

Supreme Court's JUDGMENT

delivered in Stockholm on 30 June 2023

Case no.

B 2381-22

PARTIES

Appellant

1. GBD

2. ECE

3. FCS

4. EM

5. CSA

Counsel for 1–5: Attorney PJ

6. PH

Counsel and Public Defender: Attorney JH

7. SOR

Counsel: Attorneys ALG and DU

Respondent

Prosecutor-General

Box 5553

114 85 Stockholm

THE MATTER

Disturbing proceedings

RULING APPEALED

Judgment of the Svea Court of Appeal of 10/03/2022 in case B 14386-20

JUDGMENT

The Supreme Court affirms the judgment of the Court of Appeal.

JH shall receive compensation from public funds for the defence of PH 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

GBC, ECE, FCS, EM, CSA, PH and SOR (the Appellants) have requested that the Supreme Court dismiss the charge.

In the event of an acquittal, EM has requested compensation for costs of litigation in the Court of Appeal.

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

REASONS FOR THE JUDGMENT

Background

1. On 12 November 2019, an interpellation debate was held in the Riksdag's Chamber. On the same date, the Appellants were visiting the Riksdag. During the debate, they sat together in the public gallery of the Plenary Chamber.
2. After the final speaker in the debate between JF and Foreign Minister AL regarding the China strategy and support for democratic development in Hong Kong (Interpellation 2019/20:63), the Appellants stood up. Some of them showed their dissatisfaction by shouting what, in their opinion, the Minister ought to have addressed, namely human rights and solidarity with the people of Chile. Some of them raised their arms and others unfurled a flag.
3. The protest lasted less than a minute, and security guards removed the Appellants from the gallery. Several of those present in the Plenary Chamber looked up at the gallery, and the First Deputy Speaker issued a reminder that expressions of opinion from the gallery are not permitted. However, the meeting was not adjourned and was permitted to continue after the Appellants had left the gallery.
4. The participants in the action were charged with disturbing proceedings, or, alternatively, with disturbing a public gathering, as they "jointly and in concert, by noise or other similar means, disturbed an interpellation debate in the Riksdag, which is a proceeding of the State".

5. The District Court found the participants guilty of disturbing proceedings and imposed day fines on them all. The Court of Appeal upheld the operative part of the District Court's judgment.

The criminal act as charged

6. In the Supreme Court, the Prosecutor-General amended the statement of the criminal act as charged to read as follows.

The Defendants have jointly and in concert, by noise or other similar means, during an interpellation debate, disturbed a meeting of the Riksdag, which is a State proceeding. This occurred on 12 November 2019 on Riksgatan, City of Stockholm.

Secondarily, the debate is to be considered a public gathering.

The Defendants committed the offence with intent.

What the case concerns

7. The case concerns the preconditions for criminal liability for disturbing proceedings or a public gathering, and, in particular, the question of what constitutes a disturbance by noise or other similar means. The case also highlights the importance of concerns related to freedom of expression.

Regulation of criminal liability for disturbing proceedings or a public gathering

8. A person who, by violence or noise or other similar means, disturbs or tries to prevent a public religious service, other public act of worship, a wedding, funeral or similar ceremony, a court hearing or other central or local government proceedings, or a public gathering for deliberation, instruction or to hear a lecture, is guilty of *disturbing proceedings or a public gathering* and is sentenced to a fine or imprisonment for at most six months (see Chapter 16, Section 4, first paragraph of the Criminal Code).

9. The act which, under the name of disturbing proceedings or a public gathering, is subject to criminal liability, may be an act of violence, noise or something equivalent. The offender must also, with such an act, disrupt or attempt to disrupt a meeting of the kind referred to in this Section. It follows that not all meetings are protected by the penal provision.

Noise or similar act

10. In situations such as this one, criminal liability requires that the proceedings or meeting be disrupted by noise or other similar means. What can be considered as noise is not explained in detail in the preparatory works of the penal provision.

11. Normally, shouts and other clamour or din are considered noise. The term 'noise' is, to a certain extent, dependent on the context in which it is used. If a meeting is held in a noisy environment, shouts from the audience may go unnoticed which, in other, quieter meetings, would be experienced as noise. Thus, what is considered noise is closely linked to what is perceived as a disturbance (cf. para. 15 below).

12. If the act cannot be considered noise, criminal liability requires that the act be similar to noise. Such an act may, but need not, be punishable under any other provision. This may involve people moving in a distinctive way or using light signals or smoke in the meeting room. It may also involve a person prominently displaying a banner with a particular message.

13. For an act to be similar to noise, it is assumed that the act is of such a nature that, like noise, it can be perceived as a disturbance. The context in which the act was performed may therefore also be relevant in this case.

Disturbance

14. Criminal liability, under Chapter 16, Section 4, requires – insofar as it concerns us here – that the offender disturb proceedings or a public gathering. If individuals are disturbed, but the proceedings or gathering remains undisturbed, there is no disturbance within the meaning of the Section.

15. The phrase ‘disturbance by noise’ must be interpreted in the light of the noise level suitable to the situation (cf. para. 11). The proceedings and public gatherings protected by Chapter 16, Section 4 are of various nature and are differently sensitive to noise. Proceedings and gatherings held in less peaceful circumstances need not necessarily be disturbed by an act that would incur criminal liability if it were committed in a more peaceful environment. In the same way, proceedings or public gatherings are, to a varying degree, sensitive to acts similar to noise. (See NJA II 1948 p. 348 et seq.)

Protection of meetings in Riksdag Chambers

16. The provision in Chapter 16, Section 4 of the Criminal Code covers, among other things, State proceedings. Only the performance of official duties involving the exercise of a publicly visible function of the public administration is to be considered a State proceeding. However, the work of employees in their offices is not covered. (See NJA II p. 349.)

17. The legislative history refers to proceedings in the Riksdag as an example of State proceedings (see NJA II 1948 p. 349). The decisions of the Riksdag’s Chamber are made in plenary meetings.

18. As a general rule, plenary meetings are open to the public. To that end, seats have been provided in the Plenary Chambers for the public (cf. Chapter 6, Section 26 Riksdag Act). The fact that meetings are open to the public has been considered so fundamental to a democratic system of government that it has been regulated in the constitution (see Chapter 4, Section 9 of the Instrument of

Government). Members of the public have no right to speak in the Chamber, and those who cause a disturbance may be expelled immediately. In the event of disorder among the audience, the Speaker may expel all the members of the public. (See Chapter 6, Section 27 Riksdag Act.)

19. In order for the Chamber to function, in a parliamentary and representative democracy, members of the public in attendance are expected to follow the established regulations. As a rule, meetings in Chamber are conducted in an atmosphere of calm. This affects both the assessment of what can be characterised as noise (or something similar to noise) as well as what is required for the proceedings to be considered disturbed.

Relationship with freedom of expression

The legal regulation of freedom of expression

20. The protection of fundamental rights and freedoms is governed by Chapter 2 of the Instrument of Government. This states that everyone shall be guaranteed, in his or her relations with the public institutions, freedom of expression: that is, the freedom to communicate information and express thoughts, opinions and sentiments (see Chapter 2, Section 1, first paragraph, item 1).

21. Freedom of expression may be restricted by law, but only to satisfy purposes that are acceptable in a democratic society. The restriction may never go beyond what is necessary with regard to the purposes for which it was imposed, nor may it extend so far that it represents a threat to the free shaping of opinion as one of the foundations of democracy. (See Chapter 2, Sections 20 and 21.)

22. Freedom of expression may be restricted for reasons such as public order. In judging what restrictions may be introduced, particular attention shall

be paid to the importance of the widest possible freedom of expression. (See Chapter 2, Section 23)

23. Article 10 of the ECHR also recognises the universal right to freedom of expression. This includes the freedom to receive and disseminate information and ideas without interference from public authorities. As the exercise of the freedom of expression brings certain responsibilities and obligations, it may be subject to such limitations as are prescribed by law and are necessary in a democratic society in order, inter alia, to ensure order or protect the rights of others.

The importance of freedom of expression in charges of disturbing proceedings

24. The legislative history of the 1976 reform of the rules governing constitutional rights shows that the legislator assumed that a large number of offences, including the offence of disturbing proceedings or a public gathering, would fall entirely outside the constitutional protection of freedom of expression (see Govt. bill 1975/ 76:209 p. 141). However, it is now clear that several of the criminal provisions listed in the legislative history may in themselves constitute restrictions on freedom of expression (see "Raplåten" NJA 2021 p. 215 para. 20 with references).

25. The penal provision in Chapter 16, Section 4 of the Criminal Code may include statements concerning, e.g., political matters, provided that the statement is made in such a way that it can be considered similar to noise. The criminal provision could thus, under certain circumstances, constitute an obstacle to the individual's exercise of freedom of expression and thus constitute a restriction of the same freedom under the Instrument of Government (cf., e.g., Thomas Bull and Fredrik Sterzel, *Regeringsformen - en kommentar*, Version 4, 2019, JUNO, p. 93 and Mikael Ruotsi, *Svensk yttrandefrihet och internationell rätt*, 2020, p. 50).

26. The proceedings and public gatherings that are covered by the provision in Chapter 16, Section 4 of the Criminal Code are of different types and are intended to protect different values. For example, the protection of public gatherings against disturbance by individuals aims to realise the constitutional goal of free formation of opinion (see NJA II 1937 p. 62). In the case of central or local government proceedings, the provision helps to ensure the exercise of the parliamentary and representative form of government.

27. The offence of disturbing proceedings or a public gathering does not criminalise the content of a statement and does not prevent the same message from being presented in a way or place that does not disturb proceedings or a public gathering.

28. The scope provided by the Instrument of Government for limiting freedom of expression means that penalising the disturbance of proceedings or a public gathering does not normally bring about any conflict with the constitution (cf. Chapter 2, Section 23 of the Instrument of Government). Nor does Article 10 ECHR generally preclude a conviction for this offence (see, inter alia, *Chorherr v. Austria*, 25 August 1993, §§ 31–33, Series A no. 266-B). The extent to which the finding of guilt for disturbing proceedings or a public gathering constitutes an authorised restriction of freedom of expression must be assessed on a case-by-case basis.

The assessment in this case

29. In this case, it is established that the Appellants stood up during an interpellation debate in the Riksdag's Chamber and expressed their dissatisfaction with the content of the debate (see para. 2). The expression of dissatisfaction caused noise and involved an action similar to noise.

30. The expression of dissatisfaction was noticed by many of those present in the Plenary Chamber. The First Deputy Speaker considered it necessary to

issue a reminder that expressions of opinion from the gallery are not allowed. With their behaviour, the Appellants have disturbed a meeting of the Riksdag, which is a State proceeding.

31. Surveillance footage from the Plenary Chamber shows that the Appellants displayed their dissatisfaction in a way that cannot be interpreted as anything other than acting jointly and in concert. They must also have realised that their joint action would disturb the meeting.

32. The protection of freedom of expression under the Instrument of Government and the ECHR does not, in this case, constitute an impediment to a finding of guilt (see para. 28).

33. The Appellants must therefore be found guilty of disturbing proceedings. The judgment of the Court of Appeal shall therefore be affirmed.

Justices of the Supreme Court Agneta Bäcklund (dissenting), Svante O. Johansson (reporting Justice, dissenting), Malin Bonthron, Johan Danelius and Margareta Brattström have participated in the ruling.
Judge referee: Emma Björneke

DISSENTING OPINION

Justices of the Supreme Court Agneta Bäcklund and Svante O Johansson, (reporting Justice), with their dissent, would acquit the Appellants. The reasons for the judgment should, they consider, read as follows after para. 19.

The punishable scope

20. Criminal liability under Chapter 16, Section 4 of the Criminal Code is not intended to arise from every deviation from the established regulations or other behaviour that can be said to negatively affect the order of proceedings in any way. A contrary approach would mean that any action which, according to accepted methods of interpretation, can be included in the wording of the penal provision would bring about criminal liability. Under such an approach, criminal sanctions would be applied to an extent that cannot be considered justified. There is thus reason for restrictiveness in assessing what constitutes a criminal offence (cf. Thomas Bull, *Mötes- och demonstrationsfriheten*, 1997, p. 590). Purely trivial occurrences and behaviour that does not require prosecution are outside the scope of the provision. Rather, criminal liability requires a substantive violation of public order (cf. the statement by the Council on Legislation in NJA II 1937 p. 64).

21. In the legislative matter that introduced the regulation, the minister also pointed out that, in some cases, there may be petty offences that can be dealt with by other means (see NJA II 1948 p. 349). By way of example, during a meeting of the court (which is also a State proceeding that is generally conducted in an environment of calm) the presiding judge must maintain order and enforce the necessary regulations. Those disturbing orderly proceedings must, in the first place, be reprimanded. If this does not suffice, anyone disturbing a meeting, or who otherwise behaves inappropriately, may be expelled from the meeting. Such an individual can also be ejected from the

courtroom. (See Chapter 5, Section 9 and Section 9a of the Code of Judicial Procedure.)

22. If, while the court is in session, someone disrupts the proceedings or violates a regulation that has been communicated to them, he or she is sentenced to a fine (see Chapter 9, Section 5 of the Code of Judicial Procedure). According to the legislative history, these regulations relate to petty offences, compared to acts that must be judged as disturbing proceedings (NJA II 1948 p. 349).

23. Similar rules apply to plenary meetings, where behaviour that constitutes a disturbance can bring about immediate expulsion. If the audience is disorderly, the Speaker may expel all members of the audience (see para. 18). While there is no possibility for the Speaker to impose a fine on anyone who disturbs a plenary meeting, the idea behind these rules is the same as for court hearings. Petty offences should not be considered as disturbing proceedings.

The assessment in this case

24. During an interpellation debate in the Riksdag, the Appellants stood up, verbally expressed dissatisfaction with the content of the debate and waved a flag (see para. 2). The action must be considered an action similar to noise. The expression of dissatisfaction was noticed by many in the Chamber, and the First Vice-President issued a reminder that expressions of opinion from the gallery are not allowed.

25. However, the expression of dissatisfaction was not loud and it lasted less than a minute. Security guards immediately removed the Appellants from the gallery, and they left the premises immediately and in a calm fashion. The incident occurred at the end of the debate in question, and there was no need to interrupt the plenary meeting.

26. In the light of the foregoing, the behaviour with which the Appellants are charged cannot be regarded as constituting such a disturbance as to give rise to liability under Chapter 16, Section 4 of the Criminal Code. The Appellants must therefore be acquitted.

27. In the minority on this point, we are otherwise in agreement with the majority.
