HD 2018

ACTIVITY REPORT OF THE SUPREME COURT

Table of content

A word from the President ____ 5

A pioneer on the Supreme Court ____ 9

My first year as Justice of the Supreme Court ____ 13

Creating precedent ____ 16

The Supreme Court around the country ____ 35

Cases in brief 2018 ____ 38

The year in brief ____ 42

Statistics ____ 44

A word from the President

Next year will mark 230 years since Gustav III established the Swedish Supreme Court. While the duties of the Court have evolved over the years, the central mission – acting as the court of final instance – remains unchanged.

Even if most of the Court's activities involve acting in the present with a view to the future, there is no harm in taking the occasional pause and reflecting on days gone by.

One palpable reason why we contemplated our links to the past in precisely 2018 was that it was the year that we inaugurated a portrait gallery of all of the Justices who have served on the Court since 1789.

Some of the walls of the Bonde Palace now host a gallery of all 322 Justices who have served on the Court thus far. It was a laborious task to gather these images. It has also required extensive research and detective work. With few exceptions, there are now portraits of all Justices.

From the end of the 1800's and forward, the portraits consist of ordinary photographs, while the older portraits are photographed paintings. It is an exciting portrait gallery with many well known names in the field of law. Many of the featured personalities are also recognised from other contexts, including the world of politics.

Appropriately enough, the doors of the portrait gallery were opened in conjunction with the Supreme Court's tribute to President Stefan Lindskog who retired at the end of the summer. The prospect of creating a portrait gallery of this type had been long discussed, but it was only on the initiative of Justice Lindskog that work actually got underway and was, in fact, completed.

When examining the portraits, one is struck by the disheartening insight that it is only in the relatively recent past that one encounters a female Justice. It was as recent as 1968 that Ingrid Gärde Widemar was appointed as the first female Justice of the Court. This was a breakthrough of the utmost importance. One may read more about this lady pioneer in the area of law in Kerstin Calissendorff's article which appears on later pages of this Activity Report.

Yet most of what transpires in the Supreme Court naturally pertains to the present and the future. One area in which we have worked actively in recent years is strengthening our contacts with courts, prosecutors, members of the bar and others who feel the impact of our activities. We are working to gain an understanding >

of how our activities are perceived overall. Still, we also want to know how they view the need for guidance in the form of judicial precedents in the various areas of the law. Accordingly, we regularly arrange meetings at which such issues are discussed.

Another way to disseminate information regarding our activities and inspire dialogue is our study-visit project which has been underway for some time. We pay visits to various courts throughout the country and receive representatives of courts who wish to pay us a visit in Stockholm. More about this project is presented in Måns Wigén's article.

In addition to statistics, reports of important decisions and other similar information, this year's Activity Report contains a description of how the Court administers a sample case starting with the grant of leave to appeal until a complete, precedential decision is rendered. The various phases in the process are described step by step.

As in previous years, we have cooperated in various ways with the Swedish Supreme Administrative Court. It may be gleaned from the contacts between the two Courts that both the Supreme Court and Supreme Administrative Court enjoy working under conditions in which they can readily fulfil their duties as the courts of highest instance and precedential courts. Unfortunately, this is not the case everywhere. Many countries can be found throughout the world in which the courts cannot operate in the necessary manner. Political interference which limits the independence of the courts is common. Corruption and the lack of resources are other problems. As a consequence, many courts can neither carry out their duties nor form the ultimate line of defence for due process and ensure that citizens are able to exercise their rights.

Sadly, these types of problems are found also in Europe and within the EU cooperation. Poland and Hungary are often cited as examples. Yet the risk that these problems might spread elsewhere is not to be underestimated. In the international cooperation in which the Supreme Court and the Supreme Administrative Court participate, representatives of our Courts regularly meet with representatives of other supreme courts including within the EU. When these representatives describe the difficulties they encounter in their day-to-day work, the problems become clear and a highly discouraging picture emerges from certain countries. We can certainly hope that the negative trend we perceive in this area quickly comes to an end.

In Sweden, our publicly elected representatives in Parliament have taken to heart the worrying developments in other countries and have raised the idea of conducting a review of the statutory provisions governing various issues relating to the position and independence of the courts in Sweden. This is immensely gratifying. And it also means that this article may be happily concluded on a positive note.

ANDERS EKA
PRESIDENT OF THE SUPREME COURT

Ingrid Gärde Widemar Photographer: Benno Movin-Hermes 1971

A pioneer on the Supreme Court

On Friday, 29 March 1968, Member of Parliament and the Swedish Bar Association Ingrid Gärde Widemar was appointed Justice of the Supreme Court. She became the Supreme Court's 248th Justice since the Court was established in 1789. All of her predecessors were men.

Her appointment drew much attention in the daily press and legal circles. There were many reasons for this. One of them was that Ingrid Gärde Widemar was well known. She arduously participated in public debate, including writing a column for some years in the Swedish daily paper, *Aftonbladet*. She wrote articles, was interviewed and gave speeches. In her book, *Hatt och huva* [Hat and Hood], which became a springboard for her political career, she shed light on the difficulties facing women in public service and the antipathy towards female mangers – notwithstanding amended legislation – that had previously been an obstacle to women in holding public positions.

When Ingrid Gärde Widemar was appointed to the Court, she had been a member of Parliament on behalf of the People's Party (now, the Liberals) for 20 years. While in Parliament, Ingrid Gärde Widemar made her mark on the great social issues of the day through her efforts, among others, to support legislation prohibiting corporal punishment, against joint taxation of married couples, to grant immunity from prosecution for women who had abortions in Poland, for a woman's right to keep her maiden name, in support of equal wages for equal work, for women's right to be appointed to the priesthood and other gender-equality issues. A sign of her abilities and skills in her parliamentary work was that she was the first woman chairman of a parliamentary committee – the highly important first Law Committee. Thus, she was also a pioneer in this role.

Another reason for all the attention was, quite naturally, the fact that Ingrid Gärde Widemar was the first woman who attained such a high judicial position. In Justice Olle Höglund's article in the Swedish Legal Gazette in 1989, "*Advokater i Högsta domstolen* [Members of the Bar Association on the Supreme Court]", he suggests that the reason it took so long by no means had anything to do with a reactionary stance on the part of the Supreme Court. On the contrary, the Court had expressed its desire on several occasions to see a woman appointed as a new Justice. >

It has been assumed that one explanation why it took so long was that, as in so many other academic careers, women joined the legal profession relatively late. Ingrid Gärde Widemar was born in 1912. It was only in 1870 that women were allowed to take their degree and, prior to 1900, only one woman, Elsa Eschelsson, had studied law. Prior to the First World War, only five women took what was the equivalent of a law degree.

The choice of careers for women with higher education had long been limited since, with certain exceptions for teachers and nurses, they were not permitted to hold civil service positions. Accordingly, as a rule, women who had studied law and worked had their own law practices. This was also why it took a relatively long time before the number of female justices grew. In this context, it is worth pointing out that the first female professor of law, Anna Christensen, was appointed as late as 1976.

When Ingrid Gärde Widemar joined the Supreme Court, the Swedish national paper, *Dagens Nyheter*, announced it in a way we might find strange today. The journalist wrote, "The older gentlemen of the Supreme Court are now joined by a colleague in the form of a neat and well-dressed woman. Her much-publicised interest in clothing and fashion is in contrast to a male homogeneity, presumably in grey."

At a gathering arranged for, among others, retired members of the Supreme Court in the spring of 2018, special note was made of the fact that it had been 50 years since Ingrid Gärde Widemar was appointed to the Court. At the last gathering of retired Justices of the Supreme Court attended by Ingrid Gärde Widemar some years before she passed away, she claimed that her service on the Court had been the happiest part of her life.

When, in the spring of 2016, then Chief Justice of the Supreme Court Marianne Lundius invited to her home all women who had been appointed Justice of the Supreme Court at some point in time, i.e. active Justices, those who had assumed other positions and those who had retired – all of them were alive except Ingrid Gärde Widemar. There was room for all of them around the dinner table. They were 14 in all.

KERSTIN CALISSENDORFF
JUSTICE OF THE SUPREME COURT

My first year as Justice of the Supreme Court

It has been just over one year since my first day on the Supreme Court. In that curious way which frequently characterises a period of great change in one's life, it seems both so long ago and yet only like yesterday. This sort of experience also makes it difficult to fully describe what this initial period was like. Accordingly, I will instead focus on some key features.

My first week got off to something of a flying start. This suited me well because I believe that nothing is better than throwing yourself into something entirely novel and unknown (and, perhaps, more than just a little frightening). A week or so before I got started, I got a little taste of one of the more typical elements of a Justice's work. I namely received some case bundles sent home to me to read. On my very first workday, after the traditional welcoming ceremony, I was to sit and listen to case presentations heard by three Justices (matters regarding leave to appeal or less complicated extraordinary cases). On the following day, I was to participate as one of five Justices in a case in which final judgment was to be rendered.

A case bundle contains the material which the judge referee considers necessary in order for the Justices to be able to decide the issue at bar. The case bundles are often quite extensive when a case is to be finally decided by five Justices, and they are somewhat less substantial (but still not what most people would refer to as a small amount of material) in cases prepared for three Justices. Thus, even before my first day on the Court, I had read case bundles regarding a number of cases. In the matter heard by five Justices, I was also permitted to frame an opinion as to the manner in which I believed the case should be decided, and prepared what I would have said with regard to it during the presentation of the case. Lacking experience presenting cases before the Supreme Court, this was not an entirely straightforward matter for me. As luck would have it, the subject matter of the case was something about which I gained a great deal of experience from my former workplace, namely transitional provisions for new legislation.

This sort of start indicated to me that the pace of work in the Court was relatively high. As far as I was concerned, much of the first autumn involved getting a handle on how the work was structured in in the Court, with its highly predictable weekly schedule, and learning how I should >

plan in order to apportion the right amount of time to the right things. I also gained initial insight into the scale of the reading required for the work. At no point in my career had I committed so much time to reading as I did in the autumn of 2017 as a novice Justice. And to put this in perspective, my previous job – most recently as the Director-General for Legal Affairs in the Ministry of Justice – certainly involved reading copious amounts of text.

Thus, there is a great deal of reading and a great deal of time which must be committed to the job. But it is extremely fun. Working as a Justice cannot be described in any way other than as a privilege. Imagine first-rate material pertaining to an interesting case produced by a skilled judge referee with a thorough report and accompanying proposal for a decision and then immersing yourself in it. To top it off, you then have the opportunity to discuss with equally invested colleagues how this as-of-yet unsettled legal problem should be solved. It is hard to beat. Furthermore, the collaboration of all personnel categories at the Court is equally enjoyable.

During that first autumn, I did participate in deciding a number of stimulating cases and wore the hat of reporting judge in some of them. In my view, a reporting judge has the most challenging and entertaining job at the Court, namely drafting the decision in the case. Putting pen to paper and setting out the first words on a page is sometimes fraught with great trepidation. But when it is done, it is enormously stimulating to have been involved in crafting solid, unambiguous text which clarifies the legal state of things and explains why the Court has reached a certain decision. I also find sharing the task of re-working texts together with other Justices to be immensely rewarding. A great deal of this work is carried out at what is referred to as re-examinations, sitting around a table with the chairman of the panel at the keyboard. Naturally, having your writings picked apart and altered point by point can be somewhat painful, yet it is also fascinating to see how the text qualitatively evolves into something vastly superior.

Now that I have just over a year of experience serving on the Court, I am beginning to feel accustomed to the work. Starting a new job is always an adjustment, and it is to be expected that it takes time to learn how to do it. I look forward to continuing to develop in this work. There can be no doubt that being a Justice has lived up to my expectations – namely that it is impossible to imagine a role that is more interesting or more stimulating to a jurist.

MALIN BONTHRON
JUSTICE OF THE SUPREME COURT

Creating precedent

The foremost task of the Supreme Court is to provide legal guidance when laws and rules lack clarity. The guiding decisions of the Supreme Court (precedents) thus operate as a complement and clarification, not only for the lower courts when they examine similar cases in the future, but also for anyone who needs to understand, comply with or implement applicable rules.

Unlike district courts and courts of appeal, the Supreme Court's task is not only to apply applicable rules, but to also clarify the purport and effects of those rules. This task is made clear by virtue of the fact that the right to be heard in the Supreme Court is limited by a requirement that leave to appeal i.e. permission to have a judgment reviewed by the Supreme Court must be granted. The Supreme Court only hears cases which demonstrate a need for clarification of the regulatory content or, in exceptional cases, when a new trial is justified due to incorrect handling by the lower courts or new evidence.

The appeal is filed

Initial review

Preparation – consideration of a grant of leave to appeal

Consideration of a grant of leave to appeal

Preparation – final consideration

Final consideration

Finalisation of the decision

Concluding measures

Tove Levelind
Head of the Registrar's Office and Archive

I. The appeal is filed

Each year, approximately 6,000 cases and other matters are brought before the Supreme Court. Of these, approximately 5,000 are cases appealed from one of Sweden's six courts of appeal. The majority of decisions taken by the courts of appeal may be appealed to the Supreme Court.

The appeals are received by the staff of the registrar's office. Although most parties file their appeals by e-mail, the Supreme Court normally receives the appeal also in printed form together with the files from the courts of appeal. The bulk of each file varies from a few pages to several moving boxes.

The registrar goes through the file and performs a preliminary review of the appeal. Based on the type of issue involved in the appeal, the registrar's office registers a case with the Supreme Court and ensures that all documents are uploaded electronically in the Swedish courts' case management system (VERA).

The registrar's office's scanning work forms the basis of increasingly digitalised case management. In the event the case requires urgent action, this is noted in the case management system. These types of situations might involve, for example, a request for release made by someone in custody. Note is also made if information in the case is subject to secrecy.

The case is then allocated to one of the two drafting units' large divisions for cases which require leave to appeal. Judge referees, drafting lawyers, and court clerks are employed in the drafting units. Each drafting unit has a head of division who manages and allocates the work. The division heads are regular judges who have taken a leave of absence from their bench appointments.

Registrar

The registrar's office employs five persons who collectively have over 70 years' experience working at the Supreme Court. Tove Levelind is the head of the registrar's office and the archives. The registrar's office receives all post sent to the Supreme Court. Certain documents which are not associated with a specific case are registered in the administrative journal. The registrar's office also provides assistance when receiving requests for public documents.

Elin Grethes
Law clerk

2. Initial review

In the unit for cases requiring leave to appeal, a law clerk and a judge referee share responsibility for the initial review.

Cases received by the unit span all legal areas addressed by courts of general jurisdiction and involve legal issues of various kinds. The initial review is intended to immediately identify the great majority of cases which clearly are not interesting for the purposes of establishing precedent and, at the same time, identify cases which raise precedential issues that demand more extensive examination.

The law clerk reviews the case immediately upon receipt in order to determine if it is formally ready for an examination on the issue of leave to appeal (that is, that the case will be accepted by the Court for review). The starting point for the examination is what the appellant has written in the appeal. In many cases, the reasons for leave to appeal are not compelling. The appellant, for example, might merely claim that the examination of evidence in the lower courts was incorrect without pointing out any need for clarification of the law.

When the examination of the issue of granting leave is considered ready for determination by a Justice, the law clerk or judge referee drafts a proposal for a decision. A brief basis for assessment describes the proceedings in the lower courts and the assertions made by the appellant in the appeal. A brief analysis of applicable law is presented. The law clerk or the judge referee states the reasons which speak for and against granting leave to appeal in the case and provides his or her own assessment of the issue. The case is thereafter submitted to a Justice for examination.

In the event the Justice does not believe that the examination of the issue of leave to appeal may be decided by one Justice, the case is referred for examination by three Justices. In slightly more than 90 per cent of the cases received by the Supreme Court, the issue of leave to appeal is decided by one Justice. In these cases, the issue of leave is normally determined within one month of receipt.

Law clerks

Seven law clerks work at the Supreme Court. The first law clerks were employed in June 2016. They are younger lawyers who have worked as law clerks in a district court, but often have some additional experience from other, similar legal work. One of the law clerks is specialised in land and environmental law and assists the judge referees in the administration of those types of cases. Law clerks are appointed for periods of two years. Following completion of their service, law clerks have gone on to positions as, among other things, assistant junior judges of the courts of appeal or attorneys at law firms.

Malin Hjalmarson
Judge Referee

3. Preparation – consideration of grant of leave to appeal

When an appeal contains persuasive reasons for granting leave to appeal or requires a more extensive review, the case is assigned to a judge referee for further handling. In these cases, the issue of granting leave to appeal is most frequently presented to three justices. The judge referee presents the case in a memorandum and performs legal research which is compiled in a so-called electronic case bundle.

"Case bundle" refers to the material which is provided to the Justices prior to presentation of the case. The case bundle normally consists of the decisions rendered by the lower courts, the appeal to the Supreme Court, and materials from relevant legal sources such as, for example, cases and extracts from preparatory works and legal literature.

Consideration of the issue of granting leave to appeal is not akin to an examination of the substance of the case. The documents in the case bundle are intended to illuminate whether or not there is a need for guidance (i.e. that there is a precedential issue) or whether, in exceptional cases, there is a need for a new trial (extraordinary review). The case bundle is also accompanied by a proposed decision regarding the issue of a grant of leave to appeal.

The judge referee is responsible for ensuring that the electronic case bundle is compiled approximately one week prior to presentation of the case. In these cases, the issue of leave to appeal is normally considered within a period of three months from the date of filing.

Judge referee

The Supreme Court employs approximately 30 judge referees. All judge referees have completed training as a judge. Working as a judge referee is normally part of a professional career as a judge, and most go on to join the bench as regular judges in the district courts or courts of appeal. Judge referees have a limited appointment of four years with the possibility to extend the appointment by no more than four additional years. Most of the judge referees work in Stockholm, but there is also a possibility to work remotely from Malmö or Gothenburg.

4. Consideration of grant of leave to appeal

At this stage, the Supreme Court will not decide the case (i.e. render a judgment) but, rather, will determine whether the Court will grant permission to have the case reviewed. A case may be reviewed by the Supreme Court if it involves an issue for which there is reason to provide legal guidance. Furthermore, a case may be taken up for review in exceptional cases where there are special reasons to do so. In the latter case, this means that there are grounds for a new trial or that a grave error has been committed at the trial stage in the district court or the court of appeal.

Accordingly, in most cases, the presentation to the Court focuses on determining whether the case contains any issues for which there is a need for legal guidance and, furthermore, whether the case is suitable for providing such guidance. This means that the Justices read and assess the case with particular emphasis on whether it is suitable as a precedent, not how the Court will adjudge the individual case.

The Supreme Court decides approximately 100 precedential cases per year. The cases must thus be chosen with care. Circumstances which support a grant of leave to appeal include, for example, issues which have been decided differently by various courts of appeal or in which there are conflicting opinions in the legal literature. In addition, the cases may raise questions as to how new legislation is to be interpreted or whether current legislation can no longer be applied also to new technology or new social phenomena.

Even if a case contains issues which may require legal guidance, it is not certain that it will make for a good precedent. For example, a case may be very extensive and raise only one interesting issue among many for precedential purposes, or the interesting legal issue is dependent on ascribing value to the evidence in a certain way. However, since the Supreme Court may limit leave to appeal to a certain issue, the conditions may nonetheless exist for granting leave to appeal in such cases. Thus, it is not unusual that the issue is addressed thoroughly in conjunction with the presentation of the case to the Court where it is possible to grant limited leave to appeal.

Justices

Judges on the Supreme Court are called Justices. Normally, two of the 16 Justices serve on the Council on Legislation, which is a special body which reviews and comments on proposed legislation. The remaining 14 Justices work in two judicial divisions. One of the divisions is led by the President of the Supreme Court, Anders Eka, and the other is led by Head of Division Gudmund Toijer.

Agneta Bäcklund
Justice of the
Supreme Court

Evelina Säfwe
Judge Referee

5. Preparation – final consideration

If a case is allowed – that is, leave to appeal has been granted – it continues to be processed by a judge referee. The parties normally have a timetable for the continued handling of the case. They are afforded the opportunity to argue the issues to be determined as well as state the evidence they wish to adduce.

Cases may differ both in scope and complexity. Some judge referees specialise in presenting certain types of cases such as those involving land and environmental law, intellectual property law, transportation law and freedom of the press and expression. The special cases comprise approximately five per cent of the incoming cases and include cases which are particularly extensive or draw a lot of attention in the media.

Irrespective of the character of the case, the judge referee conducts a very careful legal examination which illuminates the issue which is interesting from a precedential perspective in the case. The starting point is to assemble all relevant legal sources. It is not unusual that the legal investigation includes both domestic and European legislation, legal precedent and books and articles on jurisprudence.

As is the case with the examination of whether to grant leave to appeal, the judge referee assembles a case bundle in anticipation of the final decision. These case bundles are often very extensive. The judge referee also writes a report, i.e. a proposed decision. The report covers all issues which the judge referee believes the Court should consider. The report is added to the file and is also published in a journal of collected judgments, referred to as *Nytt juridiskt arkiv* or NJA. Cases in which leave to appeal has been granted are normally finally decided after approximately one year of the date of filing.

Framework for the final decision

As grounds for a grant of leave to appeal, the appellant may have claimed that there is a need for guidance (leave to appeal for precedential reasons) or that it is an exceptional situation which justifies a new trial (leave to appeal for extraordinary reasons). Only in those cases in which the Supreme Court takes a decision to limit leave to appeal (partial) is it apparent which issue justifies the decision to grant leave. In other cases, leave to appeal in the case is decided as a whole. However, part of the judge referee's task is to write an advisory opinion from which the parties and others may glean which issue justified the decision to grant leave. The advisory opinion is presented on the Court's website. However, it is not binding on the Court.

6. Final consideration

Normally, a case is decided substantively by means of presentation of the case. Prior to presentation, the judge referee has carried out a thorough legal investigation in which all of the relevant legal materials are assembled. In addition, the judge referee has written an advisory opinion. In the few cases in which the Supreme Court holds a main hearing, however, the judge referee does not write an advisory opinion.

The Justices receive the materials – both electronically and in printed form – two weeks in advance and carefully review the documents and form an opinion regarding the manner in which the issues are to be assessed.

In conjunction with the presentation, the Justice who is responsible for the case (the reporting judge), presents the facts of the case and the Justices examine the evidence which has been adduced. Following this, deliberations get underway. The reporting judge presents and analyses the legal material which he or she deems relevant and concludes by expressing his or her view on the issues in the case. Subsequently, the other Justices state how they believe the issue should be decided. The sequence of the respective presentations follows the order in which the Justices have been appointed – the youngest Justice begins and, finally, the chairman of the panel gives his or her opinion. After all five Justices have given their opinions, there are, as a rule, additional discussions in which various arguments asserted by the Justices are weighed against one another.

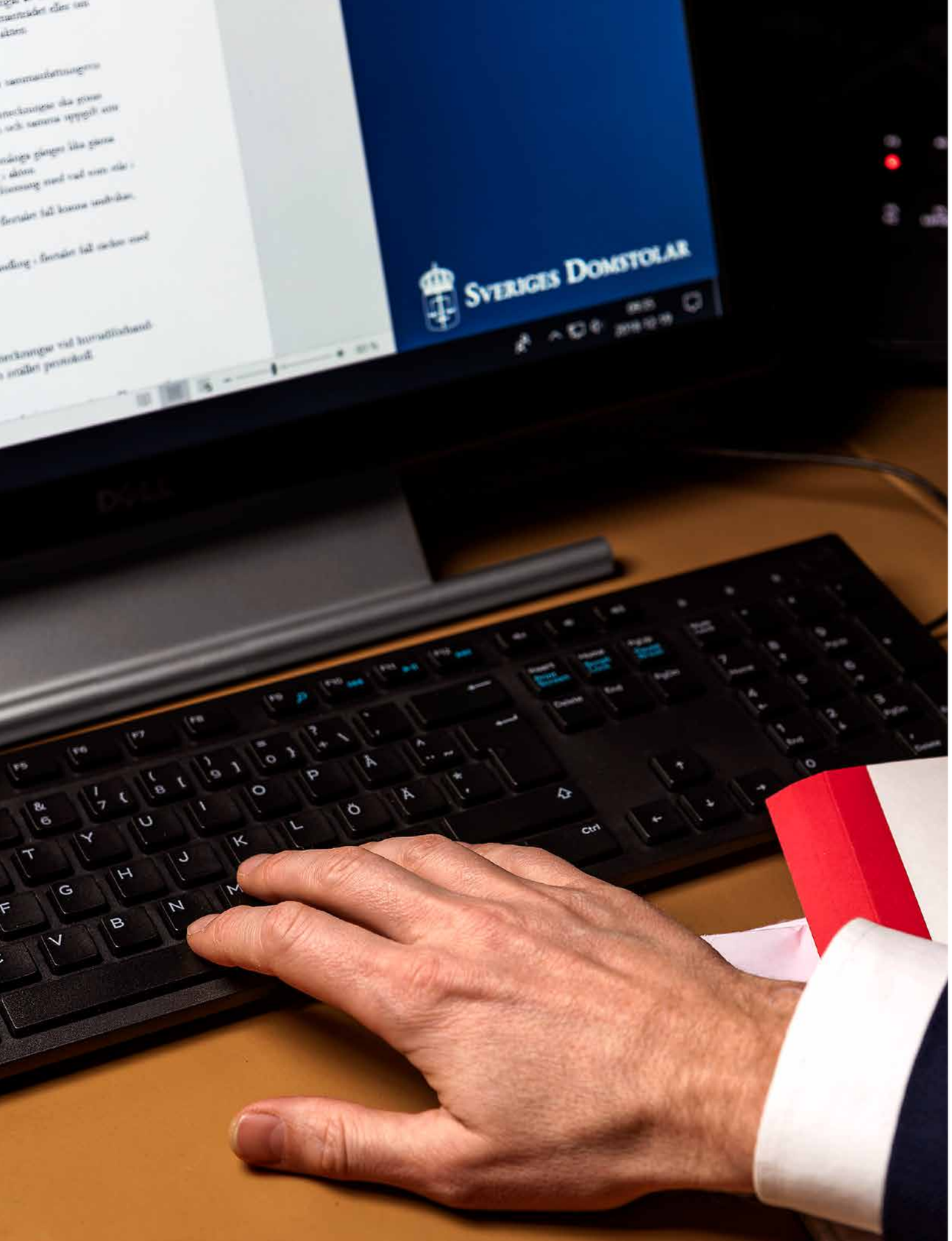
If the Justices are unanimous regarding the manner in which the issues are to be decided, the reporting judge is tasked with preparing a draft decision. If there are dissenting opinions amongst the Justices and the reporting judge is not part of the majority, it is, as a rule, the most recently appointed Justice amongst the majority who takes on this duty. The Justices who are not part of the majority then write a dissenting opinion.

Appointment of Justices

Initially, members of the Supreme Court were appointed by the King and subsequently on recommendation by the Minister of Justice. After 1974, the Justices were appointed directly by the Government in closed proceedings. Since 2011, there is a new procedure for making judicial appointments according to which the Government takes a decision following a proposal from the Judges Proposals Board of Sweden. All vacant positions are published and may be freely applied for by qualified jurists.

The Justices come from various backgrounds. For example, they may have worked as a judge in a District Court or Court of Appeal, as an attorney, in a ministry or as a professor of law.

Stefan Johansson
Justice of the Supreme Court



7. Finalisation of the decision

When presentation of the case has been concluded, work gets underway in drafting the Supreme Court's decision. The starting point is that the Justices will gather for a first review of the draft decision one week following presentation of the case. This gathering is referred to as a reconvening. In more complicated or extensive cases, however, the Justices might reconvene two weeks following presentation of the case.

The Justice who is responsible for producing a draft decision sends it to the other Justices sufficiently in advance of reconvening that they have the possibility to carefully analyse and express their views on the draft. In the event an individual Justice has views which extend beyond the mere wording of the draft, he or she will notify the other Justices of the same in writing before they reconvene.

When the Justices have reconvened, all of the Justices give their views on the draft and any opinions which may have been expressed. When there is unanimity regarding the manner in which the decision is to be arranged and its contents, a review gets underway. The Justices review in detail and discuss the draft decision point by point. Each Justice has access to a computer screen on which the draft is shown, and the President enters the amendments agreed upon by the Justices in real time. This part of the process is one of true teamwork, which enhances the quality of the decision overall.

It is not uncommon that the Justices need to reconvene several times before the Justices have agreed on the final formulation. When reconvening, the members of the Court also agree on the case header which summarises the issue that has been examined.

After reconvening, the judge referee is responsible for seeing to it that the decision is printed and, together with the case header, circulated for signature. In the event there are any dissenting opinions or special addenda, these are also circulated amongst the members together with the final decision.

Writing the judgment

The members of the Supreme Court work continuously in formulating the precedent. Emphasis is placed upon constantly considering how the precedent can best fulfil its function in serving as a guide in the application of law. This refinement work is carried out, among other things, in the context of a continuous dialogue with representatives of relevant external parties to discuss precedents, e.g. from the district courts, courts of appeal, the Swedish Prosecution Authority and the Swedish Bar Association. One example of the manner in which the Supreme Court has developed drafting of judgments over the years is the implementation of numbered paragraphs in order to create structure and add clarity. Another is that most of the precedents currently have a particular moniker which is easier to remember than a year with a mere combination of numbers.

Bibbi Englund Wikström
Court Clerk

8. Concluding measures

The finalised decision is turned over to a court clerk who is responsible for the final steps and dispatch. The parties have two days' advance notice regarding the day the decision will be issued. It is the court clerk who sees to it that the decision is issued and thereby becomes public. As a rule, this occurs at 08.45 on the assigned day. The parties and counsel in the case always receive a copy of the decision, currently usually be e-mail.

Depending on the type of decision and what has been decided, it may also be sent to certain public authorities. It is the court clerks who check which public authorities and other parties are to receive the decision. The court clerks also produce an anonymised version of the decision in which the names are replaced by initials. The decisions which serve as guides (precedents) are published on the website of the Supreme Court and on Twitter (@hogsta_domstol).

When the court clerk has concluded the final steps in the case, the file is sent to the archives at the Supreme Court for archiving. The file is then received by the archive administrator who conducts a careful review and checks that the file is complete prior to archiving. The file may not contain anything which can damage the documents, e.g. paperclips or envelopes. The signed original judgment is removed from the file and bound in a book of judgments.

Court clerks and archive administrators
Approximately 15 court clerks work at the Supreme Court. They assist the drafting attorneys and the judge referees in preparing cases and carry out the concluding measures after the decision is finalised. The court clerks at the Supreme Court frequently have experience as court clerks at other courts.

Two archive administrators work at the Supreme Court. The archive on the premises of the Supreme Court contains files of decided cases, books of judgments and daily journals from and including 1995. Older files and related documents have been transferred to the Swedish National Archives. The archive also assists in the release of public documents in concluded cases.

The Supreme Court around the country

The most important task of the Supreme Court is to guide the application of law. Our guiding decisions have an impact on many. On the general plane, every member of society must comport themselves in accordance with applicable laws and the instructive legal precedent established by the highest courts. On a more specific level, it is the courts of law and public authorities that apply laws and rules in their daily work and are duty-bound to follow the decisions of the highest courts. This means that the country's courts of general jurisdiction – the district courts and courts of appeal – belong to that group which is most affected by the decisions of the Supreme Court.

Accordingly, it is of particular importance that the courts of general jurisdiction are not only well informed of the activities of the Supreme Court but also that they can rely in the extreme on the Supreme Court striving to understand the needs of the courts for guidance.

In recent years, the Supreme Court has worked to improve its external communication. As part of this effort, the Court has invited relevant outside parties – among others, representatives from the general courts – to so-called "precedent meetings" in order to discuss the need for guidance within various legal areas.

Hopefully, these meetings have helped the courts better understand the activities of the Supreme Court and also given the Supreme Court greater insight into the types of guiding decisions which are sought by the lower courts. The Supreme Court regards the continuation of this type of exchange to be of the utmost importance.

As an additional component in the spread of information about our activities and strengthening the dialogue with relevant parties, the Supreme Court has initiated a tour of all courts of general jurisdiction in Sweden. Some courts have instead chosen to visit the Supreme Court.

The delegation from the Supreme Court has consisted of Justices, administrative directors or heads of drafting divisions, judge referees and administrative junior judges.

The first round of visits took place in the beginning of the year at the Östersund District Court and the Court of Appeal of Lower Norrland. Thereafter, other delegations visited other courts within the northern-most courts of appeal.

A second round of visits was carried out in the autumn. This time, six courts within the Courts of Appeal for Western Sweden were visited. In the spring of 2019, the last visit to the Western Sweden area will be concluded, after which different delegations will visit the area of the Court of Appeal of Skåne and Blekinge.

The Supreme Court was extremely pleased with the hospitality exhibited by the courts and the great interest and engagement which met our delegations. So far, we have found the study visits to be extremely valuable in improving the dialogue between the Supreme Court and the parties who are most immediately affected by our precedents.

MÅNS WIGÉN
ADMINISTRATIVE DIRECTOR

Johnny Herre
Justice of the
Supreme Court

Pia Nilsson Taari Judge Referee

Måns Wigén Administrative Director

Louise Bülow Andersson, Caroline Hilmerson, Isabella Bozdemir Clerks of the District Court of Uddevalla

Karin Ahlstrand Oxhamre Judge Referee

Simon Rosdahl Administrative Junior Judge

Cases in brief 2018

CIVIL LAW

Seizure of residential property

(Case NJA 2018, p. 9, the "Seized Residential Property" case)

The Swedish Enforcement Authority decided to seize a debtor's share of a residential property. A sale of the property was expected to result in a profit which was sufficient to fully cover the relevant tax debts. However, other property was also available for attachment, namely the debtor's wages. Attachment of wages only, however, would have caused a delay in full payment of the indebtedness by nearly three years. Notwithstanding that seizure of the property would entail inconvenience for the debtor and his wife, this period of time was deemed to be too long. Accordingly, the debtor's share of the property was not exempted from the seizure.

Termination of long-term distributorship agreement

(Case NJA 2018, p. 19, the "Tractor Distributor" case)

A distributor of tractors terminated the supplier after 22 years. The parties had not reached an agreement regarding a term of notice of termination or severance compensation. The Supreme Court found that, in a long-term distributorship agreement devoid of provisions governing notice of termination, the distributor was entitled at a minimum to six months' notice of termination. The right to severance compensation presupposes that there is a compelling need to protect the distributor.

Damages in conjunction with erroneous deregistration of citizenship

(Case NJA 2018, p. 103, the "Citizenship II" case)

A person was erroneously deregistered as a Swedish citizen for a period of 20 years and was granted SEK 100,000 in compensation by the Chancellor of Justice. The person requested additional compensation with reference to, among other things, the long period of time he had been deregistered. The Supreme Court stated that the limitations period began only when the infraction ceased and the State no longer maintained the erroneous deregistration. The claim in damages was thus in no respect barred by the period of limitations. In a calculation of compensation, compensation is to be based primarily on the duration of the infraction. In total, the person received compensation in the amount of SEK 150,000.

Complaint for flight delay

(Case NJA 2018, p. 127, the "Flight to Antalya" case)

Four persons had travelled by plane to Turkey. The flight was delayed by more than three hours. The passengers claimed compensation pursuant to the European Union Airline Passenger Regulation approximately two years and three months following the flight. According to the judgment of the Supreme Court, the right to compensation is forfeited if a passenger fails to notify the airline of his or her claim within a reasonable time following conclusion of the journey. A complaint which is made within two months following the journey will be regarded as having been timely made in any case. In the current case, however, too much time had passed before the claim was asserted. Accordingly, the right to compensation had been forfeited.

Passivity in a contractual relationship resulted in forfeiture of former rights

(Case NJA 2018, p. 171, the "Toy Store in Vimmerby" case)

For a period of 15 years, a landlord who was party to a commercial premises lease did not demand turnover rent according to a provision in the agreement. It was only when the agreement was terminated that the landlord requested payment of turnover rent. The landlord's passivity was regarded as constituting a forfeit of the right to demand turnover rent.

Inadequate quality of university education resulted in a refund of part of tuition fee

(Case NJA 2018, p. 266, the "University Fee" case)

A foreign student at a university paid a tuition fee for the education. After several semesters, the student quit the programme and requested reimbursement since she believed that the quality of the programme was inadequate. The Supreme Court found that there was an agreement between the student and the university in respect of the university's responsibility for the quality of the education. The student was reimbursed two-thirds of the tuition fee paid due to the fact that the quality of the education did not rise to the level which she was entitled to expect.

Delivery of drinking water by a municipal company is covered by the Swedish Product Liability Act

(Case NJA 2018, p. 475, the "Drinking Water" case)

Drinking water delivered by a municipal company contained so-called PFASs. A number of persons sued the company and requested compensation for personal injury. The Supreme Court found that the company's delivery of water was covered by the Swedish Product Liability Act and not only by the damages provisions in the Swedish Public Water Services Act. The Product Liability Act imposes strict liability.

Passive storage of software following termination of a licence did not constitute copyright infringement

(25 September, the "Passive Storage" case)

Pursuant to a licence agreement with a company, a municipality was entitled to use an IT system to which the company held copyright. Following termination by the company, the agreement ceased to apply. After the municipality stopped using the IT system, the municipality retained a user copy and a backup copy of the software for a period of time in a backup system. The Supreme Court found that passive storage of software without producing any copies does not constitute disposal of the software covered by the sole

right enjoyed by the copyright holder. Accordingly, such storage did not constitute copyright infringement.

Compulsory land transfer in accordance with the Swedish Real Property Register Act

(9 October, the "Parking Property" case)

Property owners submitted a request to the public authority responsible for land parcelling in Sweden for a transfer of a parcel of land from the neighbouring property to their property to improve the possibility to park and turn. The neighbour opposed the transfer of land. The Supreme Court established that, in accordance with the Constitution, a proportionality assessment is to be conducted between the public interest in the transfer of land and the protection of the neighbour's property. The applicant's property already had room for parking. Against this background, the Supreme Court found that the public interest in the transfer of land was so inadequate that allowing it would constitute a disproportionate infringement of the protection of the neighbour's property. Accordingly, the land transfer was not granted.

CRIMINAL LAW

Defence counsel found guilty of contempt of court

(Case NJA 2018, p. 215)

In a written appeal, a defence counsel asserted that the judges of the District Court had based the conviction on the fact that the accused was of a certain ethnic background and made their assessment based on a conscious or subconscious racial bias. The assertion was deemed improper and the defence counsel was ordered to pay fines for contempt of court.

HIV-positive man under managed care was acquitted following unprotected intercourse

(Case NJA 2018, p. 369, the "Managed HIV Care" case)

An HIV-positive man who was treated for infection had unprotected intercourse with the claimant. The man was charged with endangerment with criminal intent. In light of the medical investigation in the case, the Supreme Court found, among other things, that, when an HIV-positive person under managed care has unprotected intercourse, no specific danger of transmission of infection may be deemed to exist in the manner required for liability in accordance with the criminal statute. Since the HIV treatment in this case was managed, the indictment was dismissed.

Conviction for leaving the scene not deemed to infringe the right to a fair trial

(Case NJA 2018, p. 394, the "Leaving the Scene" case)

A driver who collided with a road sign left the scene without providing information regarding the driver's identity. As a result, he was indicted, among other things, for aggravated failure to produce a driving licence and leaving the scene. The district court and court of appeal acquitted the driver on the charge of leaving the scene. The courts stated that penalisation of the driver for failure to provide identification would entail that he needed to contribute to the investigation of his own crime in such a manner as is inconsistent with his right to a fair trial pursuant to the European Convention. The Supreme Court found otherwise and concluded that, in a situation in which a driver of a motor vehicle is suspected of having merely committed a traffic offence in conjunction with a traffic accident, there is no infringement of the right to a fair trial. Accordingly, the Supreme Court found the driver guilty of leaving the scene.

Ice hockey player found guilty of assault

(10 July, the "Cross-checking" case)

During an ice hockey game, a player delivered a cross-check to the neck of a player on the other team. The cross-checking player received a match penalty and the incident was reported to the disciplinary committee of the Swedish Ice Hockey Association. The committee took the decision to bar the player from a number of matches. The Supreme Court, which found that the act was impermissible according to the rules governing consent and social adequacy, found the player liable for assault and he received a suspended sentence.

Application of the new rules in the Swedish Weapons Act notwithstanding certain inadequacies in the legislative procedure

(28 September, the "Short Referral Period" case)

At the end of 2017/beginning of 2018, penalties for crimes involving weapons were enhanced. In conjunction with its review of the proposed legislation, the Swedish Council on Legislation complained, among other things, regarding the proceedings involving the referral of the proposed bill for consideration and opposed the proposal. The Swedish Parliament was also critical of the manner in which the matter had been administered but approved the Government's proposal for increased penalties. In conjunction with judicial review, the Supreme Court found, according to the Constitution, that the referral process was inadequate. The period of referral was entirely too short and there was no justification for the same. However, the deficiencies were not so severe so as to prevent application of the new rules. The crime, which consisted of possession of a refashioned, loaded starting gun in a vehicle in a public place was found to be aggravated. The penalty was a term of imprisonment of two years.

No warrant to search a biobank

(1 November, the "Biobank" case)

Within the context of an investigation of aggravated assault, the Supreme Court denied a request for a warrant to confiscate tissue samples of an assault victim. According to the Court, in conjunction with a proportionality assessment, the interests underlying the Swedish Biobank Act must, as a rule, be deemed to weigh so heavily that – even where consent has been obtained from the provider of the sample – they will tip the balance in favour of preventing use of compulsory measures from being used to acquire such tissue samples.

Appointment of counsel for victim in a rape case in the court of appeal

(23 November, the "Counsel for the Injured Party in the Court of Appeal" case)

As a rule, the engagement of counsel for an injured party continues until such time as the period for appealing the judgment of the district court has expired. In the event the judgment is appealed, counsel for an injured party shall, under certain circumstances, be appointed in the court of appeal. In the context of sexual crimes, counsel for the injured party shall also be appointed in the court of appeal if it is not obvious that the injured party has no need for counsel. Among other things, whether or not the injured party will be present at the main hearing in the court of appeal, whether witnesses will be heard, and the complexity of the damages issue are relevant. The Supreme Court concluded that counsel for the injured party was to be appointed in the court of appeal in cases involving rape.

The year in brief

8 January
Justices from the Supreme Court and Supreme Administrative Court began their historic, so-called criss-cross appointments. Justice Kerstin Calissendorff (of the Supreme Court) and Kristina Ståhl (of the Supreme Administrative Court) traded places at their respective courts for a period of three months.

18 and 19 January
Judge referees from the Supreme Court visited the Norwegian Høyesterett (Supreme Court) for an information exchange and cooperation. 35 employees from the Supreme Court participated in the visit.

22 and 23 January
The Supreme Court visited the Östersund District Court and the Court of Appeal for Lower Norrland. Supreme Court President Stefan Lindskog, Administrative Director Måns Wigén, Judge Referee Linda Stromberg and Administrative Junior Judge Linda Heikkilä participated from the Supreme Court.

26 January
President Stefan Lindskog and Supreme Court Head of Division Gudmund Toijer attended the opening seminar of the Court of Justice of the European Union in Strasbourg entitled "The Authority of the Judiciary".

12 February
The Supreme Court visited the Umeå District Court and the Court of Appeal for Upper Norrland. Supreme Court President Stefan Lindskog, Administrative Director Måns Wigén, Judge Referee Erika Bergman and Administrative Junior Judge Marcus Wågman participated from the Supreme Court.

19 and 20 February
The Supreme Court visited the Lycksele District Court and Skellefteå District Court. Supreme Court Head of Division Gudmund Toijer, Head of Drafting Division Jens Wieslander, Judge Referee Elisabeth Ståhl and Administrative Junior Judge Linda Heikkilä participated from the Supreme Court.

14 March
The Supreme Court visited the Gävle District Court. Justice Lars Edlund, Head of Drafting Division Jens Wieslander, Judge Referee Pernilla Svärd and Administrative Junior Judge Marcus Wågman participated from the Supreme Court.

23 March
The Hudiksvall District Court visited the Supreme Court. Justice Ingemar Persson, Heads of Drafting Division Jens Wieslander and Maria Edwardsson, Judge Referee Johanna Helevirta and Administrative Junior Judge Linda Heikkilä participated from the Supreme Court.

12 April
At a gathering of personnel to which former Justices were also invited, Justice Kerstin Calissendorff held a lecture on the first woman who became a Justice of the Supreme Court, Ingrid Gärde Widemar, in celebration of the 50th anniversary of her appointment to the Court.

13 April
The Supreme Court visited the Ångermanland District Court. Justice Agneta Bäcklund, Administrative Director Måns Wigén, Judge Referee Maria Ulfsdotter Klang and Administrative Junior Judge Linda Heikkilä participated from the Supreme Court.

17 and 18 April
The Supreme Court visited the Gällivare District Court and Haparanda District Court. Justice Ann-Christine Lindeblad, Head of Drafting Division Maria Edwardsson, Judge Referee Fredrik Blommé and Administrative Junior Judge Linda Heikkilä participated from the Supreme Court.

27 April
The Luleå District Court and the Sundsvall District Court visited the Supreme Court. Justice Kerstin Calissendorff, Head of Division Måns Wigén, Head of Drafting Division Cecilia Hager, Judge Referee Andreas Lööf and Administrative Junior Judge Linda Heikkilä participated from the Supreme Court.

20 23 May
The European Court visited Sweden. The Supreme Court and Supreme Administrative Court joined the Ministry of Foreign Affairs and the Ministry of Justice in hosting the visit. It was just over 20 years ago that the European Court last visited Sweden.

12 July
Justice Mari Heidenborg was appointed as the new Chancellor of Justice. She assumed office on 1 September. Mari Heidenborg was appointed Justice in 2016.

7 10 August
The Presidents of the Nordic Supreme Courts met on Svalbard. President Stefan Lindskog and President-Elect Anders Eka participated from the Supreme Court.

21 August
The Supreme Court arranged a reception for President Stefan Lindskog in anticipation of his impending retirement on 31 August 2018. He was appointed Justice of the Supreme Court in 2008 and became President in 2016.

On the same occasion, the Supreme Court's portrait gallery was inaugurated. On the 5th floor of the Bonde Palace, on the premises of the Supreme Court, there are portraits of all Justices. There are over 300 portraits.

31 August
The Supreme Administrative Court of Finland celebrated its centenary with a seminar in the Finlandia Hall in Helsinki. Several speeches were held at the seminar relating to the tasks of the Supreme Administrative Court. President-Elect Anders Eka of the Supreme Court participated.

1 September
Justice Anders Eka assumed the position of President of the Supreme Court. Anders Eka was appointed Justice of the Supreme Court in 2013.

3 September
Eric M. Runesson joined as new Justice of the Supreme Court. In addition to extensive experience working at law firms, Eric M. Runesson holds an LL.D degree from the Stockholm School of Economics.

10 September
As part of the Supreme Court's efforts in the sphere of gender equality, Robert Egnell, Professor and Head of the Department of Security, Strategy and Leadership at the Swedish Defence University attended and held a lecture on gender equality.

17 and 18 September
The Supreme Court visited the Borås District Court and the Halmstad District Court. Justice Ann-Christine Lindeblad, Head of Drafting Division Maria Edwardsson, Judge Referee Katarina Sergi and Administrative Junior Judge Simon Rosdahl participated.

24 and 25 September
The Supreme Court visited the Court of Appeal for Western Sweden and the Alingsås District Court. President Anders Eka, Administrative Director Måns Wigén, Judge Referees Lina Nestor and Maria Arnell and Administrative Junior Judge Mathilde Ramel participated from the Supreme Court.

27 and 28 September
Presidents from a number of European Supreme Courts met in Karlsruhe, Germany, within the context of the Network of the Presidents. The Supreme Court was represented by President Anders Eka.

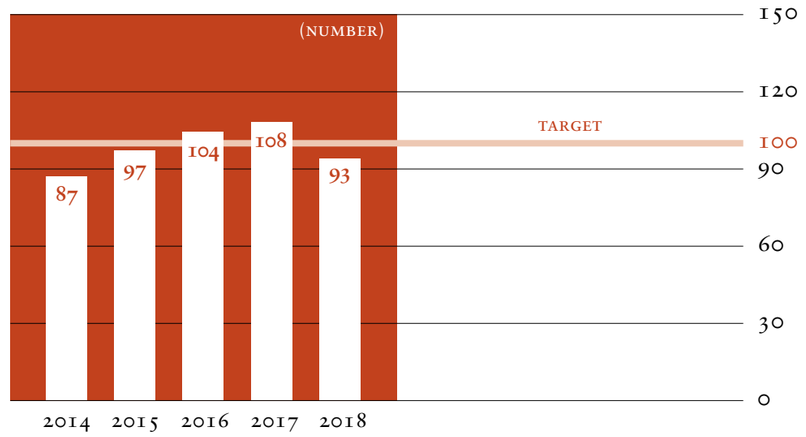
1 October
The Supreme Court of Finland celebrated its centenary in the university auditorium of the University of Helsinki. Head of Division Gudmund Toijer from the Supreme Court participated. The gathering commenced with a speech by President Timo Esko, after which Professors Eerik Lagerspetz and Mia Korpiola spoke. The 100-year jubilee was also celebrated with a commemorative publication entitled "One Hundred Years of the Administration of Justice. Approaches to the History of the Supreme Court, 1918–2018".

8 and 9 October
The Supreme Court visited the Gothenburg District Court and the Uddevalla District Court. Justice Johnny Herre, Administrative Director Måns Wigén, Judge Referees Karin Ahlstrand Oxhamre and Pia Nilsson Taari as well as Administrative Junior Judge Simon Rosdahl participated from the Supreme Court.

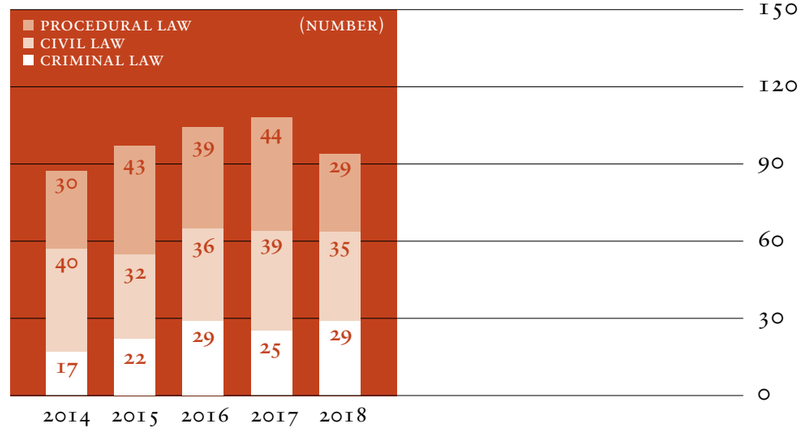
26 November
As part of the Supreme Court's reception project, Anders Stridh, strategist at the Swedish Tax Agency, held a lecture regarding the Swedish Tax Agency's work with reception issues.

STATISTICS

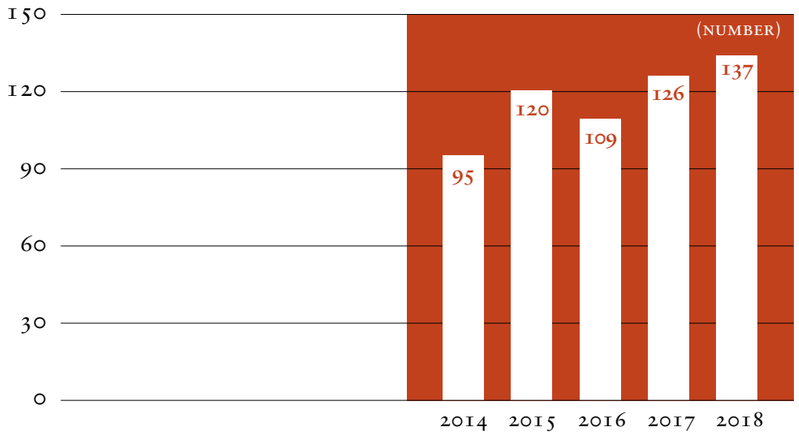
Precedents



Precedents per area of the law

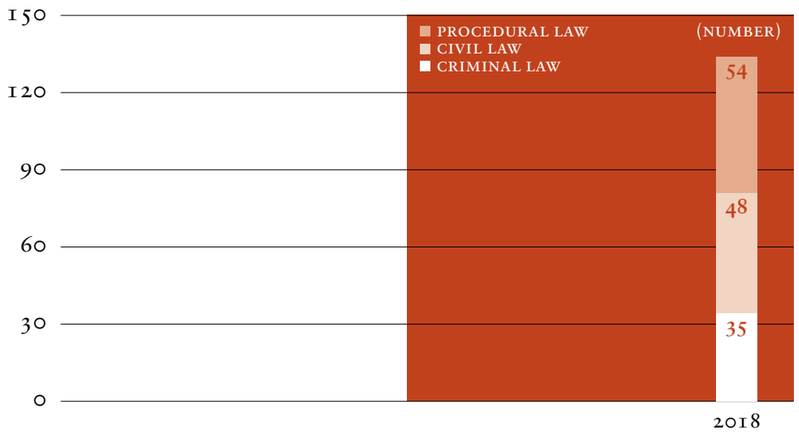


Cases for which leave to appeal was granted*



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

Cases for which leave to appeal was granted in 2018 per area of the law



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

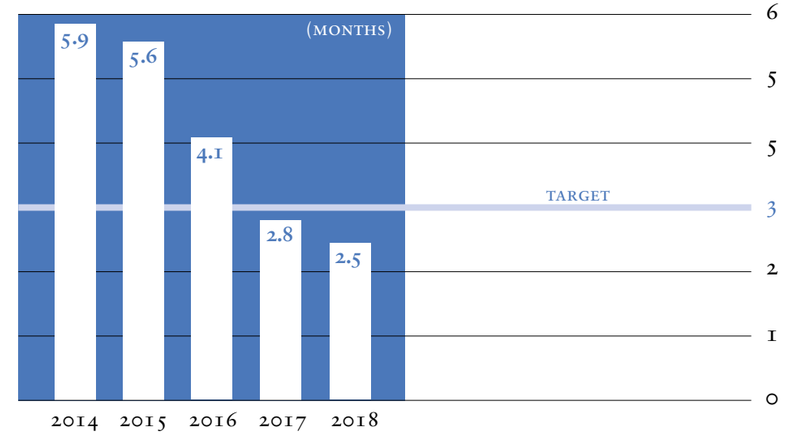
Processing times cases requiring leave to appeal (90th percentile)

Cases considered: Cases requiring leave to appeal. (non-priority)

90th percentile: Nearly all cases

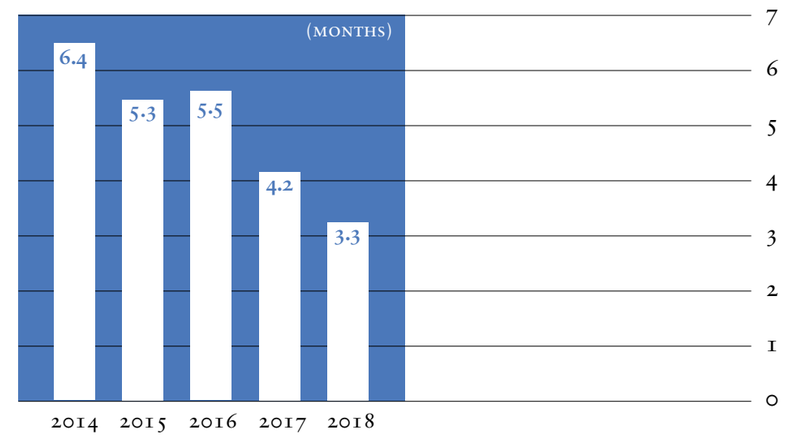
Total number of cases considered: 4 782

Percentage decided by
- 1 Justice: 94.1 %
- 3 Justices: 5.6%

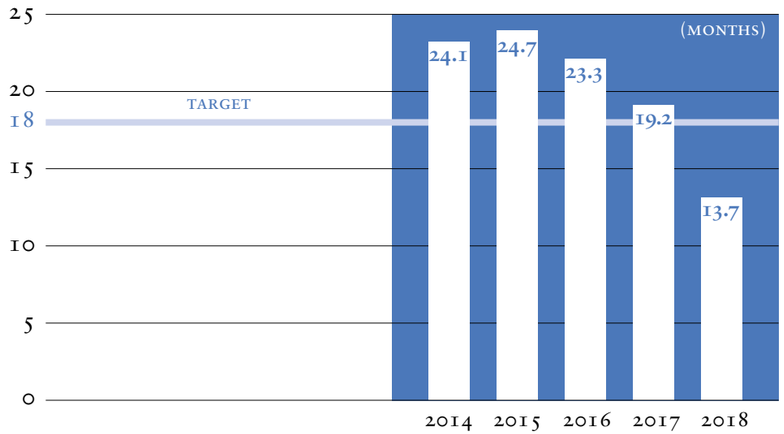


Processing times time to approval for leave to appeal (median)

Median: The normal processing time.



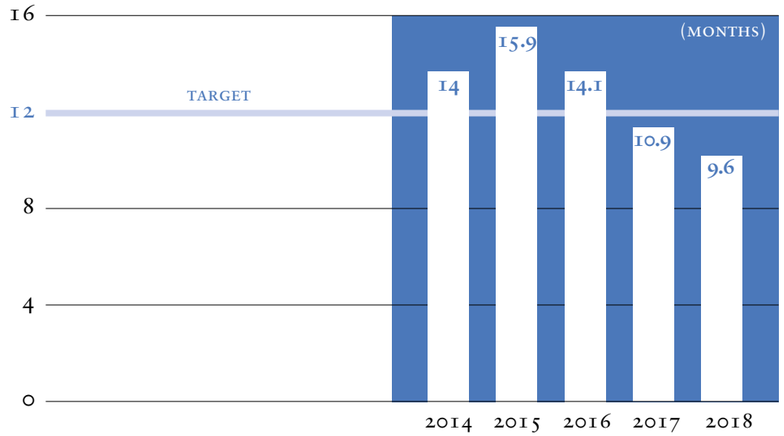
Processing times approved cases (90th percentile)



Approved cases:
Cases for which leave to appeal was granted. (non-priority)

90th percentile:
Nearly all cases.

Processing times extraordinary cases (90th percentile)

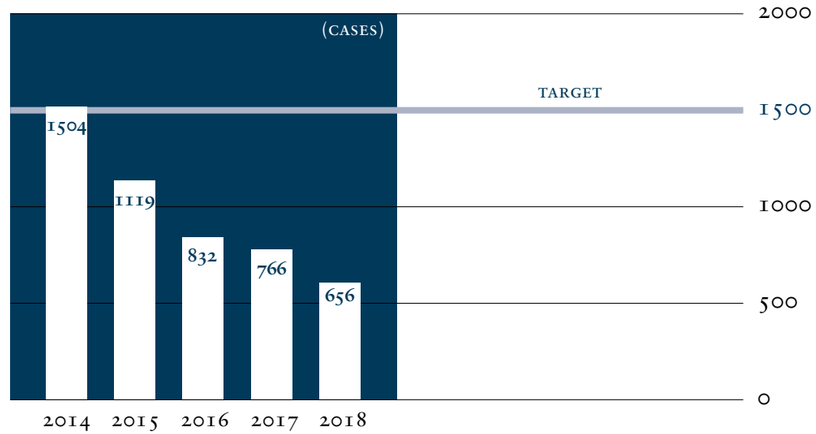


Extraordinary cases:
Grounds for new trial, grave procedural error, etc. (non-priority)

90th percentile:
Nearly all cases.

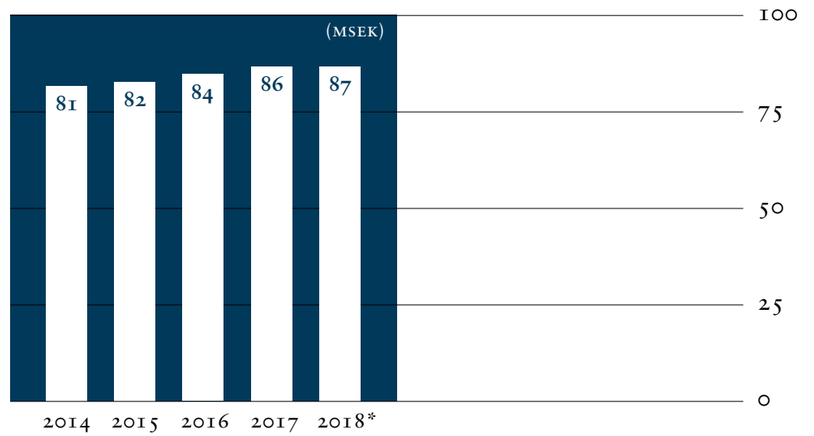
Total number of cases decided:
825
Percentage decided by
- 1 Justice: 85.6%
- 3 Justices: 8.2%
- 5 Justices: 6%

Total number of cases not decided



Budget

*Outcome:
deficit of approximately SEK 1.8 million



The Justices of the Supreme Court

ANDERS EKA, BORN 1961, JUSTICE SINCE 2013, PRESIDENT SINCE 2018
GUDMUND TOIJER, BORN 1956, JUSTICE SINCE 2007, HEAD OF DIVISION SINCE 2016
ANN-CHRISTINE LINDEBLAD, BORN 1954, 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
STEN ANDERSSON, BORN 1955, JUSTICE SINCE 2016
STEFAN JOHANSSON, BORN 1965, JUSTICE SINCE 2016
PETTER ASP, BORN 1970, JUSTICE SINCE 2017
MALIN BONTHRON, BORN 1967, JUSTICE SINCE 2017
ERIC M. RUNESSON, BORN 1960, JUSTICE SINCE 2018

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