SUPREME COURT OF NORWAY

J U D G M E N T

given on 25 January 2022 by the Supreme Court composed of

Justice Hilde Indreberg
Justice Aage Thor Falkanger
Justice Per Erik Bergsjø
Justice Ingvald Falch
Justice Knut Erik Sæther

HR-2022-207-A, (case no. 21-145427SIV-HRET)
Appeal against Borgarting Court of Appeal's order 21 September 2021

X municipality	(Counsel Jørgen Aandal Vangsnes)
v.	
A B	(Counsel Johannes Wegner Mæland)

(1) Justice **Falch:**

Issue and background

(2) The case concerns a review of a care order by the County Social Welfare Board (the County Board) in respect of two children who had travelled to England before the care order was made. The main issue is whether Norwegian authorities have jurisdiction to hear the case, see particularly Article 7 of the Hague Convention 1996.

(3) B and A are married and parents to C, born in 2012, and D, born in 2014. The family lived together in Norway until they all departed to England on the night of 22 October 2019. The mother and the children still live in England, while the father returned to Norway after a short period, and currently lives here.

(4) The child welfare service in Y municipality, currently X municipality, informed the parents on 21 October 2019 that the child welfare service had decided to request the County Board to issue a care order for both children. An emergency order was issued on the following day, immediately after the family had left. The County Board did not approve the emergency order, as it had not been executed, see section 7-22 of the Child Welfare Act.

(5) The child welfare service sent the request to the County Board on 29 October 2019. On 30 December 2019, the County Board of Oslo and Akershus ordered that the municipality take over the care of the children and that they be placed in a foster home. The parents were granted relatively extensive contact rights under supervision. The County Board found that it had territorial competence to issue the care order, because the children still had their habitual residence in Norway, see section 1-2 of the Child Welfare Act.

(6) The child welfare service has later taken various measures to have the children returned from England. I will return to these measures to the extent they are relevant for this ruling. Up to this point, they have not been successful. The children are, as mentioned, still in England.

(7) The parents requested a judicial review of the County Board's care order. On 16 June 2020, Follo District Court ruled:

> "1. The County Board's care order of 30 December 2019 in case FOA-2019/000000 is upheld.
> 2. The time limit for implementing the care order is one year, see section 4-13 (2) of the Child Welfare Act."

(8) The District Court, too, found that the children had their habitual residence in Norway at the time of the care order, see section 1-2 of the Child Welfare Act. Therefore, there was no basis for refusing a hearing of the case. The District Court also found that it was wrongful to retain the children in England after the care order had been issued.

(9) The parents appealed to Borgarting Court of Appeal. The Court of Appeal allowed the appeal as far as it concerned "the issue related to jurisdiction and time limits for implementation of the care order". Apart from that, the appeal was refused.

(10) The Court of Appeal heard these issues by way of written procedure without lay judges, and dismissed the appeal by judgment of 13 January 2021. The majority – two judges – found that Norwegian authorities still had jurisdiction to hear the case under Article 7 of the Hague Convention 1996. The majority also found that since the time limits in section 4-13 of the Child Welfare Act had been extended, the parents still had a relevant interest in having the care order reviewed. The minority – one judge – voted in favour of setting the care order aside. This judge found that Norwegian authorities no longer had jurisdiction, and that the care order in any case had lapsed due to the expiry of the time limit in section 4-13.

(11) The parents appealed to the Supreme Court. On 9 March 2021, the Directorate for Children, Youth and Family Affairs (Bufdir) submitted a written statement to the Supreme Court, see section 15-8 of the Dispute Act. Bufdir argued that the Court of Appeal had interpreted the Hague Convention 1996 incorrectly and contrary to the general practice of Norwegian authorities in child removal cases. I will return to the arguments.

(12) Upon the parents' request, the preparatory justice in the Supreme Court ordered on 25 March 2021, see HR-2021-667-F, that implementation of the care order be "postponed pending a final judgment in the case".

(13) On 27 April 2021, the Supreme Court's Appeals Selection Committee handed down a judgment, see HR-2021-897-U, setting aside the Court of Appeal's judgment. The reason was that the Court of Appeal, by agreeing to hear only parts of the appeal, had not fulfilled its duty to review all aspects of the case, see in particular paragraph 32 of the judgement.

(14) After conducting a new hearing, the Court of Appeal agreed to hear the parents' appeal in its entirety. The Court of Appeal then decided to split the proceedings and the adjudication in accordance with section 16-1 of the Dispute Act, to rule on the contentions related to jurisdiction and the time limits for implementing the care order first.

(15) Borgarting Court of Appeal, having heard these issues by way of oral procedure and with lay judges, made the following order on 21 September 2021:

> "The District Court's judgment is set aside, and the case is inadmissible."

(16) The Court of Appeal found that the County Board was competent to issue the care order of 30 December 2019, but that Norwegian authorities' jurisdiction later had been lost, see section 1-2 of the Child Welfare Act and Article 7 of the Hague Convention 1996. The care order could therefore not be implemented. In addition, the time limit in section 4-13 of the Child Welfare Act had expired. Due to Norwegian courts' lack of territorial competence, the Court of Appeal found that it was correct to rule the case inadmissible by way of order.

(17) X municipality has appealed against this order to the Supreme Court. The appeal challenges the Court of Appeal's application of the law. The parents have submitted a response.

(18) The Supreme Court's Appeals Selection Committee decided on 9 November 2021 to refer the appeal to a division of the Supreme Court composed of five justices in accordance with section 5 subsection 1 second sentence of the Courts of Justice Act. The hearing is to follow the procedure for appeals against judgments, see section 30-9 subsection 4 of the Dispute Act.

(19) At the preparatory meeting, the parties were asked also to deal with the issue whether the time limit in section 4-13 of the Child Welfare Act has expired. In addition, they were asked whether the children's opinions should be heard. Neither of them considered this necessary. As I will return to, the children's opinions have not been obtained.

(20) The case stands as it did in the Court of Appeal.

(21) A remote hearing has been held in accordance with section 3 of temporary Act relating to certain adjustments in the rules of procedure due to the COVID-19 outbreak.

The parties' contentions

(22) The appellant – *X municipality*:

(23) The Court of Appeal was correct in finding that the County Board had jurisdiction to handle the case when issuing the care order on 30 December 2019, see section 1-2 subsection 2 of the Child Welfare Act. The children's habitual residence was still in Norway, although they had departed to England.

(24) Norwegian authorities keep their jurisdiction, see Article 7 of the Hague Convention 1996. After the County Board had issued the care order, the parents wrongfully retained the children in England. It is not relevant that their departure to England was lawful. The time limit in Article 7 (1) (b) has not expired.

(25) The time limit in section 4-13 of the Child Welfare Act for implementing the care order has also not expired. The County Board has extended the time limit several times, followed by the Supreme Court postponing implementation of the care order until a final judgment has been handed down.

(26) The Court of Appeal should not have ruled the case inadmissible by way of order, but by way of judgment on the merits of the case. As the Court of Appeal did not do that, the Supreme Court's ruling must formally concern the admissibility of the case.

(27) X municipality asks the Supreme Court to rule as follows:

> "The case is admissible."

(28) The respondents – *A and B* – contend:

(29) The Court of Appeal was wrong in finding that the County Board had authority to issue a care order on 30 December 2019. The children's habitual residence was then in England, where they lived at a fixed address together with their mother and went to an ordinary school. English social services had contact with the family without registering any concerns.

(30) Norwegian jurisdiction is consequently lost. It is undisputed that the children's habitual residence is now in England, and the parents have not wrongfully retained them there, see Articles 5 and 7 of the Hague Convention 1996.

(31) The decisive time limit in section 4-31 of the Child Welfare Act for a departure to be lawful, is when the municipality requests a care order. The family left before that time, which means that their departure was lawful. A subsequent care order by the County Board does not make a stay in England wrongful. The retention there is not covered by section 261 of the Penal Code. The Court of Appeal's interpretation of the law is correct and corresponds with the view of Norwegian authorities – the Ministry of Justice and Public Security's and Bufdir's. The municipality's view is contrary to the object of the Hague Convention 1996, and entails an interruption of the children's establishment in England. That will not be in the children's best interest.

(32) Even if the retention in England should be considered wrongful, the time limit in Article 7 (1) (b) of the Convention has expired. Norwegian authorities lack jurisdiction for that reason also.

(33) Finally, the time limit in section 4-13 of the Child Welfare Act for implementing the care order has expired. The care order has therefore lapsed. In order to apply the one-year time limit in section 4-13 subsection 2, a child removal case must have been initiated under the Hague Convention 1980. Norwegian authorities rejected the municipality's application for initiating such proceedings. The courts cannot extend the time limit.

(34) The Court of Appeal was correct in ruling the case inadmissible by way of order. It is sufficiently clear that the County Board's care order has lapsed.

(35) A and B ask the Supreme Court to rule as follows:

> "Principally:
> 1. The appeal is dismissed.
> In the alternative:
> 2. The County Board's care order is set aside."

My opinion

The Court of Appeal's form of ruling

(36) The Court of Appeal ruled the case inadmissible by way of order. This is not the correct type of ruling. The Court should have ruled by way of judgment.

(37) The matter in dispute is, as the case is initiated by the parents, the County Board's care order. A judgment is required when the claim is the subject matter of the action, see section 19-1 subsection 1 (a) of the Dispute Act. Given the Court of Appeal's view on the case, the judgment should have set aside the care order. Both Rt-2011-1601 paragraphs 44–46 and HR-2020-523-U paragraph 10 are based on the rule that a judgment is required in such cases.

(38) The Court of Appeal has justified its type of ruling with the argument that Norwegian courts – at the time of the ruling – did not have territorial competence, as Norwegian jurisdiction was lost. The reasoning is inadequate. Norwegian courts have jurisdiction to review Norwegian administrative decisions. In addition, and regardless of the court's view on the jurisdiction issue, the parents have a right to have an action for revocation of the County Board's care order heard, see the Dispute Act section 36-3 subsection 2.

(39) A procedural error has therefore been made. However, it is not probable that the error has had any impact on the appealed ruling, see section 29-21 subsection 1, cf. section 30-3 subsection 1 of the Dispute Act. In its reasoning, the Court of Appeal states that the result in reality implies that the care order has lapsed. Furthermore, the Court of Appeal handled the case in accordance with the rules of procedure applicable to judgments. The Court of Appeal's order should therefore not be set aside.

(40) I will return to the significance of this to the Supreme Court's type of ruling.

Norwegian jurisdiction

Legal regulation

(41) The courts' review of the County Board's care order under section 4-12 of the Child Welfare Act must be based on the circumstances at the time of the judgment, see HR-2020-662-S paragraph 42. The issue in the case at hand is therefore whether Norwegian authorities and courts have jurisdiction *at present* to issue, and uphold, a care order for the children in question.

(42) As a starting point, the issue is regulated in section 1-2 of the Child Welfare Act. Subsection 1 establishes that the Act is applicable for children who are "habitually resident in Norway and are staying here". However, Norwegian authorities have jurisdiction to issue a care order also when the child is staying abroad. This follows from section 1-2 subsection 2 first sentence, which reads:

> "For children who are habitually resident in Norway, but who are staying in another state, sections 4-12 … apply."

(43) The parties agree that the children at present have habitual residence in England, after having stayed there for more than two years. I agree. Hence, the provision does not *presently* authorise Norwegian authorities and courts to issue and uphold a care order.

(44) However, section 1-2 of the Child Welfare Act must be supplemented by the Hague Convention 1996, which applies as Norwegian law according to section 1 of the Act relating to the Hague Convention 1996.

(45) The Convention regulates jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children. Among its objects under Article 1 are to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child, and to provide for the recognition and enforcement of such measures of protection in all Contracting States. Both Norway and the United Kingdom have ratified the Convention.

(46) The general rule on jurisdiction is set out in Article 5. It states that the judicial or administrative authorities of the Contracting State of the "habitual residence" of the child have jurisdiction to take measures directed to the protection the child's person or property. The provision is also incorporated into section 1-2 of the Child Welfare Act.

(47) This implies that when the child's habitual residence is established in another Contracting State, that other State is granted jurisdiction. However, according to Article 5 (2), this applies "[s]ubject to Article 7", which provides that jurisdiction in certain cases remains with the State where the child previously had its habitual residence. Article 7 (1) reads:

> "In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State,
>
> a) and each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
>
> b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment."

(48) It is undisputed that the municipality has accepted neither the departure from Norway nor the retention of the children in England. The jurisdiction is therefore not lost under Article 7 (1) (a). Norway – the previous state of residence – will thus keep its jurisdiction if a "wrongful removal or retention" from Norway has taken place, unless the jurisdiction has lapsed under Article 7 (1) (b).

(49) In the case at hand, three questions therefore arise. The *first* is whether the children were "habitually resident" in Norway when the County Board issued the care order on 30 December 2019. The *second* question is whether this was followed by a "wrongful … retention" of the children in England. The *third* question is whether the municipality timely lodged a request for return of the children from England and that case is still pending, see Article 7 (1) (b). If all these questions are answered in the confirmatory, Norwegian authorities keep their jurisdiction to issue, and to uphold, the County Board's care order.

The children's habitual residence when the County Board issued the care order

(50) The County Board, the District Court and the Court of Appeal concluded that the children were "habitually resident" in Norway when the County Board issued the care order on 30 December 2019. I agree, and note:

(51) The term "habitually resident", which is not defined in the Hague Convention 1996, calls for an individual overall assessment of the child's attachment to the relevant Contracting State. A key issue is where the child "is ultimately considered to have its centre of life interest" see Prop. 102 LS (2014–2015) page 21–22, which are preparatory works to the Norwegian implementation of the Convention.

(52) The European Court of Justice has summarised the interpretation of the term "habitual residence" in judgment 9 October 2014 in Case C-376/14 *PPU*. In the EU, the term is used in Council Regulation (EC) No. 2201/2003, which builds on the Hague Convention 1980. That Convention also uses the term, with the same content as in the Hague Convention 1996. The European Court of Justice states in the mentioned the judgment:

> "51 In those judgments the Court also held that a child's habitual residence must be established by the national court, taking account of all the circumstances of fact specific to each individual case (…). The Court held in that regard that, in addition to the physical presence of the child in a Member State, other factors must also make it clear that that presence is not in any way temporary or intermittent and that the child's residence corresponds to the place which reflects some degree of integration in a social and family environment (…).
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> 52 The Court explained that, to that end, account must be taken of, inter alia, the duration, regularity, conditions and reasons for the stay in the territory of a Member State and for the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State (…). The Court also held that the intention of the parents or one of them to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or lease of a residence in that Member State (…)."

(53) In my opinion, this gives an appropriate description of the term, as it should be understood in the two Hague Conventions. The description is also appropriate when it comes to the meaning of "habitually resident" in section 1-2 of the Child Welfare Act.

(54) The description implies that a child will still be habitually resident in the State where the child is no longer staying, if the stay in the other State is considered temporary or coincidental after an overall and individual assessment.

(55) In the case at hand, the family departed to England on the night of 22 October 2019, only hours after the parents had learned that the municipality would request the County Board to issue a care order. No information suggests that the parents, at that time, had planned to take the children to England on a permanent basis. The family had not previously lived in England, and neither of the parents had employment there. The father continued his employment in Norway, while the mother and the children moved into the house of the mother's family in London.

(56) During the period of a good two months until the care order was issued, the children started school in England. However, the oldest was still registered at its Norwegian school, and the parents were paying for before and after school care here. The entire family were still in the Norwegian National Registry, and the children were Norwegian citizens.

(57) I consider it clear that the children had their habitual residence in Norway when the County Board issued the care order. In my opinion, the only plausible motivation for staying in England was the fear that the County Board would issue a care order. The stay was therefore of a temporary nature. A deeper attachment to England had not been established.

Is the retention of the children in England wrongful?

(58) Article 7 (1) of the Hague Convention 1996 sets out that in case of "wrongful removal or retention" of the child, jurisdiction is generally kept by the State in which the child was habitually resident immediately before the removal or retention. This is specified in Article 7 (2):

> "The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

(59) First, I note that "rights of custody attributed to … an institution or any other body" undoubtedly includes the right to parental responsibility acquired by the local child welfare service in accordance with the County Board's care order. Among other things, the child welfare service was authorised to determine the children's place of residence, which is one of the measures described in Article 3 of the Convention.

(60) I also note that it is undisputed that the requirement in (b) is met. I agree. The child welfare service would undoubtedly have exercised this right – i.e. have implemented the care order in accordance with sections 4-13 and 4-18 of the Child Welfare Act – if the children had not been in England.

(61) The disagreement is whether the other requirements in Article 7 (2) are met.

(62) It appears that "removal" and "retention" are alternative situations that are both covered. The provision's wording suggests that a wrongful retention of a child may take place even if the child has not been wrongfully removed.

(63) I this case, the children were not wrongfully removed. The parents lawfully took them out of Norway on the night of 22 October 2019, at a time when their parental authority was not restricted.

(64) The possibility of a wrongful retention taking place subsequently is established in the mentioned judgment from the European Court of Justice in Case C-376/14 *PPU* paragraph 62 et seq. and in the judgment from the House of Lords (England) 24 July 1997 in *Re. S. (A Minor)*. The latter judgment even sets out that "a lawful retention may become a wrongful retention". That would be the case if parental rights, a while after the child was removed, are transferred to another person or institution than the one actually having custody of the child abroad. The retention abroad is then wrongful from the date such decision is made by the authorities of the State where the child is still habitually resident.

(65) The Court of Appeal, with support in Bufdir's submission to the Supreme Court, has interpreted the provision differently. The position is that, after a lawful removal, a retention may only be wrongful in certain cases: If the child was removed under a temporary consent from a competent authority or if a legal dispute was pending already at the date of the removal and later ends with parental responsibility being transferred to another person or institution. The latter was the case in the judgment from the European Court of Justice, while neither of these situations existed in the judgment from the House of Lords.

(66) I see no reason for such a restrictive interpretation of the provision. In itself, it provides no basis for introducing as relevant the lawfulness of the removal. Wrongful retention appears to be an independent alternative, regardless of the lawfulness of the removal and regardless of the circumstances under which it took place.

(67) In my opinion, the Court of Appeal's interpretation is also not supported by considerations of the objective of the rule. The objects of the Hague Convention 1996 are, as set out in Article 1, to determine the State whose authorities have jurisdiction to take measures directed to the protection of the child and to provide for the recognition and enforcement of such measures for protection in all Contracting States. As I have already concluded, Norway had jurisdiction to enforce the measure taken by the County Board. Thus, it is compatible with the Convention's object to facilitate such enforcement in order to restore lawful conditions in this country.

(68) Bufdir contends that this interpretation is contrary to the Norwegian authorities' practice. I cannot see that such practice is of particular importance in the interpretation of the Convention, see Article 31 of the Vienna Convention on the Law of Treaties. Moreover, the practice is modest. According to Bufdir, there have been no other cases than the one at hand shedding light on this issue.

(69) Decisive in this case for whether a "wrongful … retention" has taken place under Article 7 (2) (a) of the Hague Convention 1996, is thus whether keeping the children in England was wrongful according to *Norwegian law* after 30 December 2019, the date of the County Board's care order.

(70) I believe that the answer to this must be yes. A care order issued under Norwegian jurisdiction is binding on all parties involved. It "shall be implemented as soon as possible", see section 4-13 first sentence of the Child Welfare Act. For that reason, it is wrongful under Norwegian law to prevent implementation of the care order. Whether implementation is prevented by keeping the child hidden in Norway or by keeping it abroad, out of the reach of Norwegian authorities, cannot be relevant under Norwegian law.

(71) The parties disagree as to whether section 261 of the Penal Code covers such retention in England. I find no reason to elaborate on the scope of this provision. The retention does not need to be criminal to be wrongful within the meaning of the Convention.

(72) The parents contend that the travel ban in section 4-31 of the Child Welfare Act determines when retention of children abroad becomes wrongful. The Court of Appeal and Bufdir also largely base their positions on this provision. Their view is that if the removal was lawful under section 4-31, the retention is not wrongful, even if a care order is subsequently issued in Norway.

(73) Section 4-31 second sentence of the Child Welfare Act reads:

> "It is also illegal to take the child out of Norway without the consent of the child welfare service when a decision under sections … 4-12 … is made or when a request for such a decision has been presented to the County Board."

(74) Section 4-31 establishes a travel ban only. In my view, it does not cover the issue of the lawfulness of retaining a child abroad. Nor do the preparatory works suggest that the retention

cases are covered. The following is set out in the special remarks to the provision in Proposition to the Storting 143 L (2014–2015) page 86:

> "When an emergency order is executed and other coercive measures under the Child Welfare Act have been implemented, the authority to determine the child's residence has been transferred from the relevant administrative body to the child welfare services. It will therefore be a violation of the Child Welfare Act to take a child out of Norway without the consent of the child welfare service in these cases. This will also constitute wrongful removal under the Hague Convention 1980 and the European Council Convention 1980. The provision is a clarification of already applicable law.
>
> …
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> It also follows from the *second sentence* that it is wrongful to take a child out of the country when a request for such measures [under section 4-12 among others] has been presented to the County Board. At this stage, the child welfare service will have carried out thorough investigations of the child's care situation and the child welfare service will be so concerned about the child that it has considered it necessary to place the child outside the home. To avoid evidentiary issues, the most appropriate would be to set the time to the date of request for measures has been presented to the County Board and not to the date on which the child welfare service decides to bring an action."

(75) The fact that it was unlawful also before section 4-31 was adopted to take children out of Norway *after* a care order had been issued without the consent of the child welfare service, is clear from the Proposition, including in items 6.1.1 and 6.1.4.1. Under the new provision, the travel ban was extended to apply a certain time *before* a care order has been issued. Previously, *after* a care order had been issued, the travel ban was considered to follow directly from the order itself, read in context with section 4-13 first sentence and section 4-18 subsection 1 of the Child Welfare Act that regulate various aspects of the implementation of a care order.

(76) In the same way, I find that a prohibition against *retaining* the child abroad *after* a care order has been issued must follow from the care order itself seen in context with the mentioned rules in the Child Welfare Act. The preparatory works provide no evidence that section 4-31 was meant to change this status of the law.

(77) The parents finally contend that subjecting the children to Norwegian jurisdiction after such a long time in England is not in their best interest. I do not agree that the determination of which Contracting State has jurisdiction under the Hague Convention 1996 to take measures for the protection of children should depend on which State's jurisdiction is considered most favourable for the individual child.

(78) The best interests of the child are first and foremost a fundamental consideration when a State *exercises* its jurisdiction, see for instance Article 104 subsection 2 of the Constitution. As a result, I find, like the parties, that it is not necessary to obtain the children's opinions on the issues currently examined by the Supreme Court. Furthermore, as a general observation, it is hardly in the best interests of the child if the person or persons actually caring for the child are given the chance – through retaining the child abroad – to influence whether or not an otherwise valid child welfare measure should be implemented.

(79) Against this background, I find that the parents have wrongfully retained the children in England after the County Board, on 30 December 2019, ordered the care of the child

transferred to the child welfare service. After this point in time, a "wrongful … retention" of the children has taken place according to Article 7 of the Hague Convention 1996.

(80) Norwegian authorities' jurisdiction is therefore not lost on these grounds.

The time limit in Article 7 (1) (b)

(81) The third and final question is whether Norwegian jurisdiction is lost under Article 7 (1) (b) of the Hague Convention 1996. I reiterate the wording:

> "… the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment."

(82) The mid part of the provision implies that Norwegian authorities keep their jurisdiction if the local child welfare service has lodged a request of return of the children within a period of one year – "within that period" – provided the request is still pending.

(83) The period commences at the time the municipality acquired or should have acquired knowledge of the children's "whereabouts". The knowledge must therefore comprise the location – in practice the address – at which the children are present, see HR-2019-1436-U paragraph 29.

(84) I this case, the parents refused to inform the child welfare service of the children's whereabouts in England. The municipality therefore contacted the Norwegian central authority – Bufdir – for help. After receiving assistance from English authorities, Bufdir gave the address to the child welfare service in an email of 10 February 2020.

(85) I cannot see how the local child welfare service should have acquired this knowledge earlier. The municipality had no other options than to acquire the knowledge from Bufdir. From the mentioned email correspondence, it also appears that the municipality succeeded only after repeated requests.

(86) This means that the period commenced on 10 February 2020.

(87) The period is disrupted by the municipality, within one year, lodging a request for return of the children. According to court documents from England presented to the Supreme Court, the local child welfare service brought an action in England no later than 4 February 2021, to ensure, as I understand it, recognition and enforcement of the County Board's care order.

(88) Thus, the action disrupted the time limit in Article 7 (1) (b) before one year had passed. Then it is redundant to discuss whether other steps taken by the child welfare service to implement the care order were sufficient to disrupt the time limit.

(89) For the disruption still to be effective, the case in England must be pending. By an order from the High Court of Justice, Family Division, 18 May 2021 in case FA-2021-69, it appears that the children's mother, as the appellant, has been granted a stay of the English proceedings until a ruling has been made in Norway. The request made to English courts is therefore still pending.

(90) This implies that Article 7 (1) (b) does not prevent preservation of Norwegian jurisdiction.

(91) Overall, the consequence is that Norwegian authorities and courts keep their jurisdiction under Article 7 of the Hague Convention to take measures for protection of children, and thereby to decide whether the County Board's care order should be upheld.

The time limit to implement the County Board's care order

(92) Section 4-13 of the Child Welfare Act, with the headline "Implementation of care orders", reads:

> "A care order shall be implemented as soon as possible. The order lapses if it is not implemented within six weeks from the date of the decision. The chair of the county social welfare board may extend the time limit when special reasons justify doing so
>
> When the child welfare service has initiated a child removal case, the care order shall apply for one year. The chair of the County Board may extent the time limit."

(93) In the case at hand, the chair of the County Board extended the time limit twice under *subsection 1*, last time on 1 August 2020. The parents have not disputed these extensions.

(94) The District Court established in its judgment 16 June 2020, that the time limit for implementation is "one year", see section 4-13 *subsection 2*, which means that it expired on 30 December 2020. The chair of the County Board extended *this* time limit on 17 December 2020 and 23 March 2021, the last time until 30 June 2021.

(95) The parents contend that *subsection 2* cannot be applied because the local child welfare service has not initiated a "child removal case".

(96) On 29 January 2020, the child welfare service applied to the central authority in Norway – then the Ministry of Justice and Public Security – for assistance in order to facilitate the return of the children under the Hague Convention 1980. The 1980 Convention regulates civil aspects of international child abduction. A child removal case is initiated under section 4-13 subsection 2 upon sending such an application to the competent national authority.

(97) However, the Ministry turned down the application in a letter of 17 February 2020, arguing that no valid care order had been issued when the children left the country in October 2019. In line with what I have already concluded, this argument was not adequate. Also the Hague Convention 1980 is applicable when children are wrongfully retained in another State, see Article 3. The term "wrongful" is to be interpreted in the same manner as under Article 7 of the Hague Convention 1996.

(98) It is set out in section 5 of the Child Removal Act, implementing the Hague Convention 1980 in Norway, that the central authority "shall" transmit applications made under the Convention. According to Article 27 of Convention, the central authority is however not bound to accept the application when "it is manifest" that the requirements of the Convention are not fulfilled.

(99) After the rejection, the municipality asked the central authority – now Bufdir – to reconsider the Ministry's decision. Nor this has resulted in any follow-up towards English authorities.

The request indicates, however, that the municipality cannot be considered to have withdrawn its application for assistance.

(100) In this situation, where the rejection was not well founded and the application cannot be considered withdrawn, the child removal case initiated by the local child welfare service cannot be considered to have lapsed. Section 4-13 subsection 2 of the Child Welfare Act is therefore applicable, which it was from the time the child welfare service late January 2020 applied to the central authority for legal representation.

(101) Under these circumstances, it is not necessary to discuss whether also the measures for enforcement in England taken by the child welfare service under the Hague Convention 1996 fulfil the conditions in section 4-13 subsection 2. I will mention, however, that section 5-2 subsection 2 of the Child Welfare Act 2021 – which has not yet entered into force – expressly equals requests made under the 1996 Convention with requests made under the 1980 Convention.

(102) The consequence of this is that section 4-13 subsection 2 of the Child Welfare Act constituted a legal basis for the County Board to postpone the implementation of the care order. The implementation was therefore lawfully postponed to 30 June 2021.

(103) On 12 February 2021, *the parents* demanded a postponement of the implementation. On 25 March 2021, the preparatory justice in the Supreme Court granted a postponement until a final judgment in the case had been handed down. The Supreme Court's Appeals Selection Committee affirmed in Rt-1997-314 on page 316 that a postponement request to the courts disrupts the six-week time limit in section 4-13 subsection 1 second sentence. I find that such a request also disrupts the one-year time limit in subsection 2. The same considerations apply.

(104) This implies that the time limits in section 4-13 of the Child Welfare Act for implementation of the County Board's care order have not expired.

Conclusion

(105) Against this background, X municipality's appeal has succeeded.

(106) As I pointed out initially in my opinion, the Supreme Court must hand down a judgment, as there is sufficient basis for ruling on the merits of the case. This is not prevented by section 29-22 subsection 2, cf. section 30-3 subsection 1 of the Dispute Act.

(107) Because the hearing and the adjudication of the case in the Court of Appeal were split, the judgment must state that Norwegian authorities and courts keep their jurisdiction to review the County Board's care order. Furthermore, it must be established that the time limit for implementing the care order has not expired.

(108) The review of the County Board's care order will continue in the Court of Appeal.

(109) I vote for this

J U D G M E N T :

1. Norwegian authorities and courts have jurisdiction to review the County Board's care order of 30 December 2019 in respect of C and D.

2. The time limit for implementing the County Board's decision 30 December 2019 has not expired.

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

(111) Justice **Bergsjø:** Likewise.

(112) Justice **Sæther:** Likewise.

(113) Justice **Indreberg:** Likewise.

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

J U D G M E N T :

1. Norwegian authorities and courts have jurisdiction to review the County Board's care order of 30 December 2019 in respect of C and D.

2. The time limit for implementing the County Board's decision 30 December 2019 has not expired.