SUPREME COURT OF NORWAY

J U D G M E N T

given on 28 May 2021 by the Supreme Court composed of

Justice Bergljot Webster
Justice Aage Thor Falkanger
Justice Espen Bergh
Justice Cecilie Østensen Berglund
Justice Erik Thyness

HR-2021-1155-A, (case nr. 20-178462STR-HRET)
Appeal against Hålogaland Court of Appeal's judgment 6 October 2020

A	(Counsel Halvard Helle)
B	(Counsel John Christian Elden)
C	(Counsel Øivind Sterri)
v.	
The Public Prosecution Authority	(Counsel Hugo Henstein)

(1) Justice **Bergh:**

Issues and background

(2) The case questions whether strip-searches in custody amount to a violation of Article 3 or Article 8 of the European Convention on Human Rights (ECHR), and, if so, whether this should be compensated by reduced sentences.

(3) In 2019, B, A, C and three other persons were indicted for importing, storing, acquiring or transferring significant amounts of drugs. According to the indictments, the acts had been committed as part of the activities of an organised criminal group.

(4) B and A were convicted by Nord-Troms District Court's judgment 29 November 2019. The parts of the judgment's conclusion concerning them read:

> "1. B, born 00.00.1978, is convicted of violation of section 232 subsection 2 first sentence, cf. section 231 subsection 1, cf. section 79 (c), cf. section 15, of the Penal Code and sentenced to eight years of imprisonment. A deduction of 636 days is granted for time served in custody.
>
> 2. B is sentenced to confiscation of NOK 2 375 000, see section 67 of the Penal Code.
>
> 3. A, born 00.00.1977, is convicted of violation of section 232 subsection 2 first sentence, cf. section 231 subsection 1, cf. section 79 (c), cf. section 15, of the Penal Code and sentenced to nine years of imprisonment. A deduction is granted of 766 days for time served in custody."

(5) Because C was extradited to Norway at a later point in time, a separate indictment was issued for him. He was convicted by Nord-Troms District Court's judgment 29 January 2020. The conclusion of the judgment reads:

> "C, born 00.00.1987, is convicted of violation of section 232 subsection 2 first penal option, cf. section 231 subsection 1, cf. section 79 (c) and section 15 of the Penal Code and sentenced to eleven years and six months of imprisonment.
>
> A deduction of 531 days is granted for time served in custody counted up to and including 29 January 2020.
>
> C is also sentenced to confiscation of NOK 900 000, see section 67 of the Penal Code."

(6) B, A and C appealed to the Court of Appeal. B originally appealed partly against the findings of guilt, but withdrew this part during the hearing. Consequently, his appeal concerned the sentence and the confiscation only. A appealed against the findings of guilt and the sentence. C appealed against the sentence. The hearing in the Court of Appeal was held jointly for all six defendants.

(7) On 6 October 2020, Hålogaland Court of Appeal ruled as follows on the parts of B, C and A:

> "1. Nord-Troms District Court's judgment 29 November 2019 is changed as follows on the part of B, born 00.00.1978:
>
> - The sentence is reduced to years and ten months of imprisonment. A deduction of 955 days is granted for time served in custody.
> - The confiscation amount is reduced to NOK 670 000.
>
> 2. Nord-Troms District Court's judgment 29 January 2020 is changed so that C, born 00.00.1987, is sentenced to eleven years of imprisonment. A deduction 782 days is granted for time served in custody.
>
> 3. A, born 00.00.1977, is convicted of violation of section 232 subsection 2 first sentence, cf. section 231 subsection 1, cf. section 79 subsection 1 (c), cf. section 15, of the Penal Code, and sentenced to ten years and six months of imprisonment. A deduction of 1 078 days is granted for time served in custody."

(8) All six defendants have appealed to the Supreme Court. On 16 February 2021, the Supreme Court's Appeals Selection Committee let the appeals from B, A and C proceed as concerned the deduction for time spent in custody due to the strip-searches. Leave to appeal was otherwise denied.

(9) Compensation for illegal strip-searches during custody was not at issue during the hearing in the Court of Appeal, but gained relevance due to the Supreme Court judgments 5 November 2020 HR-2020-2136-A and HR-2020-2137-A. B, A and C contend that they, like the defendants in these judgments, are entitled to extra deduction for time spent in custody, so that two incidents of illegal strip-searches give one day's deduction.

(10) The Public Prosecution Authority contend that no violation of the ECHR has taken place in this case, and that such a violation, if found, may be compensated by a declaratory judgement for violation.

(11) The case in the Supreme Court is conducted as a remote hearing in accordance with section 3 of the temporary Act of 26 May 2020 no. 47 on adjustments in the procedural set of rules due to the Covid-19 outbreak etc.

My opinion

The facts

Generally on the findings

(12) Since the strip-searches and their significance in the sentencing process have not been at issue in either the District Court or the Court of Appeal, the Supreme Court must base its ruling on evidence presented in the Supreme Court. Written statements have been submitted by B, A and C as well as statements from the relevant prisons. However, the prisons have presented only limited documentation related to the strip-searches. Their statements regarding the number of searches are based on uncertain grounds. The information as to how the searches have been executed builds on the prevailing practice until September 2020.

(13) The Public Prosecution Authority has accepted that the Supreme Court based on an analogous application of rely on the statements of the convicted persons as concerns the number of searches. Also when it comes to the execution of the searches, I understand that the Public Prosecution Authority accepts that the Supreme Court will largely rely on the statements of the convicted persons. This is in accordance with case law from the European Court of Human Rights (ECtHR) on evidence in cases concerning prison conditions. If the inmate is capable of making a reasonably detailed description of the allegedly degrading conditions of detention, the burden of proof is shifted to the State if the allegations are refuted, see the ECtHR Grand Chamber judgment 20 October 2016 *Muršić v. Croatia* paragraph 128.

(14) As I will return to, from September 2020, the practice was changed due to new guidelines from the Directorate of Criminal Administration. All strip-searches at issue in this case, and of which I will give an account, were conducted prior to this change.

B

(15) B was arrested in Serbia on 26 March 2018 and extradited to Norway on 18 April 2018. He has since been in custody – mostly in Åna prison. During the court proceedings, he has been detained in Tromsø prison.

(16) According to B, he has been subjected to at least 129 strip-searches, at least eleven in Åna prison and at least 118 in Tromsø prison. As mentioned, the Public Prosecution Authority has accepted these figures.

(17) As to the strip-searches in *Åna prison*, B has stated the following:

> "I have been subjected to **at least eleven strip-searches** during detention in Åna prison. I believe at least seven of them took place upon entry and exit, in connection with transfer to/from Tromsø prison. The remaining strip-searches must have been conducted in connection with cell inspections.
>
> All searches were conducted on a routine basis, without a prior concrete or individual assessment. During transport between the prisons, I was always escorted and watched by at least two police officers, also when I had to use the toilet. Strip-searches were also occasionally conducted during routine or random cell inspections."

(18) B has stated the following regarding the strip-searches in *Tromsø prison*:

> "I believe I have been subjected to a total of **118 strip-searches** during detention in Tromsø prison. One of the searches must have been conducted when I first arrived at the prison after transport from the prison in Serbia, seven upon entry or exit in connection with transport to and from Åna prison. The remaining searches took place in connection with visits from my lawyer or the police, before and after the hearings in the District Court and the Court of Appeal, and before and after the remand proceedings.
>
> All searches were conducted on a routine basis, and not based on concrete assessments or suspicions against me. This was confirmed by the note you receive, where it was ticket off for 'routine' as basis for the search."

(19) He has stated the following regarding the execution of the searches:

> "During all strip-searches, I have been forced to undress completely on my upper and lower body at the same time, and squat while supervised by two to three prison officers. One or more officers have also examined my clothes.
>
> In Tromsø, such a strip-search took place at least twice with a female officer present. Although she turned her back when I was naked, she examined my clothes, which was uncomfortable to me."

(20) In a letter of 25 March 2021 to B's defence counsel, Tromsø prison has described the execution of strip-searches as follows:

> "Legal basis for the searches was section 28 of the Execution of Sentences Act and pertaining guidelines. The searches were conducted on a routine basis, which was prevailing practice in the prison prior to 21 September 2020. During that period, strip-searches were conducted as the inmate had to undress completely for examination of all clothes and inspection of naked skin. The routine was for the searches to be executed as smoothly and quickly as possible. For instance, the underpants was the last piece the inmates removed and the first they put back on. On some occasions, the inmates only had to pull their underpants to their knees before allowed to put them back on. It is estimated that the inmates were completely naked for a maximum of 10–15 seconds. The strip-searches did not involve the use of a mirror, and the inmates were not requested to squat."

(21) Although the prison has stated that the routine did not involve squatting, I rely on, based on what has been pointed out, B's statement that he was requested to squat during the searches.

A

(22) A was arrested on 25 October 2017. He was initially detained in Tromsø prison, and from March 2018 until June 2019, he was in Vadsø prison. Since June 2019, he has once more been detained in Tromsø prison. During these periods, he has been subjected to 83 strip-searches in Tromsø and 57 in Vadsø, a total of 140. All searches were executed on a routine basis and in accordance with prevailing guidelines.

(23) A has stated that he, in both prisons, had to fully undress and squat during the strip-searches. I rely on this statement.

C

(24) C was arrested in Spain on 23 August 2018 and extradited to Norway on 15 October 2019. He has since been detained in Romerike prison, division Ullersmo. However, for some periods, he has been transferred to Tromsø prison. I trust that C has been subjected to 73 strip-searches.

(25) Ullersmo has kept a record of the strip-searches carried out, which shows a total of 16. Nonetheless, C asserts that the total number is 37. Based on what I have pointed out regarding the burden of proof, I will rely on C's statement.

(26) Ullersmo claims that the searches were only conducted in accordance with the guidelines, without a prior individual assessment. After the practice was changed in 2018, the prison conducted the strip-searches stepwise, which means that the inmate was never completely undressed. C has stated – which I trust – that he on some occasions had to squat during the search.

(27) In Tromsø prison, C was subjected to 36 strip-searches, all of which were executed on a routine basis. In Tromsø, C had to strip completely naked. His statement that he "on several occasions" was requested to squat, is taken into account.

The law

Rules and general guidelines in Norway

(28) The legal basis for strip-searches in prisons is section 28 of the Execution of Sentences Act. It follows from the first sentence that the criminal administration system may "inspect inmates … to prevent disorder or criminal acts. According to the second sentence, the inspection may be carried out by means of "strip-search", among other things.

(29) In Regulations 22 February 2002 no. 183 relating to the Execution of Sentences, section 3-25 subsections 1 and 5 read:

> "In order to prevent or register disorder or criminal acts, inspections of inmates themselves, their rooms and possessions may be carried out.
>
> …
>
> Inspections may be carried out upon arrival, at any time during execution of the sentence and before and after outings. Inspection of the inmate personally or his or her possessions on arrival and before and after outings may only be omitted if such omission is clearly not contrary to security requirements. Inmates who are released but who find themselves in the prison area, and persons who have not yet begun to serve their sentences, but who are present in the prison area, may be inspected."

(30) In other words, the starting point is that persons may be inspected both before and after outings. Such inspections may be carried out at any point in time. The Regulations do not state in which cases an inspection may be carried out by means of strip-search, where the inmate must partially or fully undress.

(31) Until September 2020, prevailing criminal administration guidelines largely allowed inspections of the inmate's person, also by means of strip-searches. In guidelines to section 28 of the Execution of Sentences Act, revised 27 October 2008, the following was stated:

> "Inspections may be carried out on a routine basis and by spot checks. This implies that neither suspicion of any of the above offences nor an individual assessment is required in order to carry out such inspections.
>
> Inspections may be carried out in the form of checks, searches, strip-searches and ransacking. …
>
> Inspection must be executed as smoothly as possible. …"

(32) The Directorate of Criminal Administration's letter 21 September 2020 gave instructions on change of practice. In the letter, the Directorate mentioned Gulating Court of Appeal's judgment 10 July 2020, LG-2019-161767, and expressed that the judgment "clearly shows that strip-searches may amount to a violation of the ECHR".

(33) The Directorate also mentioned the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), where Rule 52 No. 1 reads:

> "Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the inmate."

(34) The Directorate pointed out that although these rules are not intended to be legally binding, "they are an expression of consensus on minimum rules for the treatment of inmates world-wide".

(35) Then, the Directorate stated:

> "The Directorate has long been familiar with the criticism towards the practice of routine strip-searches of the inmates, including the criticism from the Parliamentary Ombudsman after visits to high-security prisons. The criminal administration previously believed that routine searches may be justified by general risk considerations, and if the assessment should only be based on the individual conditions relating to the inmate and/or the visitors, this could by far undermine the security aspect such inspections are meant to maintain. However, the Directorate now finds that, as of today, the scope of the practice cannot be justified by such considerations."

(36) Against this background, the Directorate recommended the following practice, referred to as preliminary guidelines:

> "Strip-searches of inmates, i.e. searches involving stripping and inspection of the naked body, shall not be carried out *on a routine basis*. The necessity of a strip-search must in any case depend on a concrete and/or individual assessment. Furthermore, the measure must be proportionate. This implies that a balance must always be struck between the necessity and the intrusiveness of the measure."

Article 93 subsection 2 of the Constitution and Article 3 ECHR

(37) The defendants contend that in this case, strip-searches have been executed contrary to the prohibition against degrading treatment in Article 3 ECHR and Article 93 subsection 2 of the Constitution.

(38) Article 3 ECHR reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

(39) The provision applies as Norwegian law, see sections 2 and 3 of the Human Rights Act. The same prohibition follows from Article 93 subsection 2 of the Constitution, which states that "[n]o one may be subjected to torture or other inhuman or degrading treatment or punishment". It is the "degrading treatment" option that is relevant in the case at hand.

(40) ECtHR case law is also crucial for the interpretation of Article 93 of the Constitution, and I will therefore base my assessment on the ECHR and present ECtHR case law.

(41) As stressed in the Supreme Court's Appeals Selection's decision 8 June 2017, HR-2017-1127-U, paragraph 11, Article 3 ECHR contains rule-of-law values and respect for human dignity, both of which constitute the pillars of the ECHR.

(42) I paragraph 12, the further content of Article 3 is described as follows:

> "In its case law, the Court of Human Rights emphasises that in order for the prohibition in Article 3 to apply, a 'minimum of severity'/'un minimum de gravité' is required, see for instance the Grand Chamber judgment 26 October 2000 in *Kudla v. Poland* paragraph 91. Whether the threshold of severity has been reached depends on an overall assessment, taking into account, inter alia, the nature of the treatment and its context, its duration, the physical and mental effects on the person subjected to it, and, in some cases, also the sex, age and state of health of the person, see the Grand Chamber judgment 15 December 2016 in *Khlaifia and Others v. Italy*, paragraphs 159-160. The purpose of the treatment is a central factor; strong indications of a violation would include circumstances where the intention was to humiliate or debase. Even for legitimately justified measures, however, Article 3 establishes a threshold, insofar as the nature, intensity or duration of these measures exceed what is necessary or in other ways cause disproportionate suffering, see the Grand Chamber judgment 28 September 2015 in *Bouyid v. Belgium* paragraphs 86-88.

(43) The Supreme Court's judgment 5 November 2020, HR-2020-2136-A, discusses ECtHR case law with regard to the application of Article 3 ECHR to strip-searches in prison.

(44) Justice Kallerud emphasises in paragraph 100, as also expressed in my quote from HR-2017-1127-U, that the establishment of a violation requires a minimum level of severity. Also, the interference must go beyond the inevitable burdens of the treatment or punishment. In ECtHR judgment 22 October 2020 *Roth v. Germany* concerning strip-searches, this is expressed as follows in paragraph 64:

> "Furthermore, the suffering and humiliation must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment …."

(45) In HR-2020-2136-A paragraph 108, Justice Kallerud makes this summary of ECtHS case law:

> "It follows clearly from my brief references to ECtHR case law that a number of factors must be included in the assessment of whether an inmate has been subjected to degrading treatment. Particularly relevant in the case at hand is that strip-searches in prison may be accepted for security reasons and to maintain order. But a reasonable basis is required. Routine strip-searches without further justification have been considered incompatible with Article 3. The inspection must be carried out with due respect for human dignity. The purpose must not be to degrade the inmate."

(46) I rely on this summary, but wish to elaborate on some points.

(47) The ECtHR agrees that a strip-search, even if it in itself is an intrusive measure towards the individual, in many cases must be accepted for security reasons and to maintain order in the institution.

(48) In my view, the ECtHR judgment 12 June 2007 *Frérot v. France* is illustrative. In paragraph 40, the prevailing routines are described as follows:

> "The inmate must undress completely. The officer in charge of the search examines the inmate's hair, ears and mouth; the inmate has to open his mouth, cough, lift his tongue and 'where necessary' remove any false teeth. The officer also checks the inmate's armpits by making him raise and lower his arms, before inspecting the hands, asking him to keep the fingers apart; the feet are also examined, in particular the arch of the foot and the toes. The inmate must also spread his legs apart so that the officer can ensure that no objects are being concealed in the crotch area. Lastly, 'in the specific case of searches for prohibited objects or substances', the inmate may be required to bend over and cough (with the buttocks facing the officer carrying out the search, clearly in order to permit a visual inspection of the anus) …."

(49) The ECtHR acknowledged in paragraph 41 that the inmate may perceive such a strip-search as a violation of dignity. The routine was nonetheless described as generally appropriate. The Court continues:

> "Viewed in isolation, a strip-search conducted in that manner, which in practical terms is necessary to ensure prison security or prevent disorder or crime, is not incompatible with Article 3 of the Convention; unless there are special circumstances relating to the situation of the person undergoing them, it cannot be said that in principle such searches involve an element of suffering or humiliation going beyond what is inevitable …."

(50) In other words, the routine could be considered unacceptable on a general basis. This applied despite the searches in this prison being perceived as intrusive, as they could involve a duty to bend over and cough to facilitate inspection of anus.

(51) Whether there has been a violation of Article 3 ECHR depends on an assessment of several factors. As emphasised in my quoted from HR-2020-2136-A paragraph 108, the ECtHR has placed great emphasis on the justification provided for the execution of strip-searches. If strip-searches are carried out on a routine basis without any risk analysis, the ECtHR has in many cases found a violation. This applies both where the inspections are carried out as a regular practice and where they are randomly selected.

(52) The ECtHR's finding of a violation in *Frérot* derived from such an assessment. The Court emphasised in paragraph 47 that the inmate had been detained in many prisons, but that only this one practiced the routine described. Furthermore, the inspections were not based on a concrete suspicion in each case. The Court noted:

> "In fact, it appears from the applicant's undisputed submissions that in the prison concerned, when detainees were searched after each visit, they were systematically ordered to 'bend over and cough'. In other words, there was a presumption in that prison that any inmate returning from the visiting room was concealing objects or substances in the most intimate parts of his strip."

(53) Strip-searches were in other words executed as a routine, after each visit.

(54) Also in the more recent *Roth* judgment, handed down on 22 October 2020, it seems that the ECtHR emphasised the fact that the strip-searches were not based on any individual risk assessment. The Court emphasised in paragraph 70 that "[n]o concrete security concerns relating to the applicant had either been discernible or brought forward by the domestic authorities". It is set out that, in this case, the strip-searches were conducted on a random basis against one in five prisoners at the relevant time. The searches were also executed in connection with visits from public officials, including from court clerks to prepare for the criminal case.

(55) The fact that ECtHR case law aims at routine executions of strip-searches cannot imply that a concrete assessment is required in each case, and for each individual inmate. Crucial in this regard must be that both the wording of the rules and routines and the way they are practiced build on an assessment of the present risk, balanced against the dignity of the inmates.

(56) I also note that the rulings from ECtHR finding a violation of Article 3 ECHR mostly concern routine inspections after visits in the prison. Although the judgment of 4 February 2003 *Van der Ven v. the Netherlands* also concerned searches after trips to the hairdresser, dentist and similar, the case seems to center around the very strict security measures the applicant had been subject to. As far as I can see, none of the rulings concerns initial remand in custody or passing in our out where the defendant has not been subject to regular supervision or other security measures.

Individual assessments

Has there been a violation of Article 93 subsection 2 of the Constitution and Article 3 ECHR?

(57) The strip-searches in the case at hand were mainly conducted in the same manner as in HR-2020-2136-A and HR-2020-2137-A. The defendants had to undress completely and squat. The way the searches were executed here and in the previous cases in the Supreme Court may appear slightly less intrusive than in the more central ECtHR cases, see my presentation of the facts in *Frérot*. Nonetheless, it involves measures placing the inmate in a situation that may be perceived as degrading. As also reflected in the mentioned Supreme Court rulings, such differences in execution alone cannot be decisive to the assessment under Article 3 ECHR.

(58) The strip-searches in this case were conducted according to prevailing routines in the relevant prisons at the relevant time. As pointed out, all searches were executed before the practice was changed in September 2020. All three defendants have remained in custody since then, but according to information provided, none of them has been subjected to strip-searches.

(59) For all three defendants, it must be assumed that the strip-searches were conducted on a routine basis upon entry and exit of the prison or in connection with visits, regardless of which control measures were otherwise implemented. A search was also executed in connection with transfers from one prison to another, despite the inmate being under constant supervision. It has not been demonstrated that the searches were based on a concrete suspicion that the defendants might bring something into or out of the prison. Hence, no individual assessments were carried out related to each inmate or to the circumstances in each case, or to the conditions in the prison.

(60) The three defendants were charged with serious drug crimes. One might say that this generally implied an increased risk of attempts to bring drugs into the prison. From what I have pointed out, however, such a presumption cannot justify the execution of routine strip-searches without a concrete assessment. Also, no documentation has been presented by the prisons that the suspicion of serious drug crime was in fact emphasised in the decisions to carry out strip-searches.

(61) For *C*, there are some extraordinary circumstances. According to information provided, he delivered a urine specimen on 23 October 2019, testing positive for THC acid. Furthermore, a blood test of 16 November 2019 revealed a concentration of alcohol of 0.46 per thousand. Such circumstances could clearly justify strip-searches of an inmate in certain situations within a limited period of time. In this case, however, nothing indicates that the positive tests were part of the reason for strip-searching C in Romerike prison, Ullersmo division.

(62) Ullersmo has also stated that the searches of C were conducted stepwise, which must be regarded as making the measure slightly less intrusive. The Directorate of Criminal Administration's preliminary guidelines of 21 September 2020 concludes the same when stating in item 3:

> "In cases where strip-searches are considered necessary, the searches must always be conducted stepwise. This implies that the inmate must never be completely naked, but be given the chance to dress their upper body before undressing their lower body."

(63) The fact that some of the searches of C follow this procedure is in any case not sufficient for excluding them from the assessment of whether Article 3 ECHR has been violated.

(64) For all three defendants, it is crucial for the balancing towards Article 3 ECHR that the strip-searches have generally been executed on a routine basis. In my view, the fact that the number of searches is lower than the numbers in HR-2020-2136-A and HR-2020-2137-A, 617 and 506 respectively, cannot be decisive as long as the number of searches in any case is high.

(65) My conclusion in consequently that the three defendants have been subjected to violations of Article 93 subsection 2 of the Constitution and Article 3 ECHR.

(66) It is clear that a strip-search may also involve a violation of Article 8 ECHR, see HR-2020-2136-A paragraph 107 with a further reference to the ECtHR judgment 1 June 2017 *Dejnek v. Poland*. Since I have found that Article 3 ECHR has been violated, there is no reason for me to discuss Article 8.

Compensation and the deduction for time spent in custody

(67) When a violation of Article 3 ECHR is found, the defendants are entitled to "an effective remedy", see Article 13 ECHR and the discussion in *Roth* paragraph 75 et seq. With the high number of strip-searches in question, a declaratory judgment for violation may not be sufficient.

(68) In HR-2020-2136-A and HR-2020-2137-A, compensation was granted by means of deducting one extra day for time spent in custody per two illegal strip-searches, see HR-2020-2136-A paragraphs 113 and 114. The parties agree that to the extent a violation of Article 3 ECHR is found, compensation should be granted in the same manner.

(69) Consequently, the compensation is set to a deduction of 65 extra days for B, 70 extra days for A and 37 extra days for C.

(70) The defendants are still in custody.

(71) For B, the parties agree that the deduction granted for time spent in custody per 12 May 2021 was 1 173 days. With the addition of 16 days until the handing down of the judgment and the extra compensation of 65 days, the deduction will be 1 254 days.

(72) For A, the parties agree that deduction granted for time spent in custody per 12 May 2021 was 1 296 days. With the addition of 16 days until the handing down of the judgment and the extra compensation of 70 days, the deduction will be 1 382 days.

(73) For C, the parties agree that deduction for time spent in custody per 12 May 2021 constituted 1 000 days. The parties further agree that he is to be granted another 6 days due to isolation in connection with the Covid-19 pandemic. With the addition of 16 days until the handing down of the judgment and the extra compensation of 37 days, the deduction will be 1 059 days.

Conclusion

(74) I vote for this

J U D G M E N T :

1. For B, item 1 of the conclusion of the Court of Appeal's judgment is changed so that the deduction for time spent in custody is set to 1 254 days.

2. For A, item 3 of the conclusion of the Court of Appeal's judgment is changed so that the deduction for time spent in custody is set to 1 382 days.

3. For C, item 2 of the conclusion of the Court of Appeal's judgment is changed so that the deduction for time spent in custody is set to 1 059 days.

(75) Justice **Thyness:** I agree with Justice Bergh in all material respects and with his conclusion.

(76) Justice **Østensen Berglund:** Likewise.

(77) Justice **Falkanger:** Likewise.

(78) Justice **Webster:** Likewise.

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

J U D G M E N T :

1. For B, item 1 of the conclusion of the Court of Appeal's judgment is changed so that the deduction for time spent in custody is set to 1 254 days.

2. For A, item 3 of the conclusion of the Court of Appeal's judgment is changed so that the deduction for time spent in custody is set to 1 382 days.

3. For C, item 2 of the conclusion of the Court of Appeal's judgment is changed so that the deduction for time spent in custody is set to 1 059 days.