HD 2017

ACTIVITY REPORT OF THE SUPREME COURT

Table of contents

A word from the President

When – for lack of sea marks – unfamiliar waters are difficult to navigate, one must seek out a passage between the islands and skerries while avoiding the rocks and reefs. When the journey is shared, everyone keeps watch. "There's the Western Point, so mind the shoals!"

The law is often like unfamiliar waters. Various roles are brought to bear in the quest for navigable passage. When adequate direction cannot be gleaned from legal sources, one relies on scholarship to determine what is known and to seek guidance. Practicing lawyers argue points of law and judges assess the arguments and explain in their judgments how they reached their conclusions. A supreme court – to the extent of its ability and subject to the prevailing conditions – establishes new sea marks.

As I mentioned in last year's *Report*, the collaboration of various jurists is akin to a discussion, whether great or small. Words are necessary to give meaning to a discussion. And those words should make clear in the most efficient way possible what is meant to be said.

Last year, the Supreme Court began naming certain cases. The Court has done so to aid discussions in the legal realm. As a rule, most people find it far easier to associate a case with a name like "Swedish Scapegoats" than an acronym and some numbers such as "NJA 2017, p. 75".

In our maritime analogy, legal precedent should be likened to a sea mark and not, for example, a reef. Moreover, conversations around the judicial tillers are facilitated if the sea marks can be readily articulated and understood. This is no less true in discussions involving the Supreme Court.

The notion of identifying legal cases by means of associative names is not new. Yet, in Sweden, it has not been so common. It is only in recent years that the Supreme Court has begun referring in its judgements to certain legal cases by name. As a rule, this has only involved important precedents. It happens that a decision has already been christened in the legal literature, but it happens also that the Court names previous cases in its findings. The novelty is that the Supreme Court now often proposes a name as early as when rendering its decision in a case.

But these names are not set in stone. In legal discussions, one is free to ignore a suggestion made by the Supreme Court and refer to the case by another name – or use none >

at all. The Supreme Court uses these names solely to signal its ambition; not merely in an attempt to be open and reasonably thorough in its account of the reasons underlying a decision, but also to endeavour to make its underlying reasoning as accessible as possible for the readership.

The audience is diverse. Yet – other than jurists with at least some familiarity with the legal area addressed by the decision – there are few who will find pleasure in the fact that cases are referred to by name. Nonetheless, it is better to help a few than to help no one at all.

Making the Court's rulings intelligible, and thereby accessible, might be considered a ceaseless mission. While many small steps have already been taken – e.g. regarding arrangement, headlining and numbering of paragraphs – there is much left to do. Accordingly, taking into account the interest of the parties in obtaining a concrete, substantive decision and the societal interest in proactive judicial progress, a balance must be struck amongst many conflicting interests, e.g. being technically precise yet generally intelligible and being thorough yet concise. Above all, it must be kept in mind that intelligibility is for the reader. Indeed, as a Justice once put it, the grounds for a ruling should be regarded as a form of literature – implying that the text should meet certain linguistic requirements. However, all statements ultimately serve a single purpose: to help the reader understand the Court's reasoning without any unnecessary linguistic barriers.

Rulings affect people. They can change lives. In this way, all courts wield power. A precedent will typically have consequences that stretch far into the future and have an impact on many people, not just the parties before the Court. A supreme court is thus particularly powerful. All power should be the subject of review including, naturally, normative power of this brand. In order to satisfactorily achieve this, it is critical that every court exposes itself to review by means of candid, clear and readily intelligible reasons for its findings.

Against this background, ascribing a name to a case may seem like a small thing. Yet, there is value in any measure which eases the shared voyage through the difficult waters of the law. Whatever their role in the journey, all travellers can contribute. Small improvements should not be belittled. They are the engine of evolution and, in my view, evolution in any part of society equates to human progress.

STEFAN LINDSKOG
PRESIDENT OF THE SUPREME
COURT OF SWEDEN

Trading places

For three months in the spring of 2018, Justice Kerstin Calissendorff will serve on the Supreme Administrative Court while Justice Kristina Ståhl will serve on the Supreme Court. By allowing the Justices to trade places, the Courts – both of which have the chief task of establishing judicial precedent – are taking the first step towards cooperative judicial activities which were made possible by a change in law in the summer of 2017.

How did you become Supreme Court Justices?
Kerstin: I wanted to become a judge as early as when I finished my clerkship in the courts, and I was also accepted to the judicial training program. However, at that time, I was also offered and accepted a position at a law firm. I very much enjoyed my time at the firm practising business law and intellectual property law but, when I was asked if I wanted to be appointed Justice of the Supreme Court, I was already thinking about becoming a judge. So, when I was asked the question, the decision was easy.

Kristina: Back then you didn't apply to become a Justice. One of the Justices of the Supreme Administrative Court asked me if he could add my name to the discussions about candidates for a new Justice. I was delighted when I received the offer six months later, and I accepted it without hesitation. Prior to that, I hadn't considered leaving the University to become a judge.

What are your views on the division between courts of general jurisdiction and administrative courts?
Kerstin: The separation feels natural since it has always been this way, but I can see the advantages of a single court system or at least a single Supreme Court. I think the drawbacks are mostly practical and passing in nature. Merging the two Courts into one would probably require a division into two chambers; one that principally handles cases under the Administrative Court Procedure Act (as does the Supreme Administrative Court) and one that primarily handles cases governed by the Code of Judicial Procedure (as does the Supreme Court).

Kristina: I do not have a definitive view on the matter. There are obvious advantages with a single Supreme Court. A separation entails a risk that the Courts will render conflicting decisions on issues concerning both Courts. There are disadvantages as well, and the separation should be maintained if there is concern that merging the two will jeopardise the quality of judgments. A division >

Kerstin Calissendorff
Justice of the Supreme Court since 2003.
Law degree conferred 1981.
Court clerkship, 1982-1984.
Associate and subsequently Member of the Swedish Bar Association and partner of a law firm, 1984-2003.

into chambers as contemplated by Kerstin could be the solution to such a problem.

In what ways have you come across legal areas that fall within the sphere of the other Court?
Kerstin: While it is certainly unusual that cases based on administrative law make their way into the Supreme Court, it is my experience that it has become more common. For example, the Court has been called upon to address various issues concerning value added tax in civil cases. Cases involving land and the environment can also involve administrative law issues. The Courts also have in common issues related to the European Convention on Human Rights.

Kristina: I think this is more common in the Supreme Administrative Court. Tax cases in particular tend to involve aspects of civil law, and they make up about a third of our cases. The same is true in cases involving public procurement.

Why did you apply to serve in the other Court?
Kerstin: The question came up during a meeting attended by all of the Justices, and I immediately expressed my interest. I am interested in how the Supreme Administrative Court conducts operations and how administrative procedures are applied in practice. I am quite familiar with the Supreme Court's operations, and I believe I have a handle on the upsides and downsides of each Court's way of operating. On a personal level, I also look forward to getting to know my new colleagues.

Kristina: I also expressed my interest when the issue was brought up. It struck me as fun and exciting. It is already becoming clear to me that the Courts plan and structure their work differently.

What are your expectations?
Kerstin: I'm curious about how the cabinet system works in the Supreme Administrative Court in which some cases are handled by a group consisting of one Justice and several judge referees. For various reasons, the Supreme Court previously decided not to introduce a similar system, but much has changed and it might be something for us. I also hope to be involved in some tax cases.

Kristina: I'm very interested in the process of writing judgments and hope to learn more about how it works in the Supreme Court. I do not believe you can obtain adequate insight in any way other than direct participation. I hope to be able to take away something that can be put to use in the Supreme Administrative Court. I also hope to participate in the main hearing of a criminal case.

Do you have any reservations?
Kerstin: No. There will probably be lots of work, but I'm quite used to it. There will also be new colleagues and a new workplace. This can be challenging, but it will all sort out. I believe I will enjoy myself.

Kristina: I agree with Kerstin. It'll be hard work but also a great deal of fun.

Kristina Ståhl
Justice of the Supreme Administrative Court since 2008.
Law degree conferred 1988.
Doctor of Laws conferred 1996.
Docent of financial law, 1998.
Professor of financial law, 2005-2007.

Creating precedent

The Supreme Court's main objective is to provide legal guidance when the law is unclear. The Court's decisions (precedents) are used not only by the lower courts when ruling in similar cases but are also relied on by anyone who needs to apply the law.

A well functioning society requires not only rules but also a court system that can efficiently determine whether or not those rules have been followed. District courts are the courts of first instance for criminal matters and cases involving disputes between individuals. A district court decision may be appealed to a court of appeal, the primary tasks of which are to ensure that the ruling of the district court was correct and to rectify any errors.

Unlike a district court and a court of appeal, the Supreme Court must not only apply the relevant legal rules, but also clarify the meaning and effects of those rules. This is apparent in that the right to a review by the Supreme Court is subject to the requirement that leave to appeal is granted – i.e. permission must be given for the appeal to be considered. The Supreme Court examines only cases which demonstrate a need to clarify the meaning of a legal rule or, in exceptional cases, cases in which the lower courts have committed an error or new evidence justifies a new trial.

The Supreme Court receives some 5,000 appeals per year. The issue of leave to appeal is decided on the basis of the arguments asserted by the party bringing the appeal. The drafting law clerk or the judge referee puts together a brief basis for assessment and a proposal for a decision. When the issue of whether to grant leave to appeal is straightforward, the case is assessed by a single Supreme Court Justice. In these types of cases, a decision is normally made within one month of the date the case was received.

Appeals which are characterised by more compelling reasons for granting leave to appeal which require more extensive review and research are assigned to a judge referee. The judge referee does extensive research as a basis for the assessment and makes a proposal for a decision. When the issue of leave to appeal is more challenging, the assessment is carried out by three Justices. In these cases, the issue of leave is normally determined within three months of the date of receipt. >

When the Supreme Court assesses a request for leave to appeal, it does not consider how the lower courts evaluated the evidence or applied the legal rules. The issue of leave to appeal addresses only if there is a need for legal guidance or, in exceptional cases, whether a new trial is justified.

If leave to appeal is granted in a case, the parties have the possibility to argue the issues to be adjudicated and present the evidence they wish to adduce. The judge referee conducts a thorough examination of the rules and precedents relevant to the case (judicial enquiry) and proposes a ruling.

Cases are decided following an oral presentation or, in certain cases, after a main hearing, and are examined by five Justices. Following presentation, deliberations get under way with each Justice presenting his or her views on the issues in the case. Thereafter, one of the Justices (the reporting judge) drafts a proposed decision which is thereafter discussed. When the Justices have concluded their discussions – often requiring multiple deliberations – the final judgement is rendered. Cases for which leave to appeal has been granted are normally decided within one year after the registration of the case.

MÅNS WIGÉN
ADMINISTRATIVE DIRECTOR

Towards precedent

Leave to appeal – i.e., permission to have a judgement reviewed by the Supreme Court – may be granted if a resulting judgement would produce important guidance for the application of law (that is, to create legal precedent). Of the approximately 5,000 appeals made to the Court annually, leave to appeal is granted in approximately 100 of those cases.

What, then, is the basis for concluding that guidance is necessary? The wording of a statute may leave room for various interpretations. In addition, the legislature may leave a question of law to be determined by the judicial process. Or, a legal issue may involve a situation to which no legislation is applicable. It is important to examine past cases in order to understand their reach and determine whether additional commentary is needed from the Court in order to specify and/or advance the law. Often, the legal literature sheds light on the issues that remain unresolved.

One may also detect indicators or other facts in a case that suggest the need for guidance. The court of appeal or district court may make reference in their reasoning to the fact that there is a dearth of precedential rulings. Sometimes the parties to a case submit information that suggests that case law lacks uniformity.

In recent years, the Supreme Court has arranged meetings with representatives from various parts of the judicial system in order to discuss precedents. The Justices also follow and participate in the legal discussions taken up in articles and by organisations. In this way, the Court can gain insight into what issues should be addressed in the development of the law.

The Court's own experiences are also of great importance. A decision to grant leave to appeal is made by three Justices following presentation by a judge referee. Together, they bring to bear many years of experience from various legal fields and professions with the related ability not only to see the big picture but also to discern the details that may need to be addressed.

Accordingly, what are the considerations for granting leave to appeal? Fundamental to this equation is that there exists a general interest in establishing guidance for future cases, while responsibility for the outcome in individual cases essentially rests with the district courts and courts of appeal.

The case must involve a legal problem in need of further explanation, or the need for a new step forward >

in the development of the law. The issues may differ considerably in character.

In some cases, they may trigger overarching constitutional or European law assessments, in others they pertain to more widely held legal principles. These are issues which confront all courts, but it is not infrequently the case that the Supreme Court bears special responsibility for developing the law. In other situations, a more specific decision may be needed on a narrow issue. The practical implications become clear when considering a grant of leave to appeal.

The legal issue must also be clear and distinct, which makes certain demands of the case and the manner in which the parties pursue the process before the Supreme Court. If the case is extensive and also raises questions of no principle interest, the precedential issue may be overshadowed or, in any case, the cumulative effort committed by the Court to the case may be disproportionate to its value as precedent. Ultimately, the assessment must always be made taking into account the chief task of the Supreme Court: to establish precedent.

GUDMUND TOIJER
JUSTICE OF THE SUPREME COURT

Extraordinary remedies

Among its many tasks, the Supreme Court is responsible for adjudicating issues regarding *new trials, grave procedural errors,* and *restoration of lost time*. These types of adjudications are usually referred to as extraordinary remedies. Cases of this kind involve decisions that have become final and cannot be appealed.

With a request for a *new trial,* a party may ask for a review of whether a case – one in which the judgement can no longer be appealed – may be retried by the court which issued the most recent judgement in the case. A new trial may be granted, for example, where new, important evidence or critical facts have come to light.

Some mistakes made in the handling of a case may rise to the level of what is referred to as a *grave procedural error.* When this occurs in a case in which the decision can no longer be appealed, the decision can be set aside and the case retried. One example of grave procedural error is when one of the parties has not been given access to material that was important to the adjudication of the case.

Restoration of lost time means that a party can be afforded additional time to appeal a decision. If the party failed to appeal a decision on time for a valid reason (a "legal excuse"), additional time may be granted to appeal the decision.

As a general rule, decisions are final if a case has been decided by a court and no party has filed an appeal within the stated time limit. This is referred to as *res judicata*. The principle is that these decisions should stand and not be able to be modified so that that parties know the final outcome of the case and can act accordingly. The possibility for a new trial, the correction of grave procedural errors and the restoration of lost time are exceptions to this key principle.

These exceptions exist because it would otherwise be offensive or gravely objectionable if incorrect decisions could not be corrected. In addition, it would be unacceptable if a decision remained unchanged if important legal safeguards were disregarded during administration of the case.

Many requests are made every year for a new trial, to remedy a grave procedural error or for a restoration of lost time. Only a few of them succeed. Here are three examples of cases in which the request did succeed.

New trial in the "Kalamark murder" (decision of the Supreme Court of 29 December 2016 in case no. Ö 5257-15)

In 2005, a man was sentenced to life in prison for murder and aggravated >

robbery of two brothers who lived on a farm in Kalamark outside of Piteå, Sweden. The man had been in prison since that time.

He twice petitioned for a new trial but was denied such trial. Among other things, he argued that new material showed that the key witness in the case had provided information that deviated from his previous testimony on several points.

The Supreme Court noted that the information provided by the key witness had been critical to the finding of guilt. The uncertainty relating to the credibility and reliability of his testimony was important for the probative value of his story. In this light, there were extraordinary reasons to retry the case against the convicted man. The Supreme Court also took into consideration the fact that the defendant was serving a life sentence.

Following the Supreme Court's ruling, the case was retried in the court of appeal and the defendant was acquitted.

GRAVE PROCEDURAL ERROR AS THE COURT DID NOT SAVE EVIDENCE OF SERVICE OF PROCESS (CASE NJA 2016, P. 189 III)

Upon the defendant's failure to reply to a statement of claim, the district court decided by default judgment that the defendant was to pay a certain amount of money to a company. The decision became final and binding. The defendant brought an appeal in the court of appeal. He argued that someone else must have signed the acknowledgement of receipt of service of process which, according to the district court, proved that he had been served the statement of claim. He also pointed out that he was a permanent resident of Spain at the time the acknowledgement of receipt was signed. The court of appeal rejected his account.

The Supreme Court noted that the acknowledgement of receipt of service of process no longer existed, even though these types of receipts are to be saved for future purposes. There was sufficient support in the case to establish that the defendant had not been served the statement of claim. Accordingly, no default judgment should have been issued. The case was retried by the district court.

RESTORATION OF LOST TIME (SUPREME COURT DECISION OF 14 NOVEMBER 2017 IN CASE NO. Ö 3268-17)

In a matter involving the appointment of an administrator for a man, the court of appeal issued a decision on 23 May 2017. In its decision, the Court incorrectly stated that the decision could be appealed no later than 16 June 2017. According to law, the deadline for an appeal was 13 June 2017. The man appealed the decision. His appeal was filed after 13 June but before 16 June. The court of appeal rejected the appeal because it was filed too late.

The Supreme Court observed that the failure to react to the error with respect to the appeals deadline was excusable. Accordingly, the man had a legal excuse for failing to timely appeal the decision of the court of appeal. Notwithstanding that the appeal had been filed too late, the case was admitted for consideration of whether leave to appeal would be issued.

ANDERS EKA
JUSTICE OF THE SUPREME COURT

Developments in society and precedents

The Supreme Court is a precedential court the object of which is to issue judgments that serve to guide not only the adjudication process in the courts of appeal and district courts but also other players in the field of law such as lawyers and advisers. It may be said that the purpose of this activity, although based on judgements in individual cases, is to be normative. To what extent do events outside the Court affect this process? The answer is, quite a lot.

Naturally, in many instances, social developments give rise to changes to legislation which, in turn, create a need for new precedent, e.g. because the new legislation can be interpreted and applied in different ways. An example illustrating such a development (social development ▸ new legislation ▸ need for guidance) is the decision handed down in November 2017 regarding a particularly serious felony weapons charge (judgment of the Supreme Court of 7 November 2017 in case no. B 3130-17, the "Five Automatic Rifles" case). In that case, social changes – i.e. greater access to weapons for criminal gangs – caused the legislature to modify the rules regarding illegal possession of firearms which, in turn, prompted new questions for which answers were needed. The Supreme Court found that, although the crime in question was a serious felony, it should not be considered an especially serious felony. The ruling helped create reference points for how the revised law should be applied and provided a basis for lawmakers to determine whether additional changes to the legal regime were needed (the ruling was followed by a public debate).

In other cases, social developments affect the need for precedents without changes to the law. Basically, new questions arise when old laws are confronted with a "new" reality. The need for precedents is then related directly to those developments (social development ▸ need for guidance).

A simple example of this is the development of information technology which has led to a need for new precedents in different areas. For example, in case NJA 2015, p. 501, the Supreme Court considered whether a sexual act can be "performed with" a person on the other side of a webcam. (The case says that it is possible.)

Recently, the Court also considered whether the right to a domain name can be forfeited (judgement of the Supreme Court of 22 December 2017 >

in case no. B 2787-16, the "Domain Name Forfeiture" case). According to law, property can be forfeited, but should a domain name be legally classified as property? (The answer is "yes".) Another question that may require guidance is the determination of where a crime committed on the internet has actually taken place (for example, could a statement published through a server in Australia be considered to have been made in Sweden?).

Migration is another social development that has created a need for legal guidance. For example, the question of determining a person's age has historically received little attention from the courts. In Sweden, personal identity numbers assigned to a person have always provided the relevant information. Today, the situation is different. We do not always know a person's age, and the question becomes how to deal with that uncertainty when age is relevant for legal purposes. If the age of criminal responsibility is 15, can a person who is *probably* 15 years old be convicted? The answer is "no". According to case NJA 2016, p. 719, the requirements are more stringent when it comes to the age of criminal responsibility. It must be clearly established that a person is old enough to be convicted. However, age estimates are generally sufficient when it comes to sentencing issues affected by the age of the person. This ruling has not just provided guidance for prosecutors and judges in the courts of appeal and district courts. Together with a later ruling on the possibility of using coercion to establish a person's age (case NJA 2016, p. 1165), the case has also provided clarity for lawmakers: if we want a law which allows a person's age to be determined by physical examination, new legislation is necessary (and such legislation has since been adopted).

Another consequence of multiculturalism is that the law may be confronted with phenomena that are difficult to assess under a legal framework that was not made with such phenomena in mind. There was, for example, the question of how to treat a *mahr* agreement between two individuals who married in Iran. The Supreme Court concluded in that case (case NJA 2017, p. 168) that a *mahr* agreement should be likened to a preliminary agreement for a future partial estate distribution. Since these kinds of agreements can only be made prior to an imminent divorce, the *mahr* agreement in question could not be considered valid.

There are numerous other examples of precedents that arise from social developments, even though they are not always as obvious and easy to spot.

In conclusion, law *is* a social matter. The law decides the rules of the game and settles conflicts, and is thus strongly influenced by social developments. This is no less true for the Supreme Court.

PETTER ASP
JUSTICE OF THE SUPREME COURT


ÖRORDNING
UTIONE
746. 1747
KONGL. MAJ:TS
FÖRORDNINGAR
1748 — — 49
HÖGSTA
DOMSTOLEN

2017 Cases in brief

Calculating damages long after the crime was committed

(Supreme Court decision of 24 November 2017 in case no. T 4435-16, the "Referred Compensation Issues" case)

In a case involving the sexual exploitation of a minor, such a long period of time had transpired that the compensation levels for the violation and for pain and suffering had changed between the time of the harm and the time at which the compensation was to be established. At a plenary session of the Supreme Court, the majority found that compensation for a violation should be calculated based on the rules applicable at the time the compensation was determined, while compensation for pain and suffering should be calculated based on the rules applicable at the time the harm was incurred. The assessment took into account, among other things, the fact that compensation for a violation does not relate to any specific harm that can be separated from the appraisal of the act that occurs at the time of the assessment and that the intended function of the compensation may be best fulfilled if the amount of such compensation is allowed to evolve in harmony with prevailing community values. However, in compensating pain and suffering, no appraisal is made of the tortious act.

A creditor's duty to investigate a debtor's insolvency in a recovery case

(Supreme Court decision of 21 November 2017 in case no. T 5435-16, the "Railway Operator's Insolvency" case)

In conjunction with recovery in bankruptcy pursuant to Chapter 4, section 5 of the Bankruptcy Act, the subjective requirement that the contracting party should have been aware of the debtor's insolvency at the time of the transaction in question is deemed to entail a duty of investigation on the part of the contracting party in situations in which the circumstances create suspicions that the debtor is insolvent.

A municipality's liability for erroneous information

(Supreme Court decision of 14 November 2017 in case no. T 5170-16, the "Municipality's Erroneous Information" case)

In a telephone call with the head of the municipal planning office, a construction company, which intended to purchase and develop some properties, was informed that the properties were not covered by the Shore Protection Act. After the company had purchased the properties, it came to light that this information was incorrect and that the properties were in fact subject to

shore protection. The Supreme Court found that the municipality was liable in damages for the erroneous information. The Court stated, among other things, that where a representative of a municipality has provided an individual with unambiguous but incorrect information with respect to a certain matter, the assumption should normally be that this constitutes an error or omission. Accordingly, it is incumbent upon the municipality to adduce circumstances according to which, notwithstanding the erroneous information, no error or omission was committed by the public authority.

Classification of crime and sentencing for smuggling migrants

(Supreme Court decision of 8 November 2017 in case no. B 6041-16, the "Lernacken" case)

A man who had helped two migrants illegally enter the country at Lernacken in Malmö was charged with the crime of smuggling migrants. However, the Supreme Court found the crime to be a misdemeanor and sentenced the man to day fines. Smuggling migrants should typically be classified as a misdemeanor unless it can be established that it had occurred more than once, involved more than just a few migrants, was done for compensation, and that other circumstances support another assessment.

Electronic promissory note

(Supreme Court decision of 2 November 2017 in case no. Ö 5072-16, the "Collector's Electronic Promissory Note" case)

An individual took a loan from Collector Bank AB and electronically signed a document entitled "Loan Application/Promissory Note". The case concerned, among other things, whether such an electronic document can constitute a negotiable instrument. According to the Supreme Court, an electronic promissory note issued to a particular individual or order may be deemed to be negotiable provided that the debtor who makes payment by electronic means is afforded the same protections as when acknowledgment of payment is written on a physical promissory note or when the physical promissory note is returned to the debtor.

A partner who was an alternate member of the board of a limited liability company was not considered an actual principal of that firm

(Supreme Court decision of 4 October 2017 in case no. B 1981-16, the "Partner's Liability" case)

Two individuals owned 50 percent each of a limited liability company that sold wholesale newsstand goods. One of the owners served as a board member and the other as an alternate member. The board member performed the financial and administrative tasks while the alternate board member primarily delivered goods to the company's customers. Both were prosecuted, among other things, for accounting crimes. The Supreme Court found that the alternate board member could not have exercised controlling influence in the company. In other words, he was not an actual principal of the company. The charges against him were dismissed.

Noncustodial parent acquitted of child abduction

(Case NJA 2017, p. 557, the "Child in Norway" case)

A 12-year old child voluntarily stayed with a noncustodial parent following the expiry of visitation rights. The custodial parent knew where the child was and could both

visit and take the child home. The noncustodial parent was prosecuted for child abduction. The Supreme Court found that criminal liability required that the offender had the ability to remove any impediment which prevented the custodial parent from reuniting with the child. Considering the age and maturity of the child in this case, the noncustodial parent could not be compelled to turn the child over to the custodial parent. The charges were dismissed.

Attempted arson

(Case NJA 2017, p. 531, the "Bus in Östberga" case)

Four individuals broke the window on the front door of a parked bus. They then poured diesel fuel into the bus through the hole in the window. The element of attempt necessary for conviction was deemed to be satisfied although it had not been proved that they had tried to light a fire using a match or any other source of ignition.

Litigation costs in a case on property reallotment

(Case NJA 2017, p. 503)

A property owner was granted partial property reallotment by the Swedish Mapping, Cadastral and Land Registration Authority. An appeal by the County Administrative Board and the municipality was dismissed by the Land and Environment Court. The Land and Environment Court subsequently granted leave to appeal regarding the litigation costs in the case and dismissed the property owner's cost claims. The Supreme Court found that the legal or technical complexity of a case involving land parceling and the substantial importance it has for an individual may constitute extraordinary reasons for awarding such person compensation for legal costs to be paid by the government as a representative of public interests.

A police officer's unlawful use of a police dog

(Case NJA 2017, p. 491, the "Police Dog" case)

A police officer with a dog caught two individuals spray-painting a pedestrian underpass. At the officer's command, the dog ran towards one of the individuals and bit him. The Supreme Court, which noted that the police officer released the dog without suspicion of offenses more serious than deliberately causing damage to property, found the officer's actions unjustifiable and found him guilty of misconduct and liable to pay day fines.

Intellectual property infringement is not a felony

(Case NJA 2017, p. 446, the "Movie Theatre" case)

Over a period of almost two years, a man uploaded 125 movies and TV shows on a filesharing website. The man also assisted in various respects in administering the website. The Supreme Court found that intellectual property infringement does not warrant a prison sentence when the crime is less severe. In this case, the penal value was six months in prison, and the man received a suspended sentence and 100 day fines.

Photography as an invasion of privacy

(Case NJA 2017, p. 393, the "Escalator" case)

A man on an escalator put his cellphone up a woman's skirt and photographed her genitals. The Supreme Court concluded that the action constituted sexual harassment since it had occurred in immediate proximity of the woman and was a

clear violation of her right to self-determination.

Notification obligation in conjunction with unjustified termination

(Case NJA 2017, p. 203, the "KRAV Milk" case)

Two brothers ran a farm and delivered milk to a dairy. According to a special price agreement, the dairy would pay the brothers, in addition to base compensation for conventional milk, a supplement for organic milk with the Swedish KRAV certification. In December 2003, the dairy terminated the special price agreement and ceased making supplemental payments for the milk. The termination was unjustified. The brothers made demands for the supplemental payments some 10 years later. This was too late according to the Supreme Court which found that, in order to preserve the right to the supplemental payments, the farmers would have had to notify the dairy that they did not accept termination.

The validity of a *mahr* agreement

(Case NJA 2017, p. 168, the "Mahr" case)

A *mahr* agreement (a legal concept in Islamic law which has been translated in legal literature as "Islamic dower", "dowry" or "bride price") was entered into in conjunction with a marriage between two Iranian citizens in Iran. According to the agreement, the man would pay 1.5 million Swedish kronor at the bride's request. One spouse resided in Sweden while the other resided in Iran. The couple then moved to Sweden together. After the couple divorced, the woman demanded that the man pay her the money. The man argued that the agreement was not valid in Sweden. The Supreme Court determined that the agreement could be likened to an agreement regarding a future partial estate distribution. As such it was not valid under Swedish law which applied in this case.

No sentence reduction due the defendant's age

(Case NJA 2017, p. 138, the "70-year-old" case)

A man drove a car with a breath alcohol level of 0.85 milligram per liter and his driving was extraordinarily reckless. The Prosecutor-General appealed the 6-month sentence handed down by the court of appeal and requested a harsher penalty. The Supreme Court reached the same conclusion as the court of appeal and did not reduce the man's sentence because of his age (70 years old).

An artist was allowed to use a photographic work in his painting

(Case NJA 2017, p. 75, the "Swedish Scapegoats" case)

An artist used a photographic work depicting a former suspect of the murder of Prime Minister Olof Palme for one of his oil paintings entitled "Swedish Scapegoats". The photographer argued that the artist had infringed his intellectual property rights to the photographic work. Following an overall assessment of the painting, the Supreme Court observed that, rather than a compelling photographic portrait of a person, the painting depicted an allegory implying a critique of the mass media's need for scapegoats. In other words, the photographic work had been transformed to such an extent that the artist had created a new and independent work of art. His disposition of the painting thereby did not constitute infringement of the copyright to the photographic work.

The year in brief

8 February
The Justices of the Supreme Court and the Supreme Administrative Court met to discuss, among other things, the possibility of using each other's expertise and experience and to exchange views on some common issues.

20 February
Petter Asp became a new Justice of the Supreme Court. He is a professor of criminal law at Stockholm University. He has also written books on criminal law and participated as an expert on several Government Committees.

28 February
Justice Göran Lambertz retired. He was appointed Justice in 2009.

8 March
The Supreme Court held a meeting regarding the precedent-setting activities of the Court in commercial law disputes. Representatives from, among others, the judicial system, academia, and various organizations participated. Meetings of this kind are held to gain an understanding of the issues for which various interested parties want guidance from the Court.

3 July
The Supreme Court launched a project in which all district courts and courts of appeal in the country will be given the opportunity to either visit or receive a visit from the Supreme Court at some point over the next few years. First off are the courts in the northern Sweden (Norrland), which will visit or receive a visit from the Supreme Court in the spring of 2018.

4 September
Malin Bonthron became a new Justice of the Supreme Court. She trained as a judge in the Svea Court of Appeal and most recently served as Director-General for Legal Affairs at the Justice Department since 2012.

On the same day, the Supreme Court ventured onto Twitter (@hogsta_domstol) as a step towards making the Court's work more visible to the public. The Court's tweets pertain principally to precedents and grants of leave to appeal.

6 8 September
The heads of the Nordic supreme courts met in Copenhagen. Among other topics, they discussed how to best identify cases which deserve a grant of leave to appeal for precedential purposes. The Supreme Court of Sweden was represented by President of the Supreme Court Stefan Lindskog and Vice President Gudmund Toijer.

19 and 20 October
The heads of a number of supreme courts in Europe met in Tallinn within the framework of the Network of the Presidents of the European Supreme Courts. The topic of discussion was the judicial independence of the supreme courts. The Supreme Court of Sweden was represented by President of the Supreme Court Stefan Lindskog.

25 October
President of the Supreme Court Stefan Lindskog and Justices Kerstin Calissendorff and Petter Asp participated in the Swedish National Courts Administration's podcast (https://domstolspodden.podbean.com/). They discussed, among other things, the role of the Supreme Court and the creation of precedent.

15 November
The Supreme Court organized another meeting to discuss the Court's precedent-setting activities. This meeting included representatives from district and appellate courts in discussions regarding criminal, civil and procedural law.

31 December
Justice Ella Nyström retired. She was appointed Justice in 2002.

Fifteen years on the Supreme Court

More than 15 years ago, around the same time as I began serving on the Supreme Court, a major renovation began on the Bonde Palace. When everything was finished two years later, the entire Court could gather under one roof instead of being split up into two buildings. The renovation was a step towards creating a modern workplace and greater cohesion among the Court's employees.

The biggest changes during my time on the Supreme Court have concerned the way cases are prepared. It has become more important to as quickly as possible weed out and decide cases that are clearly not interesting from a precedential perspective. In reviewing incoming cases, the judge referees are assisted by drafting law clerks who are former district court clerks who serve for a few years before taking up other positions in the field of law. The preparatory work is led by the heads of the two drafting divisions who ensure that the cases are prepared in the correct order and distributed evenly within the Court. The improved preparatory process is a major reason why the backlog of cases has been significantly reduced and processing times for most cases are short. The purpose is, of course, to facilitate the Court's main task, i.e. to establish precedents.

The work on the precedential cases, which are adjudicated by five Justices, is highly efficient. Before a case is referred to the Justices for decision, the judge referees do impressive work in preparing and presenting precedents, statements and relevant legal literature applicable to the issues in the case. The research is compiled in a memorandum and appendices along with a recommended ruling and distributed to the Justices a week or two before the presentation. As a consequence of this thorough preparatory work, views and suggestions on how the verdict should be phrased can be exchanged electronically just a few days following the initial assessment in chamber. About a week later, the Justices gather again to review the draft judgment. The Justice acting as chair makes the agreed adjustments directly in the electronic document, and each Justice can view the document on a computer screen in front of them. As a rule, this is when the decision is finalized. It should be noted that, during my first years here, the Supreme Court was already using that system. In this respect the Court was a pioneer. >

The way the Justices work on the precedents has more or less remained the same, but many of the questions currently addressed in cases reflect changes in society. Over the past few years, the Supreme Court has ruled on issues such as when an online auction agreement could be considered to have been entered into, and whether an electronically signed promissory note can be classified as a negotiable instrument. Such issues were hardly on the agenda 15 years ago.

A European law on human rights has become increasingly influential for the Supreme Court's rulings. 2005 was the first time the Court awarded damages to an individual from the state for non-financial damage when the charges against him had not been tried within a reasonable time. That ruling was influenced by precedents from the European Court on Human Rights. Since then, several other cases have covered compensation claims related to violations of European law on human rights.

In a plenary decision in 2013, the Supreme Court modified previous precedent and stated, primarily in light of a ruling from the European Court of Justice, that the Swedish principle of double sanctions in the form of tax penalties and criminal sanctions in two separate proceedings is not compatible with the prohibition against double punishment (*ne bis in idem*). The Court subsequently reviewed a petition for a new trial and concluded that it could be granted in certain cases where an individual had been convicted of tax evasion in violation of the prohibition. Following this, the Court reviewed a large number of petitions for new trials in similar cases, which affected the Court's work for a long period of time. The cases were handled by a special group of Justices and judge referees.

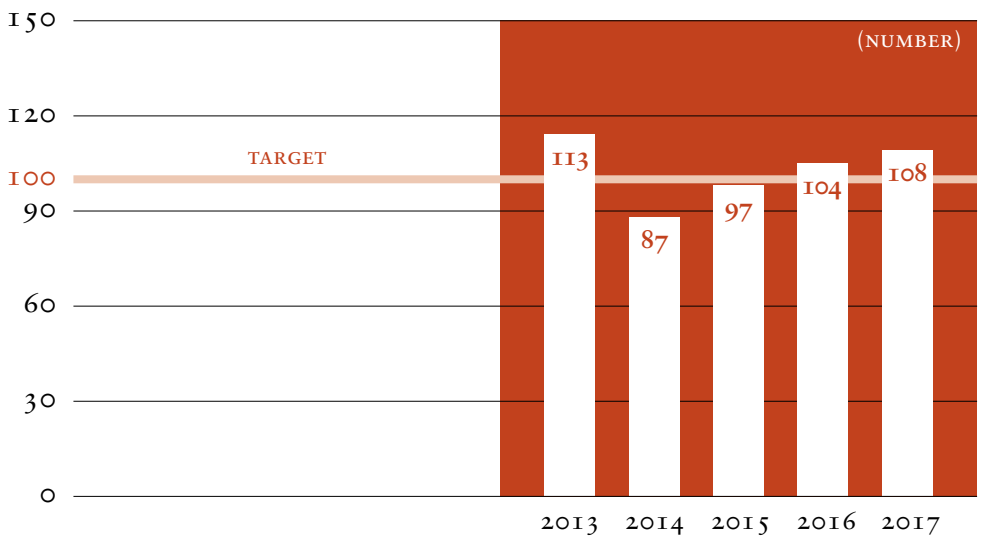
The Supreme Court has gradually become more outward-facing, which can be seen in a number of ways. For example, the Court typically publishes a post on its website as soon a new precedent is established. These posts explain the rulings in an accessible way.

Deliberations can lead to heated discussions and complete disagreement. Yet, there is no bad blood between the Justices during the daily morning coffee break or when they go out to have lunch together. It is difficult to imagine a more intellectually stimulating legal environment than the Supreme Court. The good, enjoyable collaboration with all of my skilled and responsible colleagues is yet another reason why it has been a privilege to be a part of the Supreme Court for 15 years.

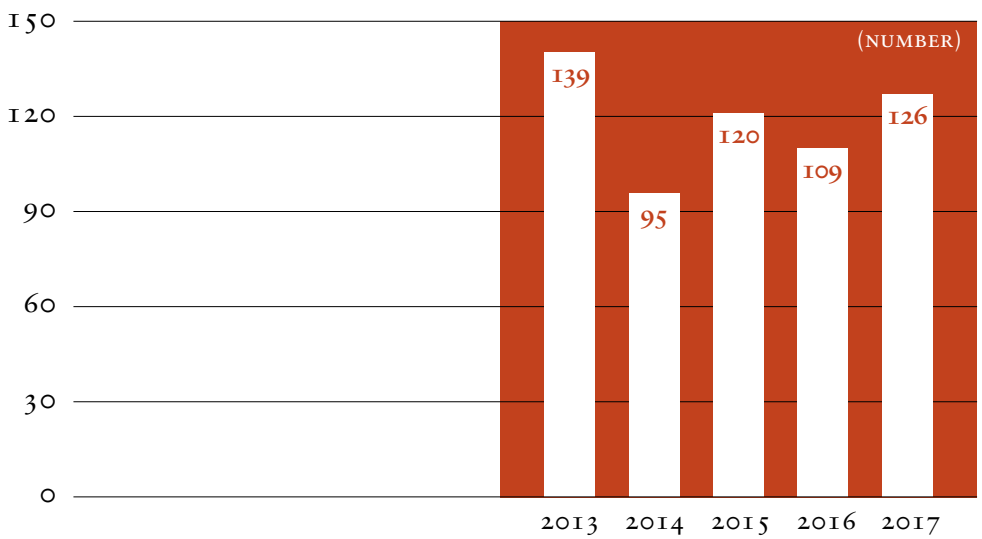
ELLA NYSTRÖM
JUSTICE OF THE SUPREME COURT

STATISTICS

Precedents



Cases for which leave to appeal was granted*



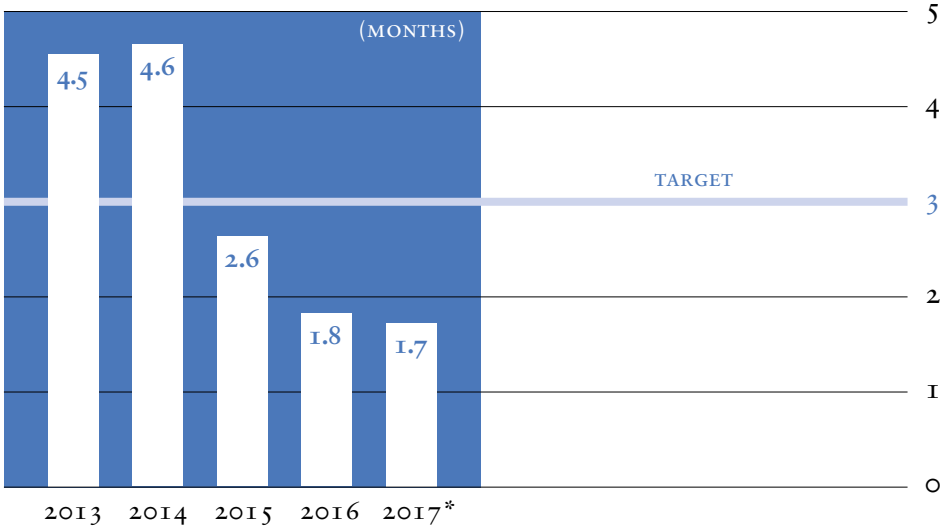
*Includes leave to appeal granted by the courts of appeal.

Processing times cases requiring leave to appeal (75th percentile)

Approved cases:
Cases requiring leave to appeal.

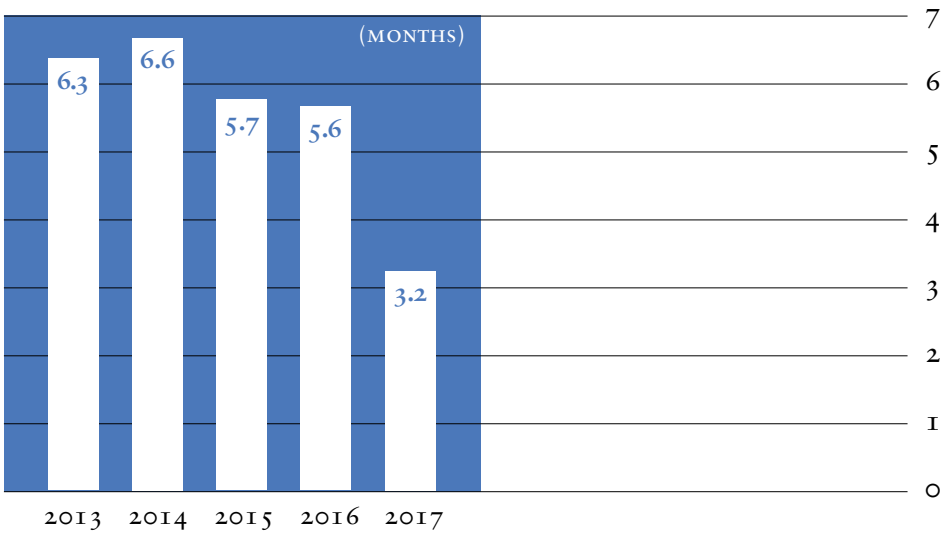
75th percentile:
The majority of cases.

*Total number of cases: 5,068
Percentage decided by
– one Justice: 93.6%
– three Justices: 6.1%

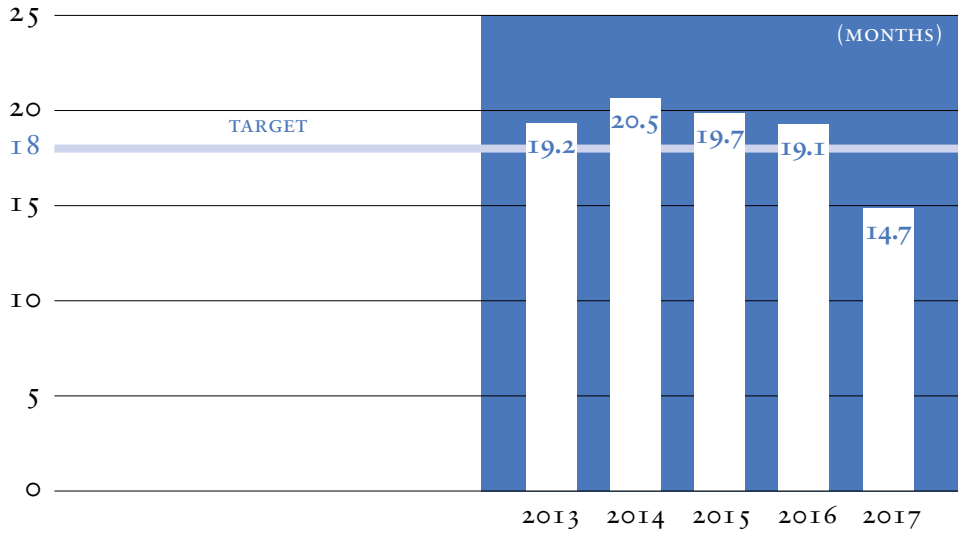


Processing times time to approval for leave to appeal (median)

Median:
The normal processing time.



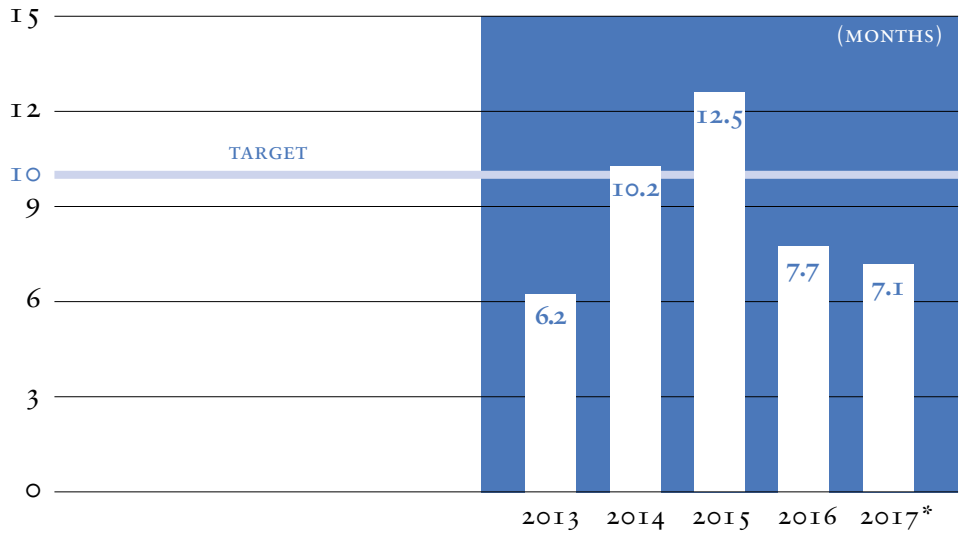
Processing times approved cases (75th percentile)



Approved cases:
Cases for which leave to appeal was granted.

75th percentile:
The majority of cases.

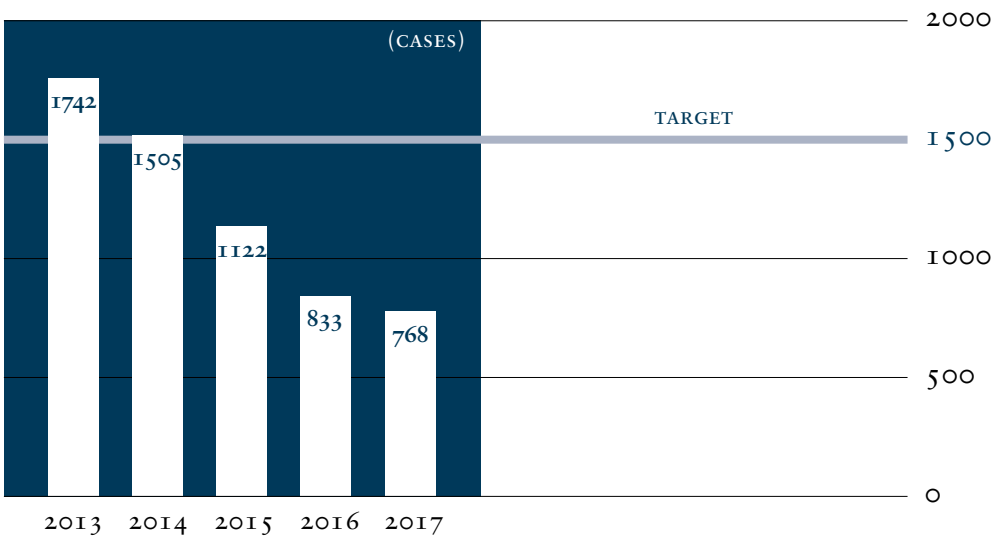
Processing times extraordinary cases (75th percentile)



75th percentile:
The majority of cases.

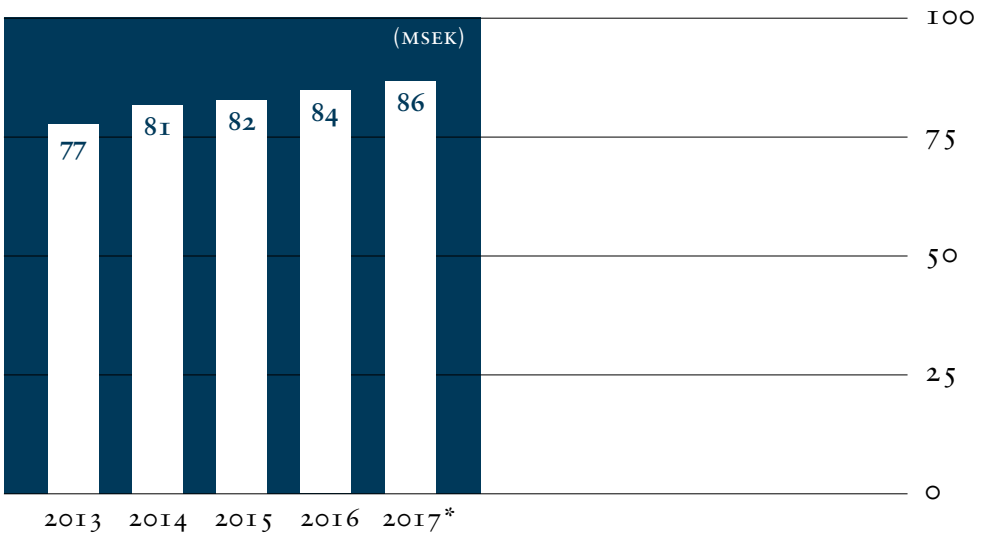
*Total number of cases: 929
Percentage decided by
– one Justice: 83.7%
– three Justices: 10.9%
– five Justices: 5.1%

Total number of cases not decided



Budget

*Outcome: deficit of approximately SEK 300,000.



The Justices of the Supreme Court

STEFAN LINDSKOG, BORN 1951, JUSTICE SINCE 2008, PRESIDENT SINCE 2016
GUDMUND TOIJER, BORN 1956, JUSTICE SINCE 2007, CHAIRMAN OF CHAMBER SINCE 2016
ANN-CHRISTINE LINDEBLAD, BORN 1954, JUSTICE SINCE 2002
ELLA NYSTRÖM, BORN 1950, JUSTICE SINCE 2002
KERSTIN CALISSENDORFF, BORN 1955, JUSTICE SINCE 2003
JOHNNY HERRE, BORN 1963, JUSTICE SINCE 2010
AGNETA BÄCKLUND, BORN 1960, JUSTICE SINCE 2010
INGEMAR PERSSON, BORN 1954, JUSTICE SINCE 2010
SVANTE O. JOHANSSON, BORN 1960, JUSTICE SINCE 2011
DAG MATTSSON, BORN 1957, JUSTICE SINCE 2012
LARS EDLUND, BORN 1952, JUSTICE SINCE 2012
ANDERS EKA, BORN 1961, JUSTICE SINCE 2013
STEN ANDERSSON, BORN 1955, JUSTICE SINCE 2016
STEFAN JOHANSSON, BORN 1965, JUSTICE SINCE 2016
MARI HEIDENBORG, BORN 1961, JUSTICE SINCE 2016
PETTER ASP, BORN 1970, JUSTICE SINCE 2017
MALIN BONTHRON, BORN 1967, JUSTICE SINCE 2017 (NOT PICTURED)

Postal address: Box 2066 103 12 Stockholm
Visitor address: Riddarhustorget 8, Stockholm