THE SUPREME COURT OF NORWAY

On 7 June 2017, the Supreme Court gave judgment in

HR-2017-1124-A, (case no. 2017/318), criminal case, appeal against judgment

I.	
A	(Counsel John Christian Elden)
v.	
The public prosecution authority	(Public prosecutor Cecilie Schløsser Møller)
II.	
B	(Counsel Øystein Storrvik)
v.	
The public prosecution authority	(Public prosecutor Cecilie Schløsser Møller)
Counsel for the aggrieved parties	(Counsel Arne Gunnar Aas)

V O T I N G :

(1) Justice **Bårdsen:** The case concerns the application of law and sentencing for, among other things, gross human trafficking and forced labour pursuant to the Penal Code 1902 section 224 subsection 1 a, cf. subsection 4. The central issues are the meaning of "forced labour", and the sentencing level for this form of exploitation.

(2) B and his son-in-law A were the respective managers of two garden centres X and Y. The business was largely based on the use of foreign labour. The case at hand arises from the conditions in the two garden centres during the period from 2008 to 2012. It involves three seasonal workers recruited via contacts in Punjab in India. C came to Norway for the first

time in 2008 and worked for B every season until, and including, 2011. In 2012, he worked for A. D and E worked for A during the seasons 2009 to 2012.

(3) On 31 October 2014, the public prosecution office in Oslo indicted A for, among other things, violation of the Penal Code section 224 subsection 1 b, cf. subsection 4 on gross human trafficking. The indictment also involved F, who is B's daughter and who was married to A at the time.

(4) As concerns B, the basis for the indictment for gross human trafficking reads as follows, see item I a:

> **"During the years 2008–2011, for periods of about 6 months, at the business Z at ------- road 00 in Æ in X, he exploited C's vulnerability in his home country and/or during his stay in Norway and/or by other undue means, for forced labour, and/or induced him to be exploited for such a purpose. During these periods of time, he had to work continuously, with short breaks only, for 12-14 hours a day, with only one day off per seasonal work period. Only after the seasonal work period had ended, he received a net payment of around NOK 18-20 000 for the total working period. Outstanding tax money was taken out and/or drawn without C receiving any of it. He received no holiday allowance or overtime payment. Work permit, travel to Norway, return to India, including booking of tickets, payment of tickets and airport transport were arranged without his influence. His passport was taken from him upon his arrival in Norway, and not returned until his departure. He had to sign documents for the establishment of a salary account, account management authorisations as well as an employment contract of which he understood nothing/ little, and which was later misused. During his stay in Norway, he had to live on Z's property and his freedom of movement was limited. The offence is regarded as gross since it generated a substantial economic gain."**

(5) For A and F the indictment for gross human trafficking involved D, E and C, see item I b–d. The basis was described mainly in the same way as in item I a, with the difference that it concerned work at the garden centre in Y. The indictment against B and A also concerned welfare fraud, breach of the Accounting Act, the VAT Act and the Working Environment Act. F was indicted for gross misappropriation of funds towards the bank she worked in.

(6) By Drammen District Court's judgment of 2 July 2015, all three were found guilty as charged. B was sentenced to imprisonment for five years and six months, A for four years and six months and F for three years and six months. In addition, the three of them were found liable for damages for economic and non-economic loss for the aggrieved parties.

(7) The convicted persons appealed to the Court of Appeal. The aggrieved parties requested a new hearing of the civil claims. On 25 November 2016, Borgarting Court of Appeal, set with a jury pursuant to the Criminal Procedure Act section 352, gave judgment concluding as follows:

> **"1. A, born 00.00.1979, is convicted for three violations of the Penal Code section 224 subsection 4, cf. subsection 1 b, the Penal Code section 270 subsection 1 no. 1, cf. subsection 2, cf. section 271, the Working Environment Act section 19-1 see section 10-6 subsection 4, the Working Environment Act section 19-1 see section 10-6 subsection 8, the Working Environment Act section 19-1 see section 10-8 subsection 1, the Working Environment Act section 19-1, cf. 10-8 subsection 2, and for the offences decided with final legal force in Drammen District Court's judgment of 2 July 2015, all compared to the Penal Code section 62 subsection 1 and section 63 subsection 2, and sentenced to imprisonment for 3 – three – years and 10 – ten – months.**

Credit for time in custody is 8 – eight – days."

2. F, 00.00.1977, is acquitted for three violations of the Penal Code section 224 subsection 4, cf. subsection 1 a.

F is convicted for violation of the Penal Code section 275 subsection 1 and subsection 2 see section 276, and sentenced to imprisonment for 1 – one – year.

Credit for time in custody is 3 – three – days.

3. B, 00.00.1950, is convicted for violation of the Penal Code section 224 subsection 4, cf. subsection 1 a, the Penal Code section 270 subsection 1 no. 1, cf. subsection 2, cf. section 271, the Working Environment Act section 19-1 see section 10-6 subsection 4, the Working Environment Act section 19-1 see section 10-6 subsection 8, the Working Environment Act section 19-1 see section 10-8 subsection 1, the Working Environment Act section 19-1 see section 10-8 subsection 2, and for the offenses that were decided with final effect in Drammen District Court's judgment of 2 July 2015, all considered in conjunction with the Penal Code section 62 subsection 1 and section 63 subsection 2, to a prison sentence for 5 – five – years and 3 – three – months.

Credit for time in custody is 2 – two – days."

4. B is sentenced, within two weeks of the serving of the judgment, to pay:

- **i. NOK 1 106 000 – onemilliononehundredandsixthousand – in damages to NAV[1]**
- **ii. NOK 30 000 – thirty thousand – in damages for non-economic loss to C**
- **iii. NOK 700 791 – sevenhundredthousandsevenhudredandninetyone – in damages for economic loss to C.**

5. B is not liable for C's claim for damages for undue appropriation of tax refund.

6. A is sentenced, within two weeks of the serving of the judgment, to pay:

- **i. NOK 30 000 – thirty thousand – in damages for non-economic loss to D**
- **ii. NOK 587 586 – fivehundredandeightysevenfivehundredandeightysix in damages for economic loss to D**
- **iii. NOK 30 000 – thirtythousand – in damages for non-economic loss to E**
- **iv. NOK 633 852 – sixhundredandthirtythreethousandeighthundredandfiftytwo – in damages for economic loss to E**
- **v. NOK 5 000 – fivethousand – in damages for non-economic loss to C**
- **vi. NOK 141 603 – onehundredandfortyonethousandsixhundredandthree – in damages for economic loss to C**

7. A is not liable for the claims from D and E for damages for undue appropriation of tax refunds.

[1] Translator's remark: Norwegian labour and welfare organisation

8. For the amounts in items 4 and 6, interest accrues pursuant to the Act relating to Interest on Overdue Payments section 3 subsection 1 from the due date until payment is made.

9. Costs are not awarded."

(8) B and A appealed to the Supreme Court against the application of the law with regard to the question of guilt, in the alternative against procedural errors and the sentencing. In addition, they asked for a new hearing of the civil claims. By the Appeals Selection Committee's decision of 24 February 2017, the Supreme Court agreed to hear the appeal in both cases, and to a new hearing of the civil claims.

(9) F, whom the court of appeal acquitted of gross human trafficking, appealed the sentencing for gross appropriation of funds. The Supreme Court refused to hear this appeal.

(10) *My view on the case*

(11) I will start by considering the appeals against the court of appeal's application of the law with regard to the question of guilt, as regards the conviction for gross human trafficking. As a necessary basis for the assessment of the court of appeal's application of the law, I will first make a general statement on the prohibition against human trafficking for forced labour and the legal context in which this is reviewed.

(12) *The prohibition against human trafficking*

(13) The Penal Code 1902 section 224 subsection 1 reads as follows:

> **"Any person who by force, threats, misuse of another person's vulnerability, or other improper conduct exploits another person for the purpose of**
> **a) prostitution or other sexual purposes,**
> **b) forced labour,**
> **c) war service in a foreign country, or**
> **d) removal of any of the said person's organs,**
> **or who induces another person to allow himself or herself to be used for such purposes, shall be guilty of human trafficking and shall be liable to imprisonment for a term not exceeding five years."**

(14) Gross human trafficking is punishable by imprisonment for a term not exceeding ten years, see subsection 4.

(15) The penal provision is continued in the Penal Code 2005 sections 257 and 258, with maximum sentences of imprisonment of six and ten years, respectively. The amendment has been made by the inclusion of "forces" in the introduction to section 257, as an independent alternative to "uses or induces". The previous wording "forced labour or forced service, including begging" is replaced by "work or services, including begging". A natural interpretation of this is that the scope of the provision is extended, since "force" is no longer a necessary component for conviction pursuant to subsection 1 a. However, it is stated in the preparatory works that no actual change was intended – it was only, according to the Ministry, a question of making "some linguistic adjustments", see Proposition to the Odelsting no. 22 (2008–2009) pages 420 and 421.

(16) The provision under the Penal Code against human trafficking was adopted in 2003 for Norway to comply with the so-called *Palermo Protocol* from 2000 – Protocol to Prevent,

Suppress and Punish Trafficking in Persons Especially Women and Children. The Protocol supplements the United Nations Convention against Transnational Organized Crime, and obliges state parties to criminalise trafficking in persons, see Article 5 no. 1.

(17) "Trafficking in persons" is defined as follows in the Palermo Protocol Article 3 a:

> **"'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;"**

(18) This definition of trafficking is continued in the Council of Europe Convention on Action against Trafficking in Human Beings 2005 Article 4 a. It also makes basis for the EU Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. The Directive is connected to the prohibition against trafficking in human beings in Article 5 no. 3 of the EU Charter of Fundamental Rights.

(19) Currently, the penal provision against human trafficking must also be considered along with the fact that the European Court of Human Rights (ECtHR) has established that the European Convention on Human Rights (ECHR) Article 4, prohibiting slavery and forced labour, obliges the states to grant protection against human trafficking, and to punish those responsible for the same. I refer to judgment of 26 July 2005 *Siliadin v. France* paras 89 and 112, judgment of 21 January 2016 *L.E. v. Greece* para 64 and judgment of 30 March 2017 *Chowdury and others v. Greece* paras 86, 93 and 105. It is set out in the judgment of 7 January 2010 *Rantsev v. Cyprus and Russia* para 282 that the ECtHR, in this respect, applies the definition of trafficking in persons in the Palermo Protocol Article 3 a and the definition in the Council of Europe Convention on Action against Trafficking in Human Beings Article 4 a.

(20) Since 2014, the Constitution Article 93 subsection 3 has prohibited slavery and forced labour, and in subsection 4, it obliges the public authorities to combat both. The Lønning Committee[2] discussed the need for an express prohibition against human trafficking in the Constitution, see Doc. no. 16 (2011–2012) page 112. The conclusion was that human trafficking in any case is "comprised either by the prohibition against slavery or the prohibition against forced labour". Thus, it was not necessary to mention human trafficking specifically for the Constitution to grant protection against this also.

(21) After a conscious legislative choice, the Norwegian prohibition against human trafficking in the Penal Code 1902 section 224 and in the Penal Code 2005 section 257 exceeds the scope of the Palermo Protocol: It is not limited to the traffickers, but also covers those responsible for the exploitation, see Proposition to the Odelsting no. 62 (2002–2003) page 97 and the Supreme Court judgment in Rt-2013-1247 para 10. As opposed to the Protocol, the provision does not only cover transnational organised crime, but also human trafficking and exploitation exclusively connected to one country.

[2] Translator's remark: Constitutional law committee appointed by the Storting

(22) With the exception of these two issues, the Norwegian penal provision on human trafficking is drafted based on the Palermo Protocol and the definition therein. Within the scope of the requirement in the Constitution Article 96 subsection 1 that "no one may be sentenced except according to law", the provision against human trafficking must be interpreted and applied in accordance with the Palermo Protocol, see also the requirement for effective protection under criminal law against human trafficking pursuant to the Constitution Article 93 and the ECHR Article 4. I also mention the Supreme Court judgment in Rt-2011-1127 para 19, where the justice giving the lead judgment, referring to a difficult process both negotiating the definition of human trafficking in the Palermo Protocol and in the drafting of the Norwegian penal provision, states that "one must be cautious about interpreting the penal provision literally to the disadvantage of the defendant if the interpretation is not supported also by other weighty sources of law".

(23) *Forced labour*

(24) The definition of human trafficking, as provided in the Palermo Protocol and in the Penal Code, is related to specific forms of exploitation. The case at hand concerns *exploitation* for "forced labour". I find that I should elaborate on this expression.

(25) The expression "force" suggests the involvement of physical or psychological pressure. Linguistically, this is a rather strong expression. Not all forms of negative impact will be included. The pressure must be so powerful that the person affected is made incapable of acting voluntarily. The meaning of "forced labour" is that the affected person has no other realistic choice but to work. Of course, this also includes situations from which it is impossible to break free. But forced labour also exists if the alternatives to this work are altogether unduly burdensome.

(26) This understanding is supported in the preparatory works of the Penal Code 1902 section 224 stating that the expression "forced labour" implies that "the person in question has not voluntarily taken the employment and/or cannot voluntarily exit it", see Proposition to the Odelsting no. 62 (2002–2003) pages 65 and 98. The draft bill also uses as an example of forced labour when someone is "lured to work in a different country, is exploited for labour because he or she is not a legal resident in the country and thus winds up in a vulnerable position". According to the preparatory works, there will also be forced labour when workers are kept "locked up", or housemaids are "neither paid nor free to leave their positions at their own choice".

(27) From Supreme Court case law, I mention the judgment in Rt-2013-39. The case concerned among other things exploitation of four minors from Lithuania for forced labour in the form of complicity in theft raids in Norway. In this case, the Supreme Court agreed that it is not a requirement that the aggrieved party has tried or wanted to break out of the situation, or that this would have been impossible or extremely difficult, as long as, objectively speaking, a form of force or pressure has been exercised. An overall assessment must be made, also including age and dependency. In this case, the children were brought into a forced situation in Norway – they had no money, did not speak Norwegian and they feared they would be abandoned if they did not do as they were told. The children were at the defendants' mercy, and had, according to their capacity, "in reality little choice as to whether to continue".

(28) Also the Supreme Court judgment in Rt-2011-1061 concerned minors. In para 46 of this decision, it is held that in cases where the aggrieved party is under 18, "overly strict

requirements should not be made with regard to the force that must have been used", but that "a certain pressure from the offender" must have been exercised, see also Rt-2012-1175 para 28.

(29) Considering the international law basis for the provision, neither the Palermo Protocol nor the Council of Europe Convention on Action against Trafficking in Human Beings gives any definition of "forced labour". But in the ILO Convention no. 29 on the abolishment of forced labour from 1930 Article 2 no. 1, forced labour is defined as follows:

> **"For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."**

(30) In Protocol of 2014 to the ILO Convention no. 29, this definition is continued, also with reference to trafficking in persons, see the Protocol's preamble and Article 2 no. 1.

(31) In the report *The concept of "exploitation" in the trafficking in persons protocol* (2015) pages 30–32 the United Nations Office on Drugs and Crime (UNODC) summarises the understanding of the definition in Article 2 no. 1 applied in connection with the Palermo Protocol's provisions on trafficking in persons for forced labour:

> **"The accepted international legal definition of forced labour is set out in ILO Convention No. 29 … The prohibition contains a subjective element (*involuntariness*) as well as objective requirements that are met when the State or a private individual orders personal work or service and a punishment or sanction is threatened if the order is not obeyed ...**
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> **Important insight into the substantive content of the prohibition of forced labour is provided by ILO supervisory bodies which have emphasised that where work or services are imposed (for instance, by exploiting the worker's vulnerability) under the menace of penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a situation of poor employment conditions and triggers the protection of ILO Convention No. 29.**
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> **With respect to 'voluntariness' the ILO has affirmed that this is to be understood as meaning that the person either became engaged in the activity against their [*sic*] free will or, once engaged, found that he or she could not leave the job with a reasonable period of notice, and without forgoing payment or other entitlements. With respect to 'menace of any penalty', ILO supervisory bodies have recognized that psychological coercion might amount to the menace of a penalty, but have been less prepared to recognize that a situation of economic constraint keeping a worker in his or her condition meets this element of the definition. Indirect coercion of that kind would only become relevant in conjunction with other factors for which the employer is responsible. Work extracted through 'menace of any penalty' is not voluntary and the ILO has further recognized that when deceit and fraud are involved in the original work offer, the worker's acceptance cannot be considered knowing and voluntary. It identifies two separate questions: (i) whether the consent to work was in fact freely given; and (ii) whether the worker retains the ability to revoke his or her consent."**

(32) The UN's Human Rights Committee has held that the definition gives guidance in the interpretation and application of the prohibition against forced labour in UN's International Covenant on Civil and Political Rights (ICCPR) Article 8 no. 3, see statement of 31 October 2005 *Bernadette Faure v. Australia* (1036/2001) para 7.5. In the plenary judgment of 23 November 1983 *Van der Mussele v. Belgium* para 32, the ECtHR expresses that the definition of forced labour in the ILO Convention no. 29 is a starting point for interpretation of the ECHR's Article 4 on forced labour; however, so that "sight should not be lost of that Convention's special features or of the fact that the Convention is a living instrument to be

read 'in the light of the notions currently prevailing in democratic States'". This is repeated in the judgment of 7 July 2011 *Stummer v. Austria* paras 117–118. I also mention the judgment of 26 July 2005 *Siliadin v. France* paras 115–118 and the judgment of 11 October 2012 *C.N. and V v. France* paras 71 and 77, both showing that the ECtHR's understanding of the expression "the menace of any penalty" in the ILO Convention no. 29 Article 2 is rather wide-ranging.

(33) The ECtHR's judgment of 30 March 2017 C*howdury et al v. Greece*, concerning 42 strawberry pickers from Bangladesh performing seasonal work in Greece, illustrates the assessment in a case where the Court concluded that there was forced labour in violation of the Convention, see in particular paras 94–101. The working conditions, the salary and the accommodation were terrible, the workers were subjected to constant humiliation, threats and serious violence. They were not permitted to work or to reside in Greece and risked arrest and deportation. Their salary was retained. The Chowdury judgment shows that it is not decisive that the worker has voluntarily taken the employment if the employment is continued by coercion.

(34) As concerns the protection against "forced labour" in the Constitution Article 93 subsection 3, it is set out in the recommendation of the Lønning Committee that the provision is actually modelled on the ICCPR Article 8, the ECHR Article 4 and the ILO Convention no. 29, to which I have already referred, see Doc. no. 16 (2011–2012) page 110–111. On page 111 in the recommendation of the Lønning Committee, it is assumed that the interpretation of the Constitution's prohibition against forced labour should be "as close as possible to the international understanding of these issues". I will apply this view. The provision against human trafficking for forced labour cannot have a narrower scope than the Constitution Article 93 subsection 3. That being said, it is unnecessary for me to elaborate on the scope of the Constitution's prohibition.

(35) When national and international sources are considered in context, there is reason to state that the question whether forced labour within the meaning of the Penal Code has occurred must be based on an overall assessment of the specific situation. Forced labour may have occurred even if the person in question would have been able to exit it, if the situation, from a realistic point of view, gave little choice. The working and salary conditions, the accommodation and the sanitary conditions are relevant, as are the level of freedom of movement and isolation, abuse of power and various forms of subordination or dependency relationships. It is of relevance whether the aggrieved party is a minor or an adult. The means of coercion that bind him or her may be physical or psychological, express or implicit. And they may have the characteristics of extortion, for instance by the aggrieved party having to sustain miserable working and salary conditions to avoid that the employer notifies the police or the immigration authorities of illegal residency or other conditions that will cause problems for the worker. In addition, the retaining of salary may also place the worker in a deadlock situation, as he or she would not be able to buy a ticket home or leave the work place without risking losing salary already earned.

(36) *The court of appeal's application of the law*

(37) I will now turn to the specific application of the law. The question is whether the three Indian seasonal workers D, E and C were in a "vulnerable position" during their stays in Norway, and whether B and his son-in-law A misused this to coerce them to work.

(38) The court of appeal adjudicated the case with a jury. Explicit grounds for the application of the law do therefore not exist. The Supreme Court's review of the court of appeal's application of the law must then be based on the questions submitted to the jury, what is stated regarding the contents of the summing-up to the jury, the court of appeal's considerations regarding the application of the law in its judgment and the facts of the case as they are described in the court of appeal's sentencing premises. I refer to the Supreme Court judgments in Rt-2007-961 para 29, Rt-2009-750 para 80 and Rt-2013-39 para 12.

(39) The questions submitted to the jury regarding the Penal Code section 224 subsection 1 a, state the conditions for conviction. In addition, for all three aggrieved parties, particular emphasis was placed on long working hours and little time off, low salaries, the employer keeping the passport and plane tickets, absence of network, lack of own money during the stay in Norway, limited freedom of movement and the fact that the three of them were instructed to give incorrect information to the authorities regarding their working conditions. The arrangement that the workers were not to receive ordinary settlement for their work until after they had returned to India and the fact that some advance payments were made, are emphasised in the questions. In my reading, the questions provided correct starting points for the jury's deliberations.

(40) In the summing-up to the jury, the following was stated regarding the meaning of "forced labour".

> **"The Penal Code has no definition of 'forced labour'. However, forced labour is covered by human trafficking that has as its object to exploit a person's capacity to work, but does not have the characteristics of slavery, which is punishable under a different provision. Forced labour is however more serious than what is normally referred to as social dumping.**
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> **You must apply the understanding that 'forced labour' implies that the aggrieved party has not voluntarily entered into the employment relationship and/or cannot voluntarily exit it. Since it is undisputed that the three aggrieved parties came to Norway at their own choice, the question is whether or not they were free to terminate the working relationship.**
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> **Forced labour must contain an element of coercion. The Supreme Court has stated in a judgment, which however concerned workers under the age of 18, that 'against this background, overly strict requirements should not be made with regard to the force that must have been used. In the Appeals Selection Committee's view, it is sufficient that the offender has exercised some form of pressure'.**
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> **In a different case also regarding children under the age of 18, the Supreme Court stated: 'Although the starting point is that overly strict requirements should not be made with regard to the force that must have been used, which means that some sort of pressure is easily established, there must also be a lower limit for what can be regarded as force under the circumstances. There must also be a distinction between pressure that within the meaning of the law must be classified as force and pressure that follows from the parents' general authority to organise the family's everyday life.'**
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> **The pressure or the regulation that naturally derives from being in an employment relationship will, of course, fall outside of what is regarded as forced labour.**
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> **It is not a requirement that it is impossible or extremely difficult to terminate the 'employment relationship'. The assessment whether coercion or pressure has been exercised has to rely on an overall assessment of a number of factors, such as age and whether and in what manner the aggrieved party was dependent of the employer. The individual aggrieved party does not need to feel forced, as long as a form of coercion or pressure exists, objectively, in the particular situation – which will manifest itself if he or she should attempt or wish to terminate the employment relationship.**

The lack of free will may be ascribed to physical hindrances, such as locking-up and strict supervision, but it also involves more psychological hindrances such as threats, fear and similar.

It is not a requirement that the person being exploited has attempted or wished to exit the 'employment'. However, he or she must have a genuine choice of leaving upon his or her own wish [*sic*]. If, through the system established, such a genuine choice is obstructed, forced labour within the meaning of the provision will be easily identified. The level and nature of the coercion covered by the provision against human trafficking must to some degree be contrasted specifically with the work the aggrieved party is pressured to perform, his or her situation and his or her relationship with the offender.

The fact that the worker voluntarily returns to resume his or her (seasonal) work is not sufficient to rule out the existence of forced labour.

There are several ways of escaping illegal/humiliating working conditions.

One option is to go to the authorities and report the illegal conditions and thereby escape.

A second option is simply to run off.

A third option to escape the working relationship, as mentioned by the defence counsel, is to tell the employer that you wish to go home and to get help with the travel arrangements.

If it cannot be ruled out that the worker could have travelled home freely without other negative consequences for him or her, or for other colleagues, than only receiving salary for the period work was performed as agreed, or the risk of not being asked to return the next season, then one has a realistic chance to terminate the working relationship. Sufficient coercion will not have been established.

But the longer a working regime is based on the workers' fear of negative consequences, and possibly also for his or her colleagues, such as the risk of being forced to repay what the employer has paid in advance for plane tickets or visa or any advance salary, or the risk of facing problems in the home country, the easier the requirement will be met that pressure/coercion must have been exercised to establish forced labour. The risk and fear of receiving no payment as a consequence of a system of payment in arrears may, under the circumstances, be central."

(41) I find that this account, which was given to the jury before it withdrew to deliberate on the question of guilt, is adequate for the central elements of the expression "forced labour". I then trust that it is implicit that the lower threshold for what can be regarded as forced labour where the aggrieved party is a minor was not to be applied. And although the summing-up to the jury does not expressly refer to the criterion of guilt, I have no doubts that the summing-up in this respect enabled the jury to understand that the defendant, in order to be convicted, had to have acted with intent. It is also expressly stated in the court of appeal's judgment that both of the defendants had acted with intent.

(42) In its judgment, the court of appeal has given a through description of the facts it has relied on, contrasted with the conditions in the Penal Code section 224 subsection 1 b. For B's part, the indictment states the following:

"The court of appeal assumes that C worked for B in 2008 from 28 March to 28 September, the same in 2009, from 20 March to 20 September in 2010 and from 17 February to 17 August in 2011.

B employed his first Indian workers early in the 2000s. The workers were largely from Punjab, where B originally comes from. The workers were recruited partially with assistance

from family in Punjab, and partially through acquaintances and workers who had previously worked for B. During the years the indictment concerns, the workers were granted visas as seasonal workers with work permit for six months at a time. It is assumed that each worker made his or her own plane ticket and visa arrangements, at least this was the case for C. They had money refunded by B to the extent they had to prepay these costs. The workers lived free of charge in flats/huts at the garden centre's area. The facilities were austere. The situation was the same both when B operated in leased premises and after he had built a new garden centre.

The Indian workers worked mainly with the production of plants, including watering and other incidental work. Some of the workers stocked the shop with products and fetched products in storage upon request. They did not understand Norwegian, and some hardly understood English, which made it difficult to communicate with other employees and customers. It is assumed that C's English skills were okay.

The court of appeal assumes that B asked to be handed and kept the Indian workers' passports. At least he kept C's passport from 2008 up to and including 2010. In line with C's statement, it is assumed that B forgot to take his passport when he arrived in 2011.

None of the workers had an employment contract. There are no time sheets showing how long C – or the other Indian workers – worked. After an overall assessment of the evidence, placing special weight on C's statement and the witness statements of G, H and I, the court of appeal finds proved that C worked up to 16 hours a day during the high season from April to and including June, and rarely less than 12 hours a day during the low season. He worked seven days a week, and his only day off was on 17 May when the shop was closed. On one occasion in 2008, B took C and some other workers to Denmark. This was a return trip with the ferry with a one to two hours' stay in Denmark. During the four years he worked for B, he visited the Sikh temple in Y a few times. Twice, he attended a party outside the garden centre, once at H's house and, on 17 May, at G's house. He saw the ski jump in Vikersund once. He was never in Drammen until on 17 May in 2012, when he was working for A. On a few occasions, he played football with some other Indian workers, possibly also B's son, on an adjacent football field.

It is assumed that apart from that, C spent all his time at the garden centre. His days were filled with work, with eating and sleeping, possibly with some TV/film watching and card-playing at night with the other Indian workers. The court of appeal has seen photos from a party held at the new garden centre. On a few occasions, C ate at B's house.

The court of appeal assumes that C, in line with his statement, entered into an agreement in 2008 on, and received, 120 000 Indian rupees in India. He brought NOK 30 000 to India after the end of the working period. He handed this money to B in India. He then received 120 000 rupees in return. In 2009, he received an amount in Norwegian kroner equal to 120 000 rupees before going home. In 2010, the salary was equal to 130 000 rupees and in 2011 it was equal to 140 000 rupees. All salary was paid in arrears at the end of a working period in accordance with the agreement entered into between him and B. The statements given by, among others, G and H, support C's statement as regards the size of the salary.

The court of appeal finds proved that B has violated the Penal Code section 224 subsection 4, cf. subsection 1 a, during the entire period from 2008 up to and including 2011. In all these years, C was exploited by B to work long days, seven days a week for a very low salary, which made it possible to generate larger income from the garden centre business.

The exploitation took place by B's abuse of C's vulnerable situation. C came from relatively poor conditions in India. The parties agreed that C was to be paid in arrears after each ended season, upon his return to India. C paid in advance for plane ticket and visa, for which he was later refunded by B. The garden centre was located in Æ in the municipality of X, in an area that must be considered far from central. According to information provided, there was a petrol station some hundred meters away.

C was dependent on B for board and lodging. C was instructed by B to give incorrect information to the public authorities in the event of a control that his salary was higher than NOK 100 per hour and that he worked from 35 to 40 hours a week.

It is assumed that B's regime was strict. According to G, some of the Indian workers called B Hitler. In line with the statements given by G, H and I, it is assumed that the workers, including C, were subservient whenever B or any of his family members arrived. They were told to speak as little as possible to customers. They could smile and laugh when B was not present, and look down when he was there. Some of the subservience is related to culture and the fact that B was much older than the Indian workers. India is a country where corruption is widespread. The court of appeal assumes that C feared that he and his family would get in trouble in India if he defied B.

For three of the four years C worked for B, the latter kept C's passport, without the court of appeal considering C's situation noticeably less vulnerable in 2011.

Although C knew he could ask for an advance payment of salary, the system's nature indicated that he should not ask for money to spend in Norway, considering the high level of costs here. The workers as well as their families in India needed the money earned in Norway. To the extent it was necessary to ask for an advance, C received a couple of hundreds in connection with his return to India.

The court of appeal assumes that C's conception of the regime was that he had to ask for permission to leave the garden centre, also in his spare time. All in all, the system was arranged so that it limited the workers', including C's, freedom of movement to the extent possible, but it is assumed that B did not wish to create conditions that would stop the workers – with the experience they had gained – from returning for subsequent seasons.

B exploited C for forced labour. The system involved pressure with the effect that he could not voluntarily exit the employment relationship. C did not speak Norwegian and he had no contact with people outside the garden centre. His knowledge of Norway and Norwegian culture was gained primarily through the limited contact he had with the Norwegian and Polish workers. A voluntary exit became even more difficult during the years B kept C's passport.

C understood that he was part of a system where the actual salary and working conditions were concealed to the Norwegian authorities, with the uncertainty this alone created. If he opposed while in Norway, he knew that he risked not being paid and that he would definitely not be allowed to return later. The fact that C and the other workers were not paid until after they had returned to their home country, is the most prominent means of coercion for preventing a voluntary termination of the employment relationship.

The coercion element was of course strongest in 2008, when C arrived in Norway for the first time. He came from relatively poor conditions in India to the completely unknown Norway and into an employment regime unfamiliar to him. In the court of appeal's view, the conditions for establishing human trafficking are met for all four seasons C worked for B. Although he eventually became more familiar with the working regime, and had the chance to turn down offers for new seasonal work and remain in India, unemployment or much worse paying jobs were the alternatives. C's desire to make a living was used as a means of coercing him to accept new offers of employment from B and to complete seasonal work until and including 2011, despite the fact that he felt used. In 2012, he decided not to take on a new season at Z."

(43) The court of appeal gives an equally detailed account as concerns A, which I also quote:

"The court of appeal assumes that D worked at Ø from 1 February to 30 July 2009, from 26 March to 21 September 2010, from 2 April to 28 April 2011 and from 10 April to 12 August 2012. It is also assumed that E worked at Ø from 25 April to 21 October 2009, from 10 May to 5 November 2010, from 11 May to 7 November 2011 and from 21 May to 11 September 2012. Finally, it is assumed that C worked at Ø from 19 April to 15 August 2012.

A and F hired Indian workers from 2006/2007 in line with the system established by B some years earlier. These Indian workers were also largely from Punjab. They were recruited with assistance from B's brother and father in India, partially through acquaintances and workers who had previously worked at the garden centres. They were normally granted visas as seasonal workers with permission to work for six months at a time, and worked at the garden centre during that entire period. As for the workers at Ø, the employer covered the costs for visas and ordered and paid the plane tickets. Their return was set to the expiry of the their respective visas. There were most Indian workers during the high season, from April to June, and few in December and January.

The Indian workers lived under relatively austere conditions at the garden centre's area. Although they may not have been ordered to live there, it is clear that they could not rent other accommodation with the salary terms agreed. Like at Z, the workers at Ø had free board and lodging.

The Indian workers mainly worked with the production of plants, including watering and other incidental work. E worked a lot at shops at Krokstadelva and outside of Dags Marked at Strømsø in Drammen. Neither of the aggrieved parties spoke any Norwegian, but their English was okay.

It is assumed that A, in agreement with F, kept the passports of the aggrieved parties. The court of appeal assumes that the main purpose of requesting and collecting the passports was to prevent the workers from leaving Ø. In the court of appeal's view, it is unlikely that this was primarily because they felt they had a responsibility for the seasonal workers towards Norwegian authorities. The court of appeal assumes that this part of the regime, like the other parts, was modelled on the system created by A, and that controlling the workers was central.

At Ø, an inspection by the immigration authorities was carried out in 2011, without this leading to any investigation of the business. Due to an anonymous tip in March 2012 regarding humiliating working conditions for the Indian workers, a decision was made to carry out a coordinated and unannounced inspection at which the police, the labour inspection authority, the tax authorities and the fire brigade participated. The inspection was carried out on 21 June 2012. The labour inspection authority, the tax authorities and the fire brigade all had comments to the business operation. Orders were given to rectify nonconformities, but the inspection did not result in any police report.

On 8 August 2012, a conflict arose between D and A at Ø. The court of appeal assumes that the conflict concerned the working conditions for the Indian workers at Ø. The conflict was of such a character that the police were called and turned up with a patrol. A friend of A's arrived, and an agitated situation arose between the parties involved. The following day, D did not attend at work. On 10 August, D sent an SMS stating that he did not want to return at work, and that A could hand his passport to E. D was told that he had to come and fetch the passport himself, and a meeting was held at Ø between D and A at which B also participated. D was then given a plane ticket to India and told to return to India the next day. He opposed returning to India before he had received the salary to which he claimed he was entitled under Norwegian standards.

D did not use his return ticket and went instead to the police to file a complaint. Due to the lack of capacity and language issues, a formal complaint was not registered until on 16 August 2012. Either on 12 August or 13 August 2012, A and F delivered D's passport to the police. They also tried to deliver to the police around NOK 60 000 that was supposedly D's earned but not paid salary for the period he had worked in Norway. However, the police did not take this money. The amount was later deposited on the account established in D's name.

On 24 August 2012, D received his passport from the police and then went to the bank together with his friend, J, to withdraw the money. The bank had closed, but the head of the department K had not left the office, and she helped him withdrawing around NOK 6 000. Eventually, she discovered that F and A were authorised to manage the account. This, along

with what D and J told her, made the whole situation so unclear to K that she did not want to assist with the withdrawal of the entire amount. They agreed to delete the authorisations to manage the account and to order a debit card so that D would be able to dispose over the account without going to Vikersund. Later, F tried to cancel the order, allegedly because she feared D would misuse the card.

It is clear that neither of the Indian workers had employment contracts that satisfied the conditions of the Working Environment Act. The aggrieved parties entered into oral agreements in India according to which a lump sum was to be paid for the entire working period of six months. The salary was to be paid in arrears in rupees in India. Following the labour inspection authority's inspection at Ø on 21 June 2012, all workers got fictitious, standard employment contracts.

No time sheets were kept showing how much each of them actually worked. Following the inspection in June 2012, fictitious time sheets were drafted. After an overall assessment of the evidence, placing special weight on the statements of the three aggrieved parties, as well as the statements of L, M, N and J, the court of appeal finds proved that D, E and C worked 12 to 14 hours a day during the high season and rarely less than 12 hours a day during the low season. They worked seven days a week, and the only day off was on 17 May when the store at Ø was closed. Then, they went to the town centre of Drammen. On very few occasions, the three of them visited the Sikh temple in Y. They were taken there by either A or by one of the other Indian workers with a driver's licence. During the years they worked at Ø, D and E visited Blaafarveverket and Verdens Ende[3] in Tjøme. On these days, they worked until 2 p.m. They were taken there by J. The court of appeal has also heard of a concert in Oslo.

It is assumed that D, E and C otherwise spent all their spare time at the garden centre. Their days were filled with work, with eating and sleeping, possibly with some TV/film watching and card-playing at night with the other Indian workers. Later, Skype was installed so that the workers could communicate with their home country in that way instead of by borrowing A's phone.

In line with the aggrieved parties' statements, the court of appeal assumes that D and E received an amount equal to 120 000 Indian rupees in 2009 and 2010, and 150 000 rupees in 2011. In 2012, it was agreed that all three of them would receive 180 000 rupees. The agreement was that all salary was to be paid in arrears, but A would give an advance if asked. An advance payment to C of 100 000 rupees in 2012 is worth mentioning. Apart from the statements of the aggrieved parties, the court of appeal places special weight on the statements of N and J. It should also be mentioned that the sums explained by A in the court of appeal do not deviate much from the statements of the aggrieved parties. The situation in the court of appeal was different. In the district court, it was stated that they received salary in accordance with the job offers enclosed with the visa application.

The court of appeal finds proved that A has violated the Penal Code section 224 subsection 4, cf. subsection 1 a, during the entire period from 2009 up to and including 2012. In all these years, D, E and C were exploited by A to work long days, seven days a week for a very low salary, which made it possible to generate larger income from the garden centre business.

The exploitation took place by A abusing the vulnerable situation of all three aggrieved parties. All of them came from relatively poor conditions in India. It was agreed that the three of them were to be paid in arrears after each ended season after they had returned to India. Ø in Y is not as remote as Z at Æ in X. Ø is still located quite a few kilometres from the centre of Drammen.

All three were dependent on A for board and lodging. And all three were instructed by A to give incorrect information to the public authorities in the event of a control that their salary was higher than NOK 100 per hour and that they worked from 35 to 40 hours a week.

[3] Translator's remark: Norwegian tourist attractions.

It is assumed that A's regime was less strict than B's. It is the court of appeal's impression that A was generally more preoccupied with the workers' well-being at the garden centre than B. However, the court of appeal does not doubt that A ensured that the workers did not have unnecessary conversations with the customers or with the Norwegian and Polish employees. It was a system of subordination with which we are unfamiliar in Norwegian working life, but which is supposedly culturally conditioned. The Indian workers came from a country with widespread corruption. It is assumed that the aggrieved parties knew that A's family in India was wealthy and powerful. The court of appeal also finds proved that all three of them feared that they and their families would have problems in their home country if they refused to conform.

The passports and any other identification papers belonging to the aggrieved parties were kept at A's house during all these years.

Although the aggrieved parties knew they had the opportunity to ask for an advance payment, the system's nature implied that they rarely asked for money to spend in Norway, considering the high level of costs here. The workers as well as their families in India needed the money earned in Norway.

The court of appeal assumes that the aggrieved parties' conception of the regime was that they had to ask for permission to leave the garden centre, also in their spare time, although this was not always done for smaller trips. All in all, the system was arranged so that it limited the workers', including the aggrieved parties', freedom of movement to the extent possible, but it is assumed that A did not wish to create conditions that would stop the workers – with the experience they had gained – from returning for subsequent seasons.

A exploited the aggrieved parties for forced labour. The system involved pressure that had the effect that they could not voluntarily exit the employment relationship. The aggrieved parties' knowledge of Norway and Norwegian culture was gained primarily through the limited contact they had with the Norwegian and Polish workers. A voluntary exit became even more difficult during the years A kept the aggrieved parties' passport.

The aggrieved parties did not speak Norwegian and had no contact with people outside the garden centre apart from those who worked or had worked at Ø. D had a romantic relationship with J. Much suggests that in 2012 this contact gave one of the workers the courage to rise up and report the humiliating conditions at Ø.

The aggrieved parties understood that they were part of a system where the actual salary and working conditions were concealed to the Norwegian authorities, with the uncertainty this alone created. If they protested in Norway, they knew that they risked not being paid and that they would definitely not be allowed to return for subsequent seasons. The strongest means of coercion was the holding back of payment until they had returned to their home country to prevent them from terminating the employment relationship. But the fact that C, in 2012, received more than half of his salary in advance was also a considerable means of pressure that year. It should also be mentioned that C, in agreement with A, went to the latter's family in India to receive the rest of his outstanding salary after he was sent home earlier because of D's uprising. It is assumed that what he was offered was not a proportional share of the agreed remuneration compared to the number of days he worked. He turned down the 500 rupees he was offered in payment.

The coercion element is of course strongest the first year the aggrieved parties came to Norway. All three of them came from relatively poor conditions in India to the completely unknown Norway and into an employment regime unfamiliar to them. In the court of appeal's view, the conditions for human trafficking are met for all the four seasons D and E worked for A and for 2012 when C worked at Ø. Although the three of them later became more familiar with the working regime, and had the opportunity to say no to more seasonal work and stay in India, the alternative was unemployment or much lower paying jobs. The three workers' desire to make a living was used as a means of pressuring them to accept new offers of employment from A, despite the fact that they felt used."

(44) There is no significant discord between what is stated in these detailed grounds for judgment, the questions for the jury to consider and the central elements of the summing-up. All in all, this material gives a basis for stating the that court of appeal has applied a correct understanding of the law. It also gives a sound basis for reviewing the court of appeal's specific application of the law with regard to the question of guilt.

(45) My view on the application of the law is as follows:

(46) It is clear that the Indian seasonal workers entered into voluntary agreements regarding employment in Norway before they arrived here, and that their first arrival in Norway was also voluntary. Moreover, they returned year after year from India voluntarily to work at the garden centres in Norway. I take it that they were not subjected to any physical force during their stay. They were not abused, locked up or directly isolated from the outside world. Nor were they threatened with any of this. The workers were not lured to Norway on false premises. They had temporary residence and work permits. The salary exceeded many times the salary for similar work in India. The workers came from poor conditions, but this does not imply that they were in a vulnerable situation in India, and they were not subjected to coercion there. They did not risk any personal strain in connection with their returns.

(47) Nevertheless, and with some doubt, I agree with the court of appeal that D, E and C were exploited for forced labour at the garden centres: They were grossly under-paid, had to sustain highly strenuous working and living conditions, and had little freedom of action and freedom of movement. They had no knowledge of Norwegian society, almost no network and did not understand Norwegian. They did not keep their own money. The employers ensured board and lodging at the garden centres. The workers knew that they participated in an illegal system towards Norwegian authorities, and they knew that asking for the authorities' help involved a risk. The premises were that the three of them, as long as they were in Norway, were in fact bound to – and dependent on – their employers.

(48) Hence, terminating the work while staying in Norway was not an available option. The reality was that they had to work at the garden centres as long as they were in the country. Several circumstances stopped them from breaking free and returning to India before the end of the contract period, if they had wanted to: The employers mostly kept the workers' passports, which they would need to return. It was the employers that kept the return tickets, with return dates in accordance with the original contract period. Since the workers, as mentioned, did not have money to spend in Norway, they were not able to buy their own return tickets. To me, it is also crucial that the workers could not expect to receive any settlement for their work until they had returned to India after the end of the contract period. In the event of an early termination, they would risk losing their entire salary. Considering the starting points for these workers, there was an extreme lock-up effect, which increased during the contract period. In short, as the court of appeal expresses it,"[t]he system involved pressure that had the effect that they could not voluntarily exit the employment relationship" even if they had wanted to. Under these circumstances, the fact that they returned voluntarily year after year does not deprive the situation of its forced labour character.

(49) B and A exploited D, E and C for forced labour. The coercion elements also placed the three workers in a vulnerable position during their stays in Norway, and it is clear that this vulnerable position made it possible to exploit the workers for forced labour.

(50) On these grounds, I agree with the court of appeal that B and A are guilty of violating the Penal Code 1902 § 224 subsection 1 a. The provision's subsection 4 on gross human trafficking is applicable for both: The exploitation was a methodical element in the very operation of the defendants' garden centre businesses, it persisted for several years and it involved substantial financial gains.

(51) The appeals against the application of the law must consequently be dismissed.

(52) *The appeal against the procedure*

(53) From what I have already said and referred to in my review of the application of the law with regard to the question of guilt, no procedural errors have been made in connection with the court of appeal's judgment. The alternative appeal against the court of appeal's procedure must therefore also be dismissed.

(54) *The appeal against the sentencing*

(55) The sentence for gross human trafficking is imprisonment for a term not exceeding ten years. The obligation under international law to give victims of human trafficking effective protection under criminal law and the weighty concerns of general deterrence that also apply in these cases, suggest that actions comprised by this penal provision must be punished severely, see the Supreme Court judgments in Rt-2010-733 para 18–22 and HR-2016-2491-A para 58. A "normal sentencing level" cannot be established. The forms of human trafficking vary too much for that. In a case like the one at hand, one can also not automatically apply the Supreme Court sentencing case law on human trafficking for prostitution or with children as the aggrieved parties, see Rt-2006-111, Rt-2010-733, Rt-2013-93 and HR-2016-2491-A.

(56) With respect to the factual basis for the sentencing, I refer to what I have already quoted from the court of appeal's judgment. The situation is not dissimilar to social dumping. But once it is labeled as human trafficking for forced labour, it becomes serious. Although we are dealing with rather typical cases, placed at the lower range of what the penal provision against human trafficking for forced labour comprises, a strong sanction must therefore be imposed.

(57) In its sentencing, the court of appeal emphasised that B was the founder of the system of which the aggrieved parties became part, which – according to what the court of appeal found proved – has persisted at least since the early 2000s and which has involved a large number of Indian seasonal workers. I agree with the court of appeal that B's central role as the "master" is clearly aggravating for his part. It is also aggravating for both B and A that the exploitation of D, E and C is the result of an established operational procedure at the two garden centres. At the same time, I emphasise that B and A are not convicted for human trafficking of other seasonal workers than the three included in the indictment. The sentences must reflect this. I refer to the right to be presumed innocent until proved guilty in the Constitution Article 96 subsection 2 and to the Supreme Court judgments in Rt-2013-287 para 21 and Rt-2015-345 paras 20–21.

(58) The court of appeal concluded that the punishment for violation of the Penal Code section 224 subsection 1 a, cf. subsection 4, considered in isolation, should be from three and a half years to four years of imprisonment for both B and A. Based on what I have accounted for, this is too strict in my view. I find that imprisonment of two and a half to three years is correct for these cases considered in isolation.

(59) B has also been convicted by both the district court and the court of appeal for violation of the Accounting Act, the VAT Act, for gross welfare fraud, for refusing to present the company's accounts in connection with control and for several violations of the Working Environment Act. The sentences for these other offences have not been specifically reviewed by the Supreme Court. Neither the prosecutor nor the defence counsel has had any objections. I have no hesitations relying on the court of appeal's considerations in these respects.

(60) Consequently, I find that the total sentence for B should be four years and six months of imprisonment. The total sentence for A should be three years and two months of imprisonment.

(61) *The appeal against the claim for compensation for non-economic loss*

(62) It follows from my view on the application of the law in the question of guilt that the aggrieved parties should be awarded compensation for non-economic loss pursuant to the Compensatory Damages Act section 3-5 a, see section 3-3.

(63) The court of appeal ordered B to pay compensation for non-economic loss to C in the amount of NOK 30 000. A was ordered to pay NOK 30 000 in compensation for non-economic loss to D and E, and NOK 5 000 to C. In its sentencing, the court of appeal took into account that the aggrieved parties had received "compensation for their loss of salary based on Norwegian standards, which is far more than they could ever hope for in India". In my view, when measuring compensation for non-economic loss, it is wrong to consider the fact that the aggrieved party lives in a country with lower salaries and life costs than Norway, which one would indirectly do if applying the court of appeal's arguments, see the Supreme Court judgment in Rt-2014-892 para 23. I nevertheless agree with the quantum of compensation for non-economic loss determined by the court of appeal. Neither the prosecutor, the defence counsel nor the counsel for the aggrieved parties has objected to the amounts. The appeals against the liability for non-economic loss are consequently dismissed.

(64) I vote for this

J U D G M E N T :

1. In the court of appeal's judgment, in item 1 of its conclusion, the sentence for A is reduced to 3 – three – years and 2 – two – months of imprisonment.

2. In the court of appeal's judgment, in item 3 of its conclusion, the sentence for B is reduced to 4 – four – years and 6 – six – months of imprisonment.

3. The appeals are otherwise dismissed.

(65) Justice **Bull:** I agree with the justice delivering the leading opinion in all material aspects and with his conclusion.

(66) Justice **Høgetveit Berg:** Likewise.

(67) Justice **Ringnes:** Likewise.

(68) Justice **Utgård:** Likewise.

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

J U D G M E N T :

1. In the court of appeal's judgment, in item 1 of its conclusion, the sentence for A is reduced to 3 – three – years and 2 – two – months of imprisonment.

2. In the court of appeal's judgment, in item 3 of its conclusion, the sentence for B is reduced to 4 – four – years and 6 – six – months of imprisonment.

3. The appeals are otherwise dismissed.