SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Contact: Zoe Bryanston-Cross
Tel: 03.90.21.59.62

Date: 11/10/2021

DH-DD(2021)1013

Meeting: 1419th meeting (December 2021) (DH)

Item reference: Action Plan (01/10/2021)

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

* * * * * * * * * * * *

Réunion : 1419e réunion (décembre 2021) (DH)

Référence du point : Plan d'action (01/10/2021)

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

Council of Europe Secretariat of the Committee of Ministers, Attn: Department for the Execution of Judgments of the European Court of Human Rights
Palais de l'Europe
Avenue de l'Europe F-67075 Strasbourg Cedex
FRANCE

Your ref	Our ref	Date
	19/4511-	30 September 2021

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

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

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.

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 *K.E. and A.K.* and *R.O.*, 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 facts of these cases occurred between 2012 and 2018.

In the cases of *H.*, *J., A.S., F.Z., K.O. and V.M., H., M.L.* and *P. and others*, the Court found violations of Article 8 based on a combination of deficiencies in the decision-making process and the extent of contact rights. The facts of these cases occurred between 2012 and 2017.

2 JUST SATISFACTION

The just satisfaction awarded by the Court has been paid when due in each case.

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 twelve 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. 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

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 applicant has a right to contest 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 twelve 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.

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 of Ringerike, Asker and Bærum. The district court 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 its 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 her request. 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 district court explicitly considered the state's obligation under Article 46 of the Convention. The district court found that it is impossible to put the applicant in the position she would have been had the violation not taken place. deadline for appeal lapsed on 30 September 2021, *i.e.* the day of this writing. The Government has not been able to ascertain whether or not the applicant has lodged a timely appeal.

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).

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 has appointed two experts to evaluate the applicant's caring ability and the child's situation today. The applicant disagreed with the mandate that the district court determined for the two experts, and appealed the scope of the mandate. Her appeal regarding the experts' mandate was finally rejected by the Supreme Court on 21 September 2021. Accordingly, the reopening

proceedings will proceed with the experts preparing a report according to the mandate originally determined by 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.

The CWS held another meeting on 2 July 2021, but only the applicant's attorney participated. On two occasions, the CWS has asked the applicant whether she wants a new hearing before the county social welfare board, most recently in March 2021. The applicant has not responded 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 does not currently have a basis to facilitate contact between the applicant and the child.

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.

The applicants' two younger children remain 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 have opposed the parents' attempts to have the care orders revoked.

Since 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 at this stage. The Government will return with a more detailed description of the individual measures later.

3.2.6 P. and Others, M.L., F.Z., K.E and A.K. and R.O.

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

The Government will return with a more detailed description of the individual measures in *K.E and A.K*., and *R.O* later.

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.

4.2 Legislative amendments

4.2.1 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 Prop 133 L (2020-2021) page 18.

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.

4.3 Measures to improve contact sessions

At its 1398th meeting, the Committee invited the authorities to keep the Committee 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.

The Directorate of Children, Youth and Family Affairs (Bufdir), has been commissioned to develop two national guidelines on visitation 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. The guidelines are developed by a group of experts, in cooperation with both children and parents with experience from child welfare cases. The first guidelines are scheduled for public hearing in the beginning of 2022, and they will initially be implemented by the CWS in all municipalities.

Further, Bufdir has amended the main procedural guidelines for local CWS. The amendments include that 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. The authorities are to ensure as far as possible that the contact sessions are of good quality. 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 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 access that encompasses all aspects of contact between children in care and their extended family. The research project is to be finalised in November 2022 and the results are intended to be incorporated in the above-mentioned national guidelines.

4.4 Measures taken in relation to contact rights

At its 1398th meeting, the Committee invited the authorities to keep the Committee informed of the outcome of this work, and to confirm how the announced guidelines or other measures will also address practical arrangements to ensure that contact sessions are organised in a manner conducive to letting parents and children bond.

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.

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, an 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 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). 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 after a thorough assessment.

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 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, in case HR-2021-476-A, the Supreme Court made a specific decision regarding contact rights based on the Court’s case-law in *Strand Lobben*. In the specific circumstances, the Supreme Court held that the biological father should be granted contact with his 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 is 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 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 does not set aside the best interests of the child.

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.

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 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.

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 arranges i.e. a number of specialised seminars for board chairs.

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 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.

Furthermore, Bufdir has been commissioned to develop national guidelines for determining contact between children in care and their extended family, as described in 4.3 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.

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 were 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.

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. and Others*, an adoption decision was 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* within the six month deadline calculated from the Court's judgment. The Government invites the Committee to close its supervision of the execution of that case.

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 minimal contact rights as set out in K.O. and V.M. v. Norway § 69.

Moreover, it is in the Government's opinion novel that the Supreme Court gets 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.

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. That being said, 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. The county social welfare boards make their determinations 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 decisions of 9 September and 30 September 2021 in the cases of *E.M and T.A*. (56271/17) and *O.S*. (63295/17). In both of these 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 emphasizes the several other measures such as capacity-building and awareness measures which have been implemented to inform stake holders 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. By that time, the Government expects to see further effects of the general measures. The Government also maintains that any earlier examination of the individual measures would be premature. In this connection it should also be noted that the Government expects more judgments in this group, so that a return date in September 2022 would allow the Government to elaborate on the individual measures in any future cases.

Regardless of the timing of the next examination, the Government will revert with an updated consolidated action plan by 31 March 2022.

Yours sincerely

Erik Bolstad Pettersen
Director General

Mette Kristin Solum
Deputy Director General

This document is signed electronically and has therefore no handwritten signature