SUPREME COURT OF NORWAY

J U D G M E N T

given 17 October 2019 by the Supreme Court composed of

Justice Magnus Matningsdal
Justice Wilhelm Matheson
Justice Knut H. Kallerud
Justice Arne Ringnes
Justice Kine Steinsvik

HR-2019-1922-A (case no. 19-070106STR-HRET)
Appeal against Borgarting Court of Appeal's judgment 26 March 2019

I.	
A	(Counsel Brynjar Nielsen Meling)
v.	
The Public Prosecution Authority	(Counsel Frederik G. Ranke)
II.	
A	(Counsel Brynjar Nielsen Meling)
v.	
B	(Counsel Halvard Helle)

(1) Justice **Steinsvik:** The case questions whether three text messages sent to a member of the Storting and a subsequent video speech posted on YouTube are covered by section 115 of the Penal Code on attack on the activities of the highest state bodies and section 263 of the Penal Code on threats.

(2) On 11 April 2018, A was indicted for violation of:

> **"I** **<u>Section 115 of the Penal Code (2005)</u>**
> **for by force or other illegal means having put a member of the Storting at risk of being hindered or affected in his activities.**
>
> **<u>Grounds:</u>**
> **On Saturday 24 September 2016 from 4:27 a.m. to 6:20 a.m., he sent three text messages with the following contents to Member of the Storting B from the liberal party Venstre.**
>
> **'B. You dirty pig, may Allah burn you in Jahannam, you rude murtad kafir dog! You are a disgrace to Paki and Muslims, don't call yourself a Muslim, for Wallahi, you have NOTHING to do with Islam, dirty traitor!!!'**
>
> **'Even your own parents disown you. You are really a NOBODY and a dirty murtad kafir! May Allah give you incurable disease, anxiety, suffering, poverty, a painful and pathetic life before death, and let you rot in Jahannam for always and ever!!!'**
>
> **We Muslims feel repulsion each time we see your ugly dirty murtad kafir face!!'**
>
> **and then, on Tuesday 27 September the same year, he held an eight-minute long video speech on YouTube with the title 'The truth – response to B & co from A'. Here, he praises Allah and reads from the Koran, partly in Norwegian and partly in Arabic, with an ISIL-inspired hymn playing in the back, and states among other things:**
>
> **'When it comes to the texts I have mentioned in the media the last couple of days, they are free to interpret them as they like, but I have only expressed my opinion in accordance with Sharia, which my deed (religion) orders me to, towards these people. … Neither of them has done anything to me personally, but both … have mocked my religion, al Islam. Therefore, I feel peace and calm in my heart, for I know, I know my intentions for doing what I did, and I hope Allah … will reward me for having corrected these enemies of Allah and his rasol (prophet). …**
>
> **First, I sent that dog, B al khaen (the traitor), the messages because this infidel traitor has mocked Islam and Muslims for a long, long time, and lately he has mocked nikab and hijab … First and foremost to clarify who and what this B is, which my respected Islamic brethren will know for sure, this a dowa Allah (enemy of Allah), B, is not a Muslim, he is a murtad (apostate), kafir (infidel), who has performed words and acts of kufur (blasphemy) for a long period of time, without the … vegetable-selling imams we have here in Norway … having done anything about it or made it clear what hokum (the judgment) is for these murtadeen (infidel) politicians and self-proclaimed spokespersons for Islam and Muslims, according to Sharia …**
>
> **These imams … who worry more about their positions and about satisfying the kufar (the infidel), than speaking hac (the truth) … they defend this B khansir (pig) … instead of speaking hac (the truth) and deen Allah (Allah's religion) ... but what to expect from these so-called imams … to you who think I should have expressed myself differently towards B … you should seek within yourselves and check your imam (faith), how can you be indifferent when these enemies of Allah**

mock Islam, moch rasol Allah (Allah's prophet), and mock sharae Allah (duties for Allah), what follows from our deed (our religion) …

Why don't you get angry, when your religion is mocked, as Allah … has described it mo'meneen (the believers) … That A is Allah's messenger, and those who follow him are harsh against the infidel and merciful amongst themselves.

There are examples of rasol Allah (Allah's prophet) using harsher words against Allah's enemies when they trampled on Islam, than those I have used. No fatwa is needed to establish that the two mentioned, those I have mentioned, are kuffar (infidel) and murtadeen (apostate), and that they do not represent any Muslim. The nawaqeb (doctrine) of our sharia is clear, one cannot only read the … creed … commit kuffur (blasphemy) and still call oneself a Muslim … Islam is free from these persons and their kuffur and ilhad (atheism).

No sensible Muslim … can support these kuffar dogs, and to you who support them, Allah will hold you responsible on judgment day …'

The overall message in the text messages and the video speech was of a threatening nature and likely to restrict or affect the activities of Member of the Storting B, including his participation in the public debate relating to immigration and integration.

II **<u>Section 263 of the Penal Code (2005)</u>**
for by words or conduct having threatened to engage in criminal conduct under such circumstances that the threat is likely to cause serious fear

<u>Grounds:</u>
At the time and place as described in count I, he sent text messages to B and posted the video described in count I, which under the circumstances was likely to cause serious fear for B."

(3) By the judgment from Oslo District Court 27 November 2018, A was convicted as charged and sentenced to two years and six months of imprisonment. He was also ordered to pay aggravated damages (*oppreisning*) to B of NOK 150 000.

(4) A appealed the judgment to Borgarting Court of Appeal, which on 26 March 2019 gave judgment with the following conclusion:

> **"1. A, born 00.00.1986, is convicted of violation of section 115 of the Penal Code and of section 263 of the Penal Code and sentenced to 2 – two – years and 3 – three – months of imprisonment, see section 79 (a) of the Penal Code. A credit of 134 – onehundredandthirtyfour – days is granted for time served in custody.**
>
> **2. A is ordered to pay aggravated damages of NOK 130 000 – onehundredandthirtythousand – to B within two weeks of the service of this judgment.**
>
> **3. Costs are not awarded."**

(5) The Court of Appeal passed a dissenting judgment. The minority, one professional judge and one lay judge, found that A's utterances could not be considered as threats and that no violation of section 115 of the Penal Code had taken place.

(6) A has appealed the judgment to the Supreme Court. The appeal concerns the application of law in the question of guilt, the sentence and the claim for aggravated damages. On 7 June

2019, the Supreme Court's Appeal Selection Committee granted leave to appeal. Consent was also given to a new hearing of the claim for aggravated damages.

(7) *The defence counsel* contends that neither the text messages nor the video speech can be considered threats covered by section 263 of the Penal Code. The utterances themselves do not have a threatening content, nor can such a content be derived from the context. The words must be interpreted in light of A's freedom of expression and religion. Moreover, the requirement of a penal provision suggests that the utterances cannot be too widely interpreted. Interpreted in a religious and political context, the utterances were merely a rebuke of B, and not threats. Nor has A caused a risk that B is affected in his activities as a member of the Storting, see section 115 of the Penal Code. In addition, there is no basis for claiming aggravated damages. Alternatively, the damages must be reduced due to B's own conduct.

(8) *The Public Prosecution Authority* contends that the Court of Appeal's majority has based its judgment on a correct application of law. The utterances must be interpreted in the context in which they are made. The use of means, the defendant's status as a leader and his religious belief are all important interpretation factors. Neither the freedom of expression, the freedom of religion nor the requirement of clarity under criminal law, can exempt the defendant from criminal liability.

(9) *Counsel for the aggrieved party* contends that the aggravated damages awarded by the Court of Appeal must be upheld. B has been living under serious threats for a long time, which the implemented security measures confirm. There is no reason for reducing the damages due to contribution or other circumstances on the part of B.

(10) *My view on the case*

(11) The most serious offence in the indictment is item I concerning attack on the activities of the highest state bodies, see section 115 of the Penal Code. I start nevertheless with the question of whether the Court of Appeal has committed an error of law in count II of the indictment regarding threats, since this is essential for both counts of the indictment.

(12) The question is whether the utterances quoted in the basis for the indictment are covered by section 263 of the Penal Code. This brings about the question of how the utterances should be interpreted, and to which extent circumstances can be considered that do not appear directly in the text messages or in the video speech.

(13) It follows from long-standing case law that the Supreme Court has full jurisdiction to interpret and establish the meaning of a statement in order to assess its punishability, see the Supreme Court judgment in Rt-2012-536 paragraph 17 with further references to the plenary judgment in Rt-1997-1821 page 1826 and Rt-2002-1618 page 1626. These rulings concern interpretation of statements under section 135a of the Penal Code 1902 on hateful utterances, but what is expressed about the reach of the Supreme Court's jurisdiction will apply correspondingly in cases concerning threats under section 263.

(14) When interpreting a statement, certain facts of the case – which are part of the evidence – may also be significant for the understanding. The Court of Appeal's findings must be relied on by the Supreme Court in its interpretation, see the Supreme Court judgment in Rt-1997-846 page 848. I mention this because, during the Court of Appeal's hearing, expert witnesses presented their view on the content of religious words and expressions uttered by the defendant. While

the Court of Appeal's conclusions in this regard, based on the expert statements, are part of the assessment of evidence, the Supreme Court is to determine to which extent the utterances have a threatening content, as part of the application of law.

(15) *Section 263 of the Penal Code – legal starting points*

(16) Section 263 of the Penal Code on threats reads:

> **"Any person who by words or conduct threatens to engage in criminal conduct under such circumstances that the threat is likely to cause serious fear shall be subject to a fine or imprisonment for a term not exceeding one year.."**

(17) First, the wording clarifies that threats made by use of both "words" and "conduct" are covered. Furthermore, the threat must have been made "under such circumstances" that it is likely to cause serious fear. To me, it is clear from the wording alone that the context in which a statement is made is crucial to determine whether the conditions for criminal liability under section 263 are met.

(18) When interpreting the statements in the text messages and the video speech further, both the prosecutor and the defence counsel have applied case law relating to the former section 135a of the Penal Code 1902, currently section 185 of the Penal Code. With respect to this provision, it has been expressed in several rulings that the interpretation of a statement depends on how the general listener would understand it in the context in which it is made. However, no opinion must be ascribed to a person which he or she has not expressly stated, unless such an opinion can reasonably be derived from the context, see most recently the Supreme Court judgment in HR-2018-674-A paragraph 12.

(19) In my view, these starting points are not necessarily transferable to cases regarding threats. First, sections 185 and 263 of the Penal Code protect various interests. While section 185 belongs to the penal provisions for the protection of the public peace, order and security, section 263 is placed in chapter 24 that contains provisions for the protection of personal freedom and peace.

(20) When assessing the scope of the criminal liability for threats, the scope of intent is also crucial. If it is the offender's intent that the person to whom the utterance is directed perceives it as a threat, it is irrelevant how the general listener would interpret the same statement. At the same time, the requirement of intent defines the limits for criminal liability. Statements that in content or under the circumstances may be perceived as threatening within the meaning of the law, are only covered to the extent the offender's intent substantiates that a threat is being made.

(21) Against this background, the interpretation must be based on how the sender and the recipient perceive the meaning. The further assessment of whether threat is "likely to cause serious fear" depends on whether the statement is objectively suited to have that effect. Here, the content will of course be essential, but according to the wording in section 263 of the Penal Code, this assessment must also be made based on the specific context in which the threat is made.

(22) Such an approach is also applied in previous cases dealing with threats, see the Supreme Court judgments in Rt-2002-1207 and Rt-2008-1350. In the latter, which concerned section

227 of the Penal Code 1902, the following was stated regarding the condition "likely to cause serious fear" in paragraph 12:

> **"A conviction under this provision requires that the threat was made 'under such circumstances that it is likely to cause serious fear'. This is an objective principle – decisive is whether the threat was 'likely' to cause such fear. Crucial here is, of course, the content of the threat. However, whether or not the threat was 'likely to cause serious fear' relies not only on its content, but also on the context in which the threat was made. This follows directly from the wording, cf. 'under such circumstances'. I also refer to Rt-1974-205, where the Supreme Court emphasises that such an overall assessment is necessary, since the penal provision has in fact not been violated unless the individual circumstances caused fear that the threat would be executed."**

(23) To which I will revert, neither the text messages nor the video speech contain threats that *the defendant himself* will attack B. This is not a requirement under section 263 of the Penal Code, see Matningsdal, *Straffeloven* (the Penal Code) 2005: Commentary, section 263 note 2.3, *Juridika*, revised 1 July 2019. Statements that encourage others to criminal conduct are also covered, if other conditions are met. In the assessment of whether such statements are likely to cause serious fear to the person threatened, it is essential to whom and how the statements have been uttered. Under the circumstances, it may also be essential who has uttered them.

(24) The defence counsel contends that the statements originating from the offender's religious conviction must be interpreted in its religious context. I agree, but if a statement – interpreted in its religious context – in fact contains a threat of criminal conduct likely to cause serious fear, the religious context does not exempt the person making the statement from criminal liability.

(25) Statements covered by section 263 of the Penal Code are as a clear starting point also not protected by the freedom of expression in Article 100 of the Constitution and Article 10 of the European Convention on Human Rights, or by the freedom of religion in Article 16 of the Constitution and Article 9 of the Convention. The right to freedom of expression and religion may, however – as contended by the defendant's counsel – define the extent to which circumstances can be considered beyond what is directly stated. In my view, however, the punishability conditions in section 263 of the Penal Code, particularly those stating that the threat must involve criminal conduct and be likely to cause serious fear to the person threatened, imply that the mentioned rights seldom limits the criminal liability.

(26) With these starting points, I will turn to the individual assessment of whether the utterances in the text messages and the video speech are punishable under section 263 of the Penal Code.

(27) *The individual assessment of whether the utterances are covered by section 263 of the Penal Code*

(28) The Court of Appeal has accounted for A's motivation for sending the text messages and posting the video speech on YouTube. From this account, it appears that the reaction was triggered by a comment from B in a newspaper article in VG of 24 September 2016. In the article, B advised against implementing a ban of burqa and niqab, but held at the same time that Muslim women should stop wearing such clothing. Furthermore, B expressed that he felt sorry for Muslim women, and that he had even felt repulsion. The comments from B, who is a member of the Storting representing the Liberal Party, were a direct response to a proposal

from Labour Party of banning the use of burqa and niqab, thus they were part of the political debate.

(29) Angered by these comments, A sent the three text messages quoted in the indictment, without revealing himself as the sender. Neither the District Court nor the Court of Appeal has concluded that the text messages contain threats. The text messages are highly defamatory and represent a serious rebuke of B, but I agree that the messages – considered in isolation – do not have a threatening content.

(30) On the same day, B posted the text messages on Twitter. This attracted the media's attention, and messages were massively criticised for their contents. According to A's own testimony, the video speech was posted to counter this criticism. The Court of Appeal has also accounted for B's testimony. B found the messages very disturbing, but it was not until the sender was revealed in the video speech that he perceived them as threatening. B knew well who the sender was and saw him as a leadership figure in a radical Islamite environment consisting of people that could be willing to exercise violence. He found that the video contained hidden threats of serious reprisals, and he therefore reported it to the police.

(31) Central parts of the video speech are quoted in the grounds for the indictment. The Court of Appeal has not found it proven that the video speech contains direct threats of violence or other criminal conduct towards B. The question is therefore whether the utterances nonetheless represent indirect threats of criminal conduct covered by section 263 of the Penal Code.

(32) Like the Court of Appeal, I assume that there is consensus in Islamic legal theory that the Koran with associated jurisprudence, as a starting point dictates the death penalty, both for apostasy and for blasphemy. As explained by the appointed expert before the Court of Appeal, Islamite Salafist groups maintain this view. Based on A's testimony in the Court of Appeal, it is clear that he belongs to a religious group insisting on the death penalty for such offences. It appears that A modified himself in the Court of Appeal holding that the death penalty cannot be imposed in Norway, as Norway is not an Islamic state. The Court of Appeal's majority did not rely on this part of the defendant's testimony. On the other hand, the majority found it proven that the defendant belongs to a radical movement within Sunni Islam that supports private enforcement of the law. The private enforcement in question includes the death penalty for apostasy. The Court of Appeal argued the following:

> **"An attack on B is rooted in a radicalised understanding of the so-called hisba principle that any Muslim must work for the good and against the evil. The starting point in Islamic jurisprudence is that a decision by public authorities is required in order to punish a person who has violated Islamic rules, while radical hisba allows private enforcement of the law. Expert witness Kari Vogt states the following:**
>
> > **'A lay person has no authority to pass judgments or punish a person who has committed an offence. Yet, there are exceptions: To execute a person declared a murtadd, an apostate, without involving the courts and the public legal system, may be justified and legitimised by a radical interpretation of the hisba principle. Hisba ('control', 'assessment', 'balancing') refers to the believers' authority under the Koran to 'command the good and forbid the evil' (sure 3, 104, 112 and sure 22, 41). This means that if the public authorities avoid hearing cases (in this case apostasy/blasphemy) according to Islamic rules, or choose not to enforce Koran penalties, the believers may take the matter into their own hands to ensure that the penalty is enforced. According to classical law, it is not punishable for a layperson to kill an apostate/blasphemer. [...]'**

Hegghammer and Gule expressed the same understanding of the hisba principle."

(33) At the start of the video speech, the defendant's rant against B is highly degrading. In my opinion, the rant must be considered a continuation of the rebuke in the three text messages. The defendant does not approach B directly, but his "respected brethren in Islam". It is natural to assume that the defendant directs his speech at his fellow believers within the Islamite environment. This is also supported by the subsequent criticism against Norwegian imams, who, according to the defendant, have neither explained the consequences for an "apostate" or an "infidel", like B, nor "done anything with this case". The speech is also directed at those who have criticised the text messages, which means it was made for a wide audience.

(34) The real meaning of the video speech must be interpreted based on who the defendant is, and on his position as an authority and a scholar within the radical Islamite environment in Norway. This is essential for how the message in fact would be perceived by B, which is the key issue. B was well aware of A and his position in the Islamite environment. He is himself a Muslim, and understood the religious expressions used. B was also aware of radical Islamists' view of and practicing of sharia law. These were facts about B of which A, in turn, was also aware.

(35) I agree with the majority of the Court of Appeal that the utterances in the video speech go beyond establishing that B has committed acts that according to sharia are punishable by death. Nor is there a basis for concluding that the speech is merely a rebuke against B.

(36) When the defendant declares B an infidel and apostate, and a mocker of Islam, while making it clear that the Prophet's followers are severe against the disbelievers, and that no fatwa – a ruling under Islamic law given by a recognised authority – is needed to establish the consequences, it is clear that the defendant both legitimises and encourages violent attacks on B. My perception of the utterances is thus concurrent to that of the Court of Appeal.

(37) Based on its content, the threat is serious also because it legitimises and encourages enforcement of the death penalty for apostasy and blasphemy.

(38) Against this background, I agree with the majority of the Court of Appeal that A's utterances in the video speech are covered by section 263 of the Penal Code as they must be regarded as a threat to engage in criminal conduct.

(39) The way I perceive the content of the video speech, there is no doubt that the threat was also likely to cause serious fear. Apart from the content of the threat and the status of the defendant, it is crucial to the assessment that the speech was posted on YouTube and that it would immediately reach a high number of the defendant's fellow believers in the radical Islamite environment. This gave reason for B to fear that someone in the environment might put the threat into action.

(40) Threats of such a gravity are not protected by the freedom of expression or freedom of religion.

(41) In my opinion, one could ask whether the offence should rather have been punishable under section 264 of the Penal Code on aggravated threats. However, the parties have not expressed any views to that effect during the appeal hearing, see section 38 subsection 3 of the Criminal

Procedure Act. In light of the fact that the indictment also concerns violation of section 115 of the Penal Code – which is a more serious offence – I do not consider it necessary to address this further.

(42) Thus, the appeal against the application of law under count II of the indictment should be dismissed.

(43) *Section 115 of the Penal Code – attack on the activities of the highest state bodies*

(44) Count I of the indictment concerns violation of section 115 of the Penal Code, which reads:

> **"A penalty of imprisonment for a term not exceeding 10 years shall be applied to any person who by force, threats or other illegal means puts the King, the Regent, the Government, the Parliament, the Supreme Court or the Court of Impeachment, or a member of these institutions, at risk of being hindered or affected in their activities.."**

(45) The purpose of the provision is to protect fundamental national interests. The protection of the Storting and its members contributes to protecting the democracy, see Proposition to the Odelsting No. 8 (2007–2008) page 125:

> **"It should still be so that an offence against single members of the Storting and the Government with the purpose of hindering their activities as such, must be regarded as an offence against the constitutional authorities. Protecting these members contributes to protecting the democracy. The fact that it is sufficient for punishment that there is a risk that they are hindered or are affected in their activities, means that it is punishable for instance to exercise violence or make threats that are likely psychologically or physically to prevent or affect their activities."**

(46) The former provision in section 99 of the Penal Code 1902 applied originally only to the state bodies as such, and not the individual members and their activities. The provision on this point was extended by Act 28 July 2000 No. 73. The background for the extension is set out in Proposition to the Odelsting No. 40 (1999–2000) page 97 et seq. The Ministry here quotes a proposition from the Norwegian Police Security Service – previously POT – to strengthen the criminal law protection of individual members of the Government:

> **"Our national politicians – and in particular the members of the Government – currently participate actively in the political life without appearing in any of the state bodies mentioned in section 99. There can be no doubt that in a democracy, it must be an important stately task to protect the right of members of the Government to participate in the political debate and share their opinions without risking threats of violence. National politicians' participation in other political arenas than the formal governmental bodies should, in POT's view, also be covered by section 99 of the Penal Code."**

(47) The Ministry agreed that the consideration for the democracy implied that members of the Government should be given a stronger criminal law protection against threats, see the Proposition page 97. This must, as I see it, apply equally to members of the Storting, who were also included in the amendment.

(48) The Proposition says the following about the scope of the protection on page 105:

> **"The second sentence will only cover threats against the member of the Government, the member of the Storting or the Supreme Court justice. But the provision will give protection for the political activities performed by members of the Storting or member of the**

Government outside of the Storting and the Government, and which are naturally related to their function there."

(49) In the Penal Code 2005, the provision is further extended, as affecting a member of a public body is put on a par with preventing the member's activities, see Proposition to the Odelsting no. 8 (2007–2008) page 303.

(50) The way I perceive the content of the video speech, there is no doubt that A, by the use of threats, has caused a risk that a member of the Storting is affected in his activities. The Court of Appeal's majority has also found it proven that the threats were made against B in his capacity of a member of the Storting, and gave this reasoning:

> **"Moreover, the interview in VG from 2016 that motivated the defendant to send the text messages, was given in B's capacity as a politician. The article had a photo of B standing in front of the Storting, referred to as 'member of the Storting'. B gave his opinion on a national prohibition against the use burka and niqab, which had been proposed by other members of the Storting.**
>
> **Overall, the majority is convinced that the defendant was well aware of B's role as a member of the Storting. (…)**
>
> **It is also clear that the threats in the video speech were likely to affect B in his activities at the Storting, and that the defendant acknowledged this. Such threats of serious reprisals due to political statements as concerned in the case at hand, may obviously have a restrictive effect on the performance of tasks as a member of the Storting and reduce the will to openly express one's opinions."**

(51) Against this background, A's appeal against the application of law under count I of the indictment should be dismissed.

(52) *The sentence*

(53) I will now turn to A's appeal against the sentence. The sentence is meted out mainly based on the violation of section 115 of the Penal Code on attack on the activities of the highest state bodies. The provision lays down a maximum penalty of 10 years of imprisonment. Since A has also been convicted of threats under section 263 of the Penal Code, section 79 subsection 1 (a) of the Penal Code will apply.

(54) In my view, directing serious threats against a member of the Storting due to opinions that he or she has expressed in a political debate, represents the very essence of criminal liability under section 115 of the Penal Code. A well-functioning democracy requires that the elected representatives of the people may exercise their duties without fear of retaliation. Threats of the nature we are dealing with in the case at hand are in fact an attack on the core values of an open and democratic society. This implies that a longer immediate prison sentence must be imposed.

(55) Former rulings under section 115 of the Penal Code and the provision in section 99 of the Penal Code 1902 concern non-comparable cases, which in my opinion do not give guidance to the sentencing.

(56) It is an aggravating circumstance that the threats are made through a video speech posted on the Internet, encouraging a large group of people to implement serious reactions against B. This is a type of threat that is suited over time to create considerable insecurity and fear, since

the aggrieved party does not know when, from whom and where a potential attack may come. It is clear that the threat is likely to affect B in his activities as a member of the Storting, and thus a part of the Storting's activities. As the speech was published on the Internet, the threat has also no expiry date and will burden B for a long period of time. He has also been forced to live under long-term protection by the Police Security Service because of the threat. The video speech is thoroughly planned and staged, and is not an act of impulse.

(57) I agree with the Court of Appeal's majority that also the violation of section 263 of the Penal Code in this case must have a noticeable effect on the aggregate sentence, considering the gravity of the threat and the manner in which it is made. In my view, it is important that we react strictly to threats made against any politicians participating in the political debate, also outside the area of application of section 115 of the Penal Code. Although they are not members of the Storting, their protection is equally essential for a well-functioning democracy.

(58) The defence counsel has submitted that the time use must be emphasised as a mitigating factor, to which the prosecution has agreed. The offence was committed in September 2016. There have been no lay time in the case. The main hearing in the District Court was also postponed once due to the defendant's absence. I cannot see that the total length of the proceedings in this case should give any reduction in the sentence. Due to the nature of the video speech, it was necessary for expediency purposes to seek expertise for the interpretation, which, naturally, took some time.

(59) The prosecutor has submitted that a correct sentence would be closer to three years, but has claimed two years and six months after credit for lengthy proceedings. I agree that a correct sentence level would be as the prosecutor suggests, but as a stricter sentence than that claimed by the prosecutor has not been discussed during the hearing, I find that the sentence should be in line with the prosecutor's proposal, see the Supreme Court judgment HR-2017-2415-A paragraphs 24 and 25. Thus, a sentence is imposed of two years and six months of imprisonment.

(60) A credit of 312 days is granted for time served in custody.

(61) *Aggravated damages*

(62) The legal basis for claiming aggravated damages is section 3-5 subsection 1 (b), cf. section 3-3 of the Compensatory Damages Act. Damages for non-economic loss in accordance with chapter 3 of the same Act is to compensate for physical harm and other personal injury. It follows from this that the violation of section 115 of the Penal Code, which is to maintain the interests of the public, is secondary in the assessment of the claim for damages.

(63) The damages are stipulated based on an overall discretionary assessment. Weight must be given to the objective gravity of the act, the aggrieved party's subjective perception of the offence as well as the scope and nature of the damaging effects caused, see the Supreme Court judgment in Rt-2010-1203 paragraph 39 with further references. Furthermore, it follows from this judgment, in paragraph 38, that aggravated damages under section 3-5 have a dual function. They function as a "penalty", while at the same time providing the aggrieved person satisfaction for the offence to which he or she has been subjected.

(64) No standard level of damages after abuse in the form of threats exists, nor is there a basis for establishing such a level, as the cases will be differ substantially.

(65) In the case at hand, B has been living under an imminent and serious threat for a long time. I have already accounted for the gravity of the threat and the consequences for B in the sentence.

(66) After an overall assessment, I have concluded that the aggravated damages of NOK 130 000 measured by the Court of Appeal should be upheld. There is no reason for reducing the amount due to contribution or other circumstances on the part of the aggrieved party.

(67) Against this background, the appeal against the measure of aggravated damages is dismissed.

(68) I vote for this

J U D G M E N T :

1. In the Court of Appeal's judgment, item 1 of its conclusion, the sentence is changed to 2 – two – years and 6 – six – months of imprisonment.

   A credit of 312 – threehundredandtwelve – days is granted for time served in custody.

2. Apart from that, the appeal is dismissed.

(69) Justice **Ringnes:** I agree with Justice Steinsvik in all material respects and with her conclusion.

(70) Justice **Matheson:** Likewise.

(71) Justice **Kallerud:** Likewise.

(72) Justice **Matningsdal:** Likewise.

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

J U D G M E N T :

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