The significance of honour for sentencing in partner killing

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ABSTRACT  Honour-related violence is the subject of this article, which is based upon Nasim Karim’s Master’s thesis in jurisprudence, Partnerdrap – familietragedie eller æresdrap (2015). Karim discusses sentencing in partner homicides. This article supplements Figueiredo’s contribution. The two murder cases Karim discusses take place in locations in Norway, and both murders are committed by the spouse. Nevertheless, the first case is designated as an honour killing, while the other case is referred to as a family tragedy.

KEY WORDS  honour | values | honour killing | family tragedy

Two women are killed. One when a man of Afghan origin fires six shots at her with a revolver (Rt 2004-750). The other when an ethnic Norwegian hits her over the head with a thermos flask (Rt. 1992-1994: 1095). In both cases, murder is committed.

The woman who is shot dies almost immediately. The other woman dies, according to the post-mortem report, more slowly, and as a result of sustained and massive violence. The murders take place in Norway. What the two murders have in common is that the perpetrator is the woman’s ex-husband. Even so, one of the murders – the revolver murder – is termed an honour killing (Rt. 2004-750), while the other – the thermos flask murder – is termed a family tragedy (Rt. 1992-1095). The perpetrator who shoots his wife must serve eighteen years for the murder, and the other must serve eight years, for beating his wife to death with a thermos flask.

Two men commit murder. And yet the punishments differ so much. Why the differences in the sentences? Why does the sentencing differ so substantially, in apparently similar cases?

*  This article is translated by Richard Burgess.
This article is based on my Master’s thesis, *Partnerdød – familietragedie eller æresdød* [Partner killing – family tragedy or honour killing] (UiO, 2015). Here, I examined the role played by honour in sentencing cases of partner killing. I wanted to chart the structures and interpretations that underlie the legal communicative commonality, where honour killing and partner killing are concerned. In my thesis, I charted the grounds given for the respective sentences in such murder cases. Then I investigated whether there were any patterns for how the sentencing, in cases of partner killing, was arrived at. I compared partner killings perpetrated by ethnic Norwegians with those of other backgrounds, referred to as men from ethnic minorities. By comparing results, I wanted to find out why similar cases could result in such widely differing sentences, eighteen versus eight years imprisonment (cf. Rt. 2004-750 and Rt. 1992-1059). At the same time, this would give me insight into whether honour played any role in the sentencing of cases of partner killing.

The thesis is built on judgements delivered by Norwegian District Courts, Courts of Appeal, and the Supreme Court over a period of thirty years, from 1983–2013. During these thirty years, Norwegian courts passed judgement on 112 cases of partner killing that fulfilled my criteria. That is, cases where the perpetrator succeeded in killing his ex-wife, ex-common-law-partner or ex-girlfriend. The fact that 112 such cases fulfilled my criteria doesn’t mean that this is the actual number of people killed in this period. Several cases may have been dropped because of the perpetrator’s disappearance, or because the necessary information or proof is lacking, and other cases may be under investigation.

In order to get to the bottom of this discrepancy in sentencing, it was necessary to study the tool used to explain the grounds of judgement. The only tool a judge has at his/her disposal to express the jurisprudence here is language. I did a discourse analysis of two selected cases. In the case from Rt.1992-1094, the homicide was carried out by an ethnic Norwegian, while in the case from Rt-2004-750, the offender was an Afghan, that is, from an ethnic minority. By studying the judges’ use of words and expressions in their judgements, the aim was to understand their thinking, as well as to illustrate the significance of the background of the case for the judges’ interpretation of them. In this way I could gain insight into the thought processes that may have taken place, and the role these may have played in the sentencing.

**DISCOURSE ANALYSIS**

Discourse analysis is an appropriate tool for shedding light on developments and attitudes within a particular field. By using this research method, I was able to go
more deeply into particular texts and analyse the significance of words and expressions in them. At the same time, the method can accentuate, and perhaps even expose, the self-understanding they are predicated on. This can help explain why similar actions are evaluated similarly or differently, while at the same time pointing to the understanding that underlies the assessment of the seriousness of the crime. The method allowed me to show the interpretation of circumstances as they were presented in the judgements.

My analysis was further inspired by Gunnar Grendstad, professor of political science and a researcher at the University of Bergen. He argues that research into the behaviour of judges in Norway reveals that court dissents are the result of the attitudes and characteristics that every judge brings with him/her into the profession (Grendstad Shaffer og Waltenburg 2001, 73–101). ‘Selv om dommerne er forelagt de samme juridiske fakta i en sak, kommer de likevel frem til ulike resultater. I slike tilfeller må det være noe annet enn de rent juridiske fakta som påvirker dommerne i deres beslutningstaking’ [Although judges are presented with the same legal facts in a case, they arrive at different conclusions. In such cases it must be more than the legal facts themselves that influence the judges in their decision-making] (Grendstad, Shaffer og Waltenburgh, 1945–2009).

That the behaviour of judges is expressed in the language of judgements is reflected in Supreme Court justice Kristi Coward’s statement in the magazine, Rett på sak (2010), that ‘[s]pråket i dommen kan si noe om hvordan dommeren har tenkt’ [t]he language in judgements can tell us something about the thinking of the judge]. Her point is that the use of words and expressions can tell us anything about the attitude of a judge, and thus reflect the sentencing in the case. In this way, it can be clarified whether the background context has any significance for the fixing of sentences in cases of partner killing. By studying the use of, for example, adjectives and value-laden words, or by analysing how sentences were constructed, I gained insight into how judgements aimed to amplify particular circumstances. Can the language used in court decisions tell us something about the behaviour of judges? Are there grounds for criticising judgements, and suggesting that courts treat comparable cases differently, or that minorities are punished more severely than Norwegians?

**LANGUAGE AS A TOOL FOR LAWYERS: THE FORMAL AND OBJECTIVE CLAIM VS. THE NEED FOR INTERPRETATION**

‘Språket er tankens verktøy, og skriveprosessen bidrar til å styre tanken’ [Language is the tool of thought, and the writing process helps to govern thinking]
A judgement is an important document, and the wording of a judgement is therefore correspondingly important. A judgement has significance for many more that those referred to in the case, and this in itself points to the importance of caution and awareness in the choice of words and expressions. The judgement should have a professional wording, and use language that, in addition to being professional, reflects objectivity, rather than the attitudes of the judge. This is also expressed in the specification of the judge’s professional competence, and the position a judge is accorded (Domstoladministrasjonen, retningslinjer for dommerskikk, jf. Etiske retningslinjer for god dommerskikk) [National Courts Administration, guidelines for judging practice, cf. Ethical guidelines for good judging practice] 2005.

There are guidelines, but no model for the language in judgements, which means that it is difficult to show deviation when the individual elements are not clarified to start off with. What is clear is that a judgement should be formal, objective and justificatory. In any case, a formal and objective approach will instil more confidence in the courts and decisions made in their jurisdiction, and be explanatory. Moreover, the importance of the duty to justify is pointed out in NOU 2011:13 8.4.2. The mandate expresses the importance of this duty in the following terms:

En skriftlig begrunnelse gir innblikk i hva som har motivert avgjørelsen. Man kan si at begrunnelsen forutsetter å speile overveielserne. Den viser partene at deres argumenter er forstått og vurdert og hever kvaliteten på avgjørelsen ved å fremme en reell og samvittighetsfull prøving uten at usaklige eller irrelevante momenter trekkes inn. At begrunnelsen gjør det mulig å kvalitetssikre avgjørelsen, er en sentral rettsstatsgaranti.

[A written justification provides insight into what motivated the decision. It could be said that it is taken for granted that the justification reflects the deliberations. It shows the litigants that their arguments have been understood and evaluated, and it increases the quality of the decision by promoting a real and conscientious hearing without reference to biased or irrelevant elements. It is central guarantee of a state governed by the rule of law that the justification makes it possible to ensure a quality control of the decision.]

The purpose of the judgement’s wording is to portray reality, while at the same time, according to the Criminal Procedure Act of 1981-05-22-25 §39 and §40 fifth paragraph, giving an account of the main points in the court’s assessment of evi-
dence for imposing sanction. The law does not state what is needed to meet the requirements of such an account of the main points, and it is not evident in other rules either, but is governed by convention.

The court administration’s guidelines for best practice in judgement gives a comprehensive account of what a judge must take into account in reaching a judgement. The judgement should be constructed with the aim of expressing prevailing laws in the area, and the correct use of them. At the same time, it has an authoritative and representative significance, in that it expresses the thinking and the attitude of the courts. A judgement is connected to the courts’ official view of events.

In law studies, there is also an awareness of the imprecision and ambiguity of language. Changes in meaning over time and the use of specialist terminology are some of the factors that require legal sources to be interpreted (Eckhoff and Helgesen 2007, Rettskildelære). The rule of thumb for interpreting legal documents is to use an everyday understanding of the language. Legal usage, judicial theory, custom and legislative history help to clear up ambiguities.

Norwegian lawyers follow a framework for the sources of law, developed by Torstein Eckhoff, that accounts for how changes in meaning over time should be dealt with, and how specialist terminology should generally be interpreted. The law is used as a basis for different types of interpretation, such as interpretation through definition, interpretation through specification, interpretation through expansion, interpretation through analogy, and so on. Andenes, Boe, Lodrup, Eckhoff and others carefully explain how a word or an expression can be understood in a text. Interpreting the meaning of a legal judgement is neither a new nor alien phenomenon for lawyers or judges, but the method does not appear to be the same. The point I am making is that both lawyers and judges know the importance of the use of words, what they can imply, and how important it is that the neutrality and independence of the court be reflected in its decisions, its statements and its actions.

If a judgement is delivered, it will, in the last instance, have significance for the development of law, and contribute to legal clarification. Audun Kjus has done research into narrative strategies in criminal proceedings. In his book, Sakens fakta [The Facts of the Case], he gives an account of eleven cases, and concludes that the provisions of the Criminal Procedure Act § 40, fifth paragraph, were not met in any of the judgements (Kjus 2007). The same point is made by Arild Linneberg (Dragvoll, Ekeland and Linneberg 2014, 68). Both Linneberg and Kjus argue that the judgement is a summary of the judge’s interpretation, in which the judge uses words and expressions to create confidence in his decision, and a social
acceptance, that is important for the survival of a judicial system. The courts will lose their significance if the victim and others take the law into their own hands to reach a just solution.

This acceptance is established by the judge’s portrayal of the offender, and characterisation of events for the reader. According to Kjus, Linneberg and Hans Petter Graver, an exposition of the words and expressions used in a judgement can shed light on the court’s interpretation of the case – not only with regard to what is said, but also what is not said in judges’ deliberations (Kjus 2007; Dragvoll, Ekeland and Linneberg 2014). Language is a tool used to present a case, and judges, too, make use of interpretation and language. This point is underlined in an article by Jens Arup Seip published in Lov og Rett in 1965:

[D]ømmeren tolker loven, men en lov er et bøyelig instrument. Den kan tolkes, den må tolkes, og i tolkningen er det ofte flere veier å gå. Dømmerens avgjørelser skaper nye normer, nye lover. Det hender at han må dømme hvor ingen lov er, det hender han dømmer på tross av hva en lov sier. (Seip 1965, 1)

[The judge interprets the law, but the law is a flexible instrument. It can be interpreted, indeed it must be interpreted, and in its interpretation there are several paths to choose between. The judge’s findings create new norms, new laws. Sometimes he must judge where there is no law, sometimes he judges in spite of what the law says.]

This sort of statement and legal usage can give the impression that a judge has no hard and fast guidelines for how sentencing should be done in criminal cases. The judge uses the arguments and factors he finds justifiable, and that appear legally correct, and thus the law is used in accordance with the judge’s understanding of the case.

CATEGORISING HOMICIDE

My examination of the two cases of partner killing, or jealousy killing, illustrates the dilemma. Two men kill their wives, one a Norwegian, the other an immigrant. One is regarded as a family tragedy, and the other as an honour killing. The terms ‘honour killing’ and ‘family tragedy’ are used to designate the same act. In my analysis, I will try to show that these terms are based on interpretations and uses of language that involve cultural prejudice, and that this affects the judgements and sentencings in unreasonable ways. The analysis will particularly be focused
on the perpetrator’s motive. In legal theory, it is argued that the motive behind a homicide plays a significant role in sentencing cases of partner killing. This has been demonstrated in several court decisions where the human aspect is seen as being central to the motive. Also, the analysis considers Gustav Wiik’s point, that the terms the prosecution or defence use in reference to the killing, lead to something that is understood in the light of the categorisation. The term used to designate the deed affects the evaluation process, as a psychological mechanism, Wiik argues (2005, p. 33). Psychological mechanisms are used as mitigating or aggravating factors in sentencing, depending on the terminology. This is done simply by using expressions such as ‘family tragedy’ or ‘honour killing’.

My examination seems highly relevant. ‘Det finnes i dag ingen forskning på partnerdrap i Norge. Dermed vet vi lite om hva som kjennetegner partnere som begår drap og deres ofre eller situasjonen de er i når drapet skjer’ [There is no research today on partner killing in Norway. Thus we know little about what characterises the killers and their victims, or about what circumstances they are in when the killing takes place], Vibeke Ottesen said to the radio programme, NRK Østlandssendingen, on the 27th April, 2013. International studies like Global Study on Homicide (2011), by the United Nations Office on Drugs and Crime, can give an insight into what characterises partner killing. Most often it is committed in jealousy, or for fear of being deserted, or because of a suspicion of infidelity. The man sees the woman as his possession, and thus cannot accept the notion that she wants to leave him.

However, the terms used for characterising such deeds are by no means neutral. Common use of language indicates some important differences between family tragedy and honour killing. Family tragedy indicates that homicide is committed within the family, most often by men. Often the motive turns out to be the custody of children, divorce or other disagreements. The killing may be motivated by jealousy, but what distinguishes it from partner killing is the relationship of the deceased to the offender. The number of deceased may also be more than one.

Honour killing is carried out with the intention of restoring the collective honour of a family or a clan that feel violated. The attempt to restore this collective honour explains, in most cases of honour killing, why the offender has had time for consideration and planning, which will have bearing on the evaluation of premeditation, according to the § 233, second paragraph, of the Norwegian Penal Code. Honour killing is often planned collectively. It is not limited to one partner, but can also take place in cases where a father, brother, father-in-law or other person kills a female, and sometimes also a male family member, in order to restore family honour. Honour is associated with esteem, fame, dignity, reputation,
acclaim and praise, and the concept of honour has a strong position in traditional societies, where the family is regarded as an important social institution, and where the system of law enforcement is less developed. In research literature, both in Norway and abroad, there is an ongoing discussion about to what extent, and in what way, some homicides involving close relatives can be distinguished from others, because of the role played by restoring family honour as a motive for the killing (NOU 2012, 15; Narayan 1997; Phillips 2007; Wikan 2003).

RT. 2004-750 – A PRESUMED HONOUR KILLING

One day in April 2002, a man shot and killed his ex-wife outside Kristiansund district court, putting an end to a family story which had been going on for some time. The man and the woman were both from Afghanistan, and their reason for attending court was for a reconciliation meeting. At the time of the killing they were divorced, and their relationship was problematic, due the fact that they had been through a custody case, involving the local child welfare services. The outcome of this case worked in the woman’s favour, leaving the responsibility for the children to her. When the man found that he was not allowed to see his children, and his interests and rights not were taken care of, he made death threats against his ex-wife. For these threats she reported him, and he spent 21 days in prison and was given an exclusion order. Obviously, the woman had every reason to be afraid of her divorced husband. She was terrified of him. Still, she kept in telephone contact with him to keep a check on his activities. On several occasions she met him in secret, even just before the reconciliation meeting. Her explanation of her frequent contact with a dangerous husband was that she was afraid. She wanted to keep a check on his movements. The meetings would give him plenty of opportunities to carry out the threats before the meeting took place. The murder the offender was found guilty of was, objectively speaking, very brutal. The victim was in a public place in the centre of Kristiansund, and many people were present. The sentence was fixed at 18 years imprisonment. The case received a lot of attention from the national media, where it was predefined as an honour killing.

The sentencing was clearly grounded in this term. Thus, there is reason to believe that the case and its outcome were decided beforehand. In connection with a debate in Aftenposten on 18 September, 2002, on the subject of honour killing, Svein Slettan and Erling J. Husabø wrote the following: ‘Nettopp for å statuere et eksempel og si klart fra at den slags handlinger ikke aksepteres i det norske samfunn, burde det å begå en slik handling på bakgrunn av æresbegrepet være særlig skjerpende.’ [Committing such an act on the grounds of honour should be
counted as aggravating circumstances, precisely to make an example and let it be known that acts of this sort are unacceptable in Norwegian society.] The justification for this point of view is the deterrent effect of sentencing honour-based crime severely, as expressed in the article ‘Ære ingen formildende omstendighet’ [Honour not a mitigating circumstance] in Aftenposten, 18 September, 2002.

The treatment of the case as an honour killing is reflected in the proceedings. The victim got all the attention and sympathy, while no one was willing to hear the perpetrator’s side of the story. Going through the documents, I did not come across a single one that questioned the victim’s credibility. The deceased had repeated many times that her husband was violent and dangerous, and that she was subjected to violence in the marriage. Her portrayal of the marriage was swallowed whole by everyone from the female staff at the crisis centre in Kristiansund, to the refugee reception centre, the police and the child welfare services. However, during the case at the Court of Appeal one judge questioned the accuracy of the claims of the deceased, as he was incomprehensible for the fear she expressed and yet she met him to keep control of his activities. Before the court case started, the offender’s defence lawyer said: ‘Tiltalte havnet i en norsk kvinnekamp som strekker seg fra krisesentret i Kristiansund til sognepresten i Eide på Nordmøre’. [The accused found himself in a Norwegian struggle for women’s liberation that stretched from the crisis centre in Kristiansund to the parish priest in Eide in Nordmøre.]

On a second occasion, an outsider saw something different to how the case was portrayed. After going through the documents, Unni Wikan, appointed as an expert witness in the case, was not convinced that a planned honour killing had taken place. She pointed this out in her case assessment, an assessment that is not even mentioned in the judgement. Moreover, the appointment of an expert was requested by the defence, since the defence believed this might be of significance for sentencing. The question of whether or not this was an honour killing was crucial to whether it was premeditated, or a crime of passion. If it was not an honour killing, then what was it?

When I met the perpetrator at Ringerike Prison, he told me the motive for the killing: ‘Hun hadde satt opp et helt apparat mot meg, ingen ville høre på meg og jeg fikk ikke lov til å se mine barn. Hun hadde sverget på Koranen, og så sier retten noe annet. Hun sa at hun gjorde det for familien og at jeg måtte hjelpe henne’ [She had set up a whole system against me, no one would listen to me and I wasn’t allowed to see my own children. She had sworn by the Koran, and then the court says something else. She said she was doing it for the family and that I had to help her]. The fact that she swore by the Koran and stipulated family reunification as
the reason for this pretence was something that emerged during the meeting of reconciliation. Denied his visiting rights by the victim, he was obviously desperate to see his children. From the judgement, it emerges that he had been in contact with the district sheriff to arrange an out-of-court settlement for visiting the children, since several months after the court settlement, no such arrangement had been put in place. And after the reconciliation meeting, where she had sworn on the Koran to come back to him after family reunification with her parents and siblings, the custody case took a turn that was in conflict with what he had been promised. He dug up a revolver that he had previously buried and used it to commit an act that he had earlier rejected as an alternative. In his frustration, he had acquired a revolver to shoot his wife, but had buried the revolver when she explained why it was important to portray him as she had done. It cannot be denied that he may have been violent, but he admitted it. She hit the children as part of their upbringing, and ‘I hit her to make her feel the same pain’ as he said when I met him at Ringerike Prison, on 3 April, 2010.

As it turned out, for this man, honour was something very different to the concept of honour and the interpretation used as a starting point by the majority of the Norwegian population, as well as by anthropologists and the legal system. For him, the killing was not the result of external aspects which hallmark honour killings. It had to do with internal honour. He talked about himself and his dignity. He would not permit her to carry on like that. He wanted to show her, but the intention was to take his own life, so that she would witness the pain she had caused. But as he met her, and saw her smile and chat with an expression of indifference in her eyes, the situation changed. Instead of taking his own life, he took hers. According to him, he killed her as a result of betrayal, lies and double-dealing.

In sentencing, the understanding of the motivation for the killing plays a major significance. Despite the statement by the perpetrator, the motive for the homicide in this case was seen as being honour.

The treatment of the case as an honour killing is also reflected in the sentencing, in the ways the events are construed. The Court of Appeal summarised the circumstances that led to the murder, and the murder itself, in the following way:

I juli 2001 anskaffet A seg en stjålet grovkalibret revolver med tilhørende ammunisjon. Han brakte våpenet med seg til Kristiansund den 2. august 2001, i forbindelse med at ekteparet da møttes i Nordmøre tingrett i anledning midlertidig avgjørelse om samvær mellom far og barn. Det ble da inngått midlertidig avtale om samvær under tilsyn en gang pr. måned. Før retur til Kristiansund, emballerte A revolveren og ammunisjonen og fant et gjem-
mested for dette i et skogholt, ca. en halvtimes gangtur utenfor Kristiansund sentrum.

A gikk ut av drosjen, tok frem våpenet, rettet det mot B og avfyrte samtlige seks skudd mot henne, hvoretter han gikk rett inn til politivakta i samme hus, for talte hva han hadde gjort og overga seg. (Rt. 2004–750)

[In July 2001, A acquired a stolen, high calibre revolver with appropriate ammunition. He brought the weapon with him to Kristiansund on 2nd August 2001, in connection with a meeting the couple were to have at Nordmøre District Court, concerning a temporary decision on the custody of the children. A temporary agreement was reached on access to the children, under supervision, once a month. Before returning to Kristiansund, A wrapped up the revolver and ammunition, and found a hiding place for it in copse approx. half an hour’s walk from Kristiansund’s town centre.

A left the taxi, took out the weapon, pointed it at B and fired all six shots at her, after which he walked straight to the police station in the same building, said what he had done, and handed himself in.]

In short sentences and descriptive words, the court tries to portray the murder as planned, premeditated and decided. Almost like the rehearsed scene of a film.

In the judgement, the significance of motivation is reflected in the Supreme Court comments on the reason the weapon was retrieved:


[The weapon lay here until it was retrieved and used in the murder on 26th April 2002. This was at the time of the main hearing in the child custody case in Kristiansund. The case started on 25th April when it was agreed that the offender would have the right to have 4 hours’ access to his children 3 times a year.]

The court statement can give the impression that the judge does not rule out the possibility that the child custody case and the limited right of access to his children may be a reason why the revolver was retrieved. Later in the judgement the Supreme Court refers to the Court of Appeal’s assessment of the question of guilt
and expresses its conviction of the guilt of the accused in the following terms: ‘[D]et er med overveldende overbevisning fremkommet under bevisførselen at hennes historie og frykt var reell, uten ubegrunnede overdrivelser eller beskyldninger’. [It has emerged with overwhelming conviction during the submission of evidence that her story and fear was real, without unfounded exaggerations or accusations]. The Supreme Court follows this line with regard to the cause of the murder, taking it more or less for granted. The judge comments explicitly on the killer’s motives, and in this way, creates a credible picture of the victim through his statements. The judge’s use of words like ‘overveldende’ [overwhelming] and ‘overbevisning’ [conviction] indicates that there is no room for doubt that the murder was intentional, that it was premeditated, and that the motivation was honour.

In several other court decisions, we see that the killing itself overshadows the guilt of the victim. The killing overshadows the mitigating circumstances, and any suspicions about whether the victim may have had other intentions with her accusations. In this way, the court takes it for granted that the victim’s fear was real from the beginning. This is further accentuated by the fact that the judge omits to mention the offender’s claims and objections in the case.

In apportioning blame, it appears that the court did not even consider viewing the case from the offender’s point of view. The case for the defence hardly gets a mention in the judgement, implying that the court is following a one-track approach and viewing the case as presented by the prosecution, on the basis of the deceased’s claims.

The court chooses to rely uncritically on the prosecution’s understanding of the case. By emphasising, as stated in the judgement, that ‘right from the start, murder was the only alternative’, any provocation or other mitigating circumstances are ignored as possible factors. This account of the murder seems to have won credibility with the court, and thus exonerated the victim from claims of speculation and lies. Responsibility for what happened lies solely with the perpetrator, and mitigating circumstances connected to the behaviour of the victim are of no significance.

The court’s judgement continues as follows: ‘Ut i fra hjemlandets lokale tradisjon og kultur aksepterte ikke domfelte at ektefellen forlot ham og tok med barna, da dette betydde skam og ydmykelse.’ [In accordance with the local tradition and culture of his home country, the offender did not accept his spouse leaving him and taking the children with her, since this meant shame and humiliation.] Once again, the wording emphasises the relevance of honour for the killing, while the wording establishes this as certain and proven. The reference to ‘the local tradition and culture of the old country’ depicts the act as almost alien, and the way the sentence is
constructed can be seen as an intimation that Norwegian men accept marriage breakdowns, while partner killing is an Eastern phenomenon. The impression is given that only men from minority backgrounds have trouble accepting breakdowns in relationships, and that this is a cultural phenomenon. Thus, the court has disassociated itself from something that also happens in Norway from time to time, and has generalised a mentality to apply only to men of minority backgrounds.

The words and concepts the judge uses create and define our understanding of reality and indicate that there is a distinction between ‘us’ and ‘them’. The fact that most Norwegian partner killings are committed as a result of the woman’s desire to break free from a relationship is ignored in this statement. In my view, the statement reveals that the court has already established a connection between the murder and the culture the offender belongs to, and they have, from the start, decided to make honour the motive, by establishing the link between the murder and the husband’s culture.

On the other hand, the language of the judgement cannot be regarded as suitable for the context it is used in. A court decision, which is the context given here, gives a framework for the text, and, by virtue of his/her role as an administrator of the law, a judge should demonstrate a rational and clarifying use of language that aspires to objectivity. Where this is not done, personal prejudices can come to the fore, and reveal the judge’s subjective attitudes (Jacobsen 2010).

According to the Court of Appeal, the wife’s behaviour led to the husband feeling ‘socially declassed by his young wife’. By constantly referring to culture, honour and a particular attitude to women, the Supreme Court tries to show that they have understood the underlying reasons why the murder was planned and carried out. Thus, attention is constantly directed to the motive. It is mentioned that the woman ‘evnet å tilpasse seg’ [managed to adapt], and wanted an education and freedom of movement, she wanted freedom from the strict regime that tradition imposed on women, and that the husband enforced.

By using the expression ‘managed to adapt’, the court points out a quality possessed by the woman, while at the same time signalling, without stating it explicitly, that the offender lacked such a quality. The word ‘evner’ [manage] is positively charged and ambiguous. It can be used in the sense of ‘to master something’, related to the noun ‘evne’ meaning a talent or gift, that is, something that not everyone has or can acquire. By using the word with that intention, it can appear as if the court is taking for granted that not all minorities are able to adapt, and that there is a process of adaptation that not everyone succeeds in. First Justice points out the deceased’s struggle for the right to education and to freedom of
movement. Reference is made to the deceased having to fight for something as basic as human rights – a globally accepted principle, ratified in law in the West and accepted as a norm. The judgement also uses the word ‘regime’, which can be seen as an attempt to stress the strict traditions and attitudes with regard to women’s position and independence in Eastern societies.

Afghanistan’s strict attitude to how women should be controlled by men is well known. The shooting of Malala Yousufzai in 2012, who inspired a global reaction to the Taliban’s doctrine of how education is harmful for women, has further entrenched their attitude to women. As we have seen, the judgement specifies that ‘[i]n accordance with the local tradition and culture of the old country, the offender did not accept his spouse leaving him and taking the children with her, since this meant shame and humiliation’. This wording expresses the court’s understanding of gender differences, and the suppression of women in Eastern societies. The use of the word ‘regime’ can thus lead to an association of the offender with the Taliban. ‘Regime’ implies, in most contexts, a system, rather than an individual act. By referring to systemic attitudes, the offender’s thoughts and understanding are associated with something more than simply honour, something that is organised and widespread in their homeland. In the worldview projected by the judges, the murder clearly had a conspiratorial intent. The narrative, as reconstructed by the court, gives an idyllic portrait of the victim by referring to her talents, thus accentuating the impression of the murder as a completely incomprehensible act. The victim is ascribed credibility, and the accused is ascribed guilt.

The judgement continues with the following statement:

For lagmannsretten er det overbevisende fremkommet at Bs selvstendige opp trende utsatte henne for fare for å bli drept i samsvar med nedarvede lokale tradisjoner fra Afghanistan. Drap som løsning var et motiverende alternativ for A fra første stund; om han ikke ønsket det, så fordi han eventuelt måtte besørge det. (Rt. 2004-750)

[In the Court of Appeal, it has been convincingly demonstrated that B’s independent behaviour exposed her to the danger of being killed in accordance with inherited local traditions from Afghanistan. Murder as a solution was a motivating alternative for A right from the beginning; if not because he desired it, then because he in the event had to arrange it.]

It is clear from the text that, in the opinion of the court, the victim’s fight for basic rights such as the right to take decisions herself, the right to education, and the
right to choose her own social circle, were the reasons why she had to die. According to the judges, there is no doubt that the offender acted on behalf of his culture. In this way, the court shows that the motivation of the crime was clearly cultural, and that the intention should probably be regarded as having existed for years.

The judgement is based on a credibility assessment of the victim’s statements, in combination with the murder itself. Since the offender is of non-Norwegian origin, the court assumes, without reasonable grounds, that it is an honour killing, and appears to build on this assumption – an assumption that may be based on the offender’s background, although this cannot be seen as proven. In the final analysis, it is the evaluation of the motive that is crucial for the assessment of intention and the likely cause. The motive is crucial because it determines the evil of the act itself.

A man motivated by money acts differently to a man motivated by reputation. A man driven by economic cupidity acts differently to a man driven by ideals, vanity or a thirst for excitement. A man who hates acts differently to a man who dreams. If the court mistakes the motive for an act, it also mistakes the act itself, and may sentence him for something he has not done, as covered by the provisions concerning homicide in the Penal Code § 233, second paragraph which deal with premeditation [overlegg] rather than intention [forsett]. A wrong assessment can be of significance for which provision is used, and for the length of sentence that is set.

The court decision continues: ‘Hans liv ble fokusert mot B og egne følelser. Det er etter bevisførselen for lagmannsretten hevet over enhver tvil at han var iherdig etter å finne ut hvor B og barna oppholdt seg, han oppnådde også kontakt’ [His life became focused on B and his own feelings. According to the evidence submitted to the Court of Appeal, it is proven beyond doubt that he was persistent in finding out where B and the children were, and he succeeded in making contact too.] (Rt. 2004–750). The court points out that the offender made contact, and if the murder was planned, as both the court and the victim claimed, a moment would have been sufficient to kill the victim, if that is what he had wished. Earlier in the judgement, the court commented, ‘Murder as a solution was a motivating alternative for A right from the beginning; if not because he desired it, then because he would perhaps be obliged to arrange it.’(Rt. 2004-750). This indication of the court’s understanding of premeditation does not, in my opinion, rhyme with the fact that he made contact, or with the description of the murder later in the judgement as a swift and specific act, as when it is commented that: ‘Murder was the solution from the very start!’ , ‘Her story and her fear were real’, ‘He was persistent in finding out where B and the children were!’ and ‘When he made contact, he grasped the opportunity to kill her immediately’ (Rt. 2004-750).
In pointing this out, the court contradicts itself. If the murder was planned all along, why didn’t he grasp the opportunity when he, according to the victim, succeeded in making contact? It is emphasised that he made persistent attempts to find them, so why let this opportunity slip when he finally achieved it? According to the court’s own statements, he had the opportunity earlier – so why did he kill her where and when he did?

Assessing the court’s statements and reading them in context, I find it difficult to understand how the claim, that murder was the only solution from the very start, can be sustained. On one hand, the fact that he had managed to make contact and, on the other, the court’s portrayal of a desperate and determined act where he chose to kill at the first available opportunity, simply do not add up. If the court’s statements are seen in context, and from an overall perspective, there is a contradiction between them and the purpose indicated in the court’s choice of words.

earlier in the judgement, the court comments that the murder weapon was dug up the night before the murder took place, but nowhere is the question asked, why was the weapon buried in the first place, if it was his intention to kill her right from the start? It cannot be ignored that the court perhaps did not understand the symbolic significance of burying something for Muslims. In countries such as Pakistan and Afghanistan, burying something symbolises being finished with it, just as in Muslim burials. Why would this man bury a pistol unless he intended to put all thoughts of murder behind him? Another question is if he had put such thoughts behind him, why should he change his mind about killing somebody, who, in a sense, had taken everything from him?

My theory is that he, in the meantime, had received a satisfactory explanation of why she was behaving the way she did, as indicated in the seized documents. The emphasis of the court shows clearly that the husband’s claims have been entirely ignored in the construction of the narrative. What the court includes and excludes tells us a lot about where the focus lies in the assessment process. The focus is constantly on what the victim experienced and claimed, on the attitude to women, on culture, and on the terrible act itself. The court amplifies the act by using words and terms that create a stronger impression that if other words had been used.

Concerning the subjective circumstances, Court of Appeal states the following:

Lagmannsretten mener de forutgående planer og overveielser som redegjort for foran må tillegges skjerpende vekt ved straffutmålingen, selv om den beslutning som førte til overlegget ble tatt i nærmere tilknytning til drapet. Selvdrapet ble utført på en måte som var en sjokkartet opplevelse for mange

[The Court of Appeal believes that the prior plans and deliberations explained earlier must be counted as aggravating circumstances when sentencing, even if the decision that led to premeditation was taken in close connection with the murder. The murder itself was carried out in a way that was a shocking experience for innocent bystanders. The evidence leaves no doubt that A behaved in a determined and purposeful manner. It was not despair but aggression that was visible. This appears to be a pure execution.]

The description depicts the murder as one of the most brutal ever heard of. Clearly, the court establishes that the motive for the murder was cultural:

Forsvarer for Høyesterett har i tilslutning til de rettsoppnevnte sakkyndiges rapport og møtende sakkyndiges forklaring for Høyesterett, vist til at domfelte har diagnosene F 60.9 Uspesifisert personlighetsforstyrrelse, F 43.2 Tilpasningsforstyrrelse, F 43.1 Posttraumatisk stresslidelse og F 32.9 Uspesifisert depressiv episode. Forsvareren har anført at de sakkyndiges rettspsykiatrisk erklæring gir støtte for at drapet kan ha vært en frikobling av primitive, aggressive og destruktive impulser, utløst av en langvarig krisesituasjon hos en mann som på forhånd kan ha vært alvorlig personlighetsskadet gjennom en traumatisk oppvekst, hvor vold og drap var en nærværende del av hverdagen. Jeg bemerker at ved utmåling av straffen vil den objektive grovhet og en nærmere vurdering av domfeltes overlegg bestemme straffens lengde. Domfeltes personlighetsavvik vil ikke kunne tillegges nevneverdig vekt i en sak som denne. Domfeltes kulturelle bakgrunn kan heller ikke få noen betydning når den gir seg utslag i alvorlige straffbare handlinger.

[In connection with the report of the judicial experts and the attending experts’ statement to the Supreme Court, the Supreme Court defence has indicated that the offender has the diagnoses F 60.9 Unspecified personality disorder, F 43.2 Adaptation disorder, F 43.1 Post-traumatic stress disorder and F 32.9 Unspecified depressive episode. The defence has stated that the experts’ forensic psychiatric statement supports the notion that the murder may have been an unleashing of primitive, aggressive and destructive impulses, triggered by a prolonged crisis situation in a man who may previously have suffered severe
damage to his personality through a traumatic upbringing in which violence and murder was a part of everyday life. I note that in sentencing, the objective brutality and a closer assessment of the offender’s premeditation will determine the length of the sentence. The offender’s personality abnormalities cannot be ascribed significant weight in a case such as this. Neither can the cultural background of the offender be of any significance when it results in serious criminal acts].

The judge is referring to a court decision where the motive was honour, and the offender acknowledged the circumstances as an honour killing. Such a statement can be defended on the basis of events in which there were no doubts concerning the honour aspect of a crime, in which both the sister and the brother-in-law were killed as a result of the sister’s breach of family honour.

The judge draws a comparison between an honour killing and this killing in order to justify the sentence given. However, no reference is made to another homicide where the victim was killed in public, and where the sentence was considerably more lenient, since it does not support the sentence given. The judge is attempting to gain support and agreement for his sentencing by referring to comparable cases. Cases that point the other way are ignored. This tactic has been used in several court decisions. It seems that the court uses the arguments that support their choice of punishment in this case.

The grounds for the judgement suggest that the murder had the appearance of an execution. This comparison by the First Justice draws parallels between the way the killing was carried out and the act of an execution. The judge’s use of a strong, negatively charged word can indicate that the murder was committed as part of an organised act. As a reader, I understand the use of such a term as expressing an action planned down to the smallest detail, purposeful and committed in cold blood, perhaps in cooperation with others.

The judge’s account of this homicide portrays an execution, in contrast to the account of the case in question, where the documents relating to the case indicate a killing committed in anger by an unstable man who at the time of the act was unbalanced and distraught. After firing five shots at the victim, he went directly to the police station, put down the revolver, and confessed to what he had done, as he wept.

On the basis of the judge’s account of events, it appears that the judge has a very different understanding of what is implied by the term ‘execution’. In the grounds for the judgement, the judge points to the fact that the murder was committed in anger by an unstable man, circumstances that are not counted as mitigating; and still the judge allows a comparison with an execution.
The murder was regarded as premeditated, while the act itself and its background were seen as aggravating factors. On the other hand, the point is made that, due to the time the killer had at his disposal, the murder is seen as being premeditated. It is pointed out that the offender had time to reflect. However, whether he actually did reflect or not was not discussed.

In Andenæs’s description of the assessment of premeditation, he points out that if the offender has had time at his disposal and, nevertheless, not deliberated, then premeditation cannot be said to exist, regardless of the time interval (Andenæs 2013, 232), as the Supreme Court has observed in several court judgements (Rt. 1949, p. 402, Rt. 1954, p. 821).

In Rt. 1954, p. 821, the court stated that they suppose that: ‘lagretten her har bygget på at tiltalte har handlet under så sterk affekt at motforestillinger ikke har gjort seg gjeldende på en slik måte at han kan antas å ha handlet etter en overveiet beslutning.’ [the Court of Appeal builds on the assumption that the accused has acted in such a state of affect that no second thoughts over his actions was possible such that he can be presumed to have acted after a deliberate decision.] In spite of arguments from the defence, the judge in this case, without prior discussion of whether such deliberations may have taken place, decides that the subjective conditions of the provisions regarding premeditation are exceeded in his estimation.

Neither did the court give credence to the offender’s argument that the purpose of bringing a revolver in the first place was to commit suicide in front of his wife, to show her the suffering she had caused him. As far as it goes, the reports from supervised visits to his children tell of how he wept and sobbed over the loss of his children and their mother. He said that he had nothing to live for, if the deceased did not change her mind and return to him. This implies that the plan of suicide should not be excluded without consideration, as the Supreme Court also commented: In Rt. 1959 (p. 991) the murder was not regarded as premeditated, even though the offender had considered it for a while. In the unanimous verdict, the First Justice stated:

"tiltalte i tiden forut for drapet har vært inne på tanken om at han skulle ta ikke bare sitt eget, men også B's liv, og at han da også traff forberedelser og la planer for det tilfelle at drapet skulle komme til utførelse. Men forberedelsene er gjort og planene lagt på et tidspunkt da han ikke hadde fattet en fast beslutning om å utføre drapet, og fremdeles håpet på at det ikke måtte skje, eller på et tidspunkt da han på grunn av sin affekt var i en slik psykisk tilstand at motforestillinger ikke kunne gjøre seg gjeldende. (Rt. 1959, 991)"
[In the period before the murder, the accused considered the idea of not only taking his own life, but also B’s and that he made preparations and laid plans in case the murder came about. But the preparations were made and the plans laid at a time when he had still not decided to carry out the murder, and was still hoping that it would not have to happen, or at a time when he was in such a psychological state of affect that he was unable to reflect over her actions.]

While it is true that these judgements are in the past, the decisions that Andenæs refers to are good examples of how assessments have been made. By omitting such assessments in the case in question, the judge demonstrates that he gives no credence to the offender, and thus bases his understanding on the claims and testimony of the deceased. Without prior examination, he creates the basis for passing a sentence of 18 years, an irreversible decision that both the offender and several others have to live with. Professor dr. juris and Supreme Court judge Carsten Smith has stated, ‘From time to time I think that when the Supreme Court justifies an aggravated punishment on the grounds of general deterrence, that this is pure fiction if people do not have insight into the judgement.’ (Smith 2012, 71).

THE THERMOS FLASK MURDER (RT. 1992, P. 1094)

The judgement in the thermos flask murder concerned a Norwegian man of 35, who wilfully killed his wife by beating her to death with a thermos flask. In the Court of Appeal, the sentence was set at eight years imprisonment. The prosecution, finding the punishment too lenient, lodged an appeal, arguing that it should have been set at twelve years imprisonment. The Supreme Court made the following statement regarding the sentencing in the judgement:

Jeg er kommet til at anken over straffeutmålingen må forkastes. Jeg legger da vesentlig vekt på at det her etter min mening ikke er grunnlag for å anse drapet begått under særdeles skjerpende omstendigheter.


[I have concluded that the appeal over sentence must be rejected. I emphasise that in my opinion there are not grounds to suggest that the murder was committed under aggravating circumstances.]
In deciding whether there are aggravating circumstances or not according to the Penal Code § 233 second paragraph, a relatively broad assessment must be made. The murder itself will have a central role, but also the offender’s subjective circumstances, the background of the murder and the circumstances surrounding it must be taken into consideration.

On 12th February 1992, Frostating Court of Appeal passed the following judgement:


Påtalemyngheten har vist til at lagmannsretten med rette la til grunn at drapet er begått under særdeles skjerpende omstendigheter ved bruk av grov og vedvarende vold. For en slik drapshandling er en straff på 8 år vesentlig for mild. Straffen bør her være på 12 år.

[A, born 0.0.1957 is sentenced to 8 years’ imprisonment for violating § 233 first and second paragraph of the Penal Code. 188 days’ served custody are deducted from the sentence.

The prosecuting authority has shown that the Court of Appeal was justified in emphasising that the murder was committed under particularly aggravating circumstances with the use of brutal and prolonged violence. A sentence of 8 years is too lenient for a murder of this nature. The punishment here should be 12 years.]

The offender has asserted that there are no grounds for increasing the sentence. In evaluating whether there are aggravating circumstances, the Court of Appeal has exclusively focused on the murder itself. Insufficient emphasis has been placed on the background of the murder and on the offender’s subjective circumstances. On the basis of a broader assessment, it is incorrect to regard the murder as having been committed under particularly aggravating circumstances. Furthermore, it must be taken into consideration that the murder was committed during a temporary state of automatism and in justifiable anger.

My conclusion is that the prosecution’s appeal over the sentence should have been rejected. I attach importance to the fact that, in my opinion, there are not grounds for regarding the murder as having been committed under particularly aggravating circumstances. The decision as to whether such grounds exist accord-
ing to § 233 second paragraph of the Penal Code should be based on a relatively broad assessment. The murder itself will have a central role, but also the offender’s subjective circumstances, the background of the murder and the circumstances surrounding it must be taken into consideration, cf. Rt. 1989-1330.

The prosecuting advocate correctly points out that massive violence was used. But the tragic background and the events leading up to it must also count in the general assessment:

[The offender and the deceased B had lived together and been married for 17–18 years when the murder took place. As described in the judgement of the Court of Appeal, there had been problems all along, as a result of B’s alcohol abuse, partying, and her relationships with other men.

I must emphasise that this had a profound effect on the offender, who was genuinely fond of his wife. But he forgave her, and he kept the family together. For the last 4–5 months he and his wife lived apart. However, they were in regular contact and they agreed to resume their life together. B promised to break off the relationship she had started with another man.]

In its judgement, the Court of Appeal describes the meeting the offender and his wife had on the evening of the murder as a ‘meeting of reconciliation’, and tells how the offender, having left his wife’s flat, suspected that it was a friend of their son that she had started a relationship with and that she was now expecting a visit from. It was after he had returned to her flat to confront her with this suspicion that the murder took place. It is reasonable to suppose that the wife confirmed the offender’s suspicion, and that this triggered the state of affect that the murder was committed in.

When the events leading up to the murder, and the state of affect they triggered in the offender, are included in the general assessment, it is my conclusion that
there are no grounds for considering the murder as committed under particularly aggravating circumstances. § 233 second paragraph is therefore not applicable.

The defence has asserted that the murder was carried out during a state of temporary automatism, cf. § 56 nr. 1 b. I do not agree here, and refer to the forensic psychiatrist’s report. On the other hand, there are, in my opinion, stronger grounds to raise the issue of whether the murder was committed in justifiable anger. Over a period of 17–18 years, the offender was continually affronted by his wife’s drunkenness and infidelity. When the murder was committed, they were temporarily separated, and although they had agreed to resume their life together, and the offender had reason to feel affronted during and after the ‘meeting of reconciliation’, I am still inclined to assume that the conditions for justifiable anger in § 56 nr. 1 of the Penal Code were not satisfied. However, I can find no grounds for reaching a definite standpoint here, since I cannot see that the provision could be applied here to bring the sentence under the minimum punishment. In my opinion, the sentence of 8 years’ imprisonment should have remained standing.

The wording of the judgement refers to the importance of family values and the understanding the court has for the offender as a person. By describing his love for his wife, using the word ‘oppriktig’ (genuinely), the court emphasises the offender’s feelings. At the same time, it appears that there is understanding for his frustration. He is characterised in almost idyllic terms when the judge points out that he forgave his wife for her alcohol abuse, her partying, and her relationships with other men.

Thus, infidelity as a motive appears to be something even Courts of Justice understand. In the grounds for the judgement, the judge says that the court regards the background of the crime as tragic, and therefore understandable, as well as being the cause of the murder. This emerges in several court decisions, and was also the case in Rt. 1948-992, where the First Justice pointed out the following:

Når deres kjærlighetsforhold likevel fikk en så tragisk slutt, må årsaken søkes i tiltaltes noe defekte sjel liv sammenhol dt med hans utpregede sjalusi, hvorvidt han virkelig har hatt grunn for sin sjalusi, er ikke tilstrekkelig klar lagt, men det må i et hvert fall ansees godt gjort at avdøde ofte ertet tiltalte med at hun flørtet med andre og at hun ved sin opp tre den bidro til å gjøre tiltalte mistenksom og usikker på seg selv.

[The reason why their love relationship ended so tragically should be sought in the somewhat defective mental life of the accused, along with his intense jealousy. To what extent he actually had grounds for his jealousy is unclear, but
it should in any case be regarded as proven that the deceased often teased the accused with the fact that she flirted with others and that by her behaviour she contributed to making the accused suspicious and unsure of himself.]

The court states that although massive violence was used, the reason for the murder must also be taken into consideration when sentencing. This statement can almost be interpreted as an attempt by the court to imply that when the motive is emotional, it should count as mitigating circumstances.

The judge presents his points of view and his arguments in the judgement to achieve an acceptance that the result is just, proportional and lawful, in view of the nature of the crime. The purpose of the judgement is to make the reader understand that justice has prevailed. By reading the judgement, the reader can assess whether the judge’s interpretation is reasonable or not.

* 

My examination of the two cases shows that homicide is categorised through the use of designations. Family killing, jealousy killing, honour killing and family tragedy are terms that can be used in reference to the same act, depending on the judge’s interpretation of the motive and the cultural context of the homicide. It should be mentioned that experts in the field cannot rule out that a lack of knowledge concerning partner killing may have led to partner killing being mistaken for honour killing, and vice versa. In the case of partner killing, the killing is always carried out by a person who either is or has been in a (sexual) relationship with the deceased. A survey of homicide from Kripos (the Norwegian Bureau of Crime Investigation) reveals that they have categorised homicides according to the motive seen as causing the killing. The following categories are used by the police: ‘jealousy’, ‘quarrel’, ‘mental illness’, ‘honour killing’, ‘fear’, ‘revenge’, ‘family killing’ and ‘unknown’. However, the point is that the sentencing can be very strongly influenced, depending on whether a case is categorised as a family tragedy or a honour killing.

The comparative analysis of the two cases indicates that sentencing practice in cases where honour is assumed to be the motive is strict. This is also evident from several other honour cases in my material (cf. Rt. 2004-750, LA-2009-72131, RG-2007-1112, LE-2014-101506). In all of these cases, sentences were set at 17 years. All the cases showed similarities with ethnic Norwegian partner killings where the conflict concerned relationship break-up or custody of children.
‘Avgjørelser forsterker og videreutvikler samfunnet’ [Court decisions reinforce and improve society] (Smith 2012, 15). As ex-Supreme Court judge Carsten Smith points out: ‘Enhver dom kan ses som et bidrag til samfunnet ved at den tar stilling til de forskjellige rettsspørsmål på det aktuelle tidspunkt’ [Every judgement can be seen as a contribution to society by making a decision on the various legal issues at a particular moment in time] (NOU 1999, 19).

Smith’s statement indicates that social changes have an impact on law in society. This means that the attitude to honour killing has changed over time. It started with the so-called ‘Turk murder’, where a father and his sons killed the daughter’s lover (Rt. 1984-1146). In that case, honour and cultural factors were regarded as mitigating circumstances. The Supreme Court, unlike the Court of Appeal, took into account prevalent attitudes in the homeland of those convicted, and reduced the prison sentences from 16, 13 and 12 years to 12, 8 and 7 years respectively. A couple of decades later, the same cultural factors were seen as aggravating rather than mitigating in our case (Rt. 2004-750), where the Supreme Court stated that culturally contingent acts required particular legal protection, and the offender was sentenced to 18 years in prison.

In punishing a crime and reaching a decision on proportionality, the legislator expresses how dangerous and socially unacceptable an act is (Brattholm 1980, 592). The length of sentence also expresses the judge’s thinking, and at the same time signals that the criminal has got his/her just deserts in the eyes of the law. Rt. 2004-750 sheds further light on this point. In fact, this judgement has been used on several occasions as a reference for sentencing in homicide cases, often in cases where the court suspects that honour has been a motive for the killing. For example, in RG.2005-942, RG.2007-112, LA.2009-72131, LB.2013-41556, TDRAM.2014-5306 and others, guidance was sought from and reference made to the judgement in 2004. The judgement in Rt. 2004 p. 750 was also mentioned, and used in the legislative history for the Penal Code of 2005 in Ot.prp.nr. 22 (2008–2009), and later repeated in Prop. 97. The legislator referred to the judgement to illustrate the need for more severe punishments in cases of honour crimes, and homicide in general. At the same time, the court decision was used to demonstrate developments in the application of law in the direction of more severe punishments for homicide. The judgement was used almost as a template for homicide sentencing, especially in cases where men from minority backgrounds committed the offence. In LA. 2009-72131, First Justice states that the case has parallels to RT. 2004 p.750 in that B’s wish to lead an independent life without A’s control was difficult for him to accept. The offender is sentenced to 17 years in prison and the
next phrase of the judgement refers to the sentence being fixed in accordance with Rt. 2004-750 and other judicial precedents.

The motive in the two cases is of great significance for the sentencing. In case Rt. 2004-750, the motive for the homicide was seen as being honour. In the grounds for the sentencing, the point was made that such acts call for extra protection of victims. The sentence of eighteen years is intended to give an impression that the perpetrator has been punished as deserved. In case Rt. 1992-1095, the motive appears to result in a more lenient punishment. Even if the killing was carried out with great brutality, it was the result of many years of infidelity and frustration. This was pointed out in the grounds for the judgement, thus emphasising that the act was carried out in justifiable anger. By assessing a homicide carried out with massive violence to a sentence of eight years, the court is expressing an understanding of the premises that infidelity can have tragic consequences.

In both cases, the evaluation is made from a subjective interpretation as well as a legal one.

Lastly, it should be mentioned that my findings seem to correspond with other research projects. In 2005 Kristin Skjørt en analysed the way the killing of family members was portrayed in the media, and pointed out that murders in majority families were referred to as family tragedies, while murders in minority families were referred to as honour killings: ‘I førstnevnte tilfelle blir vold og overgrep gjerne forstått med utgangspunkt i individualpsykologiske faktorer, mens det i minoritetsfamilier forstås som et uttrykk for en kultur, og da gjerne med fokus på ulikestilling og kvinneforakt som en del av kulturen’ [In the former case, violence and assault were understood in the light of individual, psychological factors, while in minority families they were understood as an expression of culture, and often with a focus on gender inequality and contempt for women as part of the culture] (Skjørt en 2005).

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