

Supreme Court's JUDGMENT

delivered in Stockholm on 25 April 2025

Case no.
T 1101-24

PARTIES

Appellant

A.G.

Counsel: Lawyers F.B.E., L.G., A.O. and M.R.D.

Respondent

Office of the Chancellor of Justice
Box 2308
103 17 Stockholm

Counsel: Director A.F. and Reporting Clerk E.H.

THE MATTER

Damages

RULING APPEALED

Judgment of the Svea Court of Appeal of 2024-01-17 in case
T 6233-22

SUPREME COURT
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JUDGMENT

The Supreme Court modifies the judgment of the court of appeal only in so far as the state is ordered to pay A.G. SEK 162,994 plus interest in accordance with Section 6 of the Interest Act from 10 May 2021.

The state shall compensate A.G. for his costs of litigation in the Supreme Court in the amount of SEK 63,440 pertaining to counsel fees and interest in accordance with Section 6 of the Interest Act from the date of this judgment.

CLAIMS IN THE SUPREME COURT

A.G. has requested that the state pay him damages in the amount of SEK 262,994 plus interest, of which SEK 250,000 pertains to non-pecuniary damages.

The state has opposed modification of the judgment of the court of appeal.

The parties have requested compensation for the costs of litigation incurred in the Supreme Court.

REASONS FOR THE JUDGMENT**Background**

1. At the end of 2018, the Chief Guardian for Örnsköldsvik Municipality applied to establish a guardianship for A.G. On 30 November 2018, the District Court of Ångermanland decided that a guardianship would be established on an interim basis. The guardian's assignment encompassed monitoring A.G.'s rights, managing his property and caring for his person (so-called full guardianship). In April 2019, the district court

decided finally that a full guardianship would be established for him. On 6 December 2019, it was decided that the guardianship would cease.

2. It is common ground that A.G., throughout the period from 30 November 2018 until 6 December 2019, was wrongly subjected to guardianship as a consequence of which he was completely without legal capacity and thereby the right of disposition over his property and his assets, and that this occurred following such deficiencies in the proceedings as constituted a violation of his fundamental freedoms and rights pursuant to Article 8 of the European Convention.

3. The deficiencies have consisted, among other things, of the fact that the interim decision regarding guardianship was taken without an examination by the district court of the need for such a decision and without A.G. first being afforded the opportunity to express his opinion, that he did not have a trial counsel appointed for him prior to that decision, that the medical basis was inadequate as was the case also prior to the final decision, as well as the fact that the trial counsel who was subsequently appointed was not directed to express an opinion immediately after the interim decision.

4. A.G. brought an action against the state based on the violation of his rights pursuant to Article 8 of the European Convention resulting from the wrongful guardianship and deficiencies in the proceedings. He requested damages in the amount of SEK 262,994, of which SEK 250,000 pertained to other non-pecuniary damage.

5. The district court determined that damages for other non-pecuniary damage as a consequence of the violation of rights was to amount to SEK 60,000. The court of appeal has determined that the non-pecuniary damages are to be set somewhat higher and established at SEK 80,000. By virtue of the judgment of the district court, furthermore, it has been

determined that the state shall pay an additional SEK 12,994 for pure economic loss incurred by A.G.

What is at issue in the Supreme Court

6. The case addresses non-pecuniary damages in conjunction with the violation of Article 8 of the European Convention and, more specifically, the manner in which the amount of the damages for other non-pecuniary damage is to be determined in accordance with Chapter 5, Section 8 of the Tort Liability Act.

Constitutional damages and convention damages

7. The Supreme Court has clarified through a number of legal cases that the state, without legal basis, can be obliged to pay damages for violations of fundamental freedoms and rights pursuant to the European Convention and the Instrument of Government (see, among others, the “*CFO of ICS*” case, case NJA 2005, p. 462; the “*Long Detention Period*” case, case NJA 2007, p. 295; the “*Wrongful Medical Examination*” case, case NJA 2007, p. 584; the “*Citizenship I*” case, case NJA 2014, p. 323; and the “*Citizenship II*” case, case NJA 2018, p. 103).

8. This case law has been written into the law by virtue of legal amendments in 2018 and 2022 to Chapter 3, Section 4 of the Tort Liability Act (see Government Bill 2017/18:7 regarding convention damages and Government Bill 2021/22:229 regarding constitutional damages). According to the section, the state or municipality shall compensate damage arising as a consequence of the violation by the state or municipality of the injured party’s fundamental freedoms and rights pursuant to Chapter 2 of the Instrument of Government or pursuant to the European Convention. Damages shall be paid only to the extent necessary in order to compensate the violation.

9. The obligation to compensate covers personal injury, property damage, pure economic loss, compensation for violations of personal integrity due to criminal offences and compensation for relatives due to criminal offences (first paragraph 1). The obligation to pay compensation also covers other non-pecuniary damage (first paragraph 2). The expression other non-pecuniary damage indicates that constitutional damages and convention damages cover a type of non-pecuniary damage other than such as is compensated within the types of damage referred to in paragraph 1, e.g. compensation for violations of personal integrity and compensation for physical and mental suffering in conjunction with personal injury.

Determination of damages for other non-pecuniary damage

The legal regulation

10. Pursuant to Chapter 5, Section 8 of the Tort Liability Act, constitutional damages and convention damages for other non-pecuniary damage are determined according to what is reasonable taking into account the nature of the violation and the circumstances in general.

11. The nature of the violation has in view principally the right which has been violated and the gravity of such violation. The compensation is to be proportionate to the violation which has occurred. Circumstances in general means primarily of what the violation specifically consisted from the perspective of the injured party. Consideration is to be given principally to the manner in which the perceived violation is typically experienced by one in the injured person's situation. In addition, whether a violation has affected someone who may be deemed to be more vulnerable and has greater difficulty protecting their rights may be relevant to the assessment. (See Government Bill 2017/18:7, p. 65.)

Specifically regarding the legislative matters

12. The preparatory works for the legislation regarding convention damages emphasise that existing types of damage in Swedish law should be used as far as possible. It is also stated that damages for violations of rights pursuant to the European Convention demonstrate a clear similarity with compensation for violations of personal integrity due to criminal offences and should be incorporated in the Swedish tort liability law system. The amount of damages is to be calculated in accordance with Swedish norms and may deviate from awards rendered by the European Court of Human Rights, but the assessment cannot be made wholly independent of the case law of the European Court of Human Rights. The domestic regime may not give rise to clearly unreasonable results. It is important for Swedish courts to consider how the amounts awarded to the injured party relate to the case law of the European Court of Human Rights. If compensation markedly differs from such case law, it must be clearly justified. (See Government Bill 2017/18:7, pp. 30, 36, 64 and 67 f.)

13. The preparatory works also state that convention damages are valued based on similar foundations as compensation for violations of personal integrity and may be estimated by means of general fairness assessments. Convention damages are conceived to compensate various sorts of negative experiences and feelings such as fear, humiliation, shame or powerlessness. According to the preparatory works, the amounts which are compensated as other non-pecuniary damage in accordance with Chapter 5, Section 8 of the Tort Liability Act should thus harmonise with the amounts awarded as compensation for violations of personal integrity. (See, *ibid.*, Government Bill, p. 64 f.)

14. In practice, however, it is not possible according to the preparatory works to carry out an exact comparison of various types of convention

violations with different types of criminal acts. At the same time, the amounts awarded as compensation for violations of personal integrity are an indication of the manner in which non-pecuniary compensation for violations of rights may be calculated in conjunction with various types of acts and, as a main rule, compensation should not be established in a manner which significantly deviates from that which is awarded as compensation for violations of personal integrity in comparable cases. Where the compensation is to rise to levels equal to those awarded for rape or attempted murder, it should be required that the violation of rights has been particularly far-reaching, prolonged or grave and such that, by its nature, it has extensive and profound consequences for the wellbeing of an individual. (See, *id*, Government Bill, pp. 39 and 65.)

15. When constitutional damages were legislated in 2022, Chapter 5, Section 8 was made applicable to the determination of compensation also of this type. The preparatory works refer entirely to the legislative matter regarding the implementation of convention damages (see Government Bill 2021/22:229, p. 60).

Supreme Court precedent

16. It has been stated in previous rulings from the Supreme Court regarding convention damages that, in conjunction with the assessment of claims for such damages, it is a natural starting point to take into account the precedent of the European Court on Human Rights notwithstanding the fact that there is no convention-based obligation to comply precisely with the same and that consideration must also be given to the fact that individual national circumstances may cause a variation in fair compensation levels from one country to another. In the event of violations of the European Convention, the level of compensation should not deviate too far from that applicable when damages are awarded in accordance with

the Tort Liability Act in comparable cases. However, in general, the levels are to be compatible with the precedent of the European Court of Human Rights. In the determination, consideration should be given to the gravity of the violation of a right in accordance with the European Convention. (*Cf.* the “*CFO of ICS*” case, and the “*Wrongful Medical Exam*” case.)

17. It has been emphasised in previous rulings regarding constitutional damages that the norms for the determination of compensation applicable in accordance with another regime, e.g. compensation for violations of personal integrity in accordance with Chapter 2, Section 3 of the Tort Liability Act, cannot be transferred directly to cases of constitutional damages. Nor can any guidance be directly obtained from the norms which have developed for the determination of compensation which may be payable for non-pecuniary damage for violations of the European Convention. A starting point for the determination of the damage in conjunction with a violation of the right to citizenship in accordance with Chapter 2, Article 7 of the Instrument of Government should, as with compensation for other non-pecuniary damage, rest on ethical and social valuations based on discretionary assessments of the damage which may be typically regarded as having been incurred. In conjunction with the determination, the purposes which justify payment of compensation and the duration of the violation should be taken into account. As regards determination of the compensation, even though the compensation levels applied in other areas are not directly comparable, guidance should be obtained from the principles applicable in the determination of other non-pecuniary compensation. (*Cf.* the “*Citizenship I*” case, pp. 9–11 and the “*Citizenship II*” case, pp. 22 and 23.)

18. The compensation in the “*CFO of ICS*” case was set at SEK 100,000 for protracted proceedings and delayed justice in a legal proceeding which lasted for seven years and in which the procedure had been inactive for a

lengthy period of time. In the “*Citizenship I*” case, the amount of compensation was set at SEK 100,000 for the loss of citizenship of just over four years. This compensation level was regarded as a relative level in the “*Citizenship II*” case in which it was stated that an amount of at least SEK 150,000 appeared justified for the injured party who had been deprived of his citizenship during a significantly longer period of time and, furthermore, was essentially stateless. In light of the development of trends in monetary value, the amounts today may be estimated at between SEK 130,000 and SEK 200,000.

Generally regarding loss of legal capacity

19. The establishment of guardianship entails that the individual loses his or her legal capacity within the area covered by the guardian’s assignment. Accordingly, it is a very far-reaching measure for the person to whom the decision pertains. Against this background, it is important to exercise care in the establishment of guardianships and that the individual is not deprived of his or her legal capacity to any extent greater than is appropriate in the individual case. (See the “*Undesired Guardianship*” case, case NJA 2018, p. 350, paras. 13 and 14 with further references.)

The precedent of the European Court of Human Rights regarding Convention violations in conjunction with the loss of legal capacity

20. A decision which entails that a person loses legal capacity without sufficient cause and with an inadequate medical examination is regarded as a grave violation of the right to a private life in accordance with Article 8 of the European Convention.

21. In the ruling by the European Court of Human Rights in *Ivinović v. Croatia*, it was emphasised that such an adverse effect on an individual’s personal integrity which entails depriving a person of his or her legal

capacity is justified only in exceptional circumstances and following examination in a proceeding satisfying stringent requirements of the rule of law. The court was of the opinion that the wrongful partial (not full) deprivation of a woman's legal capacity according to which she could not dispose of her money and her assets and was also deprived of the possibility of making independent decisions concerning her medical treatment, created an entitlement to damages in the amount of EUR 7,500. (See *Ivinović v. Croatia*, no. 13006/13, 18 September 2014.)

22. There is also cause to point out the rulings in *Nikolyan v. Armenia*, no. 74438/14, 3 October 2019, and *N. v. Romania (No. 2)*, no. 38048/18, 16 November 2021, in which a complete deprivation of legal capacity – in the absence of the legal possibility to do so only partially and to the extent for which there was an actual need – was found to constitute violations of Article 8. The damages amounts were determined at EUR 7,800 and EUR 7,500 respectively.

23. Taking into account the trends in monetary value and in accordance with the applicable daily exchange rate, the amount of damages awarded by the European Court of Human Rights in the relevant rulings was comparable to at least SEK 100,000.

Conclusions regarding the legal position

24. Non-pecuniary damage is distinctive in that it does not lend itself to be measured in terms of money in the same way as economic damage. Accordingly, as with compensation for other types of non-pecuniary damage, the amount of the compensation for other non-pecuniary damage in accordance with Chapter 3, Section 4 of the Tort Liability Act should be determined by means of a discretionary assessment based on ethical and social values.

25. It may be assumed that compensation for other non-pecuniary damage arises in what may be regarded as more distinctive situations. The assessment of the amount of compensation must therefore, to a degree greater than in conjunction with compensation for violations of personal integrity, have as its starting point the circumstances in the individual case taking into account the nature of the relevant violation and the circumstances relating thereto. A circumstance of weight is the effects of the violation on the individual. However, the assessment must be objective in the sense that consideration is not to be given to whether the person affected actually felt more or less violated than what may be expected in a typical assessment.

26. The statements made in the preparatory works according to which the amounts of compensation for other non-pecuniary damage should be harmonised with compensation for violations of personal integrity may not be regarded as anything more than a reminder that various awards of non-pecuniary compensation more generally may not deviate too greatly from one another (*cf.* paras. 13 and 14).

27. A specific comparison between different forms of rights violations and various types of criminal offences should normally be avoided and appears in most cases as undoable. The levels of compensation applied in other areas are thus not directly transferable. The amount of compensation must also reflect the seriousness of the fact that it concerns a violation of a fundamental freedom and rights.

28. There is cause in the context to point out that the legislature, in conjunction with the 2022 general increase in the level of compensation for violations of personal integrity for criminal offences, emphasised the weight of the fact that the compensation levels develop dynamically through their successive adaptation to changes in monetary value and social

values and in keeping with the development of the levels of other comparable non-pecuniary damages (see Government Bill 2021/22:198, p. 24). Such an adaptation may be necessary also for convention damages and constitutional damages.

29. A reasonable starting point for the determination of compensation is to view the amounts which have been previously awarded for violations of Chapter 2 of the Instrument of Government or the European Convention as an expression of the relative levels which can function as a standard against which the relevant violation can be measured. Grave violations of particularly fundamental rights should be at a relatively higher level, while less serious violations should be significantly lower. The duration of a violation and the manner in which it typically manifests for the person affected in the relevant situation should also be ascribed weight.

The assessment in this case

30. The establishment of a guardianship for A.G. has taken place without basis therefor and following proceedings associated with a number of grave deficiencies in the rule of law (see paras. 2 and 3). To completely lose legal capacity under such circumstances constitutes a very grave violation of the individual's autonomy and dignity and a violation of Article 8 of the European Convention. The violation must, for each and every person affected, entail a distinctive feeling of powerlessness and a high degree of vulnerability. The violation has persisted for a period of one year. The procedural deficiencies consisting of the failure to afford A.G. the opportunity to express an opinion before the interim decision and the lack of trial counsel in the initial proceeding, furthermore, entail that legal requirements have been disregarded which typically results in the enhancement of the feeling of powerlessness and vulnerability.

31. In an overall assessment of the violation of the European Convention which has taken place by virtue of the wrongful and unlawful decision regarding guardianship – in light of the levels of non-pecuniary damages which were previously applied in relation to constitutional and convention damages – the Supreme Court finds that the amount of other non-pecuniary damage is reasonable at SEK 150,000. In addition, damages for pure economic losses amount to SEK 12,994. Thus, the state shall pay A.G. SEK 162,994 plus interest.

32. The case has primarily concerned the bases for determining compensation for other non-pecuniary damage in conjunction with a violation of the European Convention. A.G. should be regarded as the mainly successful party. Accordingly, he is entitled to compensation for his costs of litigation in the Supreme Court. The amount has been stipulated.

Justices of the Supreme Court Agneta Bäcklund, Dag Mattsson, Malin Bonthron, Stefan Reimer (reporting Justice) and Jonas Malmberg have participated in the ruling.

Judge referee: Erik Isoz.