L. v. Norway*. Also, the ECtHR does not require that contact rights be determined according to the child's tolerance limit.
- (32) In this case, there is a basis for abandoning the aim of family reunification, and the extent of contact must be determined in the light of this.
- (33) Key factors in the individual determination of contact rights include the parents' functioning, the child's age, needs and vulnerability, its affiliations and what is realistic in terms of the duration of the placement and the parents' potential for improvement. Experiences from contact sessions and the child's own opinion are also important. The child's cultural background and identity are a factor, but must be balanced against other factors.
- (34) At present, it is not appropriate to increase the contact with C and D. The parents have poor parenting skills, and the contact sessions are not developmental for the children. Moreover, the parents have received extensive help and guidance over time, but without the desired effect. The children themselves also express that they do not want more contact with their parents.
- (35) X municipality asks the Supreme Court to rule as follows:

“The appeal is dismissed.”

My opinion

The law

- (36) A care order is an interference with the right to family life between children and their parents and is intended as a temporary measure with a aim of family reunification as soon as the situation permits. The legal requirements for a care order have been clarified through the Supreme Court judgment HR-2020-662-S, paragraph 43 et seq. The judgment sets out that a

care order may only be issued exceptionally and in accordance with the requirement of “very exceptional circumstances”, as developed in ECtHR case law, in particular its Grand Chamber judgment of 19 September 2019 *Strand Lobben and Others v. Norway*.

- (37) According to section 4-19 subsection 1 of the Child Welfare Act, children and their parents “are entitled to access to each other” unless otherwise provided. The right of access (contact) also follows from Article 102 of the Constitution, Article 8 of the European Convention on Human Rights (ECHR) and Article 9 (3) of the UN Convention on the Rights of the Child. To reach the aim of family reunification after a care order, contact between the child and its parents is crucial. Contact must be facilitated with a view to maintaining, strengthening and developing the bonds between the child and its biological parents, in consideration of the child’s best interests and the aim of family reunification.
- (38) The extent of contact must be determined on an individual basis, with emphasis on finding measures that are in the child’s best interests, see section 4-1 of the Child Welfare Act. If the interests of the child collide with those of the parents, a fair balance must be struck. Although working towards family reunification through frequent contact is important, the measures must not subject the child to undue hardship, either in the short or the long run. Nor should the contact be of such an extent that it may harm the child’s health or development. After an assessment and balancing of the various factors, the arrangement must ultimately be in the child’s best interests. The following is set out in HR-2021-474-A, paragraph 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.”

- (39) In paragraphs 52–56, the relevant aspects of the individual assessment are outlined:

“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.

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.

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.

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.

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 access 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."

- (40) I also note that the Supreme Court is to determine minimum contact rights based on the current situation. Instructions may be given as to the content of the contact sessions, as well as recommendations for increased frequency if the circumstances permit. However, the child welfare services may allow extended or flexible forms of contact, so long as the situation suggests that this would be in the child's best interests.

The significance of minority children's right to enjoy their own culture

- (41) The appellants have stressed the children's right to maintain their Tamil identity and culture, and contend that these rights are not protected with such restricted contact arrangements as those granted.
- (42) Article 30 of the Convention on the Rights of the Child reads:
- "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."
- (43) The provision is worded as a protection from interference, but it is a generally accepted legal position that it, like the related provision in Article 27 of the UN Covenant on Civil and Political Rights, also confers positive rights on minority children. This is set out in the UN Committee on the Rights of the Child" General comment No. 11 from 2009, which in paragraph 17, cf. paragraph 15, states that a State party is under the obligation to ensure that the exercise of the rights under article 30 are protected, see also Rt-2014-976 paragraph 39. In paragraph 16 of the General comment, it is further stated that the right under article 30 is conceived as being both individual and collective for the child. The rights under the provision are general, and are not lost even if public authorities take over the care of a minority child.
- (44) Furthermore, Article 20 (3) of the Convention on the Rights of the Child contains a special provision for children deprived of their family environment and placed in alternative care. When considering solutions, "due regard shall be paid to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background". This provision has been incorporated into section 4-15 subsection 1 of the Child Welfare Act. In the preparatory works, it is stressed that these considerations are not to be decisive, but "must be included in the overall assessment when seeking to determine what is in the child's

best interests”, see Proposition to the Odelsting no. 45 (2002–2003) page 62.

- (45) Both provisions support, in my view, that children’s ethnic, religious, cultural and linguistic background must be taken into account and emphasised when choosing measures, including when choosing a foster home or other placement in cases where a removal of the child is necessary. The rights of minority children under Article 30 are also important factors in the overall assessment of which solution is ultimately in the child’s best interests.
- (46) When determining contact rights after a care order, the child’s cultural rights must be respected and ensured to the extent this is in the child’s best interests and does not conflict with the child’s fundamental right to proper care and protection, see HR-2021-474-A paragraph 55.

The individual determination of contact rights

Introduction – the background to the care order, and the parents’ current situation

- (47) As accounted for earlier, the care order for C and D was a result of a very long process, where the child welfare services for years had been trying a number of different measures in the family to ensure proper care for the children. I find it clear that the children’s situation in August 2015 had deteriorated to such an extent that it was necessary to remove them from the home. Their father’s alcohol abuse made the situation intolerable, and their mother was unable to maintain proper care for the children. In addition, both parents used violence towards the three eldest children, as set out in the Court of Appeal’s judgment in the criminal case.
- (48) The parents’ situation has improved. B is permanently employed as a cleaner at a nursing home, a job she manages well. Her Norwegian is better, and she has become more integrated into Norwegian society. In the autumn of 2019, A set up his own transport company and has permanent work and a good income. The parents have also bought a new home. According to the child welfare services and the experts in both the Court of Appeal and the Supreme Court, A no longer abuses alcohol. Here, I note that the Court of Appeal, when considering the issue of revoking the care order for the eldest child, agreed that the current external circumstances might form a basis for proper childcare. The reason why the claim for revocation was dismissed all the same was that the Court of Appeal did not consider it substantiated that the parents could meet the boy’s particular care needs.

The aim of reunification and the length of the placement

- (49) The municipality has stated before the Supreme Court that contact rights for C and D must be determined based on the assumption that family reunification is no longer realistic. Neither the County Board nor the District Court has taken a position on this issue. The Court of Appeal, whose judgment was handed down after *Strand Lobben and Others v. Norway*, found that although there were no “such exceptional and strong reasons for abandoning the aim of family reunification”, the care order could not be revoked in the near future. I agree with the Court of Appeal’s assessment on this point, and note that no new information has been presented to the Supreme Court that gives a basis for concluding that the aim of reunification should be abandoned.

- (50) At the same time, it is clearly not realistic that the care order for C and D can be revoked anytime soon, primarily due to the children's vulnerability and special care needs, to which I will return.
- (51) In the light of this, contact rights must be determined with the purpose of maintaining, strengthening and developing the bonds between the children and their parents, so that one may work towards reaching the aim of family reunification in a longer perspective.

The children's current situation

- (52) A child's potential increased vulnerability after a care order is key to the determination of contact rights. This is to ensure that the contact does not expose the child to undue hardship or harm the child's health and development. The evaluation of the child's vulnerability must be substantiated by specific descriptions with references to the factual circumstances, see HR-2020-661-S paragraph 169, with a reference to ECtHR case law.
- (53) I will first discuss C's current situation, including his vulnerability, needs and bonds with his biological parents and his foster home.
- (54) C is now eleven years old. In the expert report from 2014, it was concluded that both C and D had developed vulnerability to mental and physical stress, and that they were dependent on optimum care to prevent a harmful development. His vulnerability was placed in the context of the marginal and often unsafe care situation the children had lived in thus far.
- (55) C has been examined by PPT, the first time when he started kindergarten. The expert in the Supreme Court has stated in her report that the issue at the time was the boy's "motoric, cognitive, linguistic and emotional development". He received special educational assistance and spent one extra year in the toddler department. During the 2014 examination, too, the experts assumed that C showed "delayed development in several areas" and that he needed "extra sensitive and trusting care persons that see, understand and respond to his needs more consistently".
- (56) In June 2018, PPT examined C once more, and recommended extensive special educational assistance in Norwegian, English and social competence. This report describes a boy who was still struggling in social settings and needed adult support during recess and in less structured situations.
- (57) Psychologist Ramnefjell, who was appointed expert in the Court of Appeal, described a positive development in the boy both in his foster home and at school in 2019. Ramnefjell, however, also described challenges related to contact sessions and C's reactions, for instance that he, during the winter of 2019, started to wet himself out of fear of being returned to his parents.
- (58) The expert in the Supreme Court has – based on her own observations and updated information collected from the child welfare services, the foster parents, the school and the after school care – given the following description of the challenges C is struggling with today:

“When C talks to the undersigned about the time he lived at home, he ‘feels it in his stomach’. He enjoys seeing his parents, but also finds it a little scary. When describing how he feels during visits, he uses terms such as ‘afraid’, ‘unsafe’ and ‘scary’. He is afraid of saying that he is full and feels compelled to eat. He stutters and stammers when he tells of his fear of being returned, and how embarrassing it was when he wetted himself after his parents’ visit to the foster home. When his father told him that his foster parents are just looking after him, he got a stomachache and a ‘nasty feeling in his body’. These emotional and physiological reactions in C whenever he is facing his parents indicate that he has not been able to process the emotional stress and trauma he suffered while living at home. When C during visits experiences something similar to previous negative experiences (loud sounds, angry voices, rebuking glances, insecurity, etc.) there is a high risk of retraumatisation.”

- (59) In my view, the observations of C over time have thoroughly documented that the boy has a particular vulnerability that must be taken into account when determining the extent of contact, to avoid that he is exposed to undue hardship, including retraumatisation, which the expert has pointed out in particular.
- (60) D is currently described as a child with a normal motoric and cognitive development. D was one year and ten months old when placed in emergency foster care, and does not have the same negative stories to tell from the time before the care order. However, D has suffered the same neglect and, according to the expert, witnessed conflicts between her parents and her father’s harmful alcohol abuse. The expert states that, during the period prior to the emergency placement order, D appeared very frightened “with an expression as if she were crying, without any sound or tears.” After the order, PPT observed that D reacted with almost invisible and repetitive movements when the emergency placement mother left the room. D has had a positive development in her foster home and does not have the same vulnerability as C. The expert nonetheless describes clear vulnerability factors also in her:

“When D was living at home, she was described as a happy girl, who did not cry in potentially frightening situations and showed no visible stress in separation situations. D had not developed language at the time, which means that she cannot convey her experiences verbally today. In interaction with her parents, D is generally observed as ‘silent and smiling’. This corresponds to how she was observed at her parents’ home before the placement, and is in contrast to her conduct at school and in her foster home. Smiles and obedience in unsafe situations often protect the child from anger and negative attention. These are common protective strategies in infants and toddlers having experienced insecurity and frightening experiences over time. There are many indications that contact activates previous protective strategies that D established towards her parents, and that she, like C, experiences significant anxiety during the sessions. D was so young when she was subjected to neglect and frightening situations that she is unable to put into words the feelings that the meetings with her parents arouse in her today. Instead, she describes the meetings as ‘not funny’ and ‘boring’.”

- (61) Both C and D currently have a strong and trusting relationship with their foster parents, who have been their primary care persons since the autumn of 2015. At the same time, they have a good knowledge of their biological parents.

The children's views on contact

- (62) According to Article 104 subsection 1 of the Constitution and Article 12 of the Convention on the Rights of the Child, the children's views must be given due weight and are key factors in finding the right solution for the child.
- (63) In a conversation with the expert regarding the contact with his parents, C has stated that he wishes to maintain the current arrangement with four sessions per year. He enjoys seeing his parents, but also finds it "a little scary". When asked, C explains in more detail that he is afraid of being returned to his parents. He does not want the contact sessions to be held in the foster home or at the parents' home, but in a place where they "can do something".
- (64) D has told the expert that she wants the contact sessions to continue as now. She has described them as "boring", but has not expressed any clear opinions apart from this, nor with regard to the content or the location of the meetings.

The quality of the contact sessions and the parents' competence in contact situations

- (65) All parties seem to agree that the quality of the contact sessions has not been satisfactory. They have been under supervision, and a cultural interpreter has been used. At least one of the children's foster parents has also been present. The expert writes the following:

"After talking to the children, the parents, the child welfare services and the foster parents, it is clear that neither party is satisfied with the current contact arrangement. The parents want daytime contact with their children staying overnight without an interpreter, cultural interpreter, guidance or supervision. C and D do not want the meetings to take place in their parents' home; they wish to carry out activities with their parents in a neutral place. Neither the parents nor the children want to meet in the temple. The child welfare services observe that the parents are insensitive to the children's needs during visits. Upon the advice of previous experts and the court, measures and guidance have been implemented for the parents to improve the content of the sessions. The measures and guidance are mainly aimed at culturally sensitive communication and cultural dissemination. The parents have also been advised to treat their children equally, spend less time on photography and choose activities the children enjoy."

- (66) Previously, during contact, the parents spent much time photographing the children in various outfits and poses, and did not seem to sense when the children were bored or tired. The expert states that this has improved since the Court of Appeal's judgment. The parents have spent less time on photography, and they have become better at asking the children what they would like to eat. Observations from the expert show that the most successful contact sessions have been those where the children and the parents have carried out activities together.
- (67) The problem today with the parents' competence in contact situations is their inability to fulfil their children's emotional needs and perceive their reactions. They treat them differently, and make them insecure when addressing issues concerning their future care situation. Although the parents cannot be ordered to give up their right to claim revocation of the care order, a return in this case requires strengthening and development of the bonds between the children and their parents. This is difficult to achieve as long as the parents are unable to see that they, above all, need to make their children feel safe with regard to their current care situation, and acknowledge that they are emotionally harmed by the neglect they were exposed to at home.

C has also experienced her mother angry during contact, which has made him very frightened.

- (68) The parents' competence in contact situations is somewhat better for D's part, as she receives much of the attention from the parents. However, as I will return to in my overall assessment, the expert has recommended similar contact arrangements for C and D, also due to the safety the siblings represent to each other during the sessions.

The consideration of safeguarding the children's Tamil culture

- (69) The children have a need and a right to maintain their Tamil identity and culture. In the case at hand, the child welfare services have focused on the cultural aspect, and resources have been invested to implement culturally sensitive measures, including the use of a cultural interpreter during contact. This has been only partially successful, and the Court of Appeal has emphasised that the children need an explanation adjusted to their age as to why their parents arrange the contact sessions the way they do, with emphasis on photography, celebration of birthdays and other holidays and cooking. This would make the parents' "programme" for the meetings more understandable to the children.
- (70) According to the expert in the Supreme Court, the contact sessions may be a way to give the children insight into Tamil culture, but in her opinion, the children are less open to learning about Tamil language and cultural practice at this stage, before they can feel more secure in their parents' presence.
- (71) C's contact teacher has stated that the boy is proud of his culture and his knowledge of Sri Lanka. The foster parents have also confirmed that C is committed to and interested in his cultural identity, which he has demonstrated for instance by preparing questions to his parents. Towards the parents, the child welfare services have stressed the importance of respecting his initiatives in this regard.
- (72) The child welfare services have been very concerned with the children's cultural identity, which must also form part of the follow-up of the children in the time to come. The child welfare services must continuously evaluate the children's need for measures to safeguard their cultural identity beyond what they learn from the contact sessions and the efforts made by their foster parents.

Overall assessment

- (73) I find the overall assessment of the proper extent of contact difficult. A general concern is presently C's insecurity and fear of being returned to his biological parents, as well as the problems with improving the quality of the contact sessions. Contact that puts children at risk of retraumatisation due to past experiences, which is particularly the case for C, will not contribute to strengthening the bonds with the parents.
- (74) In accordance with the expert's recommendations, joint contact sessions should be held for D and C, who live in the same foster home. The children represent safety to each other during the sessions, and a common arrangement will reduce C's perception of unequal or unfair treatment by his parents. The contact sessions should also be held jointly with the two eldest children. At present, there are strong and trusting bonds between the siblings that are

important to maintain.

- (75) The expert has proposed several concrete measures to improve the quality of the contact sessions. First, she has stressed the significance of the *location*. Sessions in the parents' home may stir up trauma to a larger extent than meetings in neutral places. C himself has also expressed that he does not want to visit his parents at home. For the period to come, I believe this should be emphasised in the planning of the sessions, although it is not sufficient to rule out sessions in the parents' home. The expert also stresses that the situation may change as the children become more secure. The positive sessions where the children and the parents have carried out activities together should form the basis for further measures.
- (76) The expert has also emphasised that the parents struggle with sensitivity and with grasping the children's emotional needs during contact, and that it is "vital that the parents acknowledge that the relationship with their children has been damaged and that it needs change and repair". The parents must therefore accept professional *guidance* including knowledge of their children's development, trauma and neglect. The expert has also indicated that C might need trauma therapy. These are recommendations that the child welfare services should emphasise in its continued work.
- (77) The contact sessions must also offer the children a chance to maintain their cultural identity. Although the children's capacity may be somewhat limited now, the expert emphasises that during the sessions with focus on the cultural aspect, the parents need help explaining to their children the rituals that are carried out.
- (78) The extent of contact must be determined based on the current conditions. So far, the contact sessions have been stressful to the children and caused strong reactions. This applies in particular to C. The expert has described emotional reactions such as "soreness, brooding, peeing, difficulty concentrating, emotional outbursts [and] fear of being returned". C is eleven years old, and his views must be given due weight. He has expressed to the expert that he does not want increased contact, and this must be seen together with the fact that the sessions make him afraid of being returned to his parents.
- (79) If the content and the quality of the contact sessions improve, the expert has suggested that four to six times per year will be in the children's best interests and not expose them to undue hardship. As I understand it, this requires that the measures she has proposed to improve the quality of the sessions be followed up.
- (80) After an overall assessment, I have concluded that, at present, the appropriate extent of contact is three hours, five times per year.
- (81) This extent of contact will both safeguard the children's best interests and protect them from undue hardship, and contribute to strengthening and developing the bonds between the children and their parents. Hopefully, this slight increase in the contact may also contribute to rendering the sessions less upsetting for the boy. The sessions must be in addition to those held between the four children.
- (82) If the quality of the contact session is improved, the child welfare services must in the ordinary manner consider whether it is appropriate to increase the contact. However, a significant increase would require that the children feel more secure during contact than they currently do. The child welfare services must prioritise measures aimed at improving this

situation.

- (83) In the light of the present challenges during contact, and to help the children feel safe, I find it clear that the contact should be supervised. The child welfare services are given the right to supervise, but are free to consider alternative solutions where a qualified guide may be present and intervene if situations occur that are unfortunate for the children.

Conclusion

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

J U D G M E N T :

1. Contact rights for C and his parents, B and A, are set at five times per year, with a duration of three hours each time.
2. Contact rights for D and her parents, B and A, are set at five times per year, with a duration of three hours each time.
3. The child welfare services may supervise the contact.

- (85) Justice **Østensen Berglund:** I agree with Justice Steinsvik in all material respects and with her conclusion.

- (86) Justice **Noer:** Likewise.

- (87) Justice **Ringnes:** Likewise.

- (88) Justice **Skoghøy:** Likewise.

- (89) The Supreme Court gave this

J U D G M E N T :

1. Contact rights for C and his parents, B and A, are set at five times per year, with a duration of three hours each time.
2. Contact rights for D and her parents, B and A, are set at five times per year, with a duration of three hours each time.
3. The child welfare services may supervise the contact.