HD 2022

ACTIVITY REPORT OF THE SUPREME COURT OF SWEDEN

Content

A word from the President

Like other courts, the Supreme Court communicates with the world at large in a variety of ways. For example, we provide information on our website and through the various news releases published by the Court.

Yet the heart of what we communicate is what the Court conveys through its judgments and decisions. This is particularly true of the 100 or so guiding rulings (precedents) handed down each year. These rulings can involve widely distinct issues within the framework of the legal areas covered by the Supreme Court. Looking at the rulings delivered in 2022, it can be said that they are, as usual, wide-ranging. This breadth has encompassed questions such as whether Swedish courts can prosecute a person who is neither a Swedish citizen nor resides in Sweden for crimes against the law of nations committed in Sudan. They also address driving a Doodlebug tractor under the influence as well as passenger compensation for cancelled flights.

Later in this Activity Report, you will find an account of some of the Court's most important rulings handed down during the year.

The fact that what is conveyed through our precedents is essential to our operation also finds expression in the extensive work we commit to formulating our rulings. First, following extensive research, a judge referee makes a proposal for a ruling. Thereafter, it is the task of the Justice who is the reporting judge and who has special responsibility for the case to present his or her proposal for a ruling. This is then subject to an extensive review by all the participating Justices. This naturally refers to the legal aspects. They must of course be first-rate. Nevertheless, the work involved in composing the judgment in terms of language, structure, and other issues relating to the composition of the judgment is also an aspect which is addressed in depth by all the Justices involved in the ruling. The relevant texts are reviewed line by line and paragraph by paragraph to ensure that the text is as clear and articulate as possible. It is also vital that the text is consistent and logically coherent.

Some rulings are relatively brief, while others are significantly longer. The work involved in lengthy rulings is sometimes quite time-consuming.

It is important for the Court to work not only internally with the issues relating to the formulation of our precedents, but it is also essential to obtain views from those who partake in various ways of the results of our work.

It is for this reason that, in 2022, we invited attorneys, prosecutors and judges as well as representatives of

Anders Eka
Justice and President
of the Supreme Court

the media, government agencies and universities to express their views on our rulings. This has fuelled highly productive discussions.

Naturally, it was gratifying to learn that the view was that the rulings are generally clear and articulate and that the language is perceived to be proper and relatively straight forward. At the same time, we received a variety of immensely valuable insights and proposals. We have already begun discussing some of them. And this effort will continue.

Another take-away from these discussions is the insight that there can be a substantial divide in how our rulings are read by the various groups who partake of them. Certainly, the interest of the parties in clear and articulate rulings is especially important. But there are also many others who read our rulings. And it may be noted in this context, for example, that a district court judge and a law professor may seek different answers in our rulings and, as a result, their wishes may diverge as regards the manner in which they are formulated. The same also naturally applies to representatives of the media who will convey the content onward to a larger group. Even if it might be difficult for the Court to satisfy all these different wishes, it is of great value to gain better insight into how diverse groups of readers perceive the rulings.

As you read the pages of this year's Activity Report, you will note that a great many of them focus on the international component of the Supreme Court's activities.

The judicial operations of Sweden's courts are no longer as domestic as they were thirty years ago. When many others of my generation and I studied law, the role of international issues was quite limited. As a young student, it did not occur to me that my future professional life would involve reading to such a great extent international texts and judgments from courts outside Sweden. By virtue of Sweden's accession to the EU and the ever-increasing significance of the European Court of Human Rights, the Swedish courts are now part of what is clearly a European-law context.

This is evident, of course, in our judicial operations. But this also means that we are now in contact with courts and judges in the rest of Europe in a way which entirely differs from the past.

One example of this is the cooperation between the presidents and presiding judges of the supreme courts within the EU. This also often includes representatives of the European Court of Justice and the European Court of Human Rights. Within the context of the so-called Network of the Presidents of the Supreme Judicial Courts of the European Union, the Supreme Court arranged a large conference during the year with participants from many European supreme courts. The event is described in greater detail in one of the sections later in the Activity Report.

And, as I mentioned above, the Activity Report also describes how the international component affects the activities of the Supreme Court. It is my hope that you find these descriptions and the remaining content in this year's Activity Report to be interesting and stimulating. I wish you good reading.

ANDERS EKA
JUSTICE AND
PRESIDENT OF THE SUPREME COURT

Two new Justices

The Supreme Court was joined by two new Justices in 2022. Jonas Malmberg, who previously held the position of Chairman of the Labour Court, started in May while Christine Lager, former Senior Judge and Head of Division at the Svea Court of Appeal, started in September.

Was law an obvious choice or could you just as well have chosen something else?

Christine: Law was not an obvious choice. I was the youngest of four siblings and neither they nor my parents attended high school other than one of my siblings who completed a vocational high school programme. Even high school didn't go without saying, but a French teacher pulled me aside and said, "of course you're going to get a theoretical high school education". While in high school, I wanted to do an internship in something cultural, such as at the theatre or with a newspaper, but it was difficult to get an internship. Instead, by happenstance, I interned at the District Court of Gotland. I knew nothing about law, but a junior judge set up a fantastic programme for me and I was hooked.

Jonas: I grew up in the Norby neighbourhood of Uppsala which was referred to as the "ghetto for assistant professors" in the 60's. In that environment,

going to high school was a given. Afterwards, I applied to be a specialist teacher but didn't get in. It was easier to get into the law programme, which was my seventh choice.

What inspired you to apply to be a Justice?

Jonas: I had been Chairman of the Labour Court for ten years and felt that it was time for a new challenge. Trying a new environment and a new context was enticing.

Christine: I have done many different things in my professional life. I have worked in various management positions since I was 39 years old. Most recently, I was head of division 2 at the Svea Court of Appeal – a division dealing specifically with actions amenable to out-of-court settlement, the Patent and Market Court of Appeal and tenancy law. It is a wonderful division, and I was considering staying there until I retired. But I was talking to a friend and said that if I was going to do something else it was going to be as a Justice. I felt as though I had the energy and that it would be fun to be able to focus more on the law again.

How would you describe the initial period at the Supreme Court?

Christine: I have only been at the Supreme Court for a few weeks. I am off to a good and intense start. The atmosphere here is fantastic and welcoming and, from the outset, I have felt the collegiality amongst the Justices - that, on the basis of everyone's profound knowledge and experience, collaboration is open, curious and respectful. It is precisely as I heard it would be and what I had been looking forward to. Much of it is new and, even though I am an experienced judge, there are many new routines to learn.

Jonas: I have been impressed by the organisation, the impetus of the operation, and the material provided to us by the judge referees and drafting law clerks. I have also been impressed by the quantity of skilled people who work here and the engagement that one encounters throughout the organisation. I appreciate the collegial work. Discussions are on a high level and the atmosphere is empowering. There is an antiquated, distorted view of the Supreme Court with its fairly tough atmosphere. It isn't accurate.

What are your hopes for the future at the Supreme Court?

Jonas: Before I came here, I had hoped to be able to work with others in solving problems in a qualified way. This has absolutely been the case. It is great to be able to learn from the know-how and impressive capabilities of my colleagues in finding solutions, for example, to drafting problems. After basically working with labour law for 30 years, I have left my legal comfort zone. I felt that I could deal with most of the issues that came up at the Labour Court but, here at the Supreme Court, the majority of issues are novel.

Christine: I hope to be able to work with highly qualified jurisprudence with very solid supporting material. My hope was that there would be an open work environment in which all of the Justices were welcome to share their views irrespective of seniority and, where there were differences of opinion, that an effort would be made to see each other's point of view. So far, these hopes have been exceeded.

Do you have, or have you had, any apprehensions about the future at the Supreme Court?

Christine: One concern I had before I

came here is that old hierarchies would be part of the woodwork. Another was that the work would be too fragmented. Creating high-quality precedents is the primary task of the Supreme Court. That is why one concern is whether there will be enough time to create precedent - particularly given the increase in the caseload. The drafting organisation is fantastic but, at the end of the day, it is 14 deciding Justices who will adopt a position on everything. I think the greatest challenge is to maintain high quality in demanding caseloads.

Jonas: For 30 years, both at the university and the Labour Court, I could largely set my own work hours. It is an adjustment to join an organisation which involves being tied up much more often. I also agree with Christine's view that it is a challenge to balance a heavy caseload and high quality in the adjudication process, both for the Supreme Court as a whole and for the Justices individually.

You both recently came from other courts with precedent-creating functions. What are the similarities and differences relative to the way the Supreme Court creates precedent?

Jonas: There are differences. Guiding the application of law involves not only influencing other courts but also legal dealings in general. The Supreme Court writes mostly for the district courts and courts of appeal. In the Labour Court, less is written for other courts, and more is written for actors on the labour market. It is also the case that the functions of legal rules vary amongst different legal areas. In some legal areas, rules have been adopted by the legislature for a certain purpose to be implemented in such a way that they might conflict with other interests such as the rule of law. In labour law, the rules build more on norms developed by actors on the labour market and working-life practices. It influences how one approaches the legal area as well as how one adjudicates.

Christine: One difference is that my former workplace was not purely precedential since it involved mixed case management. In the Supreme Court, even if the types of cases are wide-ranging, it is much more defined since the precedential role is substantially more distinct. The Patent and Market Court of Appeal also has grounds for dispensation that differ from those of the Supreme Court. As regards tenancy law, the court of appeal is the court of last instance and there is no requirement of leave to appeal. In addition, jurisprudence in the areas covered by the Patent and Market Court of Appeal is quite harmonised. Consequently, I have worked a great deal with EU law. Naturally, EU law is part of the work at the Supreme Court as well, but not as often as at the Patent and Market Court of Appeal.

Are there any areas or issues that interest you in particular?

Christine: I cannot say that I am waiting for a particular issue. But I am more experienced in certain areas, so it will be fun for that reason. At the same time, it is stimulating to be able to work with entirely different areas, but specifically with the creation of precedent. I hope to work broadly and to deal at some point with fundamental issues regarding the Charter of the EU and that sort of relationship with EU law. I have not worked with criminal law particularly much in recent years, so it will be interesting to get back into it. In the end, it is the legal analysis – irrespective of the area – that I'm looking forward to concentrating on in order to contribute to the creation of precedents.

Jonas Malmberg
Justice

Jonas: A judge should not have an agenda regarding the way in which legal rules in a certain area should develop. I also do not see my task as one of "safeguarding" some particular area of law but, rather, it is to address the issues which present themselves with an open mind. Whatever the legal area, I hope to be able to contribute to the Supreme Court maintaining a high level of quality in adjudication and that we are successful in crafting rulings which are persuasive and possess a high degree of legitimacy. So, my goals are more on the meta-plane.

Are there any challenges from your former professional lives that you recall in particular?

Jonas: A special period in my life as a researcher was when the so-called *Laval* case became the subject of great interest, both domestically and within Europe. It was the run-up to the 2007 judgment of the European Court of Justice and the continued discussion following the judgment. This period was the "15 minutes of fame" for Swedish labour law. In the Nordic region, I tried to explain how EU law works. In the rest of Europe, it was about attempting to enhance the understanding of Swedish and Nordic labour law and the labour market.

Christine: After I was an administrative junior judge at the Svea Court of Appeal, I tried my hand working at a law firm. It was a challenge to assume the role of litigation counsel. Even if you are prepared, when you get to court, a party or witness can say something completely different than what had been said earlier. Another experience I carry with me is when I got my first management position as deputy director-general, which occurred in conjunction with the erupting file-sharing debate. It was a challenge to deal with a managerial role, negotiate directives, defend personnel and handle the media's interest.

What do you most like to do when you're not working?

Christine: I love my Gotland. I have a country place there and want to be there as much as I can with my family. I have a wood-working shop, I like to grow things and to be out in nature. I also love culture, music and travel.

Jonas: I run with friends, and Nordic skate and ski in the winter. I like to be in northern Bohuslän.

What was your most recent cultural experience that you can recommend?

Christine: I usually read several books in parallel and preferably from different genres. I recently read *A Gentleman in Moscow*, which I can really recommend, and *Trion* by Johanna Hedman, which was also super-good.

Jonas: I saw Eva Dahlgren at the opera with the Royal Swedish Orchestra which was an excellent experience. Kenneth Brannagh's film, *Belfast*, I can also happily promote. It was both moving and poignant.

Is it true that you used to work together?

Jonas: We did our district court clerkships together in Uppsala. When I later joined the Svea Court of Appeal, Christine was an administrative junior judge there.

Christine: Since then, we have not worked together but we have bumped into each other through the years. And we have discovered that we are nearly the same age, only 14 days apart.

Jens Wieslander

Master of Laws, Uppsala University, 1996

Associate Judge, Svea Court of Appeal, 2003

Legal adviser and Deputy-Director, Ministry of Justice, 2003-2011

Judge, Stockholm District Court, 2011-2014

Head of Drafting Division, Supreme Court, 2014-2018

Senior Judge, Svea Court of Appeal, 2018-2022

Administrative Director, Supreme Court, 22 August 2022 - present

New administrative director

In 2022, the Supreme Court was joined by a new administrative director. Jens Wieslander started in August coming most recently from his position as Senior Judge at the Svea Court of Appeal.

Why did you apply for the position as administrative director?

I have very good experiences relating to the Supreme Court from before, and I was longing to return to this place and the people here. The overriding mission as an independent court of precedence is important, particularly in a troubled world. It is exciting to be able to continue to develop the organisation, now in a different role than when I was here last. Switching between judging and leadership in my work life has also been valuable.

What is a regular work day like for you as administrative director?

It is unpredictable and varied, with questions popping up at short notice that demand re-prioritisation of the agenda I had anticipated. There is also a fixed structure involving planning day-to-day activities, internal and external meetings, and more extensive development projects. It is about staying focused both in the short and long perspectives, frequently at the same time.

How do you spend your leisure time?

Preferably in nature, in all seasons – my interest has only grown with time. I play tennis a few times a week. I like reading and have recently returned to Kerstin Ekman, but Colson Whitehead and Lina Wolff are in line. With two teenagers, there is also a lot going on at home.

What advice do you have for young lawyers?

It is good to have breadth in your work experience, quite simply to get an idea of what it is like in several different businesses and professional roles. A career does not need to follow a straight line, since it can be difficult to foresee the available possibilities. It is a good idea to do things a little outside your comfort zone. This forces you to adopt new perspectives and develop your abilities.

I International currents

Swedish legislation and its application of law are largely a result of an interaction with international law and international courts. The Supreme Court's precedential activity is characterised to an ever-greater extent by this internationalisation. The application of EU law, the European Convention on Human Rights and international conventions are now a natural part of the work of the Supreme Court. Yet, what is the relationship between the Supreme Court and the European Court of Justice and European Court of Human Rights in reality? And how do international conventions and an increasingly troubled world impact the precedents created by the Supreme Court?

1 *A dialogue between the European Court of Justice and the Supreme Court*

2 *The European Court of Human Rights and the Supreme Court*

3 *Interpretation of convention-based private law legislation*

4 *The Supreme Court and international crimes*

СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA
SOUDNÍ DVŮR EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN UNION
EUROOPA LIIDU KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
COURT OF JUSTICE OF THE EUROPEAN UNION
COUR DE JUSTICE DE L'UNION EUROPÉENNE
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH
SUD EUROPSKE UNIJE
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS TIESA
EUROPOS SĄJUNGOS TEISINGUMO TEISMAS
AZ EURÓPAI UNIÓ BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA
HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
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EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

CVRIA

LUXEMBOURG

– 1229064 –

DOMSTOLENS DOM (fjärde avdelningen)

den 14 juli 2022 *

”Begäran om förhandsavgörande – Domstols behörighet och erkännande och verkställighet av domar i äktenskapsmål och mål om föräldraansvar – Föräldraansvar – Förordning (EG) nr 2201/2003 – Artikel 8.1 och artikel 61 a – Allmän behörighet – Principen om *perpetuatio fori* – Ett barn byter, under domstolsförfarandet, hemvist från en medlemsstat i Europeiska unionen till ett tredjeland som är anslutet till 1996 års Haagkonvention”

I mål C-572/21,

angående en begäran om förhandsavgörande enligt artikel 267 FEUF, fram
av Högsta domstolen (Sverige) genom beslut av den 14 september 2021,
inkom till domstolen den 16 september 2021, i målet

CC

mot

VO,

meddelar

DOMSTOLEN (fjärde avdelningen)

sammansatt av avdelningsordföranden C. Lycourgos samt domarna S. Ro
J.-C. Bonichot, L.S. Rossi (referent) och O. Spineanu-Matei,

generaladvokat: M. Szpunar,

justitiesekreterare: A. Calot Escobar,

efter det skriftliga förfarandet,

med beaktande av de yttranden som

I. A dialogue between the European Court of Justice and the Supreme Court

By virtue of Sweden's membership in the EU, EU law became part of the Swedish legal system. Membership has also entailed a change in the role of Swedish courts, as they are now responsible for the correct application of EU law. In an increasingly internationalised world, Swedish courts are more often presented with legal questions which give rise to the application of EU law, which applies either directly or is fundamental to the content of Swedish law.

The primary role of the European Court of Justice is to be responsible for the development of EU law and to ensure uniform application in all Member States. Accordingly, the cooperation between the European Court of Justice and the national courts is crucial. A central feature of this collaboration is the procedure for preliminary rulings, i.e. the national courts may refer to the European Court of Justice and ask it to clarify a point concerning the interpretation of EU law.

Request for a preliminary ruling in the Supreme Court

In the application of Union law, the national courts may be presented with an ambiguous legal rule, a legal rule which allows different interpretations or a question regarding the validity of an act of EU law. Article 267 of the Treaty on the Functioning of the European Union (TFEU) therefore provides that any court or tribunal of a Member State, in so far as it is called upon to give a ruling in proceedings intended to arrive at a decision of a judicial nature, may submit a request for a preliminary ruling to the European Court of Justice.

However, the Supreme Court has not only a right but also a far-reaching obligation to request a preliminary ruling. Only where the legal position in Union law is clear or has previously been clarified can a court of final instance refrain from requesting a preliminary ruling. This means that the Supreme Court – together with other courts of final instance – has been charged with a particular responsibility with regard to the proper and uniform application of Union law.

The question whether a preliminary ruling in the Supreme Court is to be obtained may be initiated either by the ▸

A preliminary ruling from the European Court of Justice.

parties or the Court itself. Decisions to request a preliminary ruling are made by five Justices and, as a rule, are preceded by communication with the parties on the issue of both the need for a preliminary ruling as well as the wording of the questions to be presented to the European Court of Justice.

The request for a preliminary ruling is formulated in accordance with the guidelines of the European Court of Justice and contains a description of all relevant circumstances in the case in addition to an account of the relevant Swedish legal rules. Decisions by the Supreme Court to request a preliminary ruling have been published for some time on the Court's website.

While the European Court of Justice processes the request for a preliminary ruling, a stay of proceedings is declared for the case in the Supreme Court. The average time for the European Court of Justice to issue a preliminary ruling is approximately 15 months. When the European Court of Justice's judgment in the case has been issued, the case is reinstated in the Supreme Court and is then decided in accordance with the interpretation provided by the European Court of Justice.

In recent years, the Supreme Court has requested preliminary rulings in several cases. For example, a preliminary ruling was requested on the issue of whether the General Data Protection Regulation (GDPR) entails a requirement for national procedural legislation regarding the duty of disclosure. In another case, a preliminary ruling was requested on the issue of whether Union law entails that the national court must examine if discrimination occurred notwithstanding that the party accused of discrimination has conceded the action but simultaneously did not stipulate that discrimination occurred. A preliminary ruling has also been requested on the issue of the compatibility of an ad-hoc arbitration agreement with the provision regarding preliminary rulings in Article 267 of the TFEU.

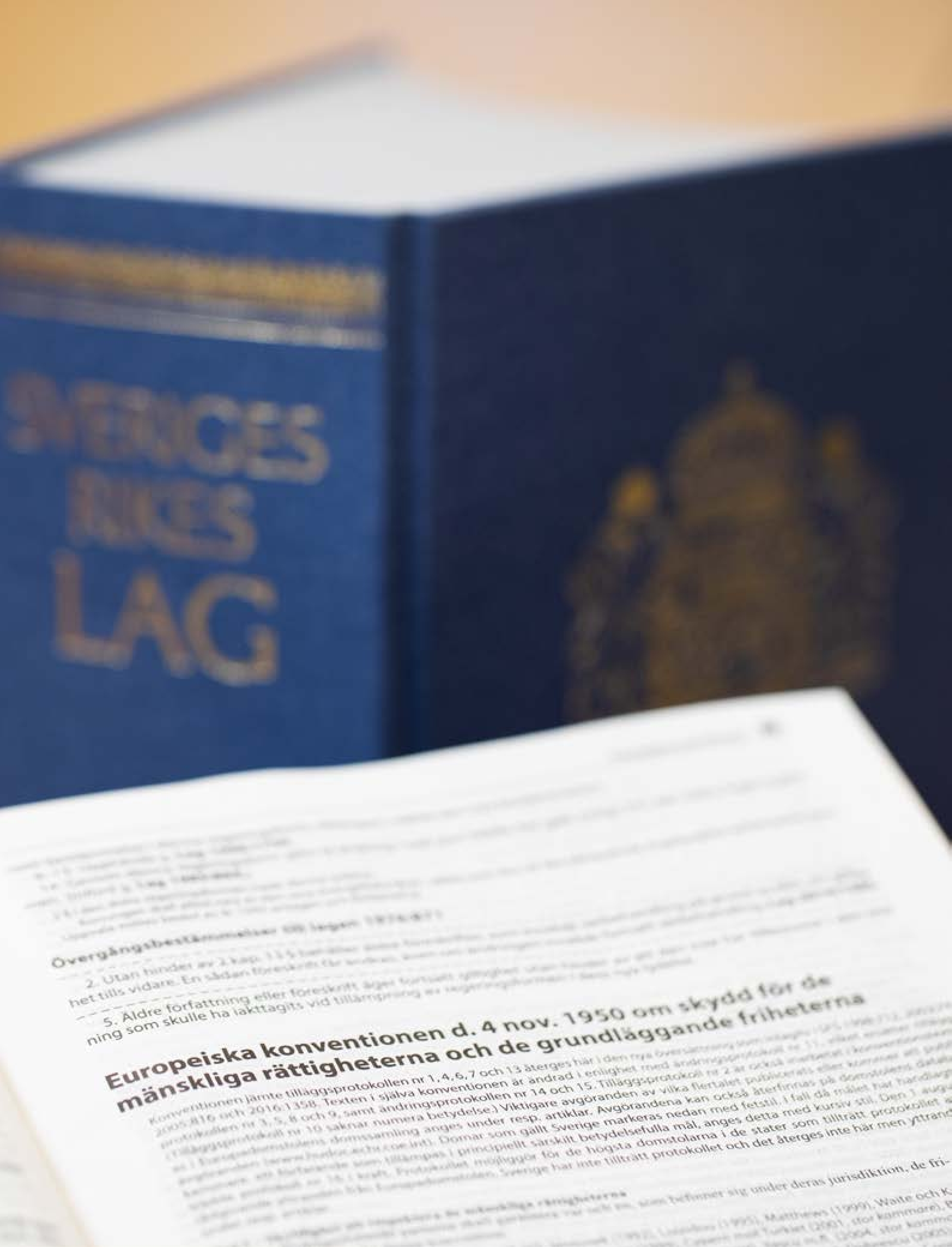
The relationship between the European Court of Justice and the Supreme Court

The cooperation between the European Court of Justice and the national court rests on a functional division. It is the task of the European Court of Justice to interpret Union law and render an opinion on its validity, while it is the task of the national court to apply EU law in individual cases (see case NJA 2014, p. 79). This means that the Supreme Court is barred from interpreting a provision which has been decided at the Union level in a manner which alters its purport or effect. At the same time, the Supreme Court must apply Swedish law and assess the factual circumstances in the case. To the extent that the European Court of Justice nonetheless renders an opinion on these questions, the preliminary ruling is not binding in this respect (see case NJA 2020, p. 147, para. 18, the "*Union*" case).

By virtue of a request by the Supreme Court for a preliminary ruling, the European Union also obtains information regarding specific problems of application which arise in Sweden. Thereby, the European Court of Justice can assist the Supreme Court in clarifying the purport of EU law. The request for a preliminary ruling may consequently, as often is expressed by the European Court of Justice, be described as a dialogue between the national courts and the European Court of Justice. The importance of this dialogue does not subside with time. On the contrary, the continuous development of EU law and the increasingly international community in which the courts operate suggest rather that the collaboration will continue to deepen and intensify.

European Court of Justice, The grounds with towers.

Photo: Court of Justice of the European Union.


SVERIGES
RIKES
LAG
Övergångsbestämmelser
Europeiska konventionen d. 4 nov. 1950 om skydd för de
mänskliga rättigheterna och de grundläggande friheterna

2. The European Court of Human Rights and the Supreme Court

The European Convention on Human Rights and Fundamental Freedoms became Swedish law on 1 January 1995 and was granted constitutional protection. However, prior to this, the Supreme Court took the European Convention into consideration to some extent in its application of the law. Among other things, principles regarding interpretation and conformity with the European Convention developed early on, i.e. that Swedish law, as much as possible, was to be interpreted in a manner which corresponded to the European Convention, yet Swedish law was to be applied if there was a conflict between the regimes. (See case NJA 1973, p. 423). Although the European Convention thus had a rather large impact even before it became Swedish law, it is clear that, following this break point, it has an ever-greater importance in the application of law.

The relationship between the European Court of Human Rights and the Supreme Court

The European Court of Human Rights addresses issues regarding the interpretation and application of the European Convention on Human Rights and ensures that the states which have acceded to the Convention respect the same. Any person who believes that a High Contracting Party has subjected him or her to a violation of any of the rights set out in the Convention may lodge a complaint with the European Court of Human Rights after all national remedies have been exhausted. The judgment of the European Court of Human Rights in a Swedish case is binding on Sweden, which is also obliged to enforce the judgment.

When a case pertains to articles in the European Convention on Human Rights, the impact of the rulings of the European Court of Human Rights is triggered. The Supreme Court has then often referred to rulings from the European Court of Human Rights in support of a legal argument, even though the ruling has been issued within the context of proceedings regarding advisory opinions to which Sweden has not acceded (see the "*California Surrogacy Arrangement*" case, case NJA 2019, p. 504, para. 31). In that ruling, which to a large extent was based on the right to respect for private and family life in accordance with Article 8 and the case law of the European Court of Human Rights which had developed concerning surrogacy arrangements, the Court stated ▸

that such an advisory opinion may be deemed to have "a significant value as a legal source in conjunction with the interpretation" of the Convention.

The European Convention on Human Rights in the case law of the Supreme Court

European law has in many ways influenced law making by the Supreme Court, and the Court also has the task of guiding application of the law on these issues. The Supreme Court ascribes great weight to the rulings of the European Court of Human Rights and sometimes provides a relatively exhaustive account of the relevant case law from that court and its significance. For example, in the case decided in plenum, the "*Restraining Order Review*" case, case NJA 2020, p. 1061, which related to the issue of whether a judicial examination is to be carried out of a restraining order in accordance with the Non-Contact Orders Act which had expired when the Court decided the case, the Court explained, among other things, the right to a fair trial (Article 6) and the case law of the European Court of Human Rights on this right.

It may be noted that the Supreme Court has not adopted a minimalistic approach to the rights in the Convention. On the contrary, in case NJA 2012, p. 211, para. 19, the Court emphasised that the Swedish system "by some margin" is to live up to the requirement of effective remedy in Article 13. It is principally the Supreme Court which is to ensure that the Swedish system of legal remedies complies with the Convention on a national level although, naturally, such determination ultimately rests with the European Court of Human Rights.

In this context, mention may also be made of case NJA 2005, p. 462, in which the Supreme Court examined whether an individual was entitled to damages from the state for economic and non-financial damage due to the fact that suspicions of criminal activity on his part had not been adjudicated within a reasonable time. The Supreme Court based the ruling on the right to damages directly on Article 13 (which entails that High Contracting Parties shall provide effective remedies) when compensation could not be immediately based on the Swedish Tort Liability Act. According to the Supreme Court, it would constitute a Convention violation if an injured party was without legal remedy and compelling reasons – among other things, the case law of the European Court of Human Rights – were deemed to suggest that Swedish courts could award non-financial damages, which also occurred in this case. Currently, there is a provision in the Tort Liability Act regarding liabilities when a loss has been incurred by virtue of a violation of the Convention.

There are also examples in which the Supreme Court has gone further than the European Court of Human Rights in order for the cumulative purport of European law and domestic Swedish rules to be consistent and uniform. The right not to be prosecuted or punished twice for the same crime or act (*ne bis in idem*) has thus not been limited to situations of *res judicata* (when one of the proceedings has been concluded by means of a legally binding ruling) but, rather, also covers *lis pendens* situations (in which a previously initiated proceeding remains ongoing), notwithstanding that Convention law is not deemed to require the same (see the "*June Ruling*" case, case NJA 2013, p. 502, para. 70).

Additional questions regarding *ne bis in idem* have also been raised in other legal areas (see, for example, cases

The European Court of Human Rights
Photo: Council of Europe

NJA 2015, p. 587 regarding revocation of a driving licence following a traffic violation and the "*Barred from the Swedish Scholastic Aptitude Test*" case, case NJA 2022, p. 118).

The European Convention on Human Rights and the case law of the European Court of Human Rights thus have a major effect on the Supreme Court's law making and setting of precedent. Overall, it has become important for the courts to apply an increasingly international perspective; European law may also be expected to have a major effect on the Supreme Court and its role in the future in developing and creating the law.

3. Interpretation of convention-based private law legislation

A large component of Swedish legislation in the area of private law is based on or inspired by international conventions. This is so in respect of legislation involving cross-border transactions. In such situations, it is important that the rules on different sides of a border do not diverge too greatly. Classic areas consist primarily of transportation law and intellectual property law. In addition, important rules regarding contracts of sale are based on a convention.

The starting point for the interpretation of a convention or convention-based legislation is the international law rules of interpretation described in the Vienna Convention on the Law of Treaties. While support and guidance may otherwise be found in the form of statements from various authoritative bodies, ambiguities remain in many respects where interpretation and application appear to be disputed or uncertain. In such situations, principles of interpretation are needed.

Some legal areas based on conventions

The regulation of contracts of carriage for all modes of transport is based on international conventions. As regards carriage by rail and air, the conventions apply as Swedish law. As regards carriage by road, domestic transport is regulated by one act and international transport is regulated by another. Carriage by sea has been transformed through Nordic cooperation into national rules in the Swedish Maritime Code, but these are based on Sweden's commitments in international law.

Intellectual property law and the rights thereunder represent great value both for companies and the public. Swedish intellectual property law is strongly bound to conventions while, at the same time, national law in recent times is highly influenced by Union law. Following a lengthy effort, the UN Convention on the International Sale of Goods of 11 April 1980 (CISG) could finally be adopted. Accession

Photo:
Henrik Isaksson/TT

to the CISG has been substantial with just over 90 states having acceded to it. In Sweden, the Convention applies as law. As regards domestic purchases, there is the Sale of Goods Act which, in all essential respects, is based on the rules of the Convention.

Interpretation of conventions in the Supreme Court

In a number of cases in recent years, the Supreme Court has developed principles of interpretation for conventions and convention-based legislation.[1] The principles stated below may be said to steer the Supreme Court's interpretation in cases in which such rules arise.

In order to determine the proper meaning of a convention rule, consideration is given both to the ordinary meaning to be given to the terms of the convention and in light of the object and purpose of the convention as well as the general principles which may be deemed to be expressed in the convention. In this context, the terms used in the convention may need to be interpreted, whereupon the various official languages of the convention must be considered.

The regimes are intended to achieve a reasonable allocation of risk regarding problems which can arise in conjunction with the execution of the agreement. One starting point for the interpretation is that the intended allocation of risk is to be maintained.

Preparatory works, where such exist, as well as the circumstances prevailing when entering into the convention, may provide guidance in order to determine its purport. Within the law of transportation, in which various conventions govern different modes of transportation, the manner in which an issue pertaining to another form of transportation may be relevant. In the event the solution is the same in several conventions, it may form a starting point for a transportation law principle which serves as guidance also in the interpretation of a convention which does not expressly regulate the question.

National case law from convention states is, naturally, of considerable importance to the extent any uniformity can be gleaned in the application. As regards the interpretation of conventions, consideration must now be given as to whether the EU has acceded thereto. There may then be case law concerning the convention as part of Union law. This case law is naturally of interest even when the carriage is not covered by Union law.

Finally, in interpreting a convention, the courts may use the legal literature from various countries. If a general view emerges, this should usually be followed. When a question is not regulated in a convention, the purpose of the convention and the general principle which may be deemed to be expressed in the convention should be taken into account (cf. Article 7 of the CISG).

All in all, it must be observed that the Supreme Court, by virtue of recent years' rulings, has provided an unusually thorough description of its view of the interpretation of international conventions and legislation based thereon.

1 The cases are the *"Akzo Nobel"* case, case NJA 2014, p. 425, which concerned a derailment during an international rail transport; the *"Cadillac in Miami"* case, case NJA 2016, p. 149, which concerned the interpretation of the Hague Visby Rules regarding goods damaged in the port of loading; the *"Cooper Turned to Stone*" case, case NJA 2016, p. 465, which concerned the interpretation of the CISG in conjunction with an international purchase; the *"Potato Ethanol"* case, case NJA 2016, p. 563, and the *"Cigarette Excise Duty"* case, case NJA 2022, p. 469, which concerned the interpretation of the CMR, and the *"Thai Airways"* case, case NJA 2016, p. 900, which concerned the interpretation of the Montreal Convention on air transport.

4. The Supreme Court and international crimes

A turbulent world marred by war, conflicts and growing streams of refugees has led to the adjudication of international crimes such as genocide, crimes against humanity and war crimes by Swedish courts. Two cases concerning international crimes have been examined by the Supreme Court in recent years.

Photo:
NY Times/TT

Generally regarding international penal law

International penal law, which is applied by Swedish courts, is ultimately based on an application of Swedish penal law to crimes which have been committed abroad. The extent to which Swedish courts have jurisdiction over such crimes is governed by the rules in Chapter 2 of the Swedish Criminal Code. The penal provisions themselves are currently incorporated in a specific act, the Swedish Criminal Responsibility for Genocide, Crimes Against Humanity and War Crimes Act (2014:406),[1] in which, among other things, the enumerated international crimes are punishable.

International penal law also exists within a narrower sense which is applied by international courts and which may be said to constitute an intersection between international humanitarian law (the laws of war) and various instruments regarding human rights. International penal law with individual criminal liability and specific international crimes subject to universal jurisdiction emerged after the Second World War and rests developmentally on three historical milestones.

- The international legal system, the so-called Nuremberg principles, which was applied in the Nuremberg trials and which were subsequently affirmed by the United Nations General Assembly.
- The work in the war crimes tribunals appointed by the United Nations for the former Yugoslavia and Rwanda in which the international crimes in accordance with international penal law were confirmed as part of customary law.
- The emergence of the Rome Statute and the International Criminal Court in the Hague (ICC) 2002, which entails a codification of international penal law and the establishment of a permanent court with universal jurisdiction for international crimes.

The ”War Poses” case, case NJA 2021, p. 303

The case pertained to liability for war crimes in accordance with section 4 of the Swedish Criminal Responsibility for Genocide, Crimes Against Humanity and War Crimes Act. The crimes consisted in that the accused, who participated as a soldier in Peshmerga forces in Iraq in offensives against IS in 2015, had posed for photographs and a film in front of mutilated corpses from the opposing side.

The main questions in the case were whether dead persons could be regarded as protected persons within international penal law and whether the posing and dissemination of the photographs and film were calculated to seriously violate the dignity of the deceased. An additional question was whether war crimes are a crime the character of which normally calls for imposition of a term of imprisonment.

Since the Swedish law on the question of what is meant by a protected person refers to what applies in accordance with the Geneva Conventions and otherwise in accordance with general international law (customary law) in an armed conflict, the examination by the Supreme Court in this respect entails an application and, to a certain extent, a development of international humanitarian law.

In its assessment, the Supreme Court used as its starting point the Rome Statute's penal provisions and what could be gleaned from the purport of customary law in the case law from international courts and the courts of other countries. The conclusion was that dead persons are to be regarded as protected persons in conjunction with war crimes of the type relevant in the case.

1 As of 1 January 2022, the name of the act is the Penalties for Certain International Crimes Act.

The Supreme Court further observed that the acts entailed such humiliating and degrading elements as were calculated to seriously violate the personal dignity of the deceased. The accused was accordingly sentenced for war crimes committed on four occasions. It was also held that it was a crime the character of which normally calls for the imposition of a term of imprisonment. The sentence was a term of imprisonment of one year.

The ”Universality Principle” case, case Ö 1314-22

The prosecutor commenced a prosecution against two persons for complicity in crimes against the law of nations which they, in their capacity of representatives of companies within a Swedish oil company group, were to have committed in Sudan during the years 1999 to 2003. One of the individuals was a Swiss citizen and resided in Switzerland. He was in Switzerland when the prosecution was brought.

The Supreme Court examined whether Swedish courts were competent to prosecute the Swiss citizen for a crime. The Court observed that the crime according to the Swedish legal rules was covered by so-called universal jurisdiction. This entails that a Swedish court, as a starting point, is competent to try the case irrespective of who committed the crime, against whom the crime was committed, and where the crime was committed.

The Supreme Court found that, even in the exercise of universal jurisdiction, some form of connection to Sweden was necessary in order to prosecute in Sweden. An additional condition was that there was no impediment to it in public international law.

The Supreme Court reached the conclusion that the connection to Sweden was sufficient to prosecute in Swedish courts and that there was no impediment to it in public international law. The fact that the accused was not present in Sweden was not deemed to be any impediment to Swedish jurisdiction since the connection was deemed sufficient in other respects.

As exemplified by these two cases, the administration of criminal justice is becoming all the more global. What is unfolding in other parts of the world in wars and other conflicts affects Swedish courts to an increasing extent, and the need for clarifying case law from both international courts and tribunals as well as national courts is growing. The current war in the Ukraine is a reminder that international crimes and violations of international humanitarian law are not merely relegated to history.

Visit from the presidents of the supreme courts of Europe

In May 2022, the Supreme Court arranged the Stockholm Colloquium – a conference for the presidents of the supreme courts of Europe. Presidents from more than 30 countries participated and discussed questions on the theme of open data and artificial intelligence.

The Network of the Presidents of the Supreme Judicial Courts of the European Union has existed since 2004. The Network consists of presidents from the EU's 27 Member States and a number of other European countries which have acceded as associate members and observers.

The Network is intended to bring the supreme courts closer together by encouraging discussions and exchanges of experience. For this purpose, so called colloquia are arranged at regular intervals. The Supreme Court arranged the Stockholm Colloquium on 5–7 May 2022. The conference was to have been convened as early as 2020 but, as with so many other events, it was postponed due to the Corona pandemic. Accordingly, it was gratifying to finally be able to welcome the members of the Network to Stockholm.

The theme for the Stockholm Colloquium was open data and artificial intelligence. Reports were presented during the conference regarding, among other things, the publication of cases, the processing of personal data in judgments and decisions, and the use by the courts of open data and artificial intelligence. Each presentation was followed by an open discussion and exchange of experiences. Professor Iain Cameron of the University of Uppsala, who is also the Swedish member of the Venice Commission, wound up the conference with a presentation regarding the work of the Commission. In addition to the conference, the participants paid a visit to the Supreme Court where they were entertained with springtime songs performed by the Court Choir. The Stockholm Colloquium was concluded with an appreciated visit to the Vasa Museum. Following a guided tour, traditional Swedish meatballs were served, naturally.

Bettina Limperg is the President of the Network and President of the Federal Court of Justice of Germany. We had the opportunity to ask her a number of questions regarding, among other things, her role in the Network, the Stockholm Colloquium and the future of the Network.

How long have you been President of the Network and what is the President's role?

I've had the honour of being President of the Network since April 2021. The role of the President is to represent the Network and to act as a member on its board. The board consists of 11 presidents from the supreme courts of Europe and manages the work of the Network during the period of time between the general meetings.

How is the work of the Network conducted?

The purpose of the Network is to promote the exchange of opinions and experiences on questions concerning case law as well as the organisation and function of the supreme courts of the European Union when they carry out their tasks. Within the Network, the presidents meet regularly – personally and online – in order to discuss issues in which they share an interest, to exchange ideas regarding the most recent legal developments and to share information. The diversity of the subjects stretches from the principle of court independence and the principle of the rule of law to the effects of Covid-19 on the legal system throughout Europe. In the Network's common portal of case law, members may conduct searches in national case law databases. In addition, the Network conducts an exchange programme which makes a living exchange of experience with colleagues with similar areas of responsibility possible. We also have a group of younger colleagues who compare current legal problems and solutions amongst the Member States.

The Stockholm Colloquium was postponed for two years due to the Corona pandemic. How did it feel to finally meet your European colleagues once again?

First and foremost I wish to emphasise how grateful I am that President Anders Eka and the Supreme Court organised the Colloquium so perfectly. It was fantastic to once again finally meet all of our European colleagues in person. Even if it has been fine to meet at least virtually on several occasions, the Stockholm Colloquium clearly showed that online meetings cannot completely replace face-to-face meetings. Personal meetings between judges from different Member States elevates trust and respect between the various courts involved. The wonderful atmosphere in beautiful Stockholm made it easy for everyone to feel a genuine "European spirit" and to engage in discussions which were concentrated, rewarding and open.

What is your specific takeaway from the discussions during the Stockholm Colloquium?

The Stockholm Colloquium has shown that legal cooperation in Europe is indispensable, particularly in a world which is constantly becoming more complicated and confronts us with recurring challenges. It has become clear that it has never been more important to maintain contact and to address these challenges together. It is of great interest to learn how the supreme courts in the various Member States promote the publication of court decisions and address both the possibilities and risks involved in artificial intelligence. The advantages and disadvantages of using artificial intelligence in legal decision-making is naturally open to debate. It was also interesting to discuss how internal work methods in the supreme courts can be improved through the increasing use of open data.

Bettina Limperg

President of the Network and President of the Federal Court of Justice of Germany.

How do you view the Network's development and future? Are there any specific challenges to come?

The Network is a unique forum for bringing together people and ideas from the supreme courts in Europe. It can promote genuine dialogue in a Europe characterised by unity and solidarity and strengthen the position of the legal system in its relationship with legislative and executive powers. In particular, it contributes to the protection and maintenance of the rule of law in Europe. The members of the Network continue to understand the value of the principle of rule of law and see to it that it remains strong as one of the cornerstones on which the European Union has been built. One great challenge will be to protect the independence of the legal system, which is indispensable to maintaining the principle of rule of law in all Member States.

Writing better judgments and more efficient communication

How can the Supreme Court improve its rulings and what should be done to increase the information about and the accessibility of them? In order to look into this, the Supreme Court opened a discussion with the intended audience for the rulings.

The principal task of the Supreme Court is to guide the development of law. In order to do so in the best way possible, it is necessary that the Court's rulings are clear and transparent to those who will apply the rulings as well as to the parties and the public. Accordingly, the Supreme Court works continuously to develop both the manner in which the rulings are formulated as well as how they will be communicated and made accessible. As part of this effort, the Court arranged three meetings in April 2022 with representatives for members of the Bar Association, courts, the media, government authorities, prosecutors and universities.

In anticipation of the meeting, the participants read four rulings from the Court and were given a number of questions regarding their views on the formulation and the language of the rulings as well as how the Supreme Court communicates its rulings. All three meetings were conducted by Marie B. Hagsgård. Justices also attended the meetings, but they were present only to listen to the discussions.

The perception was that the rulings have developed a great deal in recent years. They are clear and transparent, and the language is simple and sound. The general impression was thus that the basic structure need not be altered. On the other hand, adjustments should be made to further increase transparency. It may be valuable to strive for more homogeneous formulations for the description of what constitutes the question in the case, and the rulings would benefit from more uniform subheadings. In addition, the case reference heading should constitute part of the ruling as soon as it is issued.

As regards communication, it was stated that the website can be developed to facilitate finding the rulings. In addition, information should be provided regarding pending presentation of reports, hearings, and rulings. This would create better possibilities for the media to report on important and notable rulings.

The meetings were highly rewarding and have provided the Court with new ideas and perspective. Work is now underway to more closely analyse which proposals should be implemented and how they can have the best impact on day-to-day work.

Marie B. Hagsgård
External consultant who has worked with courts for many years in their developmental work

Cases in brief 2022

CIVIL LAW

Is there an obligation to object to the reasonableness of the price?

(Case NJA 2022, p. 3, the "Svartön's Price" case)

A consumer had retained a construction company for renovation work. They did not agree on a fixed price but, rather, the consumer was to pay a reasonable price in accordance with section 36 of the Consumer Services Act. A dispute arose regarding the reasonableness of the price. The district court referred a question to the Supreme Court (by means of so-called referral leave), namely whether there is general obligation to object in accordance with section 36 regarding the reasonableness of the price. The Supreme Court concluded that there is no such obligation to object, but it does not prevent the fact that passivity regarding the issue of asserting a counterclaim for payment may cause forfeiture of the right to repayment.

Spouse could not assume a lease agreement which was invalid due to the tenant's fraudulent misrepresentation upon entering into the agreement

(Case NJA 2022, p. 82, the "Apartment at Karlaplan" case)

Following a dispute with the rent tribunal, a tenant lost the rental agreement (the right to extension of the rental agreement) due to the fact that she provided misleading information when the agreement was prepared. The information concerned an exchange of apartments which was a condition for the landlord entering into the lease agreement with her. Her spouse wished to remain in the apartment and stated that he had assumed the rental agreement. The Supreme Court concluded that the right to assume the agreement for a spouse or cohabitant does not apply when the agreement between the landlord and the tenant is invalid as a consequence of the tenant's fraudulent misrepresentation upon entering into the agreement. This is so even when the tenant has lost the right to an extension following a dispute in the rent tribunal.

Demand letter sent to a debtor who had an administrator did not toll the statute of limitations

(Case NJA 2022, p. 150, the "Statute of Limitations and Administratorship" case)

Before the debtor was assigned an administrator, he had incurred debts and was ordered to pay the debts by virtue of a finding (decision) of the Enforcement Authority. A collections company had assumed the claim and sent several demand letters to him annually. The company requested enforcement of the decision. The Supreme Court clarified the fact that a debtor who has an administrator is not competent to personally receive a demand regarding an indebtedness covered by the administrator's engagement. In order to have the effect of tolling the statute of limitations, the demand must be received by the administrator. Since the company had not evinced that the letters were received by the debtor's administrator during the period of limitations, the claim was barred by the statute of limitations.

Gifts to a child entail an infringement of the other child's statutory share of inheritance

(Case NJA 2022, p. 277, the "Cash Gifts to the Daughter" case)

A man died leaving behind his spouse and two children of which one was a child of the

decedent in a previous marriage and the other was the child of his most recent marriage. Prior to the decedent's death, the child of his most recent marriage had received two cash gifts from her father. The decedent's child from a previous marriage was of the opinion that the gifts were to be equated with a testamentary disposition and claimed that the gifts were to be returned to the estate to the extent they infringed her statutory share of inheritance. Contacts between the man and decedent's child from a previous marriage had been broken off following a conflict, and the man had, on several occasions, stated that he would disinherit the child from the previous marriage and that the child from his most recent marriage would inherit everything. In light of the man's statements, the Supreme Court determined that it may be assumed that the gifts were made essentially with death in mind. The gifts were accordingly to be returned so that the child from the previous marriage would receive her statutory share of inheritance.

Fire damage caused by sub-lessee was the liability of the primary lessee

(Case NJA 2022, p. 329, the "Fire Damage in Asylum Apartment" case)

The Swedish Migration Agency rented an apartment to be used as a residence for asylum-seekers. The apartment was damaged by virtue of a fire started by the person who resided in the apartment. The property owner's insurance company requested compensation for the fire damage from the Swedish Migration Agency in its capacity as the primary tenant. Decisive to the Swedish Migration Agency's liability to pay compensation was whether the person who lived in the apartment was to be regarded as a sub-lessee or whether she was instead to be deemed to be a lodger. The Supreme Court was of the opinion that the person who resided in the apartment had used the apartment independently in such a manner as applied to a sub-lessee. Accordingly, the Swedish Migration Agency, as the primary tenant, was liable for the fire damage relative to the property owner.

A case regarding when a revoked will can be reinstated

(Case NJA 2022, p. 509, the "Two Wills" case)

A woman had prepared two wills – one in 2012 and one in 2017. The latter stated that it would replace the previously prepared will. Upon the woman's death, it was clear that she had revoked the 2017 will. Copies of the 2012 will were found in her residence and the original was found in her bank deposit box. A dispute arose between the woman's relatives and the beneficiaries under the 2012 will. The question was whether the woman had withdrawn her revocation of the 2012 will. The Supreme Court clarified the fact that, in order for a will to be reinstated, it is necessary that it is apparent from the circumstances that this was the testator's last will. It is the party who asserts that the testator had withdrawn the revocation and that the will was thus to be reinstated who must evince the same. The Supreme Court concluded that the beneficiaries had proved that the 2012 will expressed the woman's last will as a consequence of which it was reinstated.

Consumer was compensated by a bank for unauthorised transactions from the consumer's account

(Case NJA 2022, p. 522, the "BankID Fraud" case)

A fraudster succeeded in persuading a consumer to disclose the code to his BankID. This made several transactions possible from the consumer's account. If an unauthorised transaction has occurred, the main rule is that the payment service provider shall restore the account to the position it would have had if the transaction had not occurred. In the event the transaction could take place because the account holder did not protect his or her BankID or similar, an account holder who is a consumer is liable for the entire amount only when he or she has acted particularly reprehensibly. According to the Supreme Court, the actions by the consumer were grossly negligent but not particularly reprehensible. Accordingly, the bank was to essentially restore the account.

The relationship between two women was such that a couple relationship existed in accordance with the Cohabitees Act

(Case NJA 2022, p. 645, the "Cohabitees on Sollerön" case)

Two women lived together and had a joint household. They did not have a sexual relationship. When one of the women died, a payment was made under a policy of insurance. The benefi-

ciary was primarily a cohabitant and, in the alternative, relatives. There was a dispute between the deceased woman's parents and the other woman regarding who was entitled to the insurance payment. The Supreme Court noted that a relationship without a sexual relationship may constitute a couple relationship within the meaning of the Cohabitees Act provided that the relationship is characterised by such close personal relationship of the kind that normally exists with married couples. Of importance in the assessment is whether there is a special affinity and trust between the persons and a willingness to share life together. The investigation supported the notion that the women lived in such a close personal relationship. The other woman was thus entitled to the insurance payment.

A ruling regarding compensation to airline passengers

(24 November, the "Flight to Sotji" case)

A flight from Gothenburg to Sotji was cancelled and two passengers were rebooked on a flight which departed and arrived a day earlier than planned. Where a flight is cancelled, the passengers shall, according to the Airline Passenger Regulation, be offered to choose between repayment and rebooking. As a main rule, they are also entitled to certain compensation. The compensation is reduced if the passengers are offered rebooking on a flight with an arrival time that does not exceed the original arrival time according to the timetable by a certain amount of time. According to the case law of the European Court of Justice, it follows that a reduction is not to occur when a flight has been cancelled and a passenger has been rebooked on a flight which departs and arrives earlier than planned. Accordingly, the Supreme Court concluded that the two passengers were to receive full compensation.

Is a tenancy which is to be converted into a cooperative apartment during a cohabitee relationship to be included in a division of property?

(2 December, the "Cohabitee's Converted Residence" case)

A cohabitee had a tenancy which she acquired prior to the cohabitee relationship and which, during the cohabitee relationship, was converted to a cooperative apartment. The cohabitee who held the tenancy purchased the cooperative apartment. The cohabitees continued to use the apartment as their common home. When the cohabitee relationship was dissolved eleven years later, there was a dispute as to whether the apartment would be part of the division of property. The Supreme Court noted that a cooperative apartment has an economic value and may be transferred for payment, something which a tenancy does not. Someone who, in conjunction with the conversion, acquires a cooperative apartment will thereby acquire an asset. The asset becomes property of the cohabitees if the acquisition takes place for joint use. The cooperative apartment was thereby deemed to constitute property of the cohabitees and was to be included in the division of property between the parties.

A sub-lessee was regarded as having a right of use directly in relation to the property owner

(28 December, the "Apartment on Sibyllegatan" case)

A property owner entered into a lease agreement with a company so that the company, in turn, would sub-lease the apartment. The company had no need of its own for the apartment. The sub-lessee's right to use the apartment was terminated after nearly seven years. The sub-lessee then brought an action for a finding that the sub-lessee had a right of use directly in relation to the property owner. According to the Supreme Court, the property owner and the company had a community of interest. The Supreme Court also noted that there had been a circumvention of the provisions regarding protected tenancy and regarding reasonable rent. Accordingly, the Supreme Court granted the claim brought by the sub-lessee.

CRIMINAL LAW

Restaurant work subject to unreasonable conditions was human exploitation

(Case NJA 2022, p. 23, the "Restaurant Work" case)

A married couple from Bangladesh came to Sweden to study and work. They did not have a residence. A restaurant owner offered the spouses to live in a room in an apartment at his disposal. He subsequently agreed with the spouses that they would work in the restaurant. For the work, in addition to free room and board, the spouses would receive certain wages. Thereafter, the spouses worked in the restaurant for a period of time and, as regards the man, the workdays were long. The restaurant owner, however, at no time intended to pay any wages, and the spouses accordingly never received any compensation for their work other than the benefit of free room and board. When the spouses requested their wages, the restaurant owner said that he could see to it that they were deported. The Supreme Court concluded that the actions by the restaurant owner constituted human exploitation. In the judgment, the Supreme Court made statements of principle regarding the conditions for criminal liability and sentencing in conjunction with human exploitation.

A person who has been barred from participating in the national university aptitude test could also be prosecuted for untrue declaration

(Case NJA 2022, p. 118, the "Barred from the National University Aptitude Test" case)

A participant in a national university aptitude test used prohibited aids during a test. The Swedish Council for Higher Education had accordingly revoked the test participant's result and barred her from participating in new tests for a period of time. Thereafter, the test participant was prosecuted for having signed, in conjunction with the test, a solemn declaration that the answers were given without the use of prohibited aids notwithstanding that the declaration was untrue. The Supreme Court found that the proceedings of the Swedish Council for Higher Education did not have the character of penal law and did not pertain to the same crime as a prosecution for untrue declaration. Accordingly, prosecution of the participant for untrue declaration did not infringe the prohibitions against double jeopardy and double penalty.

The trial of a charge of negligent rape

(Case NJA 2022, p. 237, the "Overnight Stay II" case)

A man and a woman had met on several occasions and had sex with one another. During one of these meetings, the woman did not participate voluntarily in the sexual acts, and the man was prosecuted for negligent rape. The Supreme Court noted that it was not established that the man actually suspected that the woman did not willingly participate. The fact that the woman was, to a high degree, passive during the sexual act lent some support for the notion that the man should have understood that she did not willingly participate. At the same time, there were no other indications that she did not accept the sexual acts. In light of their close relationship and the sexual interaction in which they engaged for some time, there was also no clear support in the investigation that the man should have understood that the woman, this time as opposed to previous times, did not willingly participate. The Supreme Court was accordingly of the position that the man's negligence in any case could not be deemed to be so strikingly reprehensible that it could be deemed to be gross and give rise to criminal liability.

26-year-old murder was to be examined again following grant of new trial

(Case NJA 2022, p. 424, the "Murder in Husum" case)

In 1996, a 16-year-old girl disappeared. She was found dead in a wooded area a half-year later. There was a semen stain on the girl's pants, but it was not possible, given the technology at that time, to obtain a DNA profile. In 1998, a person was prosecuted for the murder. He was sentenced by the district court to a term of eight years in prison but was acquitted by the court of appeal. New technology subsequently made it possible to produce a DNA profile from the semen stain. The DNA profile was compared with blood from the person who was acquitted of the murder, and the result strongly indicated that it was his semen. The Supreme Court determined that it was probable that the person could have been found guilty of the murder if the new evidence had existed at the time of the trial in the court of appeal. Based on the new evidence, the Supreme Court thus granted a new trial to his detriment.

Possession of two submachine guns was a gross weapons crime, not an exceptionally gross weapons crime

(Case NJA 2022, p. 656, the "Both Submachine Guns" case)

An 18-year-old was prosecuted for an exceptionally gross weapons crime after having stored two fully automatic submachine guns in his residence. The Supreme Court noted that the most important factor in the assessment of whether a weapons crime is exceptionally gross is the number of weapons. The possession of two particularly dangerous weapons may be classified as exceptionally gross, but this should occur only on rare occasions when the possession, in an overall assessment, appears to be unusually dangerous. In addition to the degree of danger posed by the weapons, other circumstances may also be considered, e.g. whether the weapons had been kept in such an environment as to typically cause concern that they will be used for criminal purposes. The Supreme Court was of the opinion that the possession of the two submachine guns appeared to be highly serious but was not characterised by such an unusual degree of danger that it could be classified as an exceptionally gross weapons crime but, instead, as a gross weapons crime.

Can a threat of suicide constitute molestation?

(Case NJA 2022, p. 667, the "Offensive E-mail" case)

A man sent an e-mail to a woman with whom he was involved in a custody dispute. The e-mail had as its subject "well, you got what you wanted" with an attached image in which the man had a noose around his neck and the noose was affixed to a ceiling rafter. The man was prosecuted for molestation. The Supreme Court stated that a statement by a person that he or she intends to take his or her life cannot be deemed reckless per se. But the assessment may be different if the statement is made out of pure ill-will or has otherwise been formulated in a manner which is intended to be particularly frightening and unpleasant for the recipient. The Supreme Court found that the man, by virtue of the picture, had deliberately formulated the message in a particularly frightening and brutal way and, by means of the subject line, wished to give the woman the impression that she would be responsible for the contemplated suicide. The man was found guilty of molestation and sentenced to day fines.

A man who engaged others to commit a murder was found guilty of instigation of murder notwithstanding that the wrong person was killed

(Case NJA 2022, p. 675, the "Mix-up" case)

A man engaged two persons to shoot a certain person to death. Due to a mix-up, another person was killed instead, and the perpetrators never came to aim their weapons at the contemplated victim. The principal was prosecuted for his involvement in the matter. The Supreme Court found that he was guilty of instigating murder of the person who was killed. Notwithstanding the fact that the chain of events had perhaps developed in a manner which, from the perspective of the principal, was wholly undesired, he was deemed to have intended that the attack actually be carried out. The act to which the instigation pertained was criminally equal to the act which actually occurred, and the outcome of such instigation was a conceivable consequence of the chain of events which the instigator placed in motion. The principal, however, was freed from the charge in respect of the contemplated victim. The Supreme Court found that the chain of events did not proceed sufficiently far that it involved a so-called completed attempt. In addition, the principal was not deemed to have intended the death of two or more persons, which would have been required for him to be found guilty of both crimes.

Swedish courts are competent to examine a case involving a crime against the law of nations in Sudan

(10 November, the "Universality Principle" case)

A Swiss citizen was prosecuted for aiding a gross crime against the law of nations. The prosecution pertained to acts which he and a co-accused, who is a Swedish citizen, allegedly committed in Sudan in the capacity of representatives of companies within a Swedish company group. The Supreme

Court examined whether Swedish courts are competent to prosecute a crime against the Swiss citizen. The Court noted that the offence according to the Swedish legal rules was covered by so-called universal jurisdiction. This entails that a Swedish court, as a starting point, has jurisdiction to try the case irrespective of who has committed the offence, against whom the offence has been committed or where the offence is committed. In the exercise of universal jurisdiction, it is necessary that there is some form of connection to Sweden in order for the crime to be prosecuted here. An additional condition is that there is no impediment to it in public international law. The Supreme Court concluded that the connection to Sweden was sufficient to prosecute the crime in a Swedish court and that there was no impediment to it in public international law.

Negligence regarding the victim's age in a case of child rape

(30 November, the "Chat Contact" case)

The accused was prosecuted for child rape consisting of the fact that he persuaded a thirteen-year-old to engage in intercourse for payment. The accused and the victim did not know each other, they had made contact on an open, anonymous chat forum on the same day the occurrence took place. The question was whether the accused was unintentionally negligent as regards the circumstance that the victim was under the age of 15. The Supreme Court stated, among other things, that, in a situation with clear indications that the young person is under age, it is negligent to perform sexual acts with the young person without first having established that he or she is nonetheless old enough. Frequently, it is a matter of something quite simple, such as asking, reflecting or verifying the specific circumstances. If it is a matter of a wholly new, and in certain cases, anonymous contact, this imposes a heightened requirement that the perpetrator exercise caution. The Supreme Court concluded that the accused could have perceived a risk of it had he reflected, something which could also be asked of him. Accordingly, the accused was unintentionally negligent in respect of the age of the victim. The Supreme Court sentenced the accused to prison for child rape.

Gross driving under the influence with Doodlebug tractor

(27 December, the "Doodlebug Tractor" case)

A 15-year-old drove his Doodlebug tractor in the middle of the night on a country road devoid of other traffic. A breathalyser test showed that he had an alcohol concentration exceeding the limit for gross driving under the influence. The Supreme Court observed that driving under the influence with a Doodlebug tractor, previously an EPA tractor, typically constitutes a palpable risk in traffic notwithstanding that the highest speed that such a vehicle may be driven is 30 kilometres an hour. The Supreme Court thereby clarified that driving under the influence with a doodlebug tractor is to be assessed essentially in the same manner as driving under the influence with an automobile. The crime is thus regularly to be found to be gross when the driver's alcohol concentration exceeds the thresholds for gross driving under the influence in the Traffic Offences Act provided that it does not involve an exceptional circumstance with mitigating circumstances. The Supreme Court noted that there were no mitigating circumstances and that it was accordingly a matter of gross driving under the influence.

Essential cooperation in investigation of perpetrators' own crimes resulted in mitigation of a sentence

(28 December, the "Two Drug Dealers" case)

After two persons contacted the police and explained that they had been forced to sell drugs and feared for their lives, they provided information regarding the dealing of drugs. As a consequence of this information, a search of premises was carried out and, among other things, drugs and a pistol were found. The two individuals were prosecuted and found guilty of gross drug crimes and gross weapons crimes. In the determination of the penalty, the fact that their cooperation led to solving gross crimes was taken into account. The length of the prison sentence was reduced from (approximately) six to four years since the information regarding their own criminal acts which was provided played an essential role in the execution of the investigation in order to be able to secure evidence and the fact that an investigation was initiated at all.

The year in brief

14 March
The Supreme Court visited the Södertälje District Court. Justice Johnny Herre, Head of Drafting Division Cecilia Hager, Judge Referee Martina Bozzo, Court Clerk Therese Johansson and Administrative Junior Judge Jeanette Sirsjö participated from the Supreme Court.

21 March
The Supreme Court of Norway arranged a seminar on Sami law issues. President of the Supreme Court Anders Eka and Supreme Administrative Court Justice Thomas Bull participated from Sweden.

31 March – 1 April
President Anders Eka participated in a meeting with the board of the Network of the Presidents of the Supreme Judicial Courts of the European Union. The meeting was held in Ljubljana, Slovenia.

26, 27 and 29 April
Focus group seminars were arranged in the Supreme Court. Representatives from courts, members of the Bar Association, the Prosecution Authority, universities, and other governmental authorities gave their views on how the Supreme Court writes its judgments and its external communications.

1 May
Justice Ann-Christine Lindeblad retired. She became a Justice in 2002.

2 May
Jonas Malmberg joined the Supreme Court as Justice. He came most recently from a position as Chairman of the Labour Court.

5 – 7 May
The Supreme Court arranged the Stockholm Colloquium. The theme of the conference was open data and artificial intelligence.

12 May
EU Commissioner Didier Reynders visited the Supreme Court with a delegation. President Anders Eka, Justice and Head of Division Gudmund Toijer and Justice Kerstin Calissendorf participated from the Supreme Court. Principal Secretary of the 2020 Constitutional Inquiry Daniel Gustavsson participated.

16 – 17 May
President Anders Eka and Justice Sten Andersson participated in a meeting arranged by the judges in the judicial district under the Göta Court of Appeal.

20 May
President Anders Eka participated in the 200th anniversary of the Court of Appeal of Skåne and Blekinge.

16 June
The Supreme Court received a visit from the Ministry of Justice of Vietnam. Justice Stefan Reimer participated from the Supreme Court.

1 July
Justice Kerstin Calissendorf retired. She became a Justice in 2003.

22 August
Jens Wieslander joined the Supreme Court as Administrative Director. He came most recently from a position as Senior Judge at the Svea Court of Appeal.

24 – 26 August
A meeting of the presidents of the Nordic supreme courts was arranged in Greenland. President Anders Eka and Justice and Head of Division Gudmund Toijer participated from the Supreme Court.

29 August
Christine Lager became Justice of the Supreme Court. She came most recently from a position as Senior Judge and Head of Division at the Svea Court of Appeal.

6 September
Administrative Director Maria Edwardsson left the Supreme Court for a position as Senior Judge and Head of Division at the Solna District Court.

12 September
The Supreme Court visited the Gotland District Court. Justice Malin Bonthron, Head of Drafting Division Claes Söderqvist, Court Clerk Charlotta Luthman and Administrative Junior Judge Ted Thyrén participated from the Supreme Court.

7 October
President Anders Eka participated in a conference in Brussels at the invitation of EU Commissioner Didier Reynders.

13 – 14 October
Justice and Head of Division Gudmund Toijer participated in an international conference in Trier, Germany. The theme of the conference was ”European Sovereignty: The Legal Dimension – A Union in Control of its own Destiny”.

Petter Asp
Justice

13 – 15 October
President Anders Eka participated at a conference in Brno, Czech Republic, arranged by the Network of the Presidents of the Supreme Judicial Courts of the European Union. The programme included issues regarding public confidence in the legal system and disciplinary proceedings.

17 – 18 October
The Supreme Court visited the Mora and Falu District Courts. Justice Sten Andersson, Judge Referees Elisabeth von Salomé and Maria Schöllin, Drafting Law Clerk Anna Mirzadeh-Cederlund and Administrative Junior Judge Rebecka Jungstedt participated from the Supreme Court.

9 November
The Supreme Court arranged a seminar on judicial precedents with an emphasis on penal law and criminal procedure. 40 or so invited guests participated at the seminar from the courts, the Prosecution Authority, members of the Bar Association and universities.

22 November
The Supreme Court received a study visit from the parliamentary group of the Centre Party. President Anders Eka, Administrative Director Jens Wieslander and Administrative Junior Judge Ted Thyrén participated from the Supreme Court.

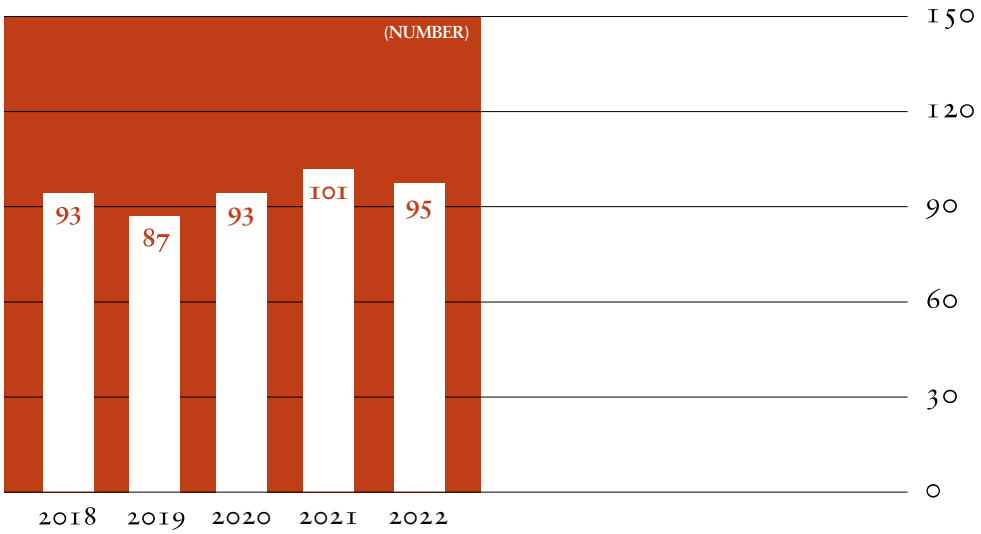
4 – 6 December
President Anders Eka participated at the 70th anniversary jubilee for the European Court of Justice in Luxembourg with the theme ”Bringing Justice Closer to the Citizen”.

6 December
The Supreme Court visited Attunda District Court. Justice Petter Asp, Head of Drafting Division Claes Söderqvist, Judge Referee Hanna Hallonsten, Court Clerk Therese Johansson and Administrative Junior Judge Rebecka Jungstedt participated from the Supreme Court.

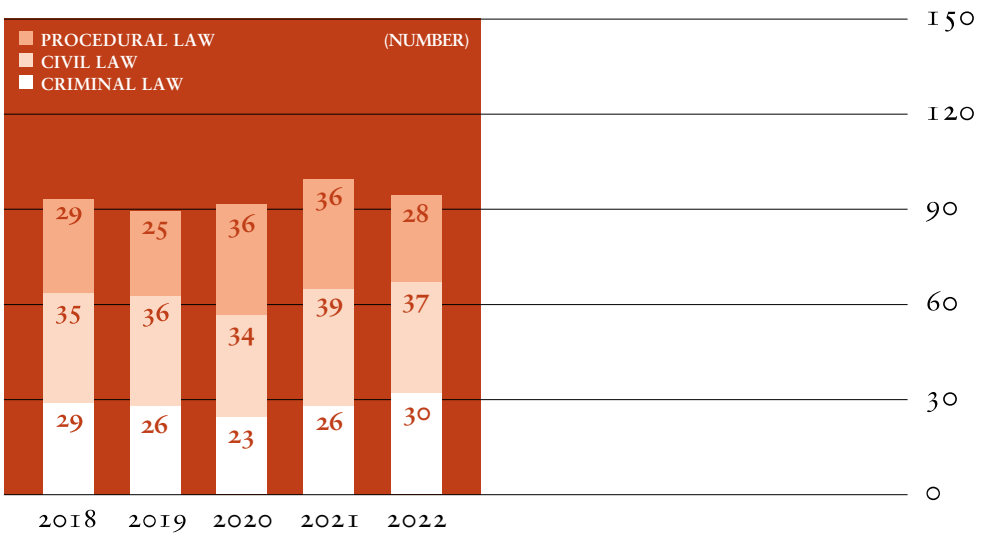
15 December
The government appointed Anders Perklev and Margareta Brattström as new Justices. They join the Supreme Court on 17 April 2023.

STATISTICS

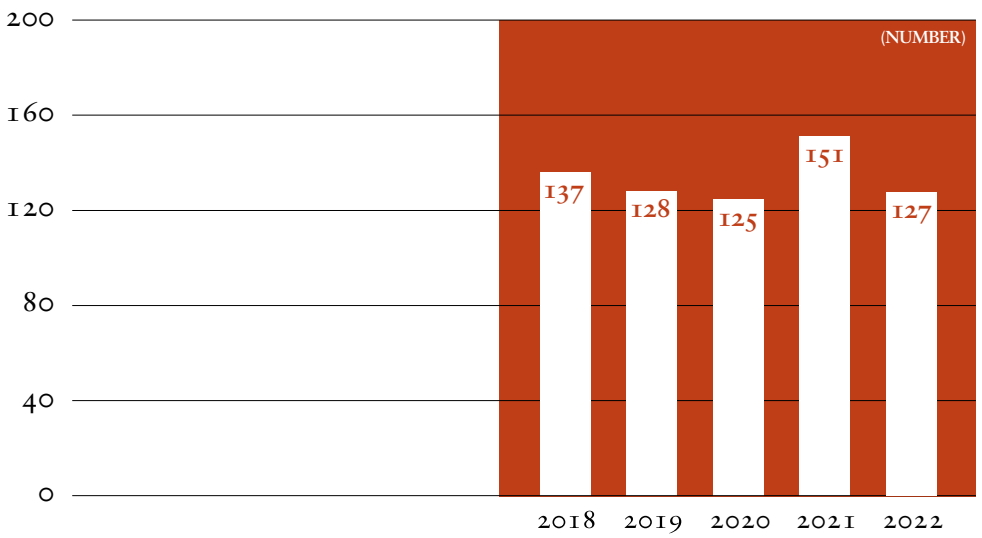
Precedents



Precedents per area of the law

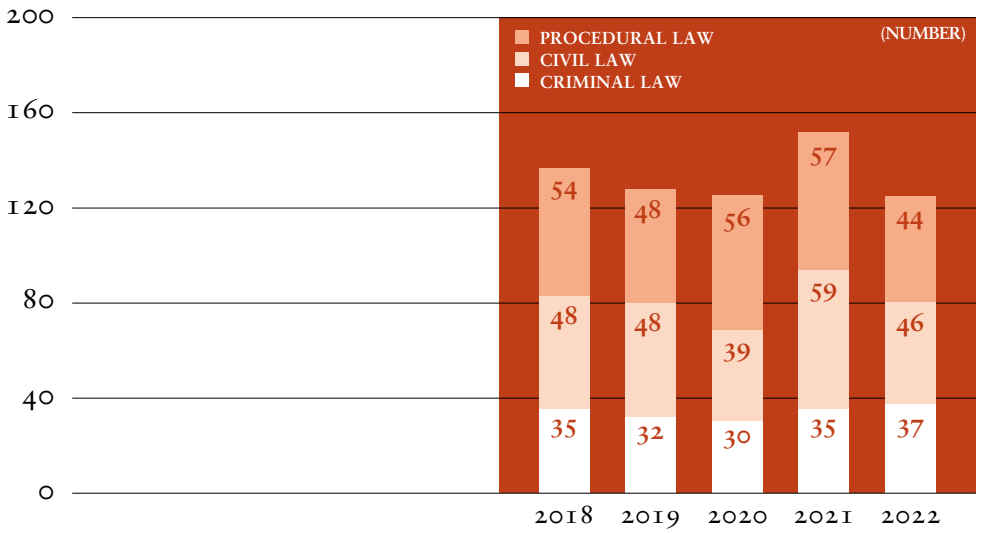


Cases for which leave to appeal was granted*



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

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



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

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

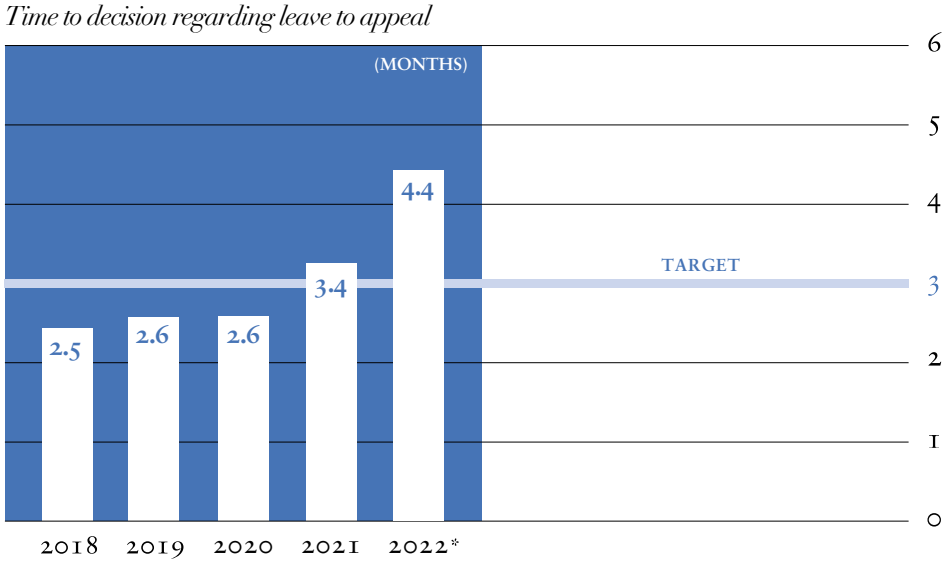
Time to decision regarding leave to appeal

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

90th percentile:
Nearly all cases.

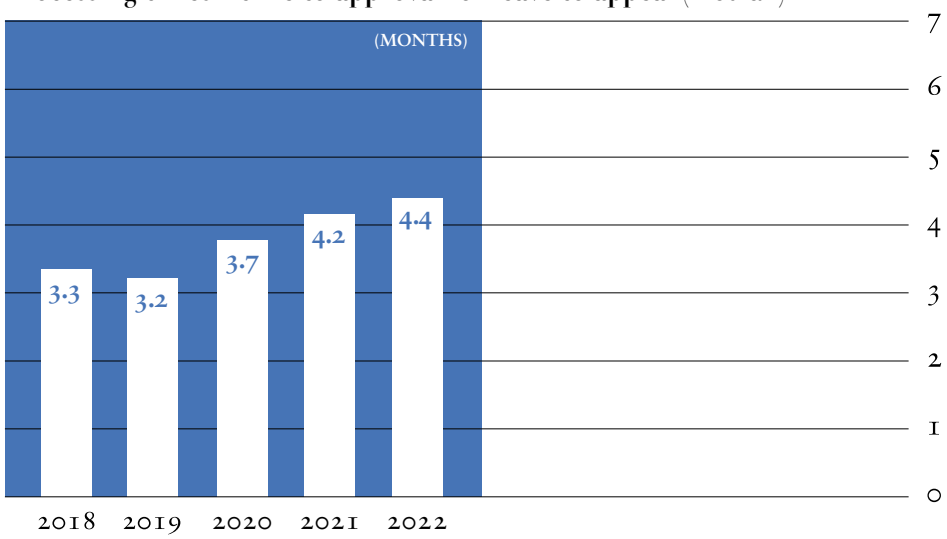
*Total number of cases considered: 6.256

Percentage decided by
- 1 Justice: approx. 95%
- 3 Justices: approx. 5%

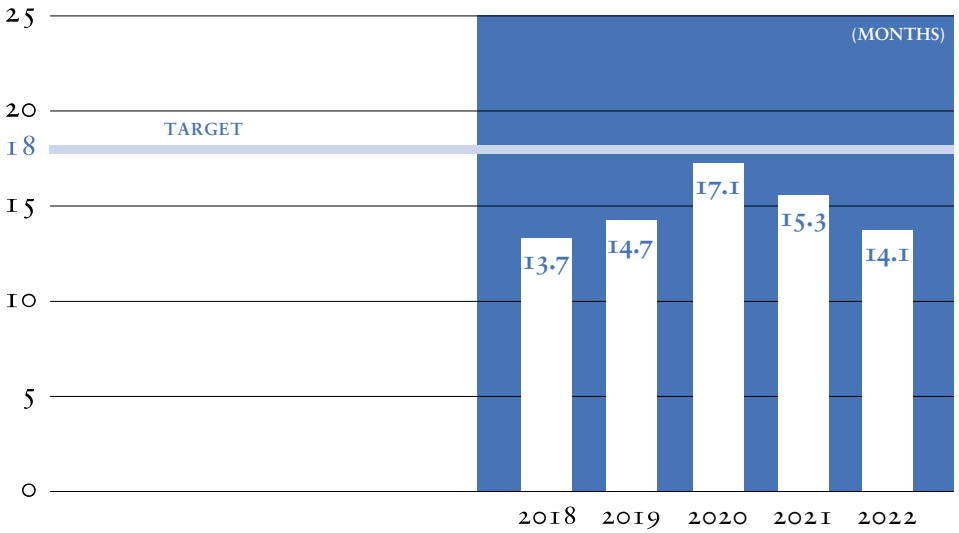


Processing times – time to approval for leave to appeal (median)

Median:
The normal processing time.



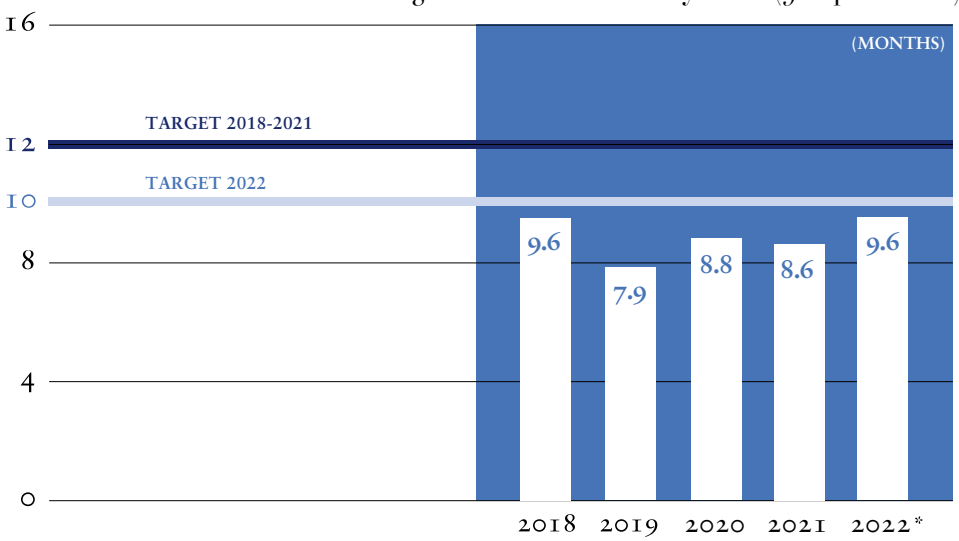
Processing times – approved cases (90th percentile)



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

90th percentile: Nearly all cases.

Processing times – extraordinary cases (90th percentile)



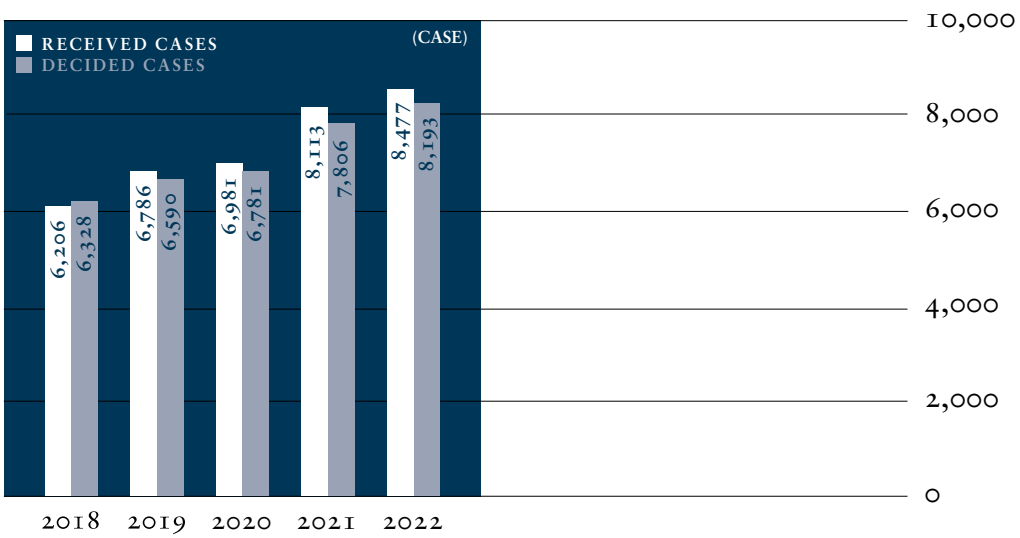
Extraordinary cases: Grounds for new trial, grave procedural error, etc.

90th percentile: Nearly all cases.

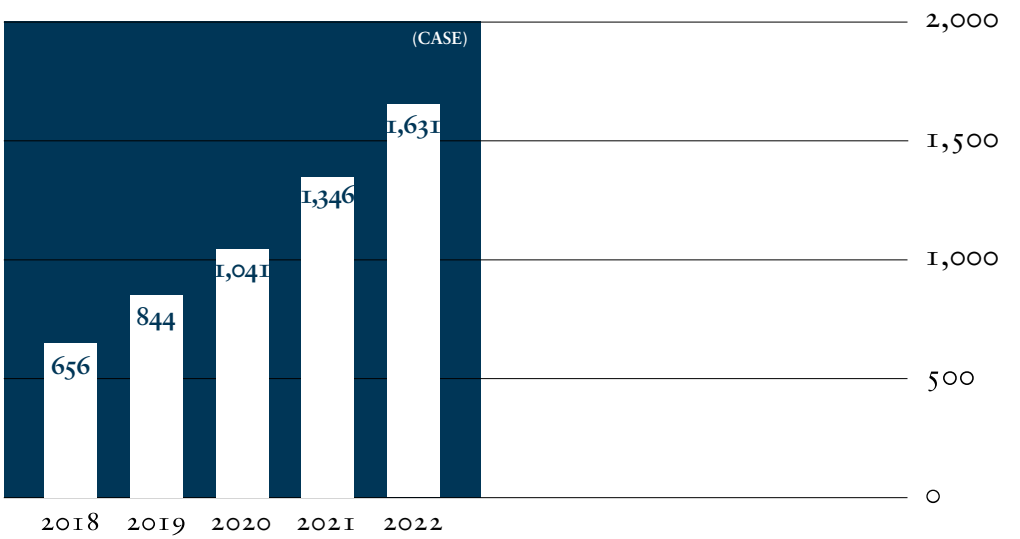
Total number of cases decided: 772

Percentage decided by
- 1 Justice: approx. 88%
- 3 Justices: approx. 10%
- 5 Justices: approx. 2%

Total number of cases received and decided

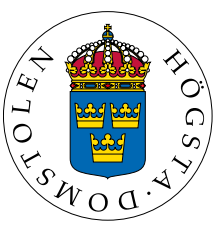


Total number of cases not decided



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
Johnny Herre, born 1963, Justice since 2010
Agneta Bäcklund, born 1960, Justice since 2010
Svante O. Johansson, born 1960, Justice since 2011
Dag Mattsson, born 1957, 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
Stefan Reimer, born 1962, Justice since 2019
Cecilia Renfors, born 1961, Justice since 2019
Johan Danelius, born 1968, Justice since 2020
Jonas Malmberg, born 1962, Justice since 2022
Christine Lager, born 1962, Justice since 2022



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