# HØJESTERETS DOM

## afsagt torsdag den 26. oktober 2023



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**Sag BS-17016/2023-HJR**
(2. afdeling)

D
og
E
(advokat Stig Jørgensen, beskikket for begge)

mod

Adoptivforældrene
(advokat Jesper Håkonsson for begge)

I tidligere instanser er afsagt dom af Familieretten i Horsens den 1. oktober 2021 (BS-17182/2021-HRS) og af Vestre Landsrets 10. afdeling den 16. juni 2022 (BS-41002/2021-VLR).

I pådømmelsen har deltaget fem dommere: Poul Dahl Jensen, Michael Rekling, Lars Hjortnæs, Oliver Talevski og Mohammad Ahsan.

Sagen er behandlet sammen med Højesterets sag BS-18800/2023-HJR.

Sagen er behandlet på skriftligt grundlag, jf. retsplejelovens § 387.

**Påstande**
Appellanterne, D og E, har påstået, at der fastsættes samvær mellem dem og barnet kaldet C, født den 5. august 2018, hver fjerde lørdag fra kl. 12.00 til kl. 15.00 eller efter Højesterets skøn. Subsidiært har de påstået, at der fastsættes anden form for kontakt, således at de modtager breve og billeder af C. Mere

subsidiært har de påstået familierettens og landsrettens domme ophævet og sagen hjemvist til ny behandling i familieretten.

De indstævnte, adoptivforældrene, har påstået stadfæstelse.

**Supplerende retsgrundlag**

*Supplerende om forældreansvarslovens § 20 a*
Forældreansvarslovens § 20 a, stk. 1, lyder således:

> "§ 20 a. Er barnet adopteret, kan der efter anmodning fra barnets oprindelige slægtninge fastsættes samvær eller anden form for kontakt med disse, navnlig hvis barnet forud for adoptionen havde samvær eller anden form for kontakt med den, som anmoder om fastsættelse af samvær m.v."

Forældreansvarslovens § 20 a fik sin nuværende ordlyd ved lov nr. 497 af 1. maj 2019. I forarbejderne til bestemmelsen er anført bl.a. (betænkning afgivet af Folketingets Social-, Indenrigs- og Børneudvalg den 4. april 2019 over forslag til lov om ændring af adoptionsloven, lov om socialservice og forskellige andre love (Folketingstidende 2018-2019, tillæg B, lovforslag nr. L 155, s. 2-3)):

> "*4. Ændringsforslag med bemærkninger*
> …
>
> Bemærkninger
> …
>
> Til nr. 2
> …
>
> Det foreslås, at henvisningen til, at der kun kan fastsættes samvær eller anden form for kontakt efter § 20 a, stk. 1, i helt særlige tilfælde udgår.
> …
>
> Ændringsforslaget medfører ikke i øvrigt ændringer af bestemmelsen i § 20 a, stk. 1, i forældreansvarsloven. Der vil herefter kunne fastsættes samvær eller anden form for kontakt mellem det adopterede barn og barnets oprindelige slægt efter § 20 a, stk. 1, hvis det er til barnets bedste, jf. § 4, 1. pkt., i forældreansvarsloven.
> …
>
> I vurderingen af barnets bedste vil der skulle anlægges en helhedsvurdering af barnets samlede situation både på kort og lang sigt. Barnets

> bedste vil have betydning for såvel vurderingen af, om der skal fastsættes samvær eller anden form for kontakt, som fastsættelsen af vilkår og hyppighed af eventuelt samvær eller anden kontakt. Det centrale i vurderingen af barnets bedste vil være barnets ret til samvær eller anden form for kontakt, hvis det er bedst for barnet, ikke de oprindelige slægtninges ret.
>
> Det vil i vurderingen af barnets bedste skulle indgå, at barnet står i en særlig situation efter en adoption, hvor der skal skabes tilknytning mellem barnet og adoptivfamilien, og hvor barnets behov for en stabil og sammenhængende dagligdag skal kunne opfyldes. Ligeledes vil de bagvedliggende årsager til, at der er truffet afgørelse om adoption uden samtykke, herunder manglende forældreevne, naturligt skulle indgå i vurderingen.
>
> Hvis der er flere, der ansøger om samvær eller anden form for kontakt, vil dette skulle indgå som et særskilt element i vurderingen af barnets bedste, da det kan have betydning for mulighederne for at skabe en stabil dagligdag for barnet. Ligeledes kan dette forhold have afgørende betydning for vurderingen af hyppighed af og vilkår for eventuelt samvær eller anden form for kontakt.
>
> Samvær eller anden kontakt vil f.eks. kunne være bedst for barnet, hvis der forud for adoptionen har været en betydningsfuld og positiv relation mellem barnet og den oprindelige slægtning, som ansøger om samvær eller anden kontakt, og det vurderes, at denne relation også fremover i barnets liv vil spille en positiv rolle."

*Praksis fra Den Europæiske Menneskerettighedsdomstol*

Den Europæiske Menneskerettighedsdomstol har i en række sager taget stilling til bedsteforældres ret til samvær eller anden kontakt med børnebørn, herunder i forbindelse med, at børnebørn er blevet anbragt i en plejefamilie eller er blevet bortadopteret.

Menneskerettighedsdomstolens afgørelse af 25. november 2014 i sagen Kruškić mod Kroatien (sag nr. 10140/13) angik to børnebørn, der havde boet hos bedsteforældrene i en længere årrække, hvorefter børnebørnenes far fik tilkendt forældremyndigheden over dem. Bedsteforældrene klagede til Menneskerettighedsdomstolen over de nationale myndigheders afslag på deres "request for custody and access rights". Domstolen afviste klagen. I afgørelsen anføres bl.a.:

> "108. The Court first reiterates that there may be "family life" within the meaning of Article 8 of the Convention between grandparents and grandchildren where there are sufficiently close family ties between

them (see Lawlor v. the United Kingdom, no. 12763/87, Commission decision of 14 July 1988, Decisions and Reports (DR) 57, p. 216). While cohabitation is not a prerequisite, as close relationships created by frequent contact also suffice, relations between a child and its grandparents with whom it had lived for a time will normally be considered to fall within that category (see Bronda v. Italy, 9 June 1998, § 51, Reports of Judgments and Decisions 1998-IV).

109. That being so and given that in the instant case the applicants were living with their grandchildren from their birth until 30 December 2013 (see paragraphs 4 and 7 above), that is, some seven and eight years, the Court considers that the relations between them constituted "family life" protected by Article 8 of the Convention.

110. The Court further reiterates that in normal circumstances the relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection. Therefore, when a parent is denied access to a child taken into public care this would constitute in most cases an interference with the parent's right to respect for family life as protected by Article 8 of the Convention, but this would not necessarily be the case where grandparents are concerned. In the latter situation, there may be an interference with the grandparents' right to respect their family life only if the public authority reduces access below what is normal, that is, diminishes contacts by refusing to grandparents the reasonable access necessary to preserve a normal grandparent-grandchild relationship (see Price v. the United Kingdom, no. 12402/86, Commission decision of 9 March 1988, DR 55, p. 224; Lawlor, cited above; and G.H.B. v. the United Kingdom (dec.), no. 42455/98, 4 May 2000). That is so because respect for a family life in such situations implies an obligation for the State to act in a manner calculated to allow the ties between grandparents and their grandchildren to develop normally (see Marckx v. Belgium, 13 June 1979, § 45, Series A no. 31).

111. Thus, the right to respect for family life of grandparents in relation to their grandchildren primarily entails the right to maintain a normal grandparent-grandchild relationship through contacts between them.

112. However, the Court reiterates that contacts between grandparents and grandchildren normally take place with the agreement of the person who has parental responsibility which means that access of a grandparent to his or her grandchild is normally at the discretion of the child's parents (see Price, cited above; and Lawlor, cited above). In any event, the Court notes that the domestic proceedings that could result

> in an interruption or restrictions of contacts between the applicants and their grandchildren, in particular those concerning imposition of a restraining order (see paragraphs 85-88 above), and access rights of the applicants (see paragraphs 89-94 above), are still pending."

Menneskerettighedsdomstolens afgørelse af 11. oktober 2016 i sagen T.S. og J.J. mod Norge (sag nr. 15633/15) angik et barn, der var født i 2003, og som i 2007 sammen med sin mor flyttede fra Polen til Norge. Moderen døde i 2011, hvorefter barnet blev anbragt i en plejefamilie i Norge. Bedstemoderen, der var bosat i Polen, havde gennem årene haft en tæt kontakt med barnebarnet. Bedstemoderen klagede over, at en norsk domstol havde truffet afgørelse om, at hun alene kunne have samvær med barnebarnet to gange om året i fire timer ad gangen. Domstolen afviste klagen. I afgørelsen hedder det bl.a.:

> "23. The Court notes from the outset that it has accepted that there may be "family life" within the meaning of Article 8 of the Convention between grandparents and grandchildren where there are sufficiently close family ties between them (see, for example, *Kruskic and others v. Croatia* (dec.), no. 10140/13, 25 November 2014). While cohabitation is not a prerequisite, as close relationships created by frequent contact also suffice, relations between a child and its grandparents with whom it had lived for a time will normally be considered to fall within that category (see *Bronda v. Italy*, 9 June 1998, § 51, Reports of Judgments and Decisions 1998-IV). In the present case, X had good contact with the first applicant until he was four years old and moved to Norway in 2007. He regularly visited her in Poland while his mother was alive. After the death of X's mother, this contact, even if less frequent because of geographical distance, became more significant. The Court is thus satisfied that there is family life within the meaning of Article 8.
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> 24. Turning to the question of whether there was an interference with the first applicant's right to respect for her family life, it should be noted that, when a parent is denied access to a child taken into public care, this would constitute in most cases an interference with the parent's right to respect for family life as protected by Article 8 of the Convention. However, this would not necessarily be the case where grandparents are concerned. In the latter situation, there may be an interference with the grandparents' right to respect for their family life only if the public authority reduces access below what is normal, that is, diminishes contacts by refusing to grandparents the reasonable access necessary to preserve a normal grandparent-grandchild relationship (see *Price v. the United Kingdom*, no. 12402/86, Commission decision of 9 March 1988, DR 55, p. 224; *Lawlor v. the United Kingdom*, no. 12763/87, Commission decision of 14 July 1988, Decisions and Reports (DR) 57, p. 216; and *Kruskic*, cited above, § 110).

25. In the instant case, the first applicant was granted contact rights for four hours, twice per year. Having regard to the fact that the first applicant lives in Poland and X in Norway, and that the first applicant thus needs to travel for each visit, the Court considers that the very limited number of hours granted per visit amounts to an interference with the first applicant's right to respect for her family life.

26.Moreover, it is clear that the measure to restrict contact between the first applicant and X was in accordance with the law, namely the 1992 Child Welfare Act (see paragraphs 15-17 above), and the Court finds no reason to doubt that these measures were intended to protect "health and morals" and the "rights and freedoms" of X.

27. In determining whether the impugned measure was "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient for the purpose of paragraph 2 of Article 8. In so doing, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interests of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see *K. and T. v. Finland* [GC], no. 25702/94, § 154, ECHR 2001-VII).

28. With regard to the proportionality of the measure, the Court has emphasised that the relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection (see *Mitovi v. the former Yugoslav Republic of Macedonia*, no. 53565/13, § 58, 16 April 2015).

29. In the present case, the Court notes that one of the reasons why the contact rights were restricted to four hours per visit was X's own views

> on the extent of contact with the first applicant, as well as the observations that the first applicant's visits had had harmful effects on X (see paragraphs 8 and 11 above). Given his age (12 years at the time of the Supreme Court's decision), and taking into account the fact that there will be nothing to prevent him from taking the initiative to increase contact at any time in the future if he so desires, the Court is satisfied that the domestic authorities were justified in giving weight to X's own views as to whether increased contact would be in his best interests (see *G.H.B. v. the United Kingdom* (dec.), no. 42455/98, 4 May 2000)."

Menneskerettighedsdomstolens dom af 19. september 2019 i sagen Bogonosovy mod Rusland (sag nr. 38201/16) angik et barnebarn, der i en længere årrække havde boet hos sine bedsteforældre. Barnebarnet blev med bedstefaderens samtykke i 2013 adopteret af en familie, som bedsteforældrene kendte. I november 2014 forhindrede adoptivforældrene bedstefaderen i at have kontakt med barnebarnet, hvilket bedstefaderen indbragte for den lokale byret.

Menneskerettighedsdomstolen fandt, at der forelå en krænkelse af artikel 8, fordi bedstefaderen af byretten automatisk var blevet udelukket fra efter adoptionen at have kontakt med sit barnebarn. I dommen udtalte Domstolen bl.a.:

> "79. The Court reiterates that there may be "family life" within the meaning of Article 8 of the Convention between grandparents and grandchildren where there are sufficiently close family ties between them. While cohabitation is not a prerequisite, as close relationships created by frequent contact also suffice, relations between a child and his or her grandparents with whom he or she had lived for a time will normally be considered to fall within that category (see Kruškić v. Croatia (dec.), no. 10140/13, § 108, 25 November 2014).
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> 80. In the present case the second applicant had been taking care of his granddaughter M. for five years from May 2008, when she had moved in with him together with her mother at age one year and eight months, through her mother's serious illness and death in April 2011, and until July 2013, when the girl moved out to live with her future adoptive parents Mr and Ms Z. He had also been M.'s guardian between May 2011 and December 2013. The Court is satisfied that there was family life between the second applicant and the child within the meaning of Article 8 of the Convention. This has not been disputed by the parties.
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> 81. The Court will next examine whether there has been a failure to respect the second applicant's family life.

> 82. The Court notes that where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be maintained. The relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection. The right to respect for family life of grandparents in relation to their grandchildren primarily entails the right to maintain a normal grandparent-grandchild relationship through contact between them, even though that contact normally takes place with the agreement of the person who has parental responsibility (see Mitovi v. the former Yugoslav Republic of Macedonia, no. 53565/13, § 58, 16 April 2015).
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> 83. The Court is mindful, however, that the adoption terminates the legal relationship between the child and his or her natural parents and family of origin and, therefore, the Convention obligation to enable the family tie to be maintained will necessarily change (see paragraph 54 above).
>
> 84. The Court observes that in the present case the issue of post-adoption contact, thus the issue of whether a family tie between the second applicant and his granddaughter should be maintained after her adoption was not examined as such by the domestic courts in the course of the adoption proceedings."

Menneskerettighedsdomstolens dom af 8. februar 2022 i sagen Q og R mod Slovenien (sag nr. 19938/20) angik to børnebørn, der havde boet hos deres bedsteforældre i fire måneder, efter at børnenes moder var død. Børnebørnene blev anbragt hos en plejefamilie i en anden slovensk region. En af bedsteforældrene indgav en anmodning om at fungere som plejeforælder for børnebørnene, hvilket de nationale domstole afslog. Bedsteforældrene klagede til Menneskerettighedsdomstolen over bl.a. dette afslag. Domstolen fandt, at der ikke forelå en krænkelse af artikel 8. I dommen hedder det bl.a.:

> "91. The Government pointed out that there had been no doubt that the applicants and W and Z had enjoyed family life and that the applicants were entitled to have contact with their grandchildren. However, the concept of family life between the grandparents and grandchildren could not be compared to that of the family life between parents and children.
> …
>
> 94. The Court points out that "family life" within the meaning of Article 8 includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a

considerable part in family life. “Respect” for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 221, ECHR 2000-VIII). For the general principles relating to the rights of grandparents, see Mitovi v. the former Yugoslav Republic of Macedonia, no. 53565/13, § 58, 16 April 2015, and Terna v. Italy, no. 21052/18, § 64, 14 January 2021.

95. In determining whether decisions on restriction of contact with a child in cases concerning parent-child relationship could be regarded as “necessary in a democratic society”, the Court has considered whether, in the light of the case as a whole, the reasons adduced to justify these measures were relevant and sufficient. The Court has emphasised that in cases of this type the child’s interest must come before all other considerations. Account must also be taken of the fact that the national authorities have the benefit of direct contact with all the persons concerned. It is not the Court’s task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding contact issues but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see S.J.P. and E.S. v. Sweden, no. 8610/11, §§ 89 and 91, 28 August 2018, and Gobec v. Slovenia, no. 7233/04, §§ 132 and 133, 3 October 2013). The Court finds that these principles apply also to the cases concerning decisions on the contact rights of grandparents (see, for example, Nistor v. Romania, no. 14565/05, §§ 73 and 75, 2 November 2010, and Manuello and Nevi v. Italy, no. 107/10, § 58, 20 January 2015).

96. The Court further reiterates that, whilst Article 8 contains no explicit procedural requirements, the decision-making process must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see, for example, Petrov and X, cited above, § 101). The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicants have been involved in the decision-making process to a degree sufficient to provide them with the requisite protection of their interests (see Z.J. v. Lithuania, no. 60092/12, § 100, 29 April 2014, with further references).

97. The Court has previously found that, pursuant to the international standards in force, in any judicial or administrative proceedings affecting children’s rights under Article 8 of the Convention, children capable of forming their own views should be sufficiently involved in the decision-making process and be given the opportunity to be heard and thus to express their views (see M. and M. v. Croatia, no. 10161/13, §§ 171 and 181, ECHR 2015 (extracts)).”

**Anbringender**

D og E har anført navnlig, at forældreansvarslovens § 20 a skal fortolkes i overensstemmelse med Den Europæiske Menneskerettighedskonvention. Det indebærer, at fastsættelse af samvær ikke kun er forbeholdt "helt særlige tilfælde", jf. Højesterets dom af 4. februar 2019 (UfR 2019.1565).

Det vil være bedst for barnet, at der fastsættes samvær med dem, fordi der inden bortadoptionen blev opbygget en positiv og betydningsfuld relation, som et fortsat samvær vil kunne bygge videre på.

Vurderingen af, hvad der er bedst for barnet, beror på en helhedsvurdering, hvorved det bør indgå, at langt størstedelen af adoptivbørn i løbet af deres opvækst, og selv fra en tidlig alder, vil have gavn af at have samvær med såvel deres biologiske forældre som deres bedsteforældre.

Et samvær hver 4. uge kan ikke anses for at gå imod barnets behov for en stabil og sammenhængende hverdag med adoptivfamilien. Endvidere vil et samvær kunne afvikles på en sådan måde, at adoptivforældrenes identitet ikke afsløres.

I hvert fald er sagen utilstrækkeligt oplyst og bør hjemvises til familieretten til fornyet behandling.

Adoptivforældrene har anført navnlig, at det er bedst for barnet, at der ikke fastsættes samvær. Barnet har fortsat brug for ro og stabilitet. Etablering af samvær med de biologiske bedsteforældre vil have den modsatte effekt. Et barn, som er tvangsbortadopteret, har brug for en lang periode, hvor barnet uforstyrret har mulighed for at danne nye relationer og føle sig tryg i adoptivfamilien. Det vil virke forvirrende og uhensigtsmæssigt for barnet, hvis barnet samtidig skal forholde sig til sine biologiske bedsteforældre.

Det beskedne samvær, der var forinden bortadoptionen, kan ikke siges at have skabt en blivende relation til de biologiske bedsteforældre. Under alle omstændigheder kan denne relation ikke antages at bestå længere, da der er gået mere end 3 ½ år uden samvær eller anden form for kontakt. Hvis der fastsættes samvær eller anden kontakt, vil det derfor alene være de biologiske bedsteforældres behov, der tilgodeses.

Gennemførelsen af samvær er ikke foreneligt med deres ønske om anonymitet, herunder bestemmelsesret over, hvilke oplysninger barnet skal have vedrørende adoptionen.

**Højesterets begrundelse og resultat**

*Sagens baggrund og problemstilling*

D og E er biologiske bedsteforældre til et barn født den 5. august 2018. Barnet blev den 31. oktober 2018 med de biologiske forældres samtykke anbragt uden for hjemmet. Den 15. januar 2020 blev barnet frigivet til adoption uden de biologiske forældres samtykke.

Sagen angår, om de biologiske bedsteforældre D og E skal have ret til samvær eller anden form for kontakt med deres barnebarn.

*Forældreansvarsloven og Den Europæiske Menneskerettighedskonvention*
Hvis et barn er adopteret, kan der ifølge forældreansvarslovens § 20 a, stk. 1, efter anmodning fra barnets oprindelige slægtninge fastsættes samvær eller anden form for kontakt med disse, navnlig hvis barnet forud for adoptionen havde samvær eller anden form for kontakt med den, som anmoder om fastsættelse af samvær mv. Anden form for kontakt kan bl.a. bestå i telefonsamtaler, brevveksling, elektronisk post og fotografier.

Efter lovens § 4, 1. pkt., skal afgørelser efter loven træffes ud fra, hvad der er bedst for barnet. Det fremgår af forarbejderne til forældreansvarslovens § 20 a, stk. 1, at der skal anlægges en helhedsvurdering af barnets samlede situation både på kort og lang sigt, og det centrale er, hvad der er bedst for barnet, ikke de oprindelige slægtninges ret. Det skal indgå i den samlede helhedsvurdering efter § 20 a, om det bl.a. i lyset af forløbet af allerede gennemført samvær kan antages, at de oprindelige slægtninge vil kunne spille en positiv rolle for barnet i forbindelse med samvær eller anden kontakt.

Endvidere fremgår det af forarbejderne til § 20 a, stk. 1, at bestemmelsen hovedsageligt er rettet mod barnets forældre, og såfremt der er flere, der ansøger om samvær eller anden form for kontakt, vil dette skulle indgå som et særskilt element i vurderingen af barnets bedste, da det kan have betydning for mulighederne for at skabe en stabil dagligdag for barnet.

Som anført i Højesterets dom af 21. februar 2023 (UfR 2023.2114) skal forældreansvarslovens § 20 a også efter den ændring, der i 2019 blev foretaget af loven, fortolkes i overensstemmelse med Den Europæiske Menneskerettighedsdomstols praksis vedrørende Den Europæiske Menneskerettighedskonventions artikel 8 om ret til respekt for familieliv og privatliv.

Domstolen har udtalt, at forholdet mellem bedsteforældre og børnebørn efter sin natur er anderledes end forholdet mellem forældre og børn, således at det førstnævnte forhold i almindelighed nyder en mindre grad af beskyttelse. Dette betyder, at bedsteforældrenes ret efter artikel 8 i forhold til deres børnebørn primært indebærer en ret til at opretholde eller udvikle et normalt bedsteforældre-barnebarn forhold gennem kontakt mellem dem, jf. bl.a. afgørelse af 11. oktober 2016 i sagen T.S. og J.J. mod Norge (sag nr. 15633/15), præmis 24, dom af 19. september 2019 i sagen Bogonosovy mod Rusland (sag nr. 38201/16), præmis

82, og dom af 8. februar 2022 i sagen Q og R mod Slovenien (sag nr. 19938/20), præmis 94.

Det fremgår af Højesterets dom af 21. februar 2023 (UfR 2023.2114), at der i sager efter forældreansvarslovens § 20 a må tilvejebringes et oplysningsgrundlag, som gør det muligt at træffe afgørelse i overensstemmelse med såvel § 20 a som Menneskerettighedskonventionens artikel 8. Den nærmere sagsoplysning må bero på en konkret vurdering, herunder af, hvilke oplysninger om barnet, de biologiske bedsteforældre og adoptivforældrene der allerede foreligger. I tilfælde, hvor det efter disse oplysninger ikke på forhånd kan afvises, at der er grundlag for at fastsætte samvær eller anden form for kontakt, kan det bl.a. være relevant at tilvejebringe en børnesagkyndig erklæring og eventuelt også en sagkyndig erklæring om de biologiske bedsteforældre, jf. retsplejelovens § 450 a, 1. pkt., herunder at indkalde den børnesagkyndige til at afgive forklaring. I den forbindelse kan også mulighederne for fastsættelse af anden form for kontakt end samvær belyses.

*Den konkrete sag*
Familieretten og landsretten har truffet afgørelse navnlig på grundlag af Ds og Es forklaringer og på grundlag af oplysninger af ældre dato om barnebarnet.

Efter Højesterets opfattelse kan det ikke efter de foreliggende oplysninger afvises, at betingelserne for at fastsætte samvær eller anden form for kontakt mellem D og E og barnebarnet, herunder f.eks. udveksling af fotos eller videooptagelser mv., er opfyldt. Under disse omstændigheder finder Højesteret, at familierettens og landsrettens afgørelser ikke bygger på et tilstrækkeligt oplysningsgrundlag, og at sagen derfor bør hjemvises til ny behandling i familieretten.

*Konklusion*
Højesteret ophæver familierettens og landsrettens domme og hjemviser sagen til ny behandling i familieretten.

**THI KENDES FOR RET:**

Familierettens og landsrettens domme ophæves, og sagen hjemvises til ny behandling i familieretten.

Ingen af parterne skal betale sagsomkostninger for familieretten, landsretten og Højesteret til den anden part eller til statskassen.