

# SUPREME COURT'S JUDGMENT

delivered in Stockholm on 28 March 2025

Case no.  
Ö 438-24

## **PARTIES**

### **Appellant**

Region Skåne, organisation no. 232100-0255  
291 89 Kristianstad

Counsel: Attorney H.A.

### **Respondent**

O.C.

Counsel: Lawyers O.M., E.S. and H.M.

## **THE MATTER**

Case regarding consent judgment

## **RULING APPEALED**

Decision of the Court of Appeal of Skåne and Blekinge of  
2023-12-20 in case Ö 4017-23

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## **THE SUPREME COURT'S RULING**

The Supreme Court grants leave to appeal.

The Supreme Court sets aside the decisions of the district court and the court of appeal and returns the case to the district court for further proceedings.

## **CLAIMS IN THE SUPREME COURT**

Region Skåne has requested that the Supreme Court set aside the decisions of the district court and court of appeal and declare that a judgment in the case shall be issued in accordance with the region's concession without further adjudication in the case.

O.C. has opposed modification of the decision of the court of appeal.

## **REASONS FOR THE DECISION**

### **Background**

1. O.C. brought an action against Region Skåne and requested that the region pay damages in the amount of SEK 75,000. She claimed that a midwife had performed a medical procedure without her consent during childbirth. The region had thereby violated her right to protection of bodily integrity pursuant to Article 8 of the European Convention on Human Rights or the right to protection against physical violation according to Chapter 2, Article 6, first paragraph of the Instrument of Government and caused her non-pecuniary damage.
2. The region conceded O.C.'s claim but declared that such concession was not to be perceived as an admission that a rights violation had occurred. The region requested that the district court issue a judgment in accordance with the concession.

3. O.C. opposed issuance of a judgment in accordance with the concession. She requested in the alternative that the district court establish that the region, by performing the medical procedure against her will, had violated her right to protection in accordance with the European Convention and the Instrument of Government. The region requested that the district court disallow the request for the declaratory judgment.

4. The district court decided to reject the region's request for a consent judgment and allow O.C. to pursue her action as an action for declaratory judgement. As a consequence thereof, her action for declaratory judgment was not to be adjudicated. The district court stated that the decision could be appealed pursuant to Chapter 49, Section 4 of the Code of Judicial Procedure. After the region gave notice of appeal, the district court determined that the decision could be separately appealed and the case would be stayed pending such adjudication.

5. The court of appeal affirmed the decision of the district court.

#### **Conditions for adjudicating the region's appeal**

6. Pursuant to Chapter 49, Section 4 of the Code of Judicial Procedure, the courts have determined that the decision of the district court could be appealed without connection to the appeal of a judgment or a final order. According to the provision, a party desiring to appeal a decision which entails that the district court has overruled an objection based on a procedural impediment shall give notice of intention to appeal. The district court shall thereupon determine whether the decision may be appealed separately or only in conjunction with an appeal from the judgment or final order in the case.

7. The reasons underlying the possibility to be able to obtain an adjudication by a higher court of a decision to overrule an objection based on a procedural impediment are pertinent in the situation which has arisen in this case. Accordingly, the region may be deemed to have the right to appeal the decision. (*Cf.* the “*Truebell*” case, NJA 1977, p. 349 and Lars Welamson and Johan Munck, “Proceedings Before the Court of Appeal and Supreme Court, Trials VI”, 6th. ed. 2022, p. 23.)

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

8. The case deals with the manner in which a court is to address an action for damages when the plaintiff bases his or her action on a violation of a fundamental freedom or right, and the defendant concedes the plaintiff’s claim but simultaneously declares that the concession does not entail an acknowledgement that a violation has occurred.

### **Adjudication of violations of fundamental freedoms and rights**

9. O.C.’s action is based upon a violation of her rights in accordance with the European Convention or the Instrument of Government.

10. Pursuant to Article 13 of the European Convention, everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority, even if the violation has been committed by persons acting in an official capacity. This applies in respect of persons who assert on reasonable grounds that they have been subjected to a violation of the Convention. The remedy must entail both an acceptable indemnification as well as the possibility for a finding regarding liability for a violation.

11. An acknowledgement of the rights violation is thus a necessary part of the indemnification to which an individual is entitled in conjunction with Convention violations.

12. It follows from the above-stated that the provisions of the Code of Judicial Procedure should be applied in such a manner that a plaintiff who asserts on reasonable grounds that his or her fundamental freedoms or rights pursuant to the European Convention have been violated is afforded the possibility to have the alleged rights violation adjudicated. The same should apply where the plaintiff asserts that his or her fundamental freedoms or rights in accordance with Chapter 2 of the Instrument of Government have been violated (*cf.* Government Bill 2021/22:229, pp. 39 and 58 f.).

13. In the event the defendant concedes a requested amount in damages but simultaneously declares that the concession therefor does not entail an acknowledgement that a violation has occurred (a so-called qualified concession), the plaintiff should thus be able to obtain an adjudication of whether a rights violation has occurred. However, this must occur in such a manner that the principle regarding the binding effect of a concession in cases amenable to out-of-court settlement is not disregarded (*cf.* the “*Airline Concession*” case, NJA 2021, p. 1093, which involved Union law and the EU Charter of Fundamental Rights).

#### **Adjudication of cases amenable to out-of-court settlement following concession**

14. In civil cases, i.e. cases where the parties can reach a settlement on the matter, the so-called disposition principle applies. This entails that the parties delimit the subject matter of the proceeding in such a manner that the plaintiff’s request and any concession on the part of the defendant determine the framework of what may be adjudicated by the court. This follows, among other things, from Chapter 17, Section 3 of the Code of Judicial Procedure.

15. The starting point is thus that the court is not to conduct any assessment of issues of fact or legal issues where the defendant has

conceded the plaintiff's action. However, the principle is not without exception. For example, the court, notwithstanding the concession, may adjudicate the case on the merits where the plaintiff's action is based on assertions over which the parties do not have a right of disposition in a settlement due to the fact that it can impact public interests (*cf.* the “*Rescission Concession*” case, NJA 1986, p. 205). However, this case does not involve such a situation.

16. The disposition principle is reflected also in Chapter 42, Section 18 of the Code of Judicial Procedure which states that a case is determined after a main hearing, but a judgment may be issued without a main hearing if the defendant concedes the plaintiff's claim (see first para. 3). However, the provision does not regulate when such a judgment is to be issued.

17. The provisions of Chapter 17, Section 4 of the Code of Judicial Procedure regarding separate judgments may also be said to reflect the disposition principle. Where several actions are joined in one proceeding, a separate judgment may be given on any of them provided they can be separated. A separate judgment may also be given if an action is conceded to a certain extent. The provisions are facultative. Thus, the court can determine if there is cause to render a separate judgment.

18. The aforementioned provisions provide the court with leeway to refrain from immediately delivering a judgment on the basis of a so-called qualified concession when a plaintiff, on reasonable grounds, asserts that his or her fundamental freedoms or rights have been violated.

19. However, the aforementioned does not answer the question regarding the manner in which an adjudication of whether there has been a violation of rights may occur. This triggers the provisions regarding actions for declaratory judgment.

**Actions for declaratory judgment**

20. The possibility to bring an action for declaratory judgment, i.e. an action concerning whether or not a certain legal relationship exists, is limited in certain ways. Such an action may be brought if an uncertainty exists as to the legal relationship and if the uncertainty exposes the plaintiff to a disadvantage (see Chapter 13, Section 2, first paragraph of the Code of Judicial Procedure).

21. An action for declaratory judgment may also be permitted regarding a legal relationship which arises in a pending case (see Chapter 13, Section 2, second paragraph). A condition is that the original claim for relief depends on a contested prejudicial legal relationship. Such a legal relationship shall, notwithstanding a request for declaratory judgment, be adjudicated by the court as a so-called prejudicial question. If a request for declaratory judgment is sought regarding the legal relationship, this will be expressed in the judgment and is significant to the legal force of the judgment.

22. The requirement that the matter must involve an issue of a legal relationship entails that the action must concern a concrete legal relationship (or non-relationship) between the parties. The action may not pertain to the purport of applicable law or purely factual circumstances. In addition, the action must relate to a legal consequence, and this must have a sufficiently clear connection to concrete circumstances adduced as grounds. The legal relationship to which the action pertains must thus be so specified that it is possible to grasp the effect of establishing whether the relationship exists or not. (Cf. the “*Environmental Proceedings in the US*” case, NJA 2013, p. 209, para. 6.)

23. The provisions are facultative. In order to be permitted, an action for declaratory judgment shall appear suitable taking into account the circumstances.

24. Thus, based on Chapter 13, Section 2, second paragraph, there is a possibility to bring an action in parallel with an action for declaratory judgment to establish a legal relationship when it constitutes a prejudicial question in the case. It should be possible to formulate an assertion that a rights violation has occurred such that it is sufficiently precise and otherwise fulfils the requirements applicable pursuant to the provision. An action for declaratory judgment may, in such cases, regularly be regarded as suitable. (Cf., also, the “*Action Regarding Climate Change*” decision of the Supreme Court of 19 February 2025 in case Ö 7177-23, para. 70, regarding the third paragraph.)

25. It follows from Chapter 13, Section 3, first paragraph (2) that a request for declaratory judgment in accordance with Section 2, second paragraph may be asserted after an action has been brought in accordance with Chapter 13, Section 1.

26. The conclusion is that the court, in conjunction with a qualified concession, should apply the procedural law provisions in such a manner that the court adjudicates in accordance with the concession and, at the same time, within the context of an action for declaratory judgment, rules on whether there has been a rights violation.

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

27. There are conditions for adjudicating the region’s appeal (see para. 7).

28. O.C. has asserted on reasonable grounds a violation of Article 8 of the European Convention. The region has consented to her request for damages,



but has not admitted that she was subjected to a violation. O.C. has opposed the issuance by the district court of a judgment in accordance with the concession and has made a request for declaratory judgment according to which a violation has occurred. In this situation, the district court is to rule on both O.C.'s claim for specific performance and her request for declaratory judgment (see para. 26).

29. The decisions of the district court and court of appeal should, against this background, be set aside and the case returned to the district court for further processing.

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Justices of the Supreme Court Stefan Johansson, Petter Asp, Eric M. Runesson (reporting Justice), Cecilia Renfors and Katrin Hollunger Wågnert participated in the ruling.  
Judge referee: Oscar Lindberg.