

# Supreme Court's JUDGMENT

delivered in Stockholm on 3 April 2024

Case no.

B 1103-23

## **PARTIES**

### **Appellant**

NF

Counsel and Public Defender: Attorney NR

### **Respondent**

Prosecutor General

Box 5553

114 85 Stockholm

## **THE MATTER**

Using an untrue instrument, etc.

## **RULING APPEALED**

Judgment of the Svea Court of Appeal of 19/01/2023 in case B 6825-22

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## **JUDGMENT**

The Supreme Court modifies the judgment of the Court of Appeal in case B 6825-22 as regards guilt, in that the Supreme Court acquits NF of the charges of using an untrue instrument and unlawful driving.

The Supreme Court also modifies the judgment of the Court of Appeal in that NF is relieved of the obligation to pay a contribution to the Crime Victims Fund.

The Court of Appeal's judgment regarding the compensation of public defence counsel stands.

NR shall receive compensation from public funds for the defence of NF in the Supreme Court in the amount of SEK 14,760. Of the amount, SEK 11,808 relates to work and SEK 2,952 relates to value added tax. The State shall bear the cost.

## **CLAIMS IN THE SUPREME COURT**

NF has claimed that the Supreme Court shall dismiss the indictment in its entirety.

The Prosecutor General has opposed modification of the judgment of the Court of Appeal.

The Supreme Court has granted the leave to appeal as set out in para. 7.

## **REASONS FOR THE JUDGMENT**

### **Background**

1. In December 2020, NF applied to the Swedish Transport Agency for the exchange of a Hungarian driving licence for passenger cars. He had, in turn, acquired the Hungarian driving licence by exchanging an Uzbek driving

licence. The Swedish Transport Agency granted the application and, in January of 2021, exchanged his Hungarian driving licence for an equivalent Swedish licence.

2. In October of 2021, after it was discovered that NF's Uzbek driving licence was forged, the Hungarian driving licence authority ordered that NF's Hungarian driving licence be revoked. No driving licence had ever been issued to NF in Uzbekistan.

3. As a result, the Swedish Transport Agency ordered in December of 2021 that NF's Swedish driving licence be revoked.

4. NF was charged with using an untrue instrument and unlawful driving. According to the indictment, in citing the Hungarian driving licence when applying to the Swedish Transport Agency, even though he was not eligible to drive, he relied on an instrument containing untrue information; he also, on four occasions between February and June 2021, had driven a passenger car without being entitled to do so.

5. The District Court found that NF had a valid Hungarian and Swedish driving licence at the time of both the application to the Swedish Transport Agency and the occasions on which NF drove. He was therefore acquitted of the charges.

6. However, the Court of Appeal sentenced NF to day-fines for using an untrue instrument and unlawful driving. The Court of Appeal found it proven that he had knowingly obtained a false Uzbek driving licence. According to the Court of Appeal, this entailed that the Hungarian driving licence was issued on an erroneous basis, and that the information in the licence regarding NF's eligibility for a licence was therefore untrue. The Court of Appeal also found that, although both the Hungarian and Swedish driving licences had been issued by the competent authorities, he did not in fact meet the

requirements for driving a passenger car in Sweden and that he was therefore not entitled to drive a car in Sweden.

### **What is at issue in the Supreme Court**

7. The Supreme Court has granted leave to appeal on the basis of the Court of Appeal's assessment of the facts in the case and on the basis of NF's knowledge of the fact that he was not eligible for a driving licence in Uzbekistan.

8. The case before the Supreme Court concerns whether a driving licence acquired on false premises may be considered to include untrue information regarding eligibility for a licence, and whether there are grounds for disregarding such a licence when assessing a charge of unlawful driving.

### **Penal provisions**

#### *Using an untrue instrument*

9. Chapter 15, Section 11 of the Criminal Code makes it a criminal offence for a person to, in a certificate or other instrument, give untrue information about who they are or about something other than their own affairs, or draw up an instrument regarding an action with legal consequences for the sake of appearance. A person who cites or in some other way uses an untrue instrument is, if the measure involves danger in respect of evidence, guilty pursuant to the third paragraph of using an untrue instrument and is sentenced to a fine or imprisonment for at most six months.

#### *Unlawful driving*

10. Pursuant to the first sentence of the first paragraph of Section 3 of *Lagen (1951:649) om straff för vissa trafikbrott* (the Act on Penalties for Certain Road Traffic Offences), anyone intentionally driving a vehicle for

which a driving licence is required without being entitled to do so is liable to a fine for unlawful driving.

11. The substantive content of the provision on unlawful driving is derived from the applicable rules of the Driving Licence Act (1998:488) for entitling someone to drive a vehicle for which a driving licence is required.

### **Rules for driving licence eligibility**

#### *The rules in general*

12. The vehicles for which a driving licence is required, and the eligibility requirements for each vehicle, are regulated in the Driving Licence Act.

13. A driving licence is defined, in Chapter 1, Section 1, first paragraph, item 2 of the Driving Licence Act, as a document authorising the driving of power-driven vehicles, including passenger cars. This definition is intended to align with Article 4(1) of the third EU driving licence directive<sup>1</sup>, which states that the driving licence referred to in Article 1 authorises the driving of power-driven vehicles of the categories defined in that Article. Several sections of the Driving Licence Act implement the provisions of the Directive into Swedish law.

14. According to Chapter 2, Section 1 of the Driving Licence Act, a passenger car may only be driven by the holder of a valid driving licence for the vehicle.

15. However, a driving licence is not only proof of one's authorisation to drive power-driven vehicles. The right to drive the vehicle or vehicles for which the licence is valid is also linked to the possession of the driving licence. Furthermore, physical possession of the driving licence document is

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<sup>1</sup> Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast).

not an absolute prerequisite for this right. (Cf. Govt. bill 2011/12:25 p. 48 et seq.)

*Driving licences issued by an EEA State*

16. A driving licence may be issued to anyone who meets the formal requirements set out in Chapter 3, Section 1 of the Driving Licence Act. However, according to the second paragraph of the provision, a driving licence may not be issued to the holder of a driving licence issued in another State of the European Economic Area (EEA).

17. Such a driving licence is instead valid in Sweden, as a rule, according to its content (see Chapter 6, Section 1 of the Driving Licence Act). However, it follows from Chapter 6, Sections 7 and 7a of the Driving Licence Act that, under certain conditions, a foreign driving licence issued in an EEA State may be exchanged for an equivalent Swedish driving licence on application.

18. These provisions fulfil the third driving licence directive's requirement for the mutual recognition of driving licences issued by an EEA State. Mutual recognition means that the possession of the licence is considered as proof that its holder, at the time of issue, fulfilled the requirements for issuing a licence in accordance with the Directive. Other Member States cannot, in principle, investigate whether the conditions for issue laid down in that directive have been met. (See judgment of the Court of Justice of the European Union in *Kreis Heinsberg*, C-112/19, EU:C:2020:864, para. 25, 26 and 33 and references therein.)

19. The provisions on recognition and exchange of driving licences also apply if the EEA driving licence has been acquired by exchange of a driving licence issued in a third country (cf. Govt. bill *ibid* p. 118 et seq.).

*Validity and revocation of driving licences*

20. A driving licence is valid from the date of issue until further notice, provided that the licence is renewed after a certain period (see Chapter 3, Sections 11 and 14 of the Driving Licence Act). Exchanging a foreign driving licence is equivalent to issuing a driving licence (see Govt. bill *ibid* p. 152). However, a driving licence becomes invalid under certain circumstances. According to Chapter 3, Section 13, first paragraph, item 2 of the Driving Licence Act, a driving licence is not valid if it has been revoked or suspended under Chapter 5.

21. Furthermore, Chapter 5, Sections 3 and 9 of the Driving Licence Act state that a driving licence is to be revoked in cases where an impediment existed at the time of the driving licence's issue and that impediment remains. This provision applies to all impediments to the issuing of driving licences and is applicable regardless of the reason why the licence was issued. It is therefore irrelevant whether the issue of the driving licence was brought about, for example, by deception. (cf. Govt. bill *ibid* 156 *et seq.*)

22. An order to revoke a driving licence applies from the date on which the decision is issued to the licence holder (see Chapter 7, Sections 7 and 8 of the Driving Licence Act). It is therefore only at this point that, in the event of revocation, the licence holder can no longer cite the possession of the driving licence to avoid liability for unlawful driving.

### **The principle of legality**

23. The principle of legality in criminal law is expressed in, *inter alia*, Chapter 2, Section 10, first paragraph of the Instrument of Government, Chapter 1, Section 1 of the Swedish Criminal Code and Article 7 of the ECHR. Primarily, this principle means that no one can be punished for an offence that was not criminal when it was committed. The principle of legality is usually considered to include the requirement that criminal offences and penalties be prescribed by law (*nullum crimen sine lege*), the prohibition of the

use of analogy in the interpretation of a criminal offence and the prohibition against retroactive criminal legislation. This principle acts as a guarantee of legal certainty by requiring legislation to ensure that individuals are able to foresee that they may be subject to criminal proceedings. This entails a principle of clear statement, meaning that a penalty must be stated in a reasonably definite form; penal provisions must be comprehensible and sufficiently clear. (See “Weapons of the Estate” NJA 2019 p. 1041 para. 12 with reference therein.)

24. To ensure predictability and legal certainty in general, the wording of a penal provision limits what the penal provision can cover. Nevertheless, the principle of legality does not prevent a penal provision from being interpreted in accordance with established principles; such interpretation must, however, be made with prudence. Interpretation can only be based to a very limited extent on general reasons of expediency, unless they are expressed in the text. Where other legislation makes apparent the meaning of a given criminal provision, the same should apply in interpretation of that legislation (see “Noble Metals” NJA 2018 p. 704 para. 23).

### **Criminal liability when driving licences are issued on the basis of misleading information**

#### *Starting points for assessment*

25. A criminal trial offers hardly any scope to disregard the fact that an individual held a formally valid driving licence because the underlying administrative rulings on the issue and exchange of driving licences could constitute so-called nullities (cf. “Permit on Erroneous Grounds” NJA 2017 p. 189 para. 15 and 16).

#### *Using an untrue instrument*



26. Liability for using an untrue instrument requires that a person cite or otherwise use untrue information about who they are or about something other than their own affairs. A statement that is objectively untrue must have been made (cf. “Date of Acquisition” NJA 1991 p. 456 and Bäcklund et al. Swedish Criminal Code, 24 November 2023, JUNO version 23, commentary to Chapter 15, Section 11).

27. The presentation of a valid driving licence from another EEA country, when applying for the exchange of a driving licence, cannot be considered to constitute untrue information regarding the authorisation to drive within the meaning of the penalty provision, since the licence itself confers such authorisation (see para. 15). The fact that the licence was issued on the basis of misleading or erroneous information does not change this.

#### *Unlawful driving*

28. Liability for unlawful driving requires that a vehicle subject to a driving licence is driven without the driver being authorised to do so. The provisions of the Driving Licence Act set out of the meaning of the prerequisite 'without being entitled to do so'. According to Chapter 2, Section 1 of the Driving Licence Act, anyone with a valid driving licence for the vehicle is entitled to drive a passenger car.

29. The main purpose of the penal provision is to promote road safety by ensuring respect for the requirement to hold a driving licence as an absolute prerequisite for the right to drive a motor vehicle (cf. NJA II 1958, pp. 493 and 495). It may seem inconsistent with this aim that a person who has obtained a driving licence by deception may escape liability on the grounds of holding a licence, despite failing to meet the formal requirements for obtaining the licence in the first place. This is particularly true as the Driving Licence Act imposes an obligation to revoke such a driving licence.

30. However, it is the licence itself that authorises the driving of certain types of vehicles. Applying the rules so that a driver possessing a valid driving licence is nevertheless considered to have driven a passenger car without being entitled to do so, is not a prudent interpretation of the provision on unlawful driving such as the principle of legality requires (see para. 24). Thus, it must be concluded that the holder of a formally valid driving licence cannot be convicted of unlawful driving, even if that licence was issued on the basis of misleading information.

#### **The assessment in this case**

31. Nothing has emerged to disprove the fact that, at the time of his application to the Swedish Transport Agency, NF held a valid Hungarian driving licence authorising him to drive a passenger car in Hungary. Therefore, the Hungarian driving licence cannot be considered to have contained any objectively false information regarding NF's driving licence eligibility, in the sense required for liability for using an untrue instrument.

32. When driving a passenger car on the occasions in question NF, as stated above, held a valid driving licence which entitled him to drive a passenger car in Sweden. Consequently, NF is not guilty of unlawful driving.

33. The indictment must therefore be dismissed in its entirety.

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Justices of the Supreme Court Svante O. Johansson, Thomas Bull (reporting Justice), Stefan Reimer, Johan Danelius and Margareta Brattström participated in the decision.

Judge referee: Christoffer Stanek