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Communication from Norway concerning the case of Strand Lobben and others v. Norway (Application No. 37283/13)

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Réunion : 1443e réunion (septembre 2022) (DH)

Référence du point : Plan d'action (17/06/2022)

Communication de la Norvège concernant l'affaire Strand Lobben et autres c. Norvège (requête n° 37283/13) ***(anglais uniquement)***

Attn: Department for the Execution of
Judgments of the European Court of Human
Rights Council of Europe Secretariat of the
Committee of Ministers
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Your ref	Our ref	Date
	19/4511-	17 June 2022

STRAND LOBBEN AND OTHERS V. NORWAY - EUROPEAN COURT OF HUMAN RIGHTS CASE NO. 37283/13 - CONSOLIDATED ACTION PLAN JUNE 2022

Name of applicant	**Application no.**	**Final judgment date**
Strand Lobben and others	37283/13	10 September 2019
J.	2822/16	6 December 2018
A.S.	60371/15	17 March 2020
K.O. and V.M.	64808/16	15 April 2020
P. and others	39710/15	7 September 2020
H.	14652/16	7 September 2020
M.L.	64639/16	22 March 2021
F.Z.	64789/17	1 July 2021
K.E. and A.K.	57978/18	1 July 2021
R.O.	49452/18	1 July 2021
M.F.	5947/19	25 November 2021
E.H.	39717/19	25 November 2021
Abdi Ibrahim	15379/16	10 December 2021
A.L. and others	45889/18	20. January 2022

1 INTRODUCTION

1.1 General

The *Strand Lobben* group of cases concerns various *violations* of the biological parents' right to family life in the period between 2011 and 2018. The shortcomings in this group relate to the following three categories:

- the decision-making process, the weighing of conflicting interests (the balancing exercise between the interests of the child and its biological family) or the reasoning for decisions taken;
- the contact regime; and
- the authorities' duty to work towards reunification of the child and the parents.

The Court has found *no violation* or *dismissed* the applications as manifestly ill-founded in cases raising similar questions against Norway in *M.L* (43701/14), *Mohamad Hasan* (27496/15), *O.S* (63295/17), *E.M and T.A* (56271/17), *S.A* (26727/19), *E.M and others* (53471/17), *C.E* (50286/18), *A.A.* (59082/19) and *S.P.* (54419/19).

1.2 Case description – Strand Lobben

Strand Lobben and Others v. Norway concerned the question of whether the Norwegian authorities had violated the right to respect for family life as set out in Article 8 of the Convention with regard to a mother (the first applicant) and her child (the second applicant) by not revoking a care order under the Norwegian Child Welfare Act and at the same time depriving the first applicant of parental authority over the child and giving consent to the foster parents to adopt the child under the Norwegian Child Welfare Act. The proceedings regarding this care order were instituted in 2011, and the last decision became final on 15 October 2012.

The Court found that the first and second applicant's rights under Article 8 of the Convention had been violated. Paras 202–213 of the judgment set out the general principles of interpretation of Article 8 on the basis of which the Court had decided the case. The Government observes that the Court's concept of the best interests of the child has been expanded so as to include an obligation for the domestic authorities to put in place practical and effective procedural safeguards for the protection of the best interests of the child and to ensure their implementation (para. 207 in fine).

In paras 214–226 these principles were applied to the facts of the case. The Court found that not all the views and interests of the applicants had been duly taken into account in the decision-making process leading up to the district court judgment that in 2012 upheld the decision to revoke the first applicant's parental authority and to consent to the foster parents adopting the child. The Court was thus not satisfied that the procedure had been accompanied by safeguards that were commensurate with the gravity of the interference and the seriousness of the interests at stake.

Three procedural shortcomings of the district court's decision-making process are significant for the Court's finding of a violation of Article 8 (see paras. 225–226):

i. insufficient reasoning as to the second applicant's continued vulnerability despite his having spent so long in a foster home;

ii. the failure to order a fresh expert examination of the first applicant's capacity to provide care in the light of her new family situation and to appreciate its importance in the district court's assessment; and

iii. excessive conjecture with regard to the first applicant's ability to provide proper care on the basis of a relatively limited number of contact sessions.

1.3 Follow-up judgments

In the cases of *P and others; M.L*; *F.Z.*; and *E.H* the Court reiterated the principles set out in *Strand Lobben* in cases regarding domestic authorities consent to adoption without the biological parent(s) consent.

In the case of *Abdi Ibrahim*, the Grand Chamber reiterated the principles set out in Strand Lobben § 203-2013, and held that the domestic authorities consent to adoption without the applicant's consent entailed a violation of Article 8. The Grand Chamber also found that the arrangements made after the care order as to the applicant's ability to have regular contact with her child, culminating in the decision to allow for his adoption failed to take due account of the applicant's interest in allowing the child to retain at least some ties to his cultural and religious origins.

In her pleadings before the Grand Chamber, the applicant argued that the Court should indicate individual measures under Article 46 of the Convention, referring in particular to the possibility of ordering a reopening of the adoption proceedings. The Grand Chamber did not find that any measures should be indicated under Article 46, for the following reasons:

> *"180. The Court reiterates that under Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, inter alia, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see, among other authorities, Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, § 311, 1 December 2020).*

181. The Court further notes that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions and spirit of the Court's judgment. However, in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measures that might be taken to put an end to the situation – often a systemic one – which has given rise to the finding of a violation (ibid., § 312).

182. As to the applicant's request in the instant case, the Court firstly notes that in a case of this type, in general the best interests of the child must be a paramount consideration also when it is to consider indication of any individual measures to be taken under Article 46 of the Convention (see, mutatis mutandis, Haddad v. Spain, no. 16572/17, § 79, 18 June 2019; and Omorefe v. Spain, no. 69339/16, § 70, 23 June 2020).

183. The Court notes that X and his adoptive parents currently enjoy family life together, and that individual measures could ultimately entail an interference with their respect for that family life. It follows that facts and circumstances relevant to Article 46 of the Convention could raise new issues which are not addressed by the present judgment on the merits (see, mutatis mutandis, Johansen v. Norway (dec.), no. 12750/02, 10 October 2002).

184. Furthermore, although the applicant did not request any measure of a more general character, the Court observes that, in so far as there might be a certain systemic issue in question, the respondent Government have shown that they are making efforts to implement the judgments rendered by the Court concerning various types of child welfare measures in which violations of Article 8 have been found (see, for example, paragraphs 62-66 above). It also observes that the respondent State is in the process of enacting new legislation (see paragraph 67 above).

185. For the above reasons, the Court does not find that any measures are to be indicated under Article 46 of the Convention."

In the cases of *J.*; *H.:, A.S.*; and *A.L. and others*, the Court reiterated the principles set out in Strand Lobben, The Court found violations of Article 8 based on a combination of deficiencies in the decision-making process and the extent of contact rights

In the cases of *K.O and V.M*; *K.E. and A.K.; R.O; and M.F.*, the Court reiterated the principles set out in Strand Lobben, and held that the limitations on contact rights entailed a violation of Article 8 of the Convention. The Court found no violation of Article 8 as regards the care orders.

2 JUST SATISFACTION

The just satisfaction awarded by the Court has been paid. In the case of A.L. v. Norway the payment for just satisfaction is still in progress due to a need of further documentation.

In the case of Strand Lobben the Court awarded 350 EUR as coverage of expenses for Strand Lobben's trip to Strasbourg in connection with the Grand Chamber case. The Ministry therefore paid 23 June 2020 350 EUR to Strand Lobben`s bank account. The Government also paid default interest calculated from 5 December 2019.

3 OTHER INDIVIDUAL MEASURES

3.1 General

It is important to distinguish between the different situations of the applicants in this group of cases.

Where the applicant's child has been adopted by a final decision, the only remedy available to the applicant is reopening on the grounds of procedural error. This is further described in section 3.1.1 below.

Where the child has not been adopted, but remains subject to a care order, the biological parents – in addition to the right to demand reopening of the impugned proceedings – have a continuing right to demand a review of the care order decision every eighteen months, as further described in section 3.1.2 below.

In addition, in all cases where there is a care order in place, the child welfare services (the "CWS") have a continuing and ex officio obligation to consider whether the contact rights should be increased or decreased based on the development of the child and its parents or if the care order should be revoked. This is described in further detail in section 3.1.3 below.

3.1.1 Reopening on the grounds of procedural error

Decisions on adoption under the Norwegian Child Welfare Act are final and sever all legal ties between the natural parents and the child. Neither the CWS nor any other public agency has the authority to change the adoption decision.

A natural parent whose rights the Court has found to be violated under the Convention is entitled to request a reopening of the domestic court's final ruling.

The civil procedure legislation offers two possible avenues. An applicant may petition for reopening if a judgment of the Court in the same matter suggests that the domestic court ruling in substance was based on an incorrect application of the Convention. Alternatively, an applicant may petition for reopening if, in a complaint against Norway in respect of the same matter, it is found that the domestic ruling's procedure violated the Convention. According to

the case law of the Supreme Court, it is a condition for reopening the case that this is necessary to remedy the violation of the Convention.

The time limit for a petition for a reopening is in both cases six months from the date on which the party became aware of, or ought to have become aware of, the grounds for the petition.

The domestic court examines whether the conditions for reopening the case are fulfilled, and if the petition succeeds, the reopened case is heard pursuant to the procedure applicable to the type of case in question.

The case will not be reopened if there is a “reasonable probability” that a fresh consideration of the case would not lead to a change in the substantive aspects of the judgment that affects the party.

3.1.2 Specific remedies in the case of care orders and contact rights

When a care order has been issued, the parents have a right to demand a review of the care order decision unless the case has been dealt with by the county social welfare board or a court of law in the preceding twelve months, cf. section 4-21 of the Child Welfare Act.

If a demand for revocation of the previous order or judgment was refused if revocation would lead to serious problems of the child, proceedings may only be demanded when documentary evidence is provided to show that significant changes have taken place in the child’s situation.

Further, the parents have a right to demand a decision on access rights before the county social welfare board, unless the case has been dealt with by the board or a court of law in the preceding eighteen months, cf. section 4-19 of the Child Welfare Act.

3.1.3 The child welfare services’ ongoing obligations

Regardless of the above-mentioned legal remedies available to the applicant, the CWS responsible for the case may on its own initiative increase the amount of contact between the parents and the child where this is in the best interests of the child or request the county social welfare board for a revocation of the care order. The CWS has an independent duty to observe the development of the parents and the child. This follows from section 4-16 of the Child Welfare Act:

> *After a child has been taken into care, the Child Welfare Service has a comprehensive, ongoing responsibility for following up the child, including a responsibility to monitor the development of the child and his or her parents.*

The duties of the CWS include supervising the parents’ and the child’s development, evaluating any changes, offering the parents guidance and follow-up, and facilitating

reunification between the parents and the child (in other words a revocation of the care order) in situations where the best interests of the child do not indicate the opposite. In Rt-2012-967 concerning revocation of a care order, the Supreme Court considered among other factors the CWS' continuous duty to follow up the measures that have been ordered. In paragraph 23, reference was made to Proposition to the Odelsting No. 64 (2004–2005) section 4.1, which states the following with regard to section 4-16 of the Child Welfare Act:

> *The child welfare services shall ensure that the placement in foster care does not become more long-term than appropriate with the best interests of the child in mind. In the cases where the child welfare services find that the conditions are no longer met, they have an independent duty to propose to the County Social Welfare Board that it revoke the care order, see section 4-21 of the Child Welfare Act.*

Further, the aim of reuniting children and parents and the (as a rule) temporary nature of care orders was further clarified in an amendment to the Child Welfare Act which came into effect on 1 July 2018.

3.2 Status – reopening proceedings etc.

At its 1398th meeting (March 2021), the Committee of Ministers invited the Government to inform the Committee about the outcome of the reopening proceedings instituted by the applicants in *Strand Lobben* and *A.S.*

Moreover, the Committee of Ministers invited the Government to inform the Committee whether the applicants in *P*. and *H.* have requested a review of the care order and/or of contact rights or requested reopening of the adoption order respectively, and the outcome of any such proceedings.

3.2.1 Strand Lobben and others

The first applicant's counsel petitioned the Appeals Selection Committee of the Supreme Court for a reopening of the case on 3 December 2019. On 9 June 2020, the Supreme Court found that the petition to reopen should be considered by the district court, as the Court (Grand Chamber) had based its judgment on procedural errors in the district court ruling.

On 6 November 2020, the first applicant brought a reopening request to the district court, which considered the child's right to be heard. The district court had appointed an expert who was given a mandate to consider whether the child should be heard before the court ruled on the request for reopening. The district court pointed out that the duty to hear a child is not absolute. In very special situations, exceptions can be made if the child's best interests dictate it. The district court found it likely, based on the child's history, age and the expert's account, that informing the child about the applicant's request and giving the child the opportunity to give their opinion would cause considerable distress and have harmful effects

to the child. After a balancing of the various interests, the district court concluded that it was in the child's best interests to be spared from taking part in the question of reopening.

By decision of 31 August 2021, the district court rejected the applicant's request for reopening. In brief, the district court found that it was "completely unlikely" that reopening the proceedings nine years after the final judgment would lead to overturning the adoption decision.

The applicant appealed the decision to the High Court, who quashed the decision inter alia because the child had not been heard. Accordingly, the applicant's request for reopening is still pending before the district court.

Since this is an adoption case, the remedies and obligations described in sections 3.1.2 and 3.1.3 are not available to the applicant.

3.2.2 J.

The CWS made repeated unsuccessful attempts to reach the applicant. According to the National Population Register, the applicant has moved to another country. The CWS has sent a letter to her new registered address abroad, but the letter has been returned. The CWS has therefore had neither the opportunity to explain the implications of the judgment to the applicant nor to inform her of further options for establishing contact with the child.

The supervision of the execution of this judgment was closed by CM/ResDH (2021)43.

3.2.3 A.S.

In this case, the applicant has requested reopening (as set out in 3.1.1 above) and a review of the care order (as set out in 3.1.2 above). From January 2020 until present day, the applicant has changed counsel approximately 26 times.

As regards the applicant's request for reopening, she has petitioned the district court for a reopening of the proceedings that led to the original care order being upheld (i.e. the proceedings that were impugned by the European Court). The district court appointed two experts to evaluate the applicant's caring ability and the child's situation today. The applicant disagreed with the mandate for the experts and the choice of experts (after initially having accepted the choice of experts), and appealed the scope of the mandate and the choice of experts. Her appeal regarding the experts and the mandate was finally rejected by the Supreme Court on 21 September 2021.

In January and February 2022, the court-appointed experts summoned the applicant to meetings, but she did not meet, and they were unable to reach her by telephone or text messages. The court-appointed experts then withdrew from the assignment, with reference *inter alia* to the fact that they were under the impression that the applicant did not trust them

and that they could not assess the case without the applicant participating. The court ordered them to fulfil their assignment. The court-appointed experts delivered their report 13 April 2022, underscoring that they could not answer the mandate as the applicant did not participate.

In the report, the court-appointed experts describe their attempts to get in touch with the applicant, also stating that the applicant had informed them that she was ill whereas at the same time, she submitted a statement from a GP that she was healthy. In the expert's view, the applicant's situation was "vague and unclear to us". The experts had decided not to talk to the child, out of concern for the child's health and development.

In a letter to the Committee of Ministers, the applicant represented by a different lawyer than in the domestic proceedings, argues *inter alia* that the experts have not tried to contact her since March 2022. The letter from the applicant has been forwarded to the district court by the Child Welfare Service, and the district court has requested the experts to give further information about how and when they tried to contact the applicant. The case is still pending before the district court.

In parallel with the reopening proceedings, the CWS has made numerous attempts to establish contact with the applicant with a view to prepare a follow-up plan that could result in contact between the applicant and the child (i.e. in accordance with the CWS's obligations as described in 3.1.3 above). In a letter of 20 January 2020, the CWS invited the applicant to a meeting regarding the Court's judgment of 17 December 2019 in her case. The purpose of the meeting was inter alia to draw up a follow-up plan and to review the Court's judgment together. The CWS offered to cover two hours of legal costs in connection with this meeting. This meeting was postponed twice at the applicant's request.

Meanwhile, the applicant's counsel filed a claim to have the care order revoked (as described in 3.1.2 above). The CWS went on to prepare the case regarding the revocation of the care order before the county social welfare board, and in that connection informed the applicant that they needed new and updated information from her. The applicant, who in the meantime had changed legal counsel, informed the CWS that she had filed a reopening request. Accordingly, in the view of the applicant's counsel, the case regarding the revocation of the care order was irrelevant. According to the applicant's counsel at that time, a new assessment of the applicant's ability to care for the child should consequently not be performed. The CWS thus – based on the wishes expressed by the applicant's counsel – did not proceed with the case regarding the revocation of the care order before the county social welfare board.

In addition, on 9 June 2020, the CWS invited the applicant to a new meeting in order to provide her with updated information about her child. This invitation was rejected by the applicant's counsel, who stated she preferred to have the information transmitted by post. The Child Welfare Service also informed that it would appreciate information about the applicant, in order to fulfil their duties to follow-up the child and the mother pursuant to the

Child Welfare Act section 4-16. The CWS also underlined that in view of the Court's judgment, they believed that it would be useful to have an expert investigation in the case.

On 3 September 2020, the applicant changed counsel again, and on 3 September 2020 the CWS invited them to another meeting for a discussion about the applicant's current situation and the possibility to re-establish contact with her child. This meeting was held on 23 September 2020, where the applicant participated with a legal advisor. In the meeting, the CWS emphasized that they have a duty to follow-up parents after a care order, pursuant to the Child Welfare Act section 4-16, that such a plan should also explore and evaluate whether it is possible to plan contact between the applicant and her child. Further, the Child Welfare Service informed the applicant that they considered it necessary to make an expert assessment of the applicant with a view to assess whether it is reasonable for the child to resume contact at present. The CWS also underlined that they could not initiate a follow-up plan of the applicant pursuant to the Child Welfare Act section 4-16 without her consent.

By letter 19 May 2022 to the Committee of Ministers, the applicant has forwarded her letter 26 May 2021 to the CWS, requesting contact sessions with her child.

The CWS invited the applicant to a meeting on 2 July 2021, but only the applicant's attorney participated. On two previous occasions, the CWS asked the applicant whether she wanted a new hearing before the county social welfare board, most recently in March 2021. The applicant did not respond to these inquiries.

Despite numerous attempts, the CWS has been unable to obtain the cooperation of the applicant to facilitate contact as contemplated by section 4-16 of the Child Welfare Act or to bring new proceedings before the county social welfare board, as envisaged by section 4-21 of the Child Welfare Act. Accordingly, the CWS maintain that it does not currently have a basis to facilitate contact between the applicant and the child. The applicant has not requested a review of the decision on contact rights before the board, cf. the child welfare act section 4-19.

Based on this, the Government can only conclude that the applicant has chosen as her primary avenue of redress to pursue the reopening of the proceedings that led to the original care order being upheld.

3.2.4 K.O. and V.M.

The child was returned to the applicants by a decision of the district court in March 2018, well before the Court's judgment of 19 November 2019.

The supervision of the execution of this judgment was closed by CM/ResDH (2021)92.

3.2.5 H.

Until 14 March 2022, the applicants' two younger children remained subject to a care order. The CWS has on numerous occasions attempted to invite the applicants to meetings in order to schedule contact sessions and to improve the quality of the contact sessions. The applicants have cancelled these meetings.

In addition, the applicants have instituted proceedings to have the care orders revoked. Due to the children's age, they are represented by counsels. On behalf of the children, the counsels opposed the parents' attempts to have the care orders revoked.

By judgment 14 March 2022, the district court revoked the care orders. The judgment was appealed 16 March by the municipality. The municipality also requested deferred implementation. The children themselves, represented by counsel, have also appealed the decision to lift the care orders. The High Court has granted leave to appeal and granted deferred implementation.

The individual measures in this case are currently pertinent to application no. 20102/19, communicated against Norway by the Court on 2 October 2019, the Government does not consider it appropriate to go into further details.

3.2.6 P. and Others, M.L., F.Z., and E.H.

As far as the Government is aware, the applicants in *P. and Others; F.Z.* and *E.H*. have not initiated any reopening proceedings.

By date of 22 September 2021 *M.L.* submitted a request before the District Court to reopen the case concerning deprival of parental responsibilities and adoption. The District Court dismissed the action by ruling of 12 May 2022. The ruling has not obtained the force of *res judicata*.

3.2.7 Abdi Ibrahim

The applicant's request to reopen the judgment consenting to adoption was rejected by decision of 1 March 2022. In brief, the High Court found it was clearly not likely that reponing the proceedings more than eight years after the final judgment would lead to overturning the adoption decision. The child had lived with his adoptive family for more than eleven years, and had been adopted for more than eight years.

The High Court explicitly considered the state's obligation under Article 46 of the Convention, and found that it was materially impossible to put the applicant in the position she would have been had the violation not taken place, without violating the best interest of the child and the established family life with his adoptive family. The High Court explicitly referred to paras. 181-183 of the Court's judgment. The applicant's appeal to the Supreme Court was rejected by the Supreme Court on 25 April 2022.

3.2.8 K.E and A.K

With reference to the Court's judgment, the applicants requested a revocation of the care order. The request for revocation was later dismissed by the applicants, but they upheld the request for increased contact sessions. On 28 February 2022, the Board increased the frequency of contact rights to 8 times annually. The decision was not appealed by the applicants.

3.2.9 R.O.

The care order in R.O. was revoked prior to the Court's judgment.

3.2.10 A.L. and others

On 23 March 2022, the parents' requested a reassessment of the frequency of contact rights, and the case is pending before the county social welfare board.

4 GENERAL MEASURES

4.1 General

In the Government's view, the violations found by the Court indicate that adjustments in accordance with Article 8 of the Convention are called for in Norwegian child welfare practice. Following the Court's judgments, the Government has drawn up and initiated a number of general measures that have been or will be implemented to strengthen the Norwegian child welfare service, as set out below. In its Grand Chamber decision of 20 March 2020 (HR-2020-661-S) para. 112, the Norwegian Supreme Court also found that certain aspects of the child welfare practices needed to be adjusted. With reference to the case law of the Court in child welfare cases, the Supreme Court noted that some of the judgments had demonstrated that "the decision-making process, balancing exercise, or the reasoning have not always been adequate". The Supreme Court also noted that the Court in particular "had found, violations with regard to the duty of the authorities to work towards reunification of the child with the parents".

The Government submits that the violations found by the Court do not indicate a conflict between the Convention and the Child Welfare Act as such. The Grand Chamber rulings by the Norwegian Supreme Court note that there is no conflict between the Court case law and the substantive and procedural principles following from the provisions in the Child Welfare Act on deprivation of parental authority, adoption and care order (see HR-2020-661- S, paragraph 170 and HR-2020-662-S, paragraph 56). In the latter paragraph it is assumed that the current threshold for a care order may be continued. Regardless and independently of the Strand Lobben case law, in 2014 the Government began a full revision of the Child Welfare Act, which led to the adoption of a new Child Welfare Act on 10 June 2021. It will enter into force on 1 January 2023.

Although the Government finds that legislative amendments are not necessary for the execution of the Court's judgments, the new Act reflects the developments in the case law of the Court. A summary of relevant aspects of the new Act is set out below under 5.3.

We have seen a change in child welfare practise in Norway during the last years. The number of requests for enforcement measures pursuant to the Child Welfare Act has been reduced over several years. Since 2019, requests for care orders and adoption in particular have been reduced. There may be several reasons for this development. The Government is keeping an eye on this issue.

4.2. Measures to improve contact rights

At its 1398th meeting, the Committee underlined that the Child Welfare Services and the County Social Welfare Boards from the very outset consider all of the relevant requirements under Article 8, including the positive duty to take measures to facilitate family reunification, not to give up on reunification at too early a stage and to implement contact regimes that effectively support that goal. The Committee also wanted to be informed of how the measures taken by the Government will address practical arrangements to ensure that contact sessions are organised in a manner conducive to letting parents and children bond.

Several measures have been or are being implemented to facilitate a practise which support the goal of reunification. This include more specific rules on contact in the new Child Welfare Act. The new provisions underline for example that the strengthening of family bonds shall be taken into consideration when contact rights are set. Furthermore, several information measures directed towards both the child welfare services and the Boards have been initiated. Moreover, national guidelines on contact rights are being set, and research projects on contact have been initialised.

4.2.1 National guidelines on contact rights

Following Strand Lobben, the Directorate of Children, Youth and Family Affairs (Bufdir), was commissioned to develop two national guidelines on contact rights. The first guideline concerns determination of the level of contact between children in care and their parents. The second guideline concerns the organisation of contact sessions. Both guidelines are developed by a group of experts, in cooperation with both children and parents with experience from child welfare cases, and representatives from the Child Welfare Sector.

The expert group's draft guideline regarding the level of contact was sent on public hearing in the beginning of 2022.[1] The input from the hearing is now being processed by the Directorate, and the final guidelines is scheduled for publication in autumn 2022. The guideline will be implemented by the CWS in all municipalities. The guideline concern subjects as the involvement of the parents, the situations of the parents and the vulnerability of the child etc. A specific recommendation in the guideline also concerns the linguistic, cultural and religious background of the child (recommendation nb. 7). I.e. the importance of

[1] Høring: Nye retningslinjer for vurdering av samvær etter omsorgsovertagelse (bufdir.no)

how contact can develop and maintain the cultural, linguistic and religious background of the child has been highlighted.

As concerns the second guideline concerning the organisation of contact rights, the Directorate is currently setting up an expert group who will develop a draft. This guideline will focus on the quality of contact sessions, with recommendations for the child welfare services on how to organise contact in the best possible way for both parents and children.

4.2.2 Research projects on contact rights

Bufdir has commissioned a research project on contact between children in care and their extended family. The project will investigate current Norwegian and international practice and existing literature on all aspects of access following placement in care. Emphasis will be put on contact arrangements that promote the wellbeing of the child, as this is a paramount consideration.

The research questions include what factors need to be considered in decision-making (situation of the child, the child's own opinion, effects on children, parents and foster parents, organisation and administration, supervision, evaluation, etc.). The researchers will use the results to develop a comprehensive model for contact that encompasses all aspects of contact between children in care and their extended family. The research project is due to be finalised by the end of 2022.

Bufdir also commissioned a supplementary project on certain legal aspects of contact rights and the practice from the boards and the courts. The report on contact after care orders [2] studied cases from the county social welfare boards and the courts in order to investigate any practice changes in the wake of the Supreme Court's grand chamber cases from March 2020. 69 decisions have been reviewed: 37 county board decisions and 32 appeals court judgments handed down in the period 27 March - 31 December 2020.The project constitutes an independent sub-report to the main project on contact after a care order, mentioned above.

The findings from the project, show that the practice is largely consistent with the Supreme Court grand chamber decisions based on the Court`s judgments. The main impression is that the reasons for determining the frequency of contact rights are thorough and concrete, and that relevant considerations are balanced against each other. Further, there has been an increase in contact between the parents and the child. More access is generally stipulated than has been the practice in the boards in the past. In most cases, access is set at 8-12 times per year after a concrete assessment.

The report presents several recommendations. Practice should to a greater extent investigate and assess the reasons for the children's reactions to the contact. Moreover;

[2] OsloMet Skriftserie 2021 no 4 , «Samvær etter omsorgsovertakelse», by Ingunn Festøy Alvik (Only available in Norwegian)

practice should more often assess whether the children have been subjected to violence/abuse under the care of the parents where there are signs that this may have occurred, and also consider what weight this should be given in the determination of the level of contact. Further; children's cultural rights should be specified and emphasised more clearly than what has been done in some cases. Moreover, children under the age of seven, who are able to form their own views, should also be ensured a higher level of participation, and their statements should appear in the decisions. Finally, the reasons for determining supervision should be more comprehensive. The findings of the supplementary project on certain legal aspects will be further assessed in the main research project on contact between children in care and their extended family described above.

4.3 Determination of contact - county social welfare boards

The county social welfare boards have registered data about the results of access cases since September 2019. The trend since 2019 with increased contact has risen further. New statistics from the boards indicate that in most cases, access is set at once a month, although there are still many instances where access is set to 4-6 times a year. Furthermore, there seems to be a greater dispersion in the determination, which may indicate a more individually adapted assessment. There is also a slight increase in the number of cases where access is granted more frequently than once a month.

The boards also register the outcome of first-time access determination between mother and child, father and child and joint access between parents and children. The county boards' practice for contact rights determination has changed significantly since *Strand Lobben v. Norway* and subsequent rulings in the Court and the Supreme Court. In 2020 and 2021, the boards established access between mother and child once a month in the majority of cases. The share of decisions that stipulated access more often than once a month has also increased since autumn 2019. There has also been an increase in access set at once a month for father and child. We also see the same development where the boards determine joint contact for mother and father.

The determination of contact in the county boards is far more differentiated since 2019. The change may be seen in in connection with the use of the conversation process as an alternative to ordinary treatment. The purpose of the conversation process is to improve communication between the parties and investigate the possibilities for a voluntary resolution of the case.

Conversation process is now used in over 50 per cent of the cases. A third of the cases dealt with in the discussion process lead to the parties agreeing on a solution. These cases are decided in writing by the board chair. A large part of the petitions for care orders or revocation of care orders are also withdrawn by the parties, because they enter into voluntary agreements .

4.4 Cultural and linguistic background

At its 1398th meeting, the Committee of Ministers invited the authorities to submit more information on measures taken or planned to ensure that the child's cultural and linguistic background is given due consideration.

The Norwegian Child Welfare Act places great importance on family ties and continuity in children's upbringing. Most children who cannot live with their parents are placed in a foster home. The child's best interests are decisive when the CWS chooses a foster home. The choice shall be made on basis of the child's distinctive characteristics and individual needs. The municipality in which the foster home is located is responsible for approval and supervision of the home.

Section 1-8 of the new Child Welfare Act contains an overarching provision that emphasises the CWS's responsibility to give due regard to the child's ethnic, cultural, linguistic and religious background. It also states that the specific rights of children belonging to the Sami minority shall be safeguarded.

This provision is new and applies to every stage of the CWS's work and every type of decision, not just the choice of foster home or institution (as is the case under the legislation currently in force). The Government expects that the provision will increase the awareness of these issues in the CWS, and lead to improved decisions in the best interests of the child, see the preparatory works (Prop 133 L (2020-2021) page 18).

Further, as mentioned above, a specific recommendation in the national guideline regarding contact rights also concerns the linguistic, cultural and religious background of the child. The guideline is scheduled for publication in autumn 2022. The supplementary project on certain legal aspects of contact rights also addresses the cultural and linguistic background of the child. The findings will be further assed in the main research project on contact, see above.

In addition to the legislative amendments, the Supreme Court in its judgment in HR-2021-475-A held that the Convention on the Rights of the Child supports the notion that the child's ethnic, religious, cultural, and linguistic background must be taken into account and given weight when the CWS makes its decisions, including the choice of foster home or other situations where it is necessary to place the child outside of its home. The rights of minority children must also be an important criterion when determining what is the best solution for the child.

Other measures have also been implemented to increase the awareness and competence for taking due considerations to the child's cultural and linguistic background. A Competence Strategy for the Municipal Child Welfare Services (2018–2024) has been implemented. A key purpose is to strengthen the employees' knowledge of how to safeguard and facilitate the participation of children and parents. The strategy includes new educational programs that aim to promote greater understanding and sensitivity in the follow-up of children and families with minority backgrounds. The government has also proposed introducing higher

competence requirements for child welfare employees. This has been adopted in the new Child Welfare Act.

The responsible agencies (The Norwegian Directorate for Children, Youth and Family Affairs and the Office for Children, Youth and Family Affairs) work actively to recruit more foster families from various ethnic minority groups. However, finding enough suitable foster homes is challenging, particularly among minority groups.

4.5 Domestic case-law

In October 2019 the Supreme Court decided to assess three sets of child welfare cases referred to it. On 27 March 2020, the Supreme Court (the Grand Chamber with a panel of 11 judges) delivered three unanimous decisions, two of which (HR-2020-662-S and HR-2020-663-S) concerned public care orders with restricted parental access (the third, HR-2020-661-S, concerned adoption as a welfare measure).

All three Supreme Court decisions make extensive reference to Strand Lobben paras 202–213 and cases building on these general principles of interpretation of Article 8 of the Convention.

With reference to the Court's practice, the Supreme Court judgments emphasise among other things the temporary nature of public care, the positive duty of the authorities to facilitate family reunification, the importance of contact between parents and child in promoting reunification, and the necessity of determining the nature and frequency of contact sessions according to the circumstances of the individual case.

The judgments also emphasise that measures must be based on adequate and updated information, including an expert opinion when required, a fair and broad balancing of interests and adequate of reasoning, in compliance with the Court's directives.

In the concrete cases, a unanimous Supreme Court:

- in HR-2020-661-S set aside the district court's judgment as being seriously flawed;

- in HR-2020-662-S held that the conditions for continuing public care had been met, but that the ultimate goal of family reunification implied that the contact should be extensive enough to strengthen and develop the child's bonds to its parents. It therefore increased the number of contact sessions per year,

- in HR-2020-663-S dismissed the appeal as there were no serious flaws in the district court's judgment.

As a general rule, child welfare cases are considered in closed court. However, the Supreme Court decided that the three cases under discussion here should be considered in open court so that both the press and the general public could be present, given the current extensive

public interest in child welfare cases before the Norwegian courts. The name of the parties was anonymized. This decision provided the general public with information on the case law of the European Court of Human Rights.

The judgment in HR-2020-661-S § 140 -1412 also notes that the natural parents' exercise of judicial remedies with a view to obtaining family reunification with their child cannot as such be held against them (see *Strand Lobben*, § 212, Abdi Ibrahim § 154, F.Z. para 55-58, M.L. § 95). The Supreme Court noted that the expression "as such" shows that if repeated processes doubtlessly will be harmful for the child, this may be accorded weight, even if the parents cannot be blamed for exercising judicial remedies. The Supreme Court underscored that such a viewpoint must be established only after a thorough assessment. This has been followed up in domestic case law, see for example LA-2021-17386 and LB-2020-163354.[3]

Moreover, the Supreme Court has subsequently decided to consider a number of other cases concerning other aspects of public care and access restrictions. All referrals were prompted by the Court's judgments on child welfare cases against Norway. A summary of some examples follows below:

- In a judgment of 15 September 2020 (HR-2020-1788-A) on a case concerning a request for revocation of a care order, the Supreme Court found that at this time reunification was not in the best interests of the child, but emphasised that there was no basis for abandoning the goal of family reunification altogether. A regime had been set up by a court of appeal in which the contact sessions were gradually increased to eight hours 12 times a year. The Supreme Court found that the lower court had weighed the competing interests in a process of reasoning that followed the guidelines set out in the Court's practice.

- On 15 September 2020, in case HR-2020-1789-A, the Supreme Court set aside the court of appeal's decision to refuse to appeal against a district court judgment denying an application for the return of a child after a care order. The Supreme Court found that the district court's reasoning failed to meet the criteria set out in the case law of the Court and the Supreme Court, including the fact that the district court had not provided for an updated expert opinion on more recent developments.

- On 1 July 2021, in case HR-2021-1437-A, the Supreme Court granted a maternal grandmother standing in a case concerning contact rights. The background for the case was that according to section 4 19 of the Child Welfare Act, relatives of the child are only granted standing in such cases where the biological parents have been granted "very limited" contact rights. In light of the case-law in the Strand Lobben group, the Supreme Court found that the prevailing understanding of what constituted "very limited" contact rights had been too narrow. With reference to para. 79 in the

[3] The Committee will recall that the Court in Aune v. Norway, no. 52502/07 § 71 accepted that adoption would counter the eventuality that a latent conflict about where the child would live could erupt into challenges to A's particular vulnerability and need for challenges, and found no violation of Article 8 in a case regarding adoption.

European Court's judgment in M.L. v. Norway, the Supreme Court held the level of contact should be more than eight times per year where the goal of reunification has not been abandoned and the interests of the child do not require more restrictive contact rights. The Supreme Court further held that contact less than six times per year constitutes "very limited" contact rights for the purposes of section 4-19 of the Child Welfare Act.

- On 2 March 2021, the Supreme Court decided on three cases regarding contact right; HR-2021-474-A, HR-2021-475-A, HR-2021-476-A, based on the Court's case law in S*trand Lobben, K.O. and V.M*; and *M.L.*:

  In case HR-2021-474-A, The Supreme Court noted several factors to be considered when deciding on the frequency of contact sessions, such as the child's vulnerability, the child's attachment to his or her parents, the child's own view, the quality of the sessions and the possibility to provide guidance to the biological parents in order to improve the quality, and whether or not the foster parents had a different language or cultural background than the biological parents. The Supreme Court emphasised that children have the right to knowledge about their culture, and that this right had to be protected regardless of the cultural background of the foster parents and the biological parents.

  When deciding the frequency of contact session in the concrete case, the Supreme Court noted that the child was now six years old, and the child welfare services had taken over the care of her when she was seven months old after providing assistance measures to her biological parents since she was three weeks old. The child had massive linguistic and social difficulties compared to other children, as also noted by the court appointed expert and with reference to information from the kindergarten. One of the experts in the case had explained that inadequate care during a child's first months of life might damage basic ability to interact with others, also damaging a child's ability to learn and understand languages.

  In the opinions of three different experts in the case, the contact sessions should be few and short, as the child had reactions after the contact sessions with her biological parents. The expert before the Supreme Court had recommended three contact sessions per year, noting that further sessions could inhibit the child's development. The Supreme Court explicitly mentioned that contact sessions must be arranged to strengthen and develop the bonds between the parents and the child. Contact visits three times per year, as stipulated by the Court of Appeal, would as a starting point not be sufficient to obtain this. At the same time, the Supreme Court noted that consideration of the best interests of the child was paramount, and the extent of access must not be of such scope that it would expose the child to an unreasonable burden or would be harmful to the child's health or development. The Supreme Court also emphasised the importance of hearing the child's own opinion.

The Supreme Court granted the parents six contact sessions per year, noting that reunification could still take place, but it was not realistic in the short run.

Case HR-2021-475-A regarded two children, now aged eleven and seven years. After lengthy and futile efforts of assistance measures from the child welfare services (for a period of eight years), care orders had been issued in 2015. The father had extensive alcohol use, and two out of the parents' four children had told that they had been subject to domestic violence from both parents. The biological parents were both convicted in criminal proceedings for violence against the three eldest children. The Supreme Court determined the extent of contact rights between the parents and the children at five times per year. The goal of reunification had not been abandoned, although a revocation of the care order was unrealistic in the nearest future. Both children had vulnerability factors that had to be considered when determining the extent of access. There had been challenges concerning the quality of the contact visits that had been carried out, which had been burdensome for the children. Due regard also had to be paid to the children's minority culture when determining the extent of access, see Article 30 and Article 20 (3) of the UN Convention on the Rights of the Child.

In case HR-2021-476-A, the Supreme Court held that the biological father should be granted contact with his four children four and six times per year respectively, even though the Supreme Court itself, based on the European Court's case-law, noted that this level of contact rights was not conducive for family reunification. The Supreme Court made a thorough decision based on testimony from an expert who had interviewed the children. The Court noted that two of the children were particularly vulnerable (they had been diagnosed with Post Traumatic Stress Disorder) and had a great need to find peace and stability in the foster home. The Supreme Court further noted that it should be a "clear ambition" and goal to increase the contact rights, always provided that this would not set aside the best interests of the children.

4.6 Capacity-building measures

Several measures have been implemented to inform stakeholders in child welfare cases about the case law from the Court and the Supreme Court.

4.6.1 Follow-up of the courts

The Norwegian Courts Administration (NCA) is following up the Court's judgments in various ways. The goal is to ensure that all judges have the necessary knowledge and information. Among various measures The NCA has made a national guide for the courts on how cases under the Child Welfare Act should be dealt with. The introductory programmes for newly appointed judges and deputy judges now address the Court's case law in child welfare cases thoroughly by means of lectures, discussions and workshops. The NCA established a working group which in December 2021 submitted proposals for increasing the level of

competence for judges in children's cases. The NCA is also arranging seminars that are open to all judges where the different aspects of child welfare are addressed. Further, The NCA has made digitally available a number of discussions, papers, lectures and debates regarding the Court's case law and what it entails for Norwegian court practice.

4.6.2 Follow-up of the county social welfare boards

The county social welfare boards decide individual cases under the Child Welfare Act. The Ministry of Children and Families sent a letter dated 18 December 2019 to the boards reminding them of their duty to remain up to date regarding relevant case law, including judgments from the Court. Among the duties of the Central Office of the county social welfare boards is to provide information and training for the chairs. The Central Office works continuously to improve the quality of the boards' proceedings, including follow-up of judgments from the Court.

The Central Office has implemented a number of measures to increase the board leaders' insight into and understanding of Court's decisions and the Supreme Court judgments. All newly employed board chairs must complete a modular training programme in the first year, where they are given, among other things, an introduction to child welfare law. In this training, great emphasis is placed on informing about practice from the Court.

Further, the office arranges monthly professional meetings for the board chairs. The meetings are held digitally. There are one or more introductions on various topics, with subsequent questions and reflection. In several of the meetings, the topic has been the judgments from the Court. Another topic in 2021 has been a report about the children's views on contact with their parents, when they are under public care. Further; the Norwegian Institution for Human Rights presented for the chairs its report "Hvorfor dømmes Norge i EMD?" [4] in April 2021.

In the autumn of 2021, the county boards organized a conference on the topic of reunification of children and parents after a care order. Key professionals presented the developments in child welfare law following the Court's grand chamber decision in the case Strand Lobben v. Norway. The conference had several hundred participants. The conference is mandatory for the board chairs and is included in the county boards' competence plan.

In January 2022, University Lecturer Ingunn Alvik presented the report " Samvær etter omsorgsovertakelse" at the board chairs' professional meeting[5]. See also a description of the report in point 4.2.2. Another topic was the Court's grand chamber decision in the case of Abdi Ibrahim v. Norway. In June 2022, all employees of the county boards will gather for a three-day meeting, where the judge in the Court, Arnfinn Bårdsen, will give a speech entitled "The Court's practice and the county boards".

[4] Why Does the ECtHR Find Human Rights Violations in Cases Concerning the Norwegian Child Welfare Services - NIM (nhri.no)
[5] OsloMet Skriftserie 2021 no 4 , «Samvær etter omsorgsovertakelse», by Ingunn Festøy Alvik (Only available in Norwegian)

Further, the county boards' intranet is actively used to inform the board leaders about new and relevant judgments from the Court, the Supreme Court and the courts of appeal.

Finally, in 2022, the Central Unit has issued a guide for decision-making that provides the board leaders with support both in the material child welfare law, but also in the design of the decisions. The guide is incorporated into the boards' case management system and contains a broad presentation of practice from the Court and the Supreme Court. The guide is continuously updated.

4.6.3 Follow-up of the child welfare services

On 10 June 2020 the Ministry of Children and Families circulated a letter concerning the handling of child welfare cases to all municipalities and county governor offices. The letter contained information about the Supreme Court's findings in the three above-mentioned Grand Chamber decisions and their consequences for the application of Article 8 of the Convention.

In the autumn of 2021 the Ministry carried out courses for the local child welfare services and the County governors. The objective was to inform the CWS about the new Child Welfare Act which was adopted 1 June 2021.

Furthermore; in a letter of 19 December 2019, the Ministry of Children and Families assigned the task of informing the child welfare authorities about the Court’s judgments against Norway in child welfare cases to the Directorate of Children, Youth and Family Affairs (Bufdir).

Bufdir has developed and carried out a three-hour course for the local child welfare services. The objective is to strengthen their understanding of the judgments of the Court and the Supreme Court and how to apply them. The course focuses on the right to family life under Article 8 of the Convention, including care orders as a temporary measure and proper justification in decision-making. Other topics are the facilitation of family reunification, the contact rights of children and parents and the principle of the best interests of the child. Special focus is given to assessment and documentation. Bufdir has also in 2021 developed two new courses on the investigations performed by the CSW, case law from the Supreme Court on the judgments from the Court and knowledge of public administration.
In order to contribute to a more equal and quality assured practice of the CWS, Bufdir has further developed the Child Welfare Quality System (BFK).

Furthermore, Bufdir has been commissioned to develop national guidelines for determining contact between children in care and their extended family, as described in 4.2.1 above.

Bufdir has also amended the main procedural guidelines for local child welfare services based on recent case law of the Court and the Supreme Court. The guidelines highlight, inter alia, that care orders issued under the Child Welfare Act must be founded on an adequate,

updated basis for decision-making, a sufficiently broad balancing of interests and satisfactory reasoning. The guidelines also address that the authorities have a positive duty to strive to maintain the relationship between the child and the parents and to facilitate reunification. This means that the authorities must monitor the child's and parents' development closely, cf. section 4-16 of the Child Welfare Act. As long as reunification is the aim, the parent–child contact must be designed to make this possible. The main purpose of the contact sessions is to strengthen family ties. This requires a thorough and frequent assessment of the frequency and content of the contact sessions. If the sessions do not function well, adjustments or alternatives should be tried, such as changing the meeting place or providing guidance in connection with the meeting. The guidelines further express that even if a reunification is not possible, contact sessions have an intrinsic value for maintaining family bonds as long as this does not harm the child.

Moreover, Bufdir has mapped how the municipalities work with parents after a care order. This includes questions concerning the routines for the follow up of the parents after a care order, organisation of the work, assessments of contact and whether the conditions facilitate a revocation of care orders.

4.7 Publication and dissemination

The Court's judgments in this group of cases have been published on the website of the Norwegian Directorate of Children, Youth and Family Affairs. Summaries of the judgments in Norwegian, with links to the original judgments, have been published on the website Lovdata. The Norwegian summaries are compiled by the Norwegian Centre for Human Rights, University of Oslo. The Lovdata website is the principal online source of information about Norwegian legislation and is widely consulted by the legal community and the general public. There has also been extensive media coverage of the Court's judgments in this group of cases. The cases have generated considerable public debate, in which the public authorities, including the Minister of Children and Families and the Norwegian Directorate of Children, Youth and Family Affairs, have taken part together with academics, legal representatives and others.

5 ADDITIONAL MEASURES

5.1 Introduction

The Government maintains that the legislative amendments are not necessary to execute the Court's judgments in this group, see the discussion of this in section 4.1. However, and in response to the Committee's decision at its 1398th meeting, the Government welcomes this opportunity to describe the legislative developments below.

5.2 Recent legislative amendments

Norway has implemented extensive legislative changes in recent years. The Child Welfare Act Committee was appointed in 2014 and tasked with revising the 1992 Child Welfare Act

and proposing a new act. The committee was given a broad mandate, where the main objectives were to make the legislation more accessible to users and strengthen the legal safeguards for children and parents. The committee delivered its report in 2016.

The first amendments to the current Child Welfare Act based on the Child Welfare Act Committee's report came into effect on 1 July 2018. The aim of reuniting children and parents and the (as a rule) temporary nature of care orders is further clarified. The amendment specifies that where the child's best interests do not exclude it the CWS should assist the parents to regain care for the child. The preparatory works emphasises that decisions on care orders should as a rule be temporary and that the CWS should actively work towards reuniting the parents and the child where possible and when this is in the best interests of the child.

Further, the duty of the CWS to collaborate with parents and children was also explicitly regulated in the Act in 2018. An overarching provision underlines as well explicitly that all children who can form their own opinions should have the right to participate in all matters relating to them. The new provision specified that decisions made by the CWS and the county social welfare boards should take account of the child's opinions and the significance of the child's opinions. The decision should also specify what factors were considered when assessing the best interests of the child.

The consultation paper on the new Child Welfare Act was circulated for comment in 2019. Some of the proposals in the consultation paper were adopted by the Storting in June 2020 as amendments to the current Child Welfare Act. The reason why these proposals were adopted already in 2020 is that they could be made independently of the new Act.

5.3 New Child Welfare Act

The Parliament adopted a new Child Welfare Act on 10 June 2021. The new Act increases the emphasis on prevention and early intervention, and to strengthen the legal safeguards for both children and parents.

The new Act reflects the development in the Court's case law. The new Act contains some more clarifications, and the Bill provides comprehensive reviews of our human rights obligations.

The present Child Welfare Act is almost 30 years old. The new Act is better adapted to today's society. The CWS is primarily an auxiliary service, but the Child Welfare Act also regulates very invasive enforcement measures. This places great demands on the CWS's work and for ensuring that the rule of law for children and parents is safeguarded in a good way.

The goal of the new Act is to put children's needs at the centre and contribute to increased prevention and early intervention. The CWS shall build on the resources that exist around the

child and facilitate the involvement of the child's family and networks. Child welfare measures shall not be more invasive than necessary.

The child's best interests are the basic consideration for CWS, and the new Act highlights this consideration in a new overarching provision. At the same time, other basic rights and principles such as children's right to care and protection, the right to family life, and the principle of least intervention, are explicitly regulated at the beginning of the Act.

The new Act is extensive and contains many changes compared to the present legislation. Amendments which particularly reflect the case law of the Court are among others measures/regulations to ensure a justifiable decision-making process. The Act contains a duty for the CWS to keep a journal over the child welfare case. The duty will ensure that the CWS documents all information that is significant for the child welfare case and the process related to the case. Furthermore, the Act strengthens the duty to state the reasons the child welfare measure is based on. The reasons given for a decision must display explanations and considerations that have been emphasized. In addition, it follows from the Act that it should be stated how the consideration of the family ties between children and parents has been assessed. This requirement will contribute to greater awareness of this consideration, and to improve the balancing of interests in cases where they conflict. The Government also refers to the legal amendments in 2018 were the aim of reuniting children and parents and the temporary nature of care orders was further clarified.

Questions about the access and follow-up of children and parents have been central to several of the cases from the Court and the Supreme Court. Care takeovers are basically temporary and the goal should be reunification. It is emphasized in the Act that the CWS must systematically and regularly assess whether decisions concerning takeover of care can be overturned. Furthermore, it is specified in the Act that access must be determined after a specific assessment in the individual case.

The new Act regulates access between a child and the parents with a view to reunification after a care order has been issued. The Act legislates the main considerations for determining the level of access. The main considerations are the need to ensure the child's right to protection and development, as well as the child's and parents' ability to maintain and strengthen the bonds between them. The need to execute a comprehensive and individual assessment of whether the companionship is in the child's best interests is highlighted.

Another amendment in the Act is the introduction of a duty for the CWS to draw up a plan for access and contact between children and parents. The access plan shall also include access with siblings and other close associates who have an established family life and close personal ties to the child. Thus, it is specified in the new Act that the CWS should regularly assess whether there is a need to change the access plan.

Furthermore, it is clarified that the CWS may grant more access than stipulated by the county social welfare boards. The goal is to provide a more flexible and dynamic access determination.

Children's participation and their possibility to explain themselves to CWS in a safe environment has been further strengthened in the new Act. The child should be able to explain themselves as freely as possible to the CWS. An exception to parents' right to access documents is therefore adopted. A child can also speak directly to the county social welfare board. Children under the age of 15 shall to a greater extent be granted party rights in compulsory cases before the board. This builds on amendments in 2018 when the Child Welfare Act became a Rights Act, the child's right to participation was clarified, and there were statutory requirements for documentation of assessments of the child's best interests and how the child's opinion is emphasized in decisions.

Further, the Ministry is currently revising all relevant regulations to the new Child Welfare Act. This includes the regulation on Children's participation. The regulations will enter into force 1 January 2023.

Moreover, competence requirements are essential to improve the quality of the CWS's work. Thus, requirements for child welfare master's degrees or other relevant education have been introduced in the Act. This applies to employees in the CWS who will carry out core tasks, the manager and the deputy leader.

6 CONCLUSION

6.1 Individual measures

The Government recalls that the Court’s findings of violations in this group of cases chiefly relate to procedural shortcomings and the extent of contact rights.

As described above, the applicants may request reopening of the impugned proceedings, and in the case of care orders, reviews as provided for by section 4-21 of the Child Welfare Act. Moreover, the CWS has an ongoing duty to adjust the amount of contact between the child and its biological parents. Accordingly, the Government considers that the applicants have effective remedies at their disposal.

The Committee will recall that in *P; F.Z; and E.H*, adoption decisions were made. Accordingly, the only remedy available to the applicants was reopening as described in 3.1.1 above. The applicants have not requested reopening in *P and Others; F.Z.; and E.H.* within the six month deadline calculated from the Court’s judgment.

The applicant’s request for reopening in *Abdi Ibrahim* was dismissed by the High Court, and her appeal rejected by the Supreme Court. No other remedy is available to her.

The Committee will also recall that in *R.O*. the care order was revoked prior to the Court's judgment.

The Government invites the Committee to close its supervision of the execution of *P*; *F.Z*; *E.H*.; *Abdi Ibrahim*; and *R.O*.

6.2 General measures

The judgments from the Supreme Court indicate a tangible shift in domestic case-law as a direct result of the European Court's judgments in this group. For instance, the case in HR-2021-1437-A demonstrates that the Supreme Court takes the principles in Strand Lobben and follow-up judgments and applies them in other contexts, such as procedural questions of standing. The Supreme Court has taken note of, and applied, the Court's statements about the frequency of contact rights as set out in *K.O. and V.M. v. Norway*, § 69 and subsequent judgments.

Moreover, the Supreme Court in a string of cases has been involved in determining contact rights in specific cases, as it did in HR-2021-476-A. The Supreme Court's extensive involvement in concrete child welfare cases shows its awareness of its responsibility to contribute to fulfilling Norway's obligations under Article 46. The Supreme Court's contribution is twofold: Firstly, the Supreme Court has made thorough and balanced assessments in specific cases. Secondly, since the Supreme Court's case-law is binding on lower courts, its elaboration of the principles in the European Court's case law constitutes important guidance to lower courts and to the CWS. This guidance from the Supreme Court facilitates the domestic authorities' application of the Court's case-law in domestic law. See for example LB-2021-78038 (contact rights set to 12 times annually) and LG-2020-100709 (contact rights set to 12 weekends annually, three weeks during summer holiday, and during autumn holiday, Christmas holiday, winter holiday and Easter holiday).

Moreover, the statistics from the county social welfare boards demonstrate a clear increase in the granting of contact rights. This is a direct result of the Court's case law in this group of cases.

The Government emphasises that it cannot be inferred from the statistical data that the level of contact rights currently determined is too low. The statistical data says nothing about the facts or concrete assessments in each case, see also *M.F* § 51 noting that "the Court is mindful that in cases such as the present one, there will inevitably be particular circumstances that need to be accommodated and takes into account that it falls to the domestic authorities to make the proper assessment to that". The county social welfare boards make their determinations based on the particular circumstances in individual cases following oral hearings, direct evidence and expert testimony.

Accordingly, the Government maintains that although contact sessions in some cases are still fixed at greater intervals than mentioned in *K.O. and V.M. v. Norway* § 69, this does not

in itself indicate that current practice is contrary to Norway's obligations under the Convention. This is supported by the Court's decision in a string of child welfare cases against Norway finding no violations or that the applications are manifestly ill-founded, although the frequency of contact sessions are set at far greater intervals than in K.O. and V.M § 69. The Government refers to the Court's decisions of 9 and 30 September 2021 in the cases of *E.M and T.A.* (56271/17) and *O.S.* (63295/17). In both cases, contact sessions were set at far greater intervals than specified in K.O. and V.M. § 69 – three times annually in *E.M. and T.A.* and four times annually in *O.S*. Regardless, the Court held that the application in *E.M and T.A.* was manifestly ill-founded and that the application in *O.S.* disclosed no violation of Article 8. The Government also refers to the Court's decision 1 July 2021 in *A.A.* (59082/19), and decision 21 October 2021 in *S.A.* (26727/19). In *A.A.*, contact rights were set to one and a half hours once a year, under supervision, and the Court held that the application was manifestly ill-founded. In *S.A*., contact rights were set at one contact session a year, under supervision. In both *A.A* and *S.A.*, the Court held that the applications were manifestly ill-founded. The care orders in these cases seem to have been issued out of concern that the children had been subject to physical violence or sexual abuse, but the Government reiterates that children have the right to be protected against all forms of violence, also mental violence, injury or abuse, neglect or negligent treatment, cf. the Convention on the Rights of the Child Article 19 § 1 and the Committee on the Rights of the Child General Comment No 13 (2011)on the right of the child to freedom from all forms of violence section 4:

> "For the purposes of the present general comment, "violence" is understood to mean "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" as listed in article 19, paragraph 1, of the Convention. The term violence has been chosen here to represent all forms of harm to children as listed in article 19, paragraph 1, in conformity with the terminology used in the 2006 United Nations study on violence against children, although the other terms used to describe types of harm (injury, abuse, neglect or negligent treatment, maltreatment and exploitation) carry equal weight. In common parlance the term violence is often understood to mean only physical harm and/or intentional harm. However, the Committee emphasizes most strongly that the choice of the term violence in the present general comment must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment)."

The Government also emphasizes the several other measures such as capacity-building and awareness-raising measures which have been implemented to inform stakeholders in child welfare cases about the case law from the Court and the Supreme Court.

In summary, the implementation of the general measures is progressing well and according to plan.

The Government maintains that the Court's case-law has already had a concrete and significant impact on domestic practice. The Government expects that the decision-making processes will continue to improve, and that the extent of contact rights will remain greater than what was the case before the Court's judgments in this group.

The Government looks forward to continuing this important work under the supervision of the Committee of Ministers. The Government proposes that the next examination of this group take place during the CMDH meeting in September 2022.

Yours sincerely

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Deputy Director General

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