

SUPREME COURT'S JUDGMENT

Delivered in Stockholm on 30 December 2025

Case no.
T 9218-24

PARTIES

Appellant

L.K.

Counsel: Attorney D.K.

Respondent

Office of the Chancellor of Justice, organisation no. 202100-0035
Box 2308
103 17 Stockholm

Counsel: Reporting Clerks A.M. and A.Å.

Address as above

THE MATTER

Damages

RULING APPEALED

Judgment of the Svea Court of Appeal of 2024-11-06 in case no.
T 4382-23

JUDGMENT

The Supreme Court affirms the judgment of the court of appeal.

Each party shall bear their costs of litigation incurred in the Supreme Court.

CLAIMS IN THE SUPREME COURT

L.K. has claimed that the state shall pay her damages in the amount of SEK 150,000 plus interest. She has further claimed compensation for her costs of litigation incurred in the district court and court of appeal.

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

The state has claimed compensation for costs of litigation incurred in the Supreme Court.

The Court has granted leave to appeal as set forth in paragraph 11.

REASONS FOR THE JUDGMENT

Background

1. In December 2020, Sveriges Television AB aired the documentary “*Dokument inifrån: Vaccinkrigarna*” on one of its nationwide TV channels. The documentary consists of three parts and remains available on SVT Play. In the documentary, two journalists conduct a critical investigation of the anti-vaccine movement in, among other places, the Nordic countries and the United States. L.K. is one of the people under scrutiny.

2. While working on the documentary, the journalists used the so-called Wallraff Method. To “*wallraff*” means to operate under a false identity in order to obtain access to the context under investigation. The journalists held themselves out to be vaccine critics who were making a documentary regarding risks associated with vaccines. During the recordings, L.K. was

unaware of the true identity of the journalists or the actual purpose of the interviews.

3. L.K. was filmed with a hidden camera on some occasions. The recordings made with hidden cameras on three different occasions are part of *Vaccinkrigarna*. In those parts of the documentary which are recorded with a hidden camera, L.K. made statements expressing her view that a power elite sought a new world order and, for this purpose, wanted to reduce and dumb-down the population by means of, among other things, vaccines. She then made statements, based on a film she had seen, about what she believed she understood about the scope of the Holocaust, and made a connection between the Holocaust and Jews and her view of a ruling, global power elite.

4. In the documentary, the journalists describe some of L.K.'s assertions as antisemitic and also express the position that she has an extreme world view.

5. L.K. reported SVT's responsible publisher for defamation to the Office of the Chancellor of Justice which decided not to initiate an investigation. L.K. herself did not initiate prosecution for defamation.

6. *Vaccinkrigarna* was reported – by persons other than L.K. – to the Swedish Broadcasting Commission which issued a decision not to uphold the complaint on the question of whether *Vaccinkrigarna* contravened the requirements of impartiality and objectivity. Several complainants had stated that the documentary series constitutes an intrusion into L.K.'s private life. The Swedish Broadcasting Commission noted that the Commission could examine the question of intrusion into private life only if the person affected consents thereto in writing. Since no such consent was granted by L.K., the matter was not subject to further action in that part.

7. L.K. brought an action for damages against the state. She claimed that SVT's publication of *Vaccinkrigarna* entailed a violation of her rights pursuant to Articles 8-11 of the European Convention on Human Rights (ECHR). She requested damages in the amount of SEK 150,000.

8. The state conceded that the publication of the material which had been filmed with a hidden camera constituted interference with L.K.'s rights in accordance with Article 8 but claimed that the publication was permissible in light of opposing interests.

9. The district court partially upheld L.K.'s action and set the damages at SEK 100,000.

10. The court of appeal has modified the judgment of the district court and rejected L.K.'s claim and ordered her to compensate the state for its costs of litigation incurred in the district court and court of appeal.

11. The Supreme Court has granted leave to appeal on the question of whether SVT's actions have entailed an interference with L.K.'s rights in accordance with Article 8 and whether the state, in such case, is liable in damages to her due to the fact that the state did not fulfil its positive obligations pursuant to that article. Leave to appeal has also been granted on the question of costs of litigation incurred in the district court and court of appeal. The Supreme Court has not otherwise granted leave to appeal regarding the case. Accordingly, the assessment of the court of appeal in other respects is affirmed.

What is at issue in the Supreme Court

12. The main question in the case is how the protection of private life in Article 8 of the ECHR is to be balanced against the freedom of expression in Article 10.

The legal framework

The state's liability in damages for violations of the ECHR

13. Pursuant to Chapter 3, Section 4 of the Tort Liability Act, the state shall compensate non-pecuniary damages arising as a consequence of the violation by the state of the injured party's fundamental freedoms and rights pursuant to the ECHR. Damages shall be paid only to the extent necessary in order to compensate the violation.

14. One function performed by the provision is to provide a possibility to a person who believes they lack an effective legal remedy to have their assertions regarding a Convention violation examined by a court of law (*cf.* Government Bill 2017/18:7, p. 19 and Article 13 of the ECHR).

Right to respect for private and family life

15. Pursuant to Article 8 of the ECHR, everyone has the right to respect for his private and family life, his home and his correspondence.

16. The state's obligations pursuant to Article 8 are primarily negative. This means that the state is obliged to not act in such a manner as infringes an individual's rights in accordance with the article.

17. The state is also deemed to have positive obligations pursuant to Article 8, i.e. obligations to ensure that an individual's rights are protected, also in relation to other individuals. In addition, even in the absence of any interference by a public authority, the state can accordingly breach Article 8 by tolerating interference or failing to provide adequate legal protections against interference even where such interference is the result of someone's actions for whom the state is not responsible.

18. A person's reputation constitutes a part of his or her personal integrity and is covered by the protection of private life in accordance with

Article 8. The aforementioned applies even if that person was criticised within the context of a public debate. (*Cf. Denisov v. Ukraine* [GC], no. 76639/11, § 97, 25 September 2018.)

19. Not every interference in a person's private life entails a violation of Article 8. A certain level of severity must be attained. (*Cf. Denisov* §§ 110–112.) Article 8 does not entail, for example, that a general duty of truthfulness regarding one's own views applies in the connections between people. If a critical journalistic investigation has entailed that the journalist obtained access to a certain context by means of a false identity and misrepresentations regarding his or her own views, this should, however, impact how great the interference with private life the publication of the investigation is deemed to entail.

Freedom of expression

20. Pursuant to Article 10 of the ECHR, everyone has the right to freedom of expression, which includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Also as regards Article 10, the state bears both negative and positive obligations.

21. The right to freedom of expression has been described by the ECHR as one of the essential foundations of a democratic society and one of the basic conditions for society's progress and for the development of every man. The freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive, but also to those that offend, shock or disturb. The pluralism, tolerance and broad-mindedness without which there is no democratic society demand freedom of expression (*Cf. Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24.)

22. The freedom of the press is an important part of the freedom of expression protected by Article 10. The press and other mass media are essential to the democratic social system intended to be maintained by the ECHR. Interference with journalists may therefore be particularly grave since such interference may have a deterrent effect also on other journalists. (Cf. Hans Danelius, *et al.*, *Mänskliga rättigheter i europeisk praxis* [Human Rights in European Case Law], 6th ed., 2023, p. 555.).

A balancing of interests

The balancing and circumstances to be considered

23. The various rights established in the ECHR may conflict with one another. Questions regarding an individual's right to respect for private life can, for example, arise in connection with the exercise by others of their right to freedom of expression.

24. The exercise of the freedom of expression may entail interference with someone's private life, but this does not necessarily mean that the interference is such that the state is obliged to protect the individual against it. A balancing of interests must be carried out in each case. Only where the outcome of the balancing is that the right to respect for private life weighs more heavily than the right to freedom of expression do the state's obligations arise. (Cf. *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 63, 15 March 2012.)

25. The circumstances which may be relevant in a balancing of interests have been addressed by the European Court of Human Rights in several rulings, among others in *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89–95, 7 February 2012. Noteworthy circumstances referred to in the ruling are a) whether publication contributed to a debate of general interest, b) how well known is the person concerned and what is the subject of the

report, c) prior conduct of the person concerned, d) the method of obtaining the information and its veracity, e) content, form and consequences of the publication and, where applicable, f) the severity of the sanction imposed for publication. The items are not always distinguishable *inter se*. One example is that the question regarding how well known the person concerned is relates to the prior conduct of such person.

Debate of general interest

26. If the publication contributes to a debate of general interest, it is relevant to the balancing. If the general interest is great, it weighs more heavily on the side of the freedom of expression than if it is more limited. What constitutes a subject of general interest will depend on the circumstances of the individual case. Publication concerning political issues or crimes may be of general interest. According to the European Court of Human Rights, it can also be where it concerns sporting issues or the like. (Cf. *Axel Springer AG* § 90.)

How well known is the person concerned, the subject of the publication and the prior conduct of the person

27. The investigated person's role or function, the subject of the publication and the prior conduct of the person are deemed to also constitute circumstances which are relevant to the assessment. According to the European Court of Human Rights, a distinction needs to be made between reporting of facts capable of contributing to a debate in a democratic society – e.g. relating to politicians in the exercise of their official functions – and reporting details of the private life of an individual who does not exercise such functions. The interest in reporting of the former type weighs less heavily than the latter. The extent to which an individual has a public profile also otherwise influences the balance between the protection that may be afforded to his or her private life and the interest in the freedom of

expression. (*Cf. Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 117, 10 November 2015, and *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 110, 7 February 2012.)

28. It is not only politicians, for example, who are regarded as public persons and thereby must count on critical examination. This may correspondingly also apply to other persons who, through their acts or their position have entered the public arena. A person who has voluntarily disseminated his or her ideas or convictions has chosen to enter the public arena. Such person may then show a higher degree of tolerance of critical examination of his or her statements than those who do not seek publicity. (*Cf. Kajganić v. Serbia*, no. 27958/16, § 65, 8 October 2024, and *Balaskas v. Greece*, no. 73087/17, § 50, 5 November 2020.)

29. It is also deemed relevant in the balancing of interests whether the examination has been limited to the subject area within which a person has sought publicity or whether the reporting pertains to other aspects of the private or family life of the person examined (*Cf. Kajganić* § 67).

The method of obtaining the information

30. It is apparent from the case law of the European Court of Human Rights that journalists may use hidden cameras, but that such use should be restricted as a matter of principle since it is an intrusive method which entails interference with the respect for the private life of the person investigated. At the same time, the Court has observed that it may be important to be able to use covert investigative methods for the production of certain types of documentaries. For example, journalists may be obliged to use hidden cameras when the information is difficult to obtain by any other means, but the method should be used as a last resort, sparingly, and in compliance with the relevant codes of ethics. (*Cf. Bremner v. Turkey*, no.

37428/06, § 76, 13 October 2015. *Cf.*, also, section 11 of the Rules of Professional Conduct of the Swedish Union of Journalists.)

31. A journalist who conducts a critical investigation by means of a hidden camera may also need to use a false identity and false misrepresentations in order to obtain access to the context in which the information is to be obtained. Of course, this can also take place without the use of a hidden camera.

32. When the use of a hidden camera also entails such deception as involved in the Wallraff Method, the aggregate interference with integrity should be regarded as greater than it otherwise would be. This is a circumstance which is to be taken into account in the balancing of interests. (*Cf. Haldimann and Others v. Switzerland*, no. 21830/09, §§ 9, 10 and 61, 24 February 2015.)

33. Filming with a hidden camera in a private area is deemed to entail a greater interference in the respect for private life than filming in public spaces. (*Cf. Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece*, no. 72562/10, § 78, 22 February 2018.)

34. The European Court of Human Rights has stated that it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to which methods should be adopted in a particular case (see *Axel Springer AG* § 81).

Content, form and consequences of the publication

35. The manner in which a report is published and how the relevant person is presented are also deemed to be criteria which are to be taken into account in the balancing. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (*cf. Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III).

36. In addition, the extent to which the report is disseminated and its consequences may be deemed to be relevant. Whether it is a national or local news provider and whether a large or limited circulation is involved can play a role. (*Cf. Axel Springer AG* § 94.)

The assessment in this case

Open and concealed recordings

37. It is common ground that *Vaccinkrigarna* constitutes an interference with L.K.'s private life as regards those parts of the documentary which were filmed with a hidden camera.

38. The segments regarding L.K. which were filmed openly also entail a criticism of her views and credibility. This has occurred in a documentary in which the overall tone is critical. The investigation thereby affects her reputation, which is a circumstance covered by the right to respect for a private life under Article 8. In the assessment, it is relevant that L.K., even as pertains to the openly filmed segments, was misled on the question of the identity and intentions of the journalists.

39. In addition, those parts of *Vaccinkrigarna* which contain materials in which L.K. was filmed with an unconcealed camera thereby fall into the area of application of Article 8 and shall be subjected to a balancing of interests against the right of the journalists to freedom of expression in accordance with Article 10.

Debate of public interest

40. *Vaccinkrigarna* was broadcast during the Covid-19 pandemic.

41. Publishing a journalistic investigation of influential persons in such context on the question of resistance to the use of vaccines and the reasons these persons have for their views must be deemed to constitute a clear case

of contributing to a debate of great public interest. Accordingly, the right to freedom of expression weighs heavily in this case. (*Cf.* paras. 26 and 27.)

The person and the subject

42. L.K. is not a public person in the same way as a politician. However, it may be noted that she has herself chosen, in several contexts, to appear publicly and assert critical views regarding vaccines. She has done so through her lectures, participation in debate programmes, as chief editor for the website and online magazine *Vaccin & biverkningar* and as chairman of the association 2000-Talets Vetenskap. In addition, L.K. herself states in *Vaccinkrigarna* that, both in Sweden and the Swedish-speaking part of Finland, she has become a prominent personality on the question of vaccine criticism.

43. By virtue of her own actions, L.K. must be deemed to have entered into the public sphere as regards vaccine criticism. She must thus tolerate critical examination in these respects to a higher degree than would apply to someone who did not seek publicity. (*Cf.* para. 28.)

44. In this context, with a continuously increasing flow of information, the Supreme Court takes into account the fact that it is easier and faster than before to disseminate information, e.g. via social media. More and more people can get their message out without being a politician, leader of an organised movement or otherwise without any formal position of power. Even engaged private persons who are skilled at disseminating and gaining traction for their message may be such persons who must tolerate critical examination to a higher degree than others.

45. All segments relating to L.K. in *Vaccinkrigarna*, both the segments which were filmed openly and those which were filmed with a hidden camera, are connected to L.K.'s view on vaccines and do not address any

other aspect of her private or family life (*cf.* para. 29). Even the segments relating to her opinion on the Holocaust and the existence of a governing power elite must, in the context, be deemed to be relevant to the theme of the documentary.

Method of obtaining the information

46. Had the journalists not used the Wallraff Method and hidden camera, it would have been difficult for them to obtain the information which they acquired in that way. Nothing has come to light other than that they acted in such context in accordance with professional guidelines to the extent such existed. (*Cf.* para. 30.)

47. In two segments of *Vaccinkrigarna*, the hidden camera was used outdoors and at a café. In a third case, it involves filming in an apartment, i.e. in a private area. While it is not L.K.'s apartment, the interference with her integrity must nonetheless be deemed to be greater in the latter case than in the two former ones. This is to be taken into account in the balancing of interests. (*Cf.* para. 33.)

Publication and its consequences

48. The Supreme Court notes that *Vaccinkrigarna* possesses a thoroughly critical tone and that the thrust is directed, among other things, at L.K.'s credibility. Room is made for objections raised by L.K. and other investigated persons against vaccines and their side-effects but within a critical framework (*cf.* para. 38). The Supreme Court also takes into account the fact that L.K. has been given the opportunity in the documentary to comment and nuance the statements she made during the recording with a hidden camera (*cf.* para. 30).

49. The documentary has had wide dissemination through broadcasting on a national TV channel and is available on SVT Play (*cf.* para. 36).

50. It is apparent from L.K.'s own information and the facts of the case that the publication of *Vaccinkrigarna* has caused her to be subjected to the contempt of others, to lose assignments, and suffer from reduced opportunities to lecture on vaccines and the risks associated therewith.

Overall balancing of interests

51. Several circumstances suggest that the interference with L.K.'s private life is substantial. This applies in particular to those parts in which the segments in *Vaccinkrigarna* were filmed with a hidden camera. L.K. has rightly felt deceived by the journalists and the negative consequences for her are considerable.

52. Where the public interest in the published, critical journalistic investigation is very great, even a substantial interference with someone who is not a public person of the clearest sort may, however, be trumped by the protection of the freedom of expression. The current situation is one such case. This means that the right to the freedom of expression in accordance with Article 10 in this case weighs more heavily than L.K.'s right to respect for her private life in accordance with Article 8.

53. The fact that the documentary remains available on SVT Play entails that the interference with L.K.'s private life continues to some extent. Since the interference is deemed to be permissible, however, the continued accessibility of the journalistic investigation at issue does not per se give rise to a breach of Article 8. Nor does accessibility alter the balancing of interests in a decisive manner. (*Cf. Hurbain v. Belgium* [GC], no. 57292/16, § 199, 4 July 2023, regarding what might have been the case if, among other things, the timing of the circumstances was different).

No Convention violation has occurred and the state is not liable in damages

54. L.K.'s rights under Article 8 have accordingly not been violated.

With this outcome, it is not suitable to examine whether the state has breached its positive obligations in accordance with the article. She has had her assertion regarding a Convention violation legally examined in the case, subject to a possibility of the state's liability in damages had the violation been affirmed. There are no grounds for damages in accordance with Chapter 3, Section 4 of the Swedish Tort Liability Act. L.K.'s other assertions do not alter this assessment.

Costs of litigation

55. The main rule is that L.K., as the losing party, shall reimburse the opposing party's costs of litigation (Chapter 18, Sections 1 and 15 of the Swedish Code of Judicial Procedure).

56. Chapter 6, Section 7 of the Tort Liability Act, however, contains the possibility, in a case for compensation in accordance with Chapter 3, Section 4 of the same act, to decide that each party shall bear their costs of litigation. This presupposes that the individual who has lost the case had reasonable cause to have the matter examined. According to the preparatory works, cases may be expected in which an individual, on sound, objective grounds, has assumed that a violation has occurred but in which an examination shows that such was not the case. The fact that the case has raised complicated legal issues and that it was difficult to foresee the outcome, however, are not sufficient on their own for each party to bear their own costs. The preparatory works instruct restrictiveness in the application of the provision. (*Cf.* Government Bill 2017/18:7, pp. 44 f. and 69.)

57. The fact that L.K. brought about a clarification on the question of what may be material also for parties other than herself suggests that there was reasonable cause for her to have the matter examined. However, as observed by the court of appeal, L.K., particularly in the district court but also in the court of appeal, pursued the action in a manner which did not contribute to an efficient examination of the Convention issue. This speaks against an application of Chapter 6, Section 7. In addition, the fact that L.K. did not exploit the other legal means which were available to her also speaks against such application. (*Cf., ibid.*, Government Bill, p. 69.)

58. To a large extent, the Supreme Court shares the assessment of the court of appeal in these respects. Accordingly, there is no cause for an allocation of liability for costs of litigation incurred in the district court and court of appeal other than that carried out by the court of appeal.

59. As regards the question of the allocation of costs of litigation incurred in the Supreme Court, the situation is somewhat different. The Supreme Court has found that it has been important for the guidance of the application of law that certain questions in L.K.'s appeal be examined. The outcome differed in the district court and court of appeal. The case has been distilled by virtue of the partial leave to appeal, and L.K. cannot be said to have pursued her action in the Supreme Court in a manner which did not contribute to an efficient examination of the Convention question. Against this background, there is cause pursuant to Chapter 6, Section 7 to have each party bear their own costs of litigation incurred in the Supreme Court.

Conclusion

60. The judgment of the court of appeal shall be affirmed and each party shall bear their own costs of litigation incurred in the Supreme Court.

Justices of the Supreme Court Agneta Bäcklund, Petter Asp, Eric M. Runesson, Margareta Brattström and Erik Sjöman (Reporting Justice) participated in the ruling.
Judge Referee: Josefin Odelid.