



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-2021-476-A, (case no. 20-138877SIV-HRET)
Appeal against Gulating Court of Appeal's judgment 25 June 2020

A

B

(Counsel Jon Christian Elden)

v.

X municipality

(Counsel Stig Ravnstad)

(1) Justice **Ringnes:**

Issues and background

- (2) The case concerns contact rights for a father and his four children after a care order.
- (3) The children are B, born 00.00.2010, C, born 00.00.2011, D, born 00.00.2014, and E, born 00.00.2016.
- (4) The parents are the father A and the mother F, who are both from Chad. A came to Norway in 2003 and F a few years later. F returned to Chad in June 2017.
- (5) The child welfare services in X municipality met the family in January 2013, after A had reported that F was violent towards the children. Measures were implemented, but terminated after a year because the parents did not accept guidance, follow-up or help. During the guidance period, more reports came in from the local child welfare office, the crisis shelter and B's kindergarten.
- (6) In the course of 2014, there were also several reports of concern regarding F's mental health. She wanted to leave A and take the children to Chad, but did not have the resources or health to do so. F claimed that A beat and controlled her. The kindergarten reported a lack of boundaries and poor hygiene and diet. The child welfare services opened an investigation, but had to terminate it because A refused to have any contact with them.
- (7) In April 2016, the child welfare services initiated an investigation and supervision due to F's mental health and the high level of conflict between the parents. In November of the same year, the school submitted a report of concern regarding B. B had told her contact teacher that her father slapped her with a pencil over her hand when she struggled with her reading homework, and she repeated this later to the child welfare services. She described it as hard and painful. The parents denied having used violence towards B, but agreed to take guidance from a family counselling centre.
- (8) During the period 24 November 2016 to 24 March 2017, the child welfare services carried out 18 supervisions, both announced and unannounced. The supervisor observed that the parents responded poorly and insensitively to their children's emotional needs. There were few boundaries, the children were fighting, and their behaviour was considered worrying. Their mother's mental health was also a reason for concern.
- (9) Due to F's mental health, A agreed in 2017 to stay in a crisis shelter with the children. After the stay, B told the child welfare services that her mother and father were constantly fighting, that her father still beat her, and that this had also happened during the period at the crisis shelter.
- (10) F was involuntarily committed to psychiatric care for nearly two months, from April to May 2017. She was diagnosed with an adaptation disorder, deemed to relate to cultural background, language issues and her situation in Norway. A wanted her to travel to their home country for traditional treatment, and, according to the child welfare services, she felt very pressured by him. The child welfare services advised her not to travel.
- (11) The child welfare services were contacted by the police on 30 May 2017. There had been a situation at the airport when F was set to leave. A had made all the arrangements, but she

refused to go. Back home, she was unstable and kept screaming and throwing herself to the floor while holding E in her arms.

- (12) During a control visit by the local child welfare officer on one of the following days, A announced that F had gone to Africa after all, on 2 June 2017. The officer insisted that someone speak to the children about how they felt about their mother's departure and answer any questions they might have, and that A accept guidance on how to deal with this towards the children.
- (13) Later in June 2017, the child welfare services received a new report of concern from B's school after she had told her teacher about violence and fear at home. A denied having used violence. The child welfare services decided to engage a supervisor and that A should receive guidance from the family counselling centre. A refused to accept any form of help, and demanded that the family be left in peace. He also said that he did not want any interference by the child welfare services.
- (14) In August of the same year, supervision was initiated after the decision by the County Board for Child Welfare and Social Affairs in Hordaland and Sogn og Fjordane (the County Board). According to the supervision reports, the children enjoyed the visits by the supervisor, and there was a good atmosphere in the home during supervision.
- (15) The child welfare services received reports of concern from D's kindergarten in September 2017 and April 2018. D had said that her father beat her, B and C, and that she was afraid. The kindergarten was concerned about D's mental health. The child welfare services reported A to the police for possible criminal acts.
- (16) After the second report of concern, the child welfare services reported A to the police once more, and the children were interviewed. The police have since dropped the case.
- (17) On 19 April 2018, the child welfare services issued an interim order under section 4-6 subsection 2 of the Child Welfare Act that all four children be placed in emergency care. The County Board upheld this order for B and C by a decision of 18 May 2018. Contact rights for the children and their father were set at three hours, once per week. The County Board did not uphold the order for D and E, as they were no longer considered to be in an emergency. They moved back to the father on 22 May 2018.
- (18) On 6 September 2018, the following decision was made by the County Board for Child Welfare and Social Affairs in Hordaland and Sogn og Fjordane:
 - "1. X municipality represented by the Child Welfare Services in Y takes over the care of B, born 00.00.2010, C, born 00.00.2011, D, born 00.00.2014, and E, born 00.00.2016, see section 4-12 subsection 1 (a), cf. subsection 2, cf. section 4-1 of the Child Welfare Act.
 2. B, C, D, and E are to be placed in an approved foster home, see section 4-14 (a) of the Child Welfare Act.
 3. Contact rights for A and B, C, D and E are set at four times a year, see section 4-19 subsection 2 of the Child Welfare Act. The duration of the contact sessions between A and B and C is up to four hours, and up to three hours for D and E, see section 4-19 subsection 2 of the Child Welfare Act.
 4. The child welfare services may supervise the contact sessions, see section 4-19

subsection 2 of the Child Welfare Act.”

- (19) A brought an action against X municipality demanding that the County Board’s decision be set aside.
- (20) In accordance with section 36-4 subsection 1 of the Dispute Act, the District Court sat with one professional judge and two lay judges – one psychologist and one ordinary lay judge. Psychologist specialist Dag Henrik Vilsvik was appointed as an expert. He gave both written and an oral testimony. The District Court also heard testimonies of 18 other witnesses. Interpreters had been appointed for A. The main hearing lasted four days.
- (21) On 14 June 2019, Bergen District Court upheld the County Board’s decision.
- (22) The District Court stated that “a care order [was] strictly necessary considering the children’s situation and in their best interests”, and that assistance measures would not alleviate the shortcomings in the father’s care. When determining the extent of contact, the District Court placed considerable emphasis on “the children’s need to begin the process of settling down in separate foster homes without this involving too many switches between the father and the foster parents”.
- (23) A appealed to Gulating Court of Appeal. The Court of Appeal refused to hear the part of the appeal relating to the care order, but allowed the part relating to contact rights.
- (24) In accordance with section 36-10 subsection 4 of the Dispute Act, the Court of Appeal sat with three professional judges, one psychologist and one ordinary lay judge. Psychologist specialist Dag Henrik Vilsvik was appointed to hear the testimonies of the three eldest children. The case was dealt with partially in writing, and the oral hearing took a day and a half. Interpreters had been appointed for A. Psychologist Specialist Vilsvik gave testimony, and the Court of Appeal heard the statements of five other witnesses.
- (25) On 25 June 2020, Gulating Court of Appeal dismissed the appeal.
- (26) A has appealed to the Supreme Court. The appeal challenges the application of the law.
- (27) Psychologist specialist Dag Henrik Vilsvik has been appointed as an expert also in the Supreme Court. In addition to a written statement, he has given oral testimony during the hearing.
- (28) Some new documents have been presented to the Supreme Court, including supervision reports, reports from contact sessions held after the Court of Appeal's judgment, statements from the foster mothers, the children’s teachers and the supervision officers. The case has been heard jointly with HR 2021-474-A and HR-2021-475-A.

The parties’ contentions

- (29) The appellant – A – contends:
- (30) According to the Supreme Court’s grand chamber rulings from 2020 and case law from the European Court of Human Rights (ECtHR), very limited contact rights may be granted only in two types of cases: When exceptional circumstances justify such a measure for a limited period of time, and when there is no longer a basis for working towards family reunification.

- (31) In the case at hand, the extent of contact must be determined based on the aim of family reunification. The ECtHR's judgment of 22 December 2020 *M.L. v. Norway*, paragraph 79, states that family reunification cannot normally be expected if there are intervals of weeks, or months, between each contact session. The initial phase of the care order is now over for all children, and they are settled in their respective foster homes. Contact is important for maintaining and strengthening cultural and religious affiliations, and the chances of improved quality of the contact sessions are better now that a new supervisor has been brought in.
- (32) For the two youngest children, contact sessions should be arranged at least every month. This is also the goal for the two eldest, but with a possible step-up plan in the course of a year with six contact sessions as a starting point, which will allow them to complete the treatment from the Children and Adolescents' Psychiatric Outpatient Services (BUP).
- (33) A asks the Supreme Court to rule as follows:
- “Contact rights are to be set as the Supreme Court’s sees fit, based on the aim of family reunification.”
- (34) The respondent – *X municipality* – contends:
- (35) The introduction of the criterion “undue hardship” does not change the limits for how much contact a child should endure, and no general rule can be laid down as to when four contact sessions per year are appropriate.
- (36) The two eldest children have been diagnosed with post-traumatic stress disorder (PTSD) and receive treatment from BUP. The children are vulnerable after the years in the parental home. B and C are most vulnerable, but D is also affected. The most recent contact sessions have produced negative reactions in the children.
- (37) A struggles to meet his children’s emotional needs, and the contact sessions are burdensome to them. He opposes measures that might improve the quality of the sessions.
- (38) In the light of the current situation, there is no basis for increasing the contact for any of the children beyond the four sessions per year, three and four hours each time, respectively.
- (39) X municipality asks the Supreme Court to rule as follows:
1. Contact rights for A and B, C, D and E are set at four hours, four times per year, see section 4-19 subsection 2 of the Child Welfare Act.
 2. The child welfare services may supervise the contact, see section 4-19 subsection 2 of the Child Welfare Act.”

My opinion

The Supreme Court’s jurisdiction

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

The law

- (41) Earlier today, the Supreme Court has handed down two judgments on contact rights. I will base myself on the legal principles presented in these judgments. The following is set out in HR 2021-475-A paragraphs 36–38:

“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*.

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.

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.”

- (42) The following is set out in HR-2021-474-A, paragraph 43:

“As long as the aim of family reunification has not been given up, as much contact as possible must be established without disregarding the child’s best interests. Although an absolute minimum cannot be applied, see HR-2020-662-S paragraph 134, as little as three to six contact sessions per year is at the outset not suited to facilitate strengthening and development of the bonds between the parents and the child. Such limited contact *must be necessary* based on consideration of the best interests of the child.”

- (43) 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."

The individual determination of contact rights

The background to the care order and the aim of family reunification

- (44) As set out in the presentation of the case, the family were in contact with the child welfare services long before the care order was issued. Despite several assistance measures, the parents were not willing, or able, to take guidance. The Court of Appeal mentions the District Court's conclusion that the three eldest children have been subjected to violence by their father, and that all children have witnessed a serious, extensive and partially violent conflict between their parents over many years.
- (45) When assessing whether a care order should be made, the District Court also emphasised A's difficulty in understanding the children's situation, his denial of most of what had been disclosed in the case, and his unwillingness or inability to take in what the children had experienced and their problems. The District Court singled out his blindness towards his children's deep longing for their mother and the great emotional strain this causes. The District Court also stressed the lack of a common language and the difficulties in communicating. As for the practical care, the District Court found clear shortcomings in daily routines, diet and hygiene – particularly the children's dental hygiene.
- (46) The Court of Appeal has highlighted the following passage, among others, from the District Court's judgment:
 - “Although it has been demonstrated that A is invested in his children, loves them and gives them attention during visits, see the statement from supervisor Losnegård, the Court finds, based on the overall evidence, that the shortcomings in both his emotional and practical caring

skills are so serious that it is unlikely that he will be able to properly care for his children, either individually or jointly. He lacks a basic capacity to see their needs, and over the years, he has been unwilling or unable to respond to these needs. This is despite extensive contact with the public assistance system in the form of measures and guidance, as documented under the background to the case.”

- (47) The municipality does not contend that the *aim of family reunification* must be abandoned. Nor can I see that this is justified. However, given A’s poor caring skills, the children’s particular vulnerability and their need to settle in their foster homes, family reunification is not realistic in the short term. In the light of this, the extent of contact must be determined with the purpose of maintaining, strengthening and developing the bonds between children and parents, so that one may work towards family reunification in a longer perspective.

The children’s current situation

- (48) The child’s particular vulnerability after a care order is a key factor when determining the amount of contact. As stated in HR-2021-475-A paragraph 52, this to ensure that the contact does not subject the child to undue hardship or harms the child’s health and development. In the same paragraph, it is stated that the evaluation of the child’s vulnerability must be substantiated by specific descriptions with references to the factual circumstances.
- (49) Since the District Court examined the care order and the issue of contact, there have been several changes. B and C moved from emergency homes to their foster home on 19 August 2019, where they have lived together for one year and seven months. D and E moved from emergency homes to their foster home on 20 November 2019, and they have lived together for one year and three months. In addition, two contact sessions have been held since the Court of Appeal’s judgment, one in December 2020 and one in January 2021.
- (50) B is currently ten and a half years old. She has been referred to BUP Voss for trauma therapy, and she has been diagnosed with PTSD. She suffers from complex trauma or developmental trauma from the serious conflicts between care persons over time and her mother’s sudden departure. BUP further describes that B had to protect her younger siblings from their parents on several occasions while the family were still living together. BUP also states the following:
- “B has large difficulties trusting others, particularly adults, and she needs time to feel safe. It will take time before she is able to tell others about her experiences and emotional condition. This means that it will probably take time for her to heal. Individual therapy should not be the primary treatment for B. From a child-psychiatric point of view, a good care base over time is the best treatment for B. This will give her predictability and a good and trusting environment with caring adults in the long term.”
- (51) According to the statement from B’s teacher, B struggles with certain subjects and in social interaction, but the child welfare services find that she has made great academic progress, and the school is no longer concerned about her development. The foster mother has stated that B has many difficult thoughts and feelings about her and her siblings’ situation. In the meeting with the expert, the representatives of the child welfare services stated that B “during the first winter expressed dark thoughts, that she did not want to live. She said that she wanted to find a knife, and cited her mother who had said that it is better to die than to live.”
- (52) The foster mother states that B needs close follow-up at home, and that she seeks a lot of care and confirmation. She also describes B’s reactions to contact, and that she has recently been

upset about her father's critical remarks on her looks and his persistence with regard to religion and religious practice.

(53) I understand from the expert's assessment and other information provided, that B is a vulnerable child who is in great need of calm and stability.

(54) C is nine years old. Like B, he is receiving therapy from BUP Voss and has also been diagnosed with PTSD.

"From a child- and adolescent-psychiatric point of view, a good care base over time is the most important treatment for developmental trauma in children. It is likely that increased contact may increase anxiety and stress in the patient and thus intensify the trauma symptoms. The patient is now in the process of healing and expresses content with his foster home and with his community in Voss. He will need more trauma therapy with focus on maintaining what he has learned in TF-CBT."

(55) The expert states that C is performing better at school, and that he turns to his assistant for safety. PPT has concluded that he needs a full-time assistant at school.

(56) This shows that C is also a vulnerable child who needs calm and stability to avoid that his positive development is unnecessarily disturbed.

(57) D and E are six years and ten months and four years and eight months, respectively. The expert in the Supreme Court, psychology specialist Dag Henrik Vilsvik, describes them as follows:

"Based on descriptions given, it is my assessment that the two eldest children are most affected by their time in the parental home. D and E lived there for a shorter period, have fewer memories and less understanding of what took place there than the two eldest. This is particularly the case for E, who was one year old when their mother left and two when he was removed from the home. The expert notes that over time, D has expressed a deep longing for her mother, and that she worries about her, and asks why she left.

The expert finds that the two youngest generally also react less strongly to contact than the two eldest. After the more recent sessions, E has acted as usual in kindergarten, while the foster mother describes him as slightly upset. The kindergarten has described E as well functioning, although he sometimes struggles in transitional situations. D has had a difficult time after the two latest contact sessions, and it is my impression that this is due to her longing for her mother, which was probably triggered by the latter's sudden appearance on Skype when D came to visit on 14 December [2020]. D seemed confused and sad afterwards."

(58) The foster mother states that D seeks confirmation of her attachment with her foster home and expresses uncertainty about how long she will stay there.

The quality of the contact and A's competence in contact situations

(59) The expert observed the contact session held on 14 December 2020. His overall impression is that the children appreciate seeing the father, and that he is friendly with them. However, there are communication issues, particularly when complex topics are brought up. In this regard, the expert states:

"A challenge during visits is the father's poor mastery of the Norwegian language.

Although there is a lot of positivity and intimacy in the contact between the children and the father, they lack the linguistic channels to discuss topics such as uncertainty, loss and grief, and other difficult feelings, but also positive experiences. I have registered during visits, both in 2019 and now, that this creates frustration and a slight resignation in the children. This is considered an obstacle for the father's ability to respond to the children emotionally, which is a problem when the children need comfort and confirmation that the father sees them and understands them.

Both in the reports to both the District Court and in the present report, I have addressed the father's language challenges. His response is the same now as in 2019, that language is not an issue, and that even deaf parents understand their children. My impression is that he does not realise that this is a problem. This is also confirmed by his refusal to use an interpreter during visits to help with the communication. It is noted in the case documents that he has been offered considerable language training, which he has declined with the explanation that he has no time since the child welfare services will not leave him and his family in peace. He has also claimed that the child welfare services' strategy has been to stop him from learning the language, so that they can use it against him.

It is my assessment that the, through his view on the language challenges, shows little insight into the importance of language in the communication between him and his children. According to the children, D in particular, it is difficult to understand him. E also has difficulties with this. My conclusion is that these challenges and the father's attitude towards them obstruct the creation of bonds during visits. This applies to all of the children."

- (60) A's failure to communicate adequately with his children is also expressed in the child welfare services' observations:

"The main impression from the supervisor's reports is that the father does not understand the children and that he does not manage to interact with them. When they approach him with questions, they receive no answers. Eventually, they are forced to turn to the supervisor with a feeling of being ignored. B has said that daddy does not seem to care, since he does not talk to them."

- (61) The expert also points out that particularly the three eldest children have reactions after contact. However, he also stresses that there are positive sides about the contact sessions, and that these are important to determine how much contact is appropriate before it imposes an undue hardship.

- (62) As already described, the father's unwillingness to accept guidance is a persistent problem. The expert states in this regard:

"Guiding the father has been an issue over time, and the purpose of guidance should be to help him onto a path where he understands more of the children's needs and how to meet them, especially at an emotional level. The father has declined guidance before, and he still refuses to accept the child welfare services' guidance. He says that someone who suffers cannot be guided by liars, and that the child welfare services want to make him look bad. Both in 2019 and at present, he has claimed that he and the family have been destroyed and trampled by the treatment they have received. This seems to be his persistent experience/position.

Based on what the father expresses, it is unlikely that he, today, is susceptible to guidance with focus on change, which seems to have been the case for a long time. Such guidance can only be given if the recipient acknowledges the need for it and wants it, and it is necessary that an alliance be established between the supervisor and the recipient. In my

opinion, these conditions are not met.”

- (63) As can be seen from my quotes from the expert’s statement, A’s position is that language does not pose a problem. He does not want an interpreter to be present during contact, and he has declined offers of language training.
- (64) A also has a negative attitude towards the foster homes. He expresses dissatisfaction with their parenting, and claims that the children are dirty and shabby and do not apply the right creams to their skin. During the contact session in January 2021, he photographed the children and pointed out pigment stains on their faces. According to the expert, this was also a topic when the children lived in emergency homes, and A has mentioned this to the children on several occasions. This concern may place the children in a loyalty conflict and obstruct and delay their healing process in the foster homes. It will also have negative consequences for the development of bonds to their father.
- (65) As mentioned, the mother F travelled to Chad in June 2017. A has demonstrated little understanding of the children’s longing for her. He has refused to tell them and the child welfare services how she can be reached, and he is silent about her well-being. The children have thus had no contact with their mother since her departure, until their father – without warning – contacted her during the contact session in December 2020. The expert has stated the following in this regard:

“B and D in particular have expressed concern for their mother, and D’s difficult days after the most recent visits seem to be much related to her absence. Their father has an important task supporting them in their need for information about and contact with their mother, which I cannot see that he has done thus far, apart from when he contacted her during the visit on 14 December 2020.”

- (66) In November 2020, the child welfare services asked the Norwegian Directorate of Immigration to assist in the work to establish contact between the children and their mother. The letter states that “[t]he children’s father refuses to provide the child welfare services with information about their mother”.

The children’s views on contact

- (67) The expert has spoken to the three eldest children about contact. They express that they look forward to the visits, and that they wish to have contact with their father. When asked if four times per year is suitable, too little or too much, they have all replied that it is “fine”. They have also been asked how they would feel if the contact was increased, and they are not negative to that.
- (68) B and C have expressed a wish for supervised contact, as they find that reassuring. The expert’s assessment is that this is related to their trauma experiences and to events taking place at home that they remember.
- (69) The children have been concerned with their father addressing topics during visits that they find difficult, particularly topics related to religion. The expert’s comment to this is that the father seems insusceptible to correction in this regard. His view is that due to the religious freedom in Norway, he should be able to talk to his own children about religion. As mentioned, he has also made hurtful remarks about the children’s appearance. B in particular finds this upsetting, and the expert states:

“I also mention that B in a conversation in January 2021 made it clear that if no supervisor could be present during the visits, she would not come. Furthermore, it is evident from the supervisor’s reports that the children on several occasions have turned to the supervisor for support during contact. Against this background, supervised contact is still considered necessary to create the necessary security.”

The consideration of the children’s cultural identity

- (70) When it comes to the children’s cultural identity, I base my assessment on Justice Steinsvik’s remarks in HR-2021-475-A paragraphs 45–46. Among other things, she refers to Articles 30 and 20 (3) of the Convention on the Rights of the Child and summarises her view as follows:

“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.

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.”

- (71) I will discuss the concrete relevance of this to our case in my overall assessment, which comes next.

Overall assessment

- (72) The starting point is that a concrete and individual assessment must be carried out for each child. However, the situation in this case is that B and C live together in one foster home, and D and E live together in another. This means that the extent of contact must be determined with regard to the children’s need to see each other and the value in itself of the children spending time together. Towards the expert, the children have made it clear that they wish to have contact sessions together.
- (73) The expert’s finds that the extent of contact granted, in the current situation, “contributes little to the aim of reunification”. This may be due to the frequency as well as the quality of the contact sessions. Four times per year is not much, and at the outset not suitable to fulfil the purpose of facilitating family reunification. I refer to HR-2021-474-A section 43.
- (74) The expert also addresses this aspect:
- “Whether the contact is aimed at reunifying the children and their father or at maintaining contact between them, four times per year will, in my assessment, be too little. An important factor is that contact allows the children to connect with their ethnic and cultural/linguistic background, merely by sharing time with the father. Considered in isolation, this may call for a certain adjustment of the number of contact sessions.”
- (75) I support this assessment. The question in our case is therefore whether the current situation and the consideration for the children suggest that contact rights should be set at four or six times per year. I reiterate that there is no automatic conflict between restricted contact for a

period and family reunification, when the latter is not realistic in the short term. The contact may be increased when considered to be in the children's best interests.

- (76) I will first consider contact rights for the two youngest children, *D and E*. They currently see their father four times per year, up to three hours each time. According to the expert, D does not express insecurity during contact, and E currently shows few reactions. He was only two when he was placed in emergency care, and the expert states that his father is not very familiar to him. At the same time, it must be assumed that both children – and particularly D – are vulnerable to the situation in the parental home. Moreover, they have lived in the foster home only for a short period. It is therefore essential that the children be given the chance to find calm and stability there.
- (77) The expert's assessment is that the *number of hours* for the two youngest should be increased by granting the same number for all children, at least for joint contact sessions, which for B and C is four hours.
- (78) As regards the *number of contact sessions*, the expert states that D and E do not have the same trauma history as the two eldest, and that they may learn to know the father better if, for example, they have two extra visits per year. These may be of a slightly shorter duration than the others, at least the first few times.
- (79) I have been uncertain whether it would also be appropriate to increase the contact for the youngest even further, to eight times per year. However, I find that the shortcomings in their father's competence in contact situations are so serious that doubling the number from four to eight times per year would not be appropriate at present. This is due to the language issues, his unwillingness to support his children in their longing for their mother and his refusal to accept guidance. The expert emphasises that an increased understanding of the children's needs would be essential to enable the creation of bonds during contact.
- (80) Against this background, I find that contact rights for D and E should be set at six times per year. The contact sessions held together with the older siblings should have a duration of four hours, and the two remaining sessions are to have a duration of three hours.
- (81) I will now consider contact rights for *B and C*.
- (82) The expert has assessed whether it would be appropriate for them to increase the contact to six times per year, but he is "somewhat reluctant" to recommend such an increase at present. He points out that the two have been through a very demanding period of trauma treatment, that B is still receiving treatment and that C attends follow-up meetings. He finds that this process should be prioritised before increasing the contact with the father. At the same time, he expresses that an increase from four to six contact sessions per year is unlikely to impose an unreasonable burden on the two eldest children, but that an increase beyond this will be close to their tolerance limit.
- (83) I note that both B and C are particularly vulnerable children with a great need to settle and find security in their foster home, where they have lived only for a short time. Under the present circumstances, I cannot see that increasing the contact from four to six times per year would be appropriate. However, the ambition must be to increase the contact to six times per year when this is considered to be in the children's best interests. In this context, I emphasise the aim of family reunification, as well as the positive aspects of the contact pointed out by the expert, the children's love for their father, his clear signs of affection and the good meals

he serves.

- (84) The goal must be to increase the contact further in the time to come, but never at the expense of the children's best interests. In addition, the father must demonstrate his willingness and ability to improve the quality of the contact sessions to allow bonds to be created.
- (85) The expert recommends *supervision*. The eldest children prefer supervised contact, and the father has not opposed it. In the light of the current concerns related to the contact sessions, and in order to protect the children, I find it clear that the contact should be supervised.
- (86) Furthermore, the expert's finds that it is currently best for the children to have joint contact sessions, but that it would also be suitable to split them so that they see the father two and two together. The child welfare services must follow this up in the future with a view to finding appropriate solutions.

Conclusion

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

J U D G M E N T :

- 1. Contact rights for B and C and their father, A, are set at four times per year, with a duration of four hours each time.
- 2. Contact rights for D and E and their father, A, are set at six times per year. Four of the contact sessions are to have a duration of four hours, and two are to have a duration of three hours.
- 3. The child welfare services may supervise during the contact sessions.

- (88) Justice **Steinsvik:** I agree with Justice Ringnes in all material respects and with his conclusion.
- (89) Justice **Østensen Berglund:** Likewise.
- (90) Justice **Noer:** Likewise.
- (91) Justice **Skoghøy:** Likewise.
- (92) The Supreme Court then gave the following

J U D G M E N T :

- 1. Contact rights for B and C and their father, A, are set at four times per year, with a duration of four hours each time.
- 2. Contact rights for D and E and their father, A, are set at six times per year. Four of the contact sessions are to have a duration of four hours, and two are to have a duration of

three hours.

3. The child welfare services may supervise during the contact sessions.