HD 2024

ACTIVITY REPORT OF THE SUPREME COURT OF SWEDEN

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A word from the President

Readers of the Supreme Court Activity Report from last year know that the Court has been housed in the Bonde Palace in Stockholm's Old Town since 1949. The Parliament - Sweden's legislative and representative body elected by the Swedish people - is a stone's throw from the Court, on the isle of Helgeandsholmen. Somewhat further away, the Government Offices have their premises in the Rosenbad building. The Government steers the realm and is the impetus behind the work of changing the laws. While the physical distances between the legislative, executive and judicial powers are not particularly great, their functions are to be kept separate.

Even if it is important in a democracy to separate these various functions from one another, this does not eliminate the possibility of interaction amongst the Parliament, the Government and the judiciary. Quite the contrary, such interaction is a natural component of a well functioning society. This interaction is highlighted in several articles of this year's Activity Report on the theme of legislation and the court of precedence. These sections describe the various duties of the legislature, the Government and the courts, as well as the limits of the authority wielded by these various bodies.

The creation of laws which provide general rules for various parts of society is reserved exclusively to the elected members of the Parliament. And one of the central tasks of the Government is to initiate new legislation. Yet, legislation does not come about in a vacuum. Rather, new legal rules are a product of an issue which has come up in some particular context. For example, it may be the case that a ruling from the Supreme Court expressly states that there is a need for new legislation concerning a particular question. Or, even if the Court has not clearly indicated any such need, a precedent may nonetheless result in new legislation at the initiative of the Government. The interaction also comes to light in the passing of new legislation in the sense that the Supreme Court might be called upon to clarify the way the rules adopted by the Parliament are to be interpreted and applied. In turn, the rulings of the Court can inspire the Government to again perceive a need to review the legislation and submit proposals for amendments.

Anders Eka
Justice and President
of the Supreme Court

In this way, there is an interaction between the Government, the legislature and the judiciary. You can read more about this in later pages of the Activity Report.

Like last year, this year's Activity Report also casts light on some of the Court's employees. A category which has not been addressed in previous years in this context is mid-level management of the Court. These are key positions such as head of drafting division, head of the administrative unit, and head of court clerks. Their work duties and roles are described in greater detail in the article entitled *Heads of the Supreme Court offices*.

In a precedential court such as the Supreme Court, access to an extensive library containing both older and more recent literature is essential to the operations. Accordingly, this year, we also draw attention to the Court's librarian. Her central and highly important function is addressed in the article *The Court's library and legal research*.

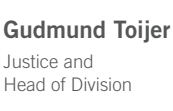
Last, but not least, one article is committed to Head of Division Gudmund Toijer as he is now retiring from the Supreme Court after 18 years as Justice. Much has changed at the Court since Gudmund came on board as Justice in 2007. Such changes include, among others, the way in which the Court writes and reasons in its rulings. This and other matters are addressed in the article.

I recently mentioned the fundamental division of roles amongst the Parliament, the Government and the judiciary in the Swedish form of government. This allocation of roles and other issues central to Swedish society are governed by our Constitution, specifically in the Instrument of Government. In 2024, the Instrument of Government celebrated its 50-year jubilee, an event which was recognised in myriad ways during the year including by the Parliament and the Supreme Court. At the beginning of summer, a seminar was held at the Court regarding our current Instrument of Government. One can read about the long history and evolution of the Instrument of Government in the article entitled *The Instrument of Government – a 50-year jubilee with a long tradition.*

It is my hope that readers find the articles presented in this year's Activity Report interesting and stimulating. I hope you enjoy reading about the past year at the Supreme Court.

ANDERS EKA

JUSTICE AND PRESIDENT
OF THE SUPREME COURT



Gudmund Toijer
Justice and
Head of Division

Eighteen years in the service of the Supreme Court

When Supreme Court Justice and Head of Division Gudmund Toijer retires after 18 years, he will be able to look back on a rich and extensive career.

You graduated from Stockholm University law school in 1981. What inspired you to choose law?

I majored in humanities in upper-secondary school, which was traditionally a good way to prepare to study law. I had an uncle who was a lawyer, so I had some notion about the profession. But most of all, I have always had a broad humanistic interest.

Following graduation, you started as a law clerk in Norrköping. What was that experience like?

In those days, service as a law clerk was regarded most like an internship and a natural continuation of studies. I chose Norrköping to see something other than Stockholm, where I grew up. I enjoyed Norrköping, both the city and the work. After concluding my clerkship, I was encouraged to consider a career as a judge at the Göta Court of Appeal. By then, I had already developed a fondness for court work. I enjoyed the practical aspect of the work, the fact that parties presented tangible problems which could be resolved by the law. As a law clerk, I also reacted to the fact that many criminal suspects were younger than I was – an insight which gave me perspective.

You became an associate judge in 1991 and then worked for more than a decade at the Government Offices. Tell us more about that period.

I started at the Ministry of Justice during a very exciting time when EU law began to be integrated into Swedish law and when the international perspective started to have a greater impact. There was a feeling throughout the Government Offices that we were at the threshold of a new era. I became involved in several different legal areas, including maritime law and the civil law rules pertaining to international transportation. I also got to travel to Brussels, Paris and New York to participate in negotiations. One memorable negotiation involved electronic bills of lading which were used in large commodities transports. We negotiated with representatives from many different countries to produce a model act for digital documents, something that was entirely new at that time. This was a taste of how quickly new legal areas can develop when technology changes. I also frequently visited Bern and was involved in negotiations relating to the civil law regime for rail transport. The only languages accepted for negotiations were German and French, so it was a lucky strike that I remembered my school French.

You subsequently returned to the judiciary and eventually became senior judge of appeal at the Svea Court of Appeal before the Supreme Court came calling. How was that journey?

I wrapped up my time at the Government Offices as director general for legal affairs and director general for administrative and legal affairs at the Ministry of Education. I thoroughly enjoyed it, particularly the opportunity to work with so many different professional groups. But I started to miss working at the courts. This is why I applied to the Svea Court of Appeal and, after some years as judge of appeal, I became head of division at what was then the special department for tenancy issues. I genuinely enjoyed the collegial atmosphere at the court and the role as head of division suited me. The work duties varied, the department was the right size and my colleagues were fantastic.

I clearly remember one day, when I had been head of division for maybe 15 months. The telephone rang twice with issues that needed to be addressed in different cases. When it then rang for a third time in short order, I was quite surprised to hear that it was the Minister of Justice at that time, Beatrice Ask, who was on the line. She asked if I was interested in becoming a Justice of the Supreme Court. I never really thought that I would get that question. Yet, I composed myself enough to ask for a little time to think it over given the gravity of the matter. But I did not need to think about it particularly long.

Gudmund Toijer
Justice and
Head of Division

Caroline Smith
Judge Referee

Malin Falkmer
Judge Referee

Since you started at the Supreme Court, you have participated in over 600 precedents. Is there any particular case that stands out?

The cases which stand out the most are from the summer of 2013. I was reporting judge in three matters that summer, and two of them dealt with *ne bis in idem* in the area of tax law. These rulings drew a great deal of attention and set off a wave of petitions for new trial. The third case was an environmental case regarding the Ojnare forest on Gotland. I didn't have many days off that summer. But it is a great privilege to be involved in establishing legal guidelines regarding issues of major importance.

In 2016, you became head of division at the Supreme Court. How has this affected your work?

This entails that I act as presiding judge in the cases I am involved in. Accordingly, I no longer write the first opinion for judgments and decisions in the cases. I sometimes miss the writing, particularly the work of formulating the reasoning in, and structure of, the text. As a reporting judge there is also the opportunity to present the case both orally and in writing, which I always found rewarding. I enjoy writing, and this includes judgments, reports and legal literature. At the same time, being head of division means that you have a different perspective and a greater opportunity to direct the collegial work, which is also stimulating.

What has been the greatest challenge during your time at the Supreme Court?

One of the greatest challenges for the Supreme Court is to maintain quality in every ruling – it has to be good, every time. Each case is important, and we must always be engaged and updated, particularly in light of the rapid pace of change in legislation and international legal standards. This demands diligence and interest. Naturally, it isn't easy but, at the same time, it doesn't feel like a sacrifice. There has been great social change during my time here, and this makes demands of the Supreme Court in terms of staying relevant. We have responded to this by adjusting the way we write. We now explain and justify our positions more. In modern society, no legitimacy is won by simply stating how things are. To have credibility, one must also explain why. This has been a challenge, but one I have enjoyed taking on.

Labour law is an area which is particularly close to your heart. Where does this interest come from?

Labour law is an area which often involves the challenges faced by common people, rendering it everyday law in the positive sense of the term. During my time at the Government Offices, I worked extensively with labour law issues and I was also a stand-in for the vice chairman in the Labour Court. It is an area in which the law can really make a difference in the living conditions of individuals, as well as in trade and industry and public administration. There has always been a sense of reward in being able to contribute to legal developments in the area of labour law.

What are you looking forward to in retirement?

I am looking forward to writing more articles and having more time to read. When I commuted between Jönköping and Stockholm weakly during part of my time at the Göta Court of Appeal, I had a tradition of always buying a book for the train journey on Friday. I am also very interested in sports, particularly soccer, and it will be fun to go to more matches. I might even spend a little more time on the family farm in Västergötland. But I am most looking forward to not having everything so carefully scheduled, but to instead take things somewhat as they come.

Finally, do you have any tips for young lawyers?

Try not to plan your career too much. If you are constantly striving to move forward, you readily miss out on the opportunities that pop up right in front of you. It is better to try to enjoy the journey. If you find joy in where you are at present, you can focus better on the tasks at hand, which often creates the best conditions in the long run. Who knows, sometimes the phone rings – just be sure you pick up every time.

Anders Hübinette
Head of Drafting Division

Josefin Lilja Cohen
Head of the Administrative Unit

Heads of the Supreme Court offices

The Supreme Court offices are comprised of the entire staff with the exception of the Justices. The offices are headed by the administrative director. Approximately 80 persons work in the offices which consist of two drafting units and an administrative unit. Their work is intended to create in various ways the best possible conditions for the Justices to conduct the judicial activities. Between the administrative director and staff, there are also heads of the various units and employee groups. The drafting divisions are supervised by the heads of the drafting divisions. The head of the administrative unit oversees that unit, and a head of court clerks oversees the work of the court clerks.

The Supreme Court's judge referees and drafting law clerks are responsible for the preparation and reporting of cases. The reporting clerks are divided into two drafting divisions. One division is overseen by Head of Drafting Division Anders Hübinette and the other unit is overseen by Head of Drafting Division Sofie Westlin. Sofie is currently on parental ▸

leave and, in her place, Judge Referee Jenny Engvall has been standing in as division head since September 2024.

The heads of the drafting divisions have overall responsibility for most of the personnel in their divisions, and the position is comparable to that of a senior judge/head of division in a large district court.

Anders Hübinette assumed his position in May 2023. He is on leave from his position as judge of appeal in the Svea Court of Appeal. Previously, Anders worked, among other things, as an association legal advisor and subsequently as chief legal counsel for the Swedish Football Association.

Anders: The entire staff is highly skilled and self-propelled and, to develop skills further, we strive to ensure that the reporting clerks work with portfolios containing a variety of cases. Accordingly, working as head of a drafting division includes allocating cases. It is also important to regularly and constructively provide feedback. The heads of the drafting divisions also address day-to-day questions regarding how the cases should be handled as well as the arrangement of routines. This also includes coordinating in a suitable way cases containing similar issues.

Sofie Westlin has been head of a drafting division since April 2024. She is on leave as a judge of the Nyköping District Court. Most recently, Sofie has been acting head of division of the same court. Before that, she was judge referee at the Supreme Court.

Sofie: The heads of the drafting divisions often serve as a link between the reporting clerks and other parts of the organisation. One important task is ensuring that the drafting resources are used in the best way. This is true not the least in the planning of the cases which are to be addressed by five Justices, i.e. principally those cases which have been granted leave to appeal. The Supreme Court strives to ensure the even release of precedents. It can be a challenge to strike a good balance where each reporting clerk is carrying the right workload while the Justices are furnished with cases in pace with their schedules.

Jenny Engvall has been a judge referee since 2023. Among other places, she has worked with legislation at the Ministry of Justice.

Jenny: The heads of the drafting divisions also have an important role when new reporting clerks are recruited and introduced into the operations, which takes place several times per year. In addition, the heads of the drafting divisions also head up many of the working groups at the Court.

Maria Konstantinidou has been head of court clerks for just over a year and a half. She comes most recently from the position of head of unit at the Swedish Police Authority. Although the court clerks are divided into the two drafting units, Maria is the head of the entire court clerk group.

Maria: It is important to address the needs of every colleague and to analyse how everyone can develop in their work. In general, I focus much of my energy on personnel issues. The most stimulating part of my work is to be involved with and develop the employees as a group. It is also essential to develop the content of the court clerks' work over time. Naturally, we want to hold onto our skilled colleagues as long as possible. In addition, making the operations efficient and ensuring their quality is a contin-

Anton Dahllöf
Judge Referee

Jenny Engvall
Head of Drafting Division

uous endeavour. In recent times, for example, this has involved developing the way we work in dispatching judgments and decisions, managing mail, and producing printed reports.

Josefin Lilja Cohen has been head of the administrative unit since April 2023. Previously, she played a comparable role at a local public prosecution office. Josefin oversees a unit which is responsible for various support functions within the Court: the front desk, the registrar, archives, IT, the library, coordination and HR/administration. The staff responsible for the offices of the Council on Legislation are also part of the administrative unit.

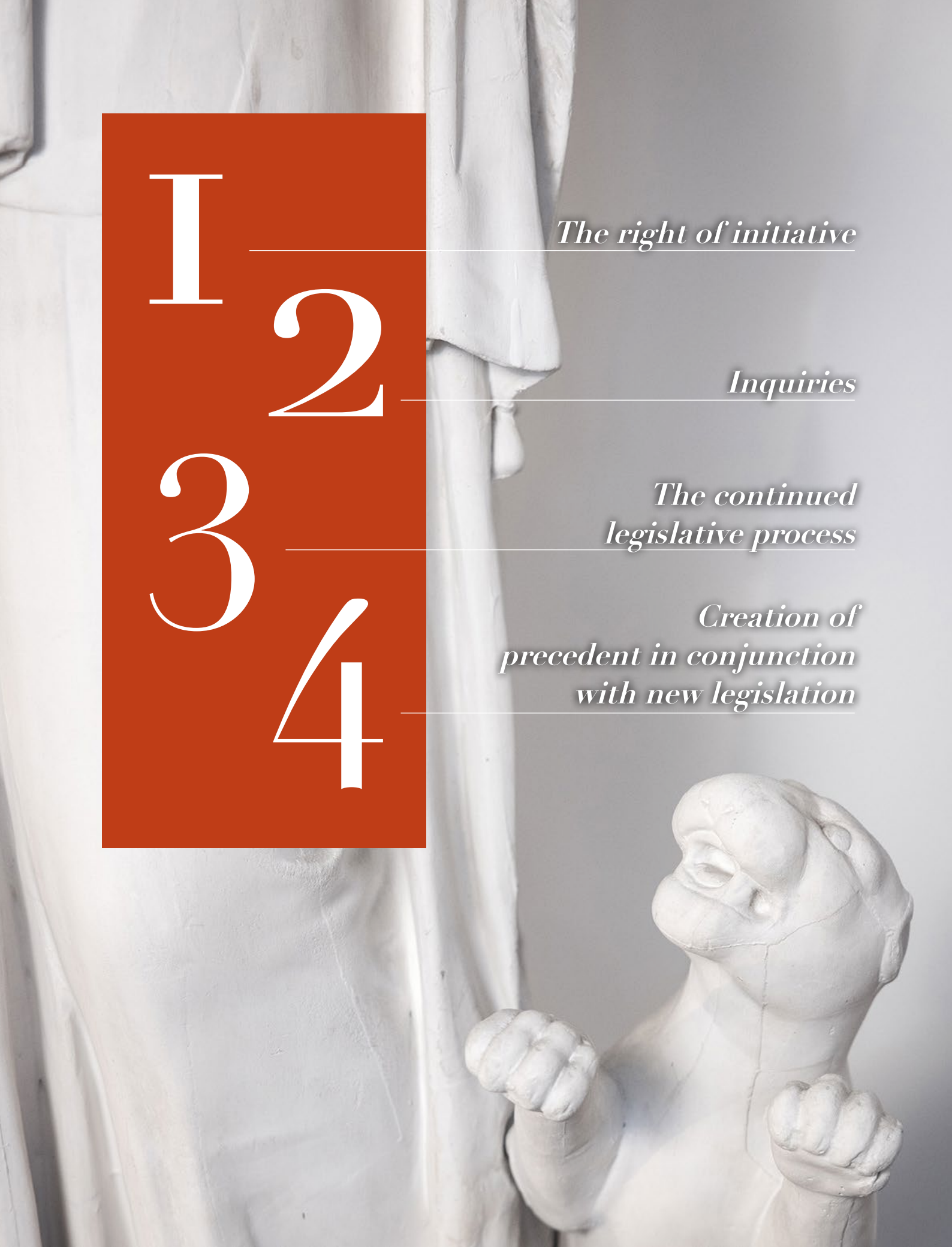
Josefin: To a large extent, the staff works independently in their respective areas. In the day-to-day work of each of the functions, my task consists very much of providing support and participating here and there with assorted input. I am proud of the administrative division and the work performed here. Everyone is ambitious and has high expectations of themselves. There is a great deal of engagement in the operation. When the public comes to the Court, it is often one of the employees in the administrative division who is their first contact, so addressing issues relating to visitor reception is naturally a large part of what we do. Other parts of my work concern issues regarding the budget and finances, as well as the premises and security. These duties are largely carried out on my own initiative, but also in close cooperation with the administrative director.

Cooperation amongst the various heads and directors is very close. Checking in with one another happens in a way which is both structured and regular. Anders, Sofie, Jenny, Josefin and Maria are, furthermore, part of the Supreme Court's management group together with President of the Supreme Court Anders Eka, Head of Division Gudmund Toijer and Administrative Director Jens Wieslander. The management group addresses many issues concerning the operations of the Court on an overall and strategic level, e.g. case development and general priorities. Being a director or head at the Supreme Court offices thus entails tremendous influence in both the management and development of the Court.

Legislation and the court of precedence

The courts and the legislative power are and shall remain separate and undertake different roles in a state governed by law. While the Government and Parliament are responsible for formulating and taking decisions regarding rules and regulations, it is the task of the courts to apply applicable law. A court of precedence such as the Supreme Court shall, furthermore, guide other courts as to the manner in which laws and other rules are to be interpreted. This activity is accordingly also standards-setting.

Thus, where in practice is the line between the rule-making legislature and the precedential activity of the Supreme Court? The allocation of roles naturally involves clearly defined boundaries but also presupposes a dialogue between the various institutions.



1 *The right of initiative*

2 *Inquiries*

3 *The continued legislative process*

4 *Creation of precedent in conjunction with new legislation*

I The right of initiative

It is Sweden's Parliament that adopts new laws and legislative amendments. The Government is normally behind proposed laws by virtue of a government bill for a new act or amendment which is submitted to the Parliament. In addition, individual members of Parliament may initiate new legislation by means of so-called motions.

The Supreme Court has no formal right of initiative for new legislation. The principal task of the Supreme Court is to create precedents to provide guidance as to the manner in which similar cases are to be assessed by general courts and by the legal community at large in the future. For example, this may be pertinent in situations involving borderline cases in which guidance as to the manner in which the assessment is to be carried out is not clear from the statutory text. The creation of precedent by the Supreme Court may be said to work in supplementation of the legislation in order to promote a uniform application of law by the general courts.

Prior to issuing a ruling, the Supreme Court conducts thorough legal research regarding the relevant question in the case. Any shortcomings in the legislation can be revealed in the course of the legal research. Accordingly, it may happen in subsequent rulings that the Supreme

Rosenbad.
Photograph:
Henrik Isaksson, TT

Court draws attention to the fact that there is a need for legislation in a certain area or concerning a particular issue.

One example of this is the Supreme Court's ruling in case NJA 2008, p. 946. In that case, a person was prosecuted for having installed hidden camera equipment and thereby having recorded sound and images of, among other things, intimate relations between two other persons. For the sound recording, the person was found guilty of unlawful interception. As regards the recording of images, the question before the Supreme Court was whether such person could also be found guilty of molestation.

The judgment states that the question regarding liability for unlawful recording of images (and dissemination of such recordings) had been the subject of the legislature's consideration for a long time but that Swedish law did not contain any general prohibition against filming an individual without permission or showing such a film to others, even if it constituted a profound breach of privacy. The Supreme Court found that the offence could not be deemed covered by the crime of molestation and thus dismissed the indictment in this respect. The Supreme Court stated in conclusion that there was good cause to state that the type of activities which were the subject of the case should be punishable, but it was incumbent upon the legislature to examine whether such criminalisation should be implemented and, in such case, how it should be formulated.

Some years later, in Government Bill 2012/13:69 regarding intrusive photography, it was proposed that the crime of intrusive photography should be incorporated in the Swedish Criminal Code. With reference to case NJA 2008, p. 946, mention is made in the bill of the fact that the Supreme Court has drawn attention to the issue that protection against unlawful filming of someone is inadequate. The provision regarding the crime of intrusive photography (Chapter 4, Section 6 a of the Swedish Criminal Code) was implemented on 1 July 2013.

It also happens that the rulings of the Supreme Court prompt initiatives for new legislation without the Court having expressly pointed out the need for it. An example of this is the "Dummy Weapon" judgment (case NJA 2023, p. 393). In this case, the police had exchanged three hidden weapons for a dummy weapon four months before a person attempted to retrieve the weapons. The person was charged with attempted aggravated weapons offences consisting of him having attempted to unlawfully possess, among other things, the weapons which had been confiscated. The statement of the criminal act as charged stated that the act would lead to the completion of the offence or that such a danger was excluded only due to chance circumstances. The Supreme Court found that the weapons had been exchanged before the person had formed intent and, accordingly, there was a fundamental flaw in the criminal plan. The person was accordingly acquitted of liability for attempted aggravated weapons offences.

In June 2023, the Government decided to engage an inquiry chair to conduct a broad review of the types of accessory and inchoate crimes in Chapter 23 of the Swedish Criminal Code. With reference to the Supreme Court's "Dummy Weapon" judgment, the Government's instructions to the inquiry chair stated that it was of particular interest to examine such cases in which the danger of the completion of the crime is forestalled due to intervention by government authorities or where crimes have been prevented by some other similar situation. The report, A Review of Chapter 23 of the Swedish Criminal Code (Swedish Government Official Reports 2024:55), was submitted to the Government in September 2024.

Notwithstanding the fact that the Supreme Court has no formal role in the legislative process, the Court, by virtue of the creation of precedent, may nonetheless be said in reality to exercise some influence in the initiation of new or amended legislation.


Ytterligare åtgärder mot
Medieborgarna & medierna En digital värld av rättigheter, skyld
FRAMTID SÖKES – Slutredovisning från den nationella samord
Låt fler forma framtiden! Del A
Politisk information i skolan
Höghastighetsjärnvägens finansiering och kommersiella
Statens bredbandsinfrastruktur som resurs
En annan tågordning – bortom järnvägsknuten
En annan tågordning – bortom järnvägsknuten
Bättre samarbete mellan stat och kommun
Strandskyddet i praktiken
Bilaga 8 LU2015 Forskning, innovationer och ekonomisk tillv
Bilaga 1 LU2015 Sveriges ekonomi – scenarier fram till år 2060
Plats för fler som bygger mer
Långtidsutredningen 2015 Huvudbetänkande
SOU 2015:84
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SOU 2015:80
Stöd och hjälp till vuxna vid ställningstaganden till vård, omsorg och forskning DEL 1
SOU 2015:80
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SOU 2015:77
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Fakturabedrägerier
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Ett tandvårdsstöd för alla – fler och starkare patienter
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Skydd för vuxna i internationella situationer – 2000 års Haagkonvention
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SOU 2015:72
Barns och ungas rätt vid tvångsvård. Förslag till ny LVU. Del A
SOU 2015:71
Högre utbildning under tjugo år

2 Inquiries

When the Government considers implementing a new act, the work is often initiated by the appointment of a government inquiry or committee to investigate the conditions for what it is the Government seeks to achieve. If one person is responsible for the investigation, they are referred to as an inquiry chair. In the event the assignment is carried out by several persons, reference is instead made to a committee. Where constitutional issues are involved, for example, the assignment is carried out by a committee.

The Government makes the assignment by means of terms of reference, i.e. directives, to the inquiry chair or committee. In the terms of reference, the Government sets forth the guidelines for the chair or committee's work as well as the question to be investigated, when the inquiry is to be completed and whether the Government wants the chair to present a proposal for new legislation or legislative amendments. During the course of this work, it is not uncommon for the Government to supplement the terms of reference for the investigation of related issues.

The inquiry chair or the committee chair heads up the inquiry and contributes their experience and expertise to the matter. He or she also participates in convening the experts who will participate in the inquiry. The expert group may consist of persons from affected government agencies, e.g. the police or prosecution authorities, or persons who have done research in the area which is the subject of the inquiry. It may also be of interest to investigate how the relevant question is handled in other legal systems, not the least in the neighbouring Nordic countries.

The inquiry chair or committee is supported by one or more inquiry secretaries. The inquiry secretary gathers and combines material in consultation with the chair or committee and performs legal analyses and deliberates. The conclusions reached by the inquiry and proposals for legislative amendments are formulated in a report submitted ▸

to the Government. The report is subsequently published in the Swedish Government Official Reports or "SOU" series.

Several of the Justices and judge referees in the Supreme Court are experienced participants in inquiry work. Some of the Justices undertake engagements as inquiry chairs or committee chairs based on their expertise and experience. On the other hand, it is not possible to combine employment as a judge referee with that of an inquiry secretary. The work of inquiry secretaries is namely often a full-time position. Normally, it is an associate judge – a lawyer who has undergone special judge training – who is appointed to the position of inquiry secretary. As an inquiry secretary, one must produce a great deal of text material within a limited time, something well within the experience of associate judges.

Norah Lind, who works as a judge referee in the Supreme Court, was previously appointed to the position of inquiry secretary on the committee which presented the report, *A Clearer Provision Regarding Agitation Against a Population Group* (Swedish Government Official Reports 2023:17). It was the task of the committee to consider whether special criminal liability should be introduced for public exculpation, denial or flagrant extenuation of, among other things, genocide and whether the provision regarding agitation against a population group was to be altered in some manner. She worked together with Justice Stefan Johansson, who headed up the work.

Stefan: It is important to carefully analyse the Government's terms of reference since they constitute the framework of the inquiry work. As a Justice, one does not, as a rule, wish to perform what is purely an assignment on commission. For this reason, it is advantageous to have a more open mandate, for example, so that the engagement consists of investigating whether there is reason to amend the legislation and, in such case, to provide a proposal for such amendment.

Norah: As far as I'm concerned, it is important to work with a question that feels interesting and exciting. Also, it would be good if I already possess some knowledge of the subject. For a court-trained lawyer, some aspects of the work of inquiry secretary can involve entirely new work duties. Since each inquiry is its own little government agency, the inquiry secretary's work duties include, for example, being responsible for the inquiry budget and, sometimes, also arranging for a website for the inquiry.

Stefan: It is to be stressed that the collaboration between the chair and inquiry secretary is extremely important and may be pivotal to the result.

Norah: I agree. As inquiry secretary, one must drive the inquiry forward. It is important to have structure, but also good dialogue with the chair.

Justices of the Supreme Court sitting in plenum

3 The continued legislative process

Following conclusion of an inquiry, it is sent to affected parties to obtain their comments. This is referred to as the consultation process and has long been a significant component of the Swedish political decision-making process. Many of those who can be affected are afforded the opportunity to submit their opinions regarding the proposal. These may include anyone from companies and interest groups to government agencies and courts of law. Even if less frequent, it happens that the Supreme Court acts as a consultation body.

After the inquiry work has been concluded, but before the Government takes a decision on a matter, the Government shall have obtained the necessary comments and information from government agencies, organisations and other affected parties. This most frequently takes place by means of a consultation process. Through the process, affected parties can read the proposal and submit their views. By these means, the issues are illuminated in a balanced way and the practical consequences of the proposal can be clarified.

Consequently, the quality of the work of the Government and Parliament improves which, in the long term, is intended to safeguard the rule of the law and the efficiency of the legislative work and application of law. A referral for consideration normally proceeds such that the Government Offices submit the proposal to the consultation bodies in the form of a report or a memorandum for comment. Procuring such comments is also the most common way to satisfy the preparation requirements following from Chapter 7, Article 2 of the Instrument of Government. Most frequently, written statements are requested but the opportunity to provide views orally at a meeting is sometimes used.

Because, among other things, Justices participate in the review of legislative proposals on the Council on Legislation, the Supreme Court is not, as a rule, also a consultation body. However, the Court does sometimes respond to referrals for consideration. A referral for consideration may be presented to the Supreme Court as a court of law or to the Justices of the Supreme Court. In the event a referral for consideration is presented to the Court, the referral is reviewed from the perspective of the Supreme Court, i.e. in light of the activities conducted by the Court and how they may be influenced by the proposal. The response to a referral for consideration is then frequently handled as an administrative procedure.

When a referral for consideration is made to the Justices, the Justices review it based on the respective Justice's experience and in light of their position as a Justice of the Supreme Court. On these occasions, the Justices respond to the referral jointly, and the matter is presented in plenum (with all Justices, even those who are temporarily serving on the Council on Legislation, present). Referrals for consideration submitted to the Justices are quite unusual and often involve major, more comprehensive legislative projects with greater consequence. This was the case, for example, when the Supreme Court Justices were requested to provide an opinion regarding the report, *Enhanced Protection for Democracy and the Independence of the Courts* (Swedish Government Official Reports 2023:12), which pertained, among other things, to central issues regarding the position of the courts.

Individual courts, which then represent the interests to be safeguarded by the national courts, are often involved as consultation bodies.

When the consultation process has been concluded and the Government has considered the views provided, a legislative proposal can then be presented. However, prior to the submission of such proposals to the Parliament, they must, as a rule, be reviewed by the Council on Legislation.

The task of the Council on Legislation is to review legislative proposals affecting legal areas of particular weight such as constitutional amendments and legislation involving individual freedoms and rights, as well as personal and financial circumstances or obligations to the public. The review by the Council on Legislation is intended to examine the manner in which the proposal relates to the fundamental laws and legal system otherwise, the manner in which the provisions of the proposal relate to one another and to the requirements of the rule of law. Furthermore, the Council on Legislation shall examine whether the proposal is formulated in such a manner that the legislation may be assumed to provide for the purposes which have been presented, and which problems might arise upon the application thereof. The Council on Legislation consists of Justices and former Justices of the Supreme Court and the Supreme Administrative Court.

Remissyttrande över promemorian Tilläggspr
Europakonventionen (Ds 2023:7)

DOMSTOLEN


HÖGSTA DOMSTOLEN
SUPREME COURT

4 Creation of precedent in conjunction with new legislation

One reason underlying a decision to grant leave to appeal in the Supreme Court may be that new legislation has entered into force. Yet, the answer to the question regarding when it is suitable for the Supreme Court to create precedent in respect of new legislation is not clear.

On occasion, the Supreme Court must express itself as to the manner in which parts or a certain part of new legislation is to be interpreted and applied. In some cases, the Supreme Court might have reasons to wait and see how the new legislation is applied by district courts and courts of appeal. The Court does so to be able to determine which aspects of the application require clarification through guiding case law. In other cases, it becomes clear that there is a need for precedent the moment the legislation enters into force. Then there is cause for the Supreme Court to promptly adjudicate a relevant case to provide guidance.

Scrutiny by the Supreme Court sometimes reveals that the new legislation has not achieved the sought-after effect. Accordingly, new legislative amendments often follow, as a consequence of which the need for yet additional precedent may arise.

This was the situation involving legislative amendments regarding the penalty for murder. The scale of penalties for murder in the Swedish Criminal Code has been amended three times: 2009, 2014 and 2019. By virtue of the amendment in 2009, the scale of penalties was modified such that the penalty involving a fixed term of imprisonment was expanded to be not less than ten and not more than eighteen years. The purpose of this legislative amendment was to create a more nuanced determination of the penalty for murder and to raise the penalty level for the fixed-term penalty for that crime. In 2014, the provision was amended once again. The intention was to make life imprisonment the "normal" penalty for murder. Jurisprudentially, the proposal proceeded on the basis that it was to be stated in the scale of penalties for murder that the penalty was life imprisonment "if the circumstances were aggravating". The choice of legislative solution was criticised by the Council on Legislation, among others.

In the "Scale of Penalties for Murder" case, case NJA 2016, p. 3, the Supreme Court stated that there was a conflict between the statutory text and the purpose of the legislative amendment as had been expressed in the preparatory works. The conflict was examined by reference

to the principle of legality such that the wording of the act was deemed to have precedence. The statutory text was thus not deemed to entail any change to the previous legal position but, instead, entailed a clarification of it. The circumstances in the case were not considered to be such that there was justification for life imprisonment. Instead, the sanction was a term of imprisonment of sixteen years.

In 2019, the legislature reformulated the murder provision once again to achieve the effect that a life sentence would be applicable to a substantially greater extent than before. The provision now states that, as grounds for life imprisonment, particular consideration is given to whether the act was preceded by careful planning, was characterised by particular cunning, aimed to promote or conceal other offences, involved severe suffering for the victim or was otherwise particularly ruthless. The Supreme Court has subsequently produced additional precedent which addresses the conditions for lifetime imprisonment pursuant to the current formulation of the provision, e.g., the "Murder with the Kitchen Knife" case, case NJA 2021, p. 32, the "Dumbbell Murder" case, case NJA 2021, p. 583, the "Bus Stop Murder" case, case NJA 2023, p. 29 I, and the "Cause of Death" case, case NJA 2024, p. 36.

The Supreme Court's examination of new legislation may also have in view whether the legislative work as such may be said to satisfy the fundamental requirements enumerated in the Instrument of Government. In the "Brief Period of Referral" case, case NJA 2018, p. 743, the question was whether inadequate preparation has the consequence that the regime pursuant to which legislation is created had been disregarded in some material respect in the creation of amendments to the Weapons Act. The Supreme Court observed that the preparation of the amendments in the Weapons Act had been inadequate. The referral period was too short and the justification for the deviation was insufficient. However, there was no support for the conclusion that the consequences for the individual were wholly undetermined or indiscernible. In this context, the inadequacies were not deemed to be so material that the new legislation could not be applied.

The "Glass Shard in the Bag" case, case NJA 2023, p. 265, is one example of when the Supreme Court produced a precedent a short time after new legislation had entered into force. That ruling addressed a new basis for mitigating a sentence which involved participation in the investigation of someone else's crime. The new basis for mitigation of the sentence was implemented on 1 July 2022. In the legislative matter which preceded the implementation, the Council on Legislation sought more thorough guidance for the application of law on the question of how great the reduction of the sanction could be in different cases. The Government stated that the question regarding the extent of the reduction should be decided following an assessment of all circumstances in the individual case. Accordingly, it was apparent early on that guiding case law was necessary for the application of the new provision. On 22 November 2022, the Supreme Court granted leave to appeal in a case which involved such an application. The "Glass Shard in the Bag" ruling was subsequently rendered on 4 April 2023. The Supreme Court applied the new provision and granted a one and a half years' reduction of the sentence taking into account the defendant's participation in the investigation of another person's crime.

Another example of new legislation in response to which the Supreme Court created precedent was the new crime, sabotage of emergency service activities,

Justices from the Supreme Court and the Supreme Administrative Court in a joint presentation of cases regarding the release of public documents

which was implemented in January 2020. The crime makes it punishable to attack or in some other way disturb police activities, rescue services or ambulance care so as to seriously obstruct or impede the performance of a response. One of the difficulties associated with the new legislation was to determine which acts were to be deemed sufficiently serious to be covered by the provision. In this context, the Supreme Court was early in providing guidance and issued two rulings in June 2021 which had in view the acts which may be deemed to be intended to seriously obstruct or impede police activities, i.e. the "Police Checkpoints at Hässelholmen" case and the "Police Chase in Älvdalen" case, case NJA 2021, p. 457 I and II.

The new crime of sabotage of emergency service activities also drew special attention in conjunction with the various riots throughout Sweden in the spring of 2022 which led to several persons being charged for gross sabotage of emergency service activities. The scale of penalties for gross crimes is broad. It covers terms of imprisonment of not less than two years to terms of imprisonment of not more than eighteen years or life sentences. Accordingly, upon application, there was a risk that the district courts and courts of appeal would determine the penalty value for similar acts in very different ways. Since several offenders were often involved in the same attack on the emergency services activities and together caused extensive damage, there could also be difficulties in the determination of individual penalty values for each of the offenders. In the beginning of 2023, the Supreme Court delivered the "Easter Riot in Örebro" case, case NJA 2023, p. 114, which provided guidance on the question regarding the assessment of the gravity of the act and the consideration given to the fact that the act had been committed in a larger context. The district courts and court of appeal had determined that the penalty value for

the acts was terms of imprisonment of five or six years. However, the Supreme Court was of the opinion that the penalty value amounted to a term of imprisonment of three years.

Prosecutions for sabotage of emergency service activities have increased in recent years. The fact that the Supreme Court issued precedent shortly after the new crime was implemented has provided the district courts and courts of appeal with early guidance and facilitated the uniform application of law.

A comparison may be made with the so-called Gothenburg riots which occurred in June 2001 at the EU Summit, which also led to a number of prosecutions for, among other things, violent rioting. This did not involve new legislation. Yet, what had transpired at the EU Summit was a new phenomenon, as well as a challenge for the courts in classifying the acts and knowing which sanctions were to be imposed. In 2002, the Supreme Court delivered several rulings which addressed the events in conjunction with the EU Summit, i.e. the "Gothenburg Riots I" case, case NJA 2002, p. 198, the "Central Despatch" case, case NJA 2002, p. 489, and the "Gothenburg Riots II and III" cases, cases NJA 2002, p. 533 I and II. At that stage, however, a number of other cases pertaining to prosecutions for the events had already been decided and had become legally binding. By virtue of the rulings of the Supreme Court, the penalties were reduced, which caused many defendants in cases in which the judgments had already become final to petition for new trials. However, the possibility of being granted a new trial in conjunction with the change of case law is strictly limited. When there is a risk of such a situation, it is accordingly desirable that the Supreme Court provides guidance soon after the new legislation or change in circumstances in the world at large.

Frequently, upon the occurrence of new phenomena in society, even existing legislation is viewed in a new light, giving rise to the need for new case law. An example of this is the "Internet Wine Shop" case, case NJA 2023, p. 593, which dealt with e-commerce in wine sold to consumers in Sweden. In that case, such sales activities were not deemed to have occurred in Sweden and were thus not in violation of the Swedish Alcohol Act.

As mentioned previously in *The right of initiative* article, the Supreme Court's rulings may also shed light on the need for new legislation. Such a situation was addressed in an addendum to the "Airline Concession" case, case NJA 2021, p. 1093. A judgment from the Court of Justice of the European Union made it clear that there was a requirement of a right to judicial proceedings and a determination that discrimination had occurred. According to the Supreme Court, this had the consequence that the way in which Swedish procedural law was to be adapted to the stated requirements must be considered. Such consideration, however, was such that it was to be suitably established by the legislature and not by the courts in individual cases. Following the ruling, work involving such legislative amendments is now underway.

As illustrated, there are several factors which may determine when it is suitable for the Supreme Court to provide guidance through precedents. It is often desirable that precedents relating to new legislation or new phenomena are created shortly after the need arises, while there is sometimes cause to wait. However, it is not a given that a relevant case will make it all the way to the Supreme Court precisely when the need for precedent arises. In such cases, the Supreme Court can do little else than wait for a suitable case.

Norrköping, 17 April 2022, during the so-called "Easter Riots".

Photograph: Andreas Bardell, Aftonbladet


De lege

The Instrument of Government – a 50-year jubilee with a long tradition

On 6 March 2024, it was 50 years since the 1974 Instrument of Government was promulgated. This was recognised in several ways during the year, including by the Parliament. The jubilee was also celebrated by the Supreme Court.

The Instrument of Government is the most central of Sweden's fundamental laws. It provides for the manner in which Sweden is to be governed and the conditions for international relations, as well as establishes the rights of every individual.

As early as in the provincial laws of the Middle Ages, there was something that may be said to have preceded the constitutionally enshrined rule of law. The Uppland Law (1296) expressed it thusly: *"Land skulu mæþ laghum byggiæs. ok æi mæþ walz wærkum. þy at þa standæ land wæl laghum fylghis"*, i.e. Lands shall be created by laws and not acts of violence, for the land fares well when laws are obeyed. However, it was only when King Magnus Eriksson organised the realm under one and the same law in the 1350's that the first predecessor of the Instrument of Government may be said to have been created. This Country Law contained namely a king's code and a royal oath in which the king swore to uphold certain principles of right and wrong.

King Gustav II Adolf also swore a royal oath when he assumed the throne in 1611 and, in respect of certain important issues, also vowed to seek the consent of the Council and estates – a sort of allocation of power. Following the death of the king in Lützen in 1632, Sweden's first instrument of government was approved in 1634. This had been drafted by Chancellor Axel Oxenstierna and was amended through the so-called Additament of 1660. Yet, as early as during the reign of Gustav II Adolf, but particularly during the latter Carolingian Dynasty, the principles emerged according to which royal power came to play an even smaller role. However, following the death of Karl XII and by virtue of the government reforms of 1719 and 1720 during the Age of Freedom, power was returned to the Parliament relatively extensively. This period of freedom came to an end in 1772 with Gustav III's *coup d'état* and the new Instrument of Government which once again augmented the power of the king. The king himself subsequently wrote an addendum to the Instrument of Government – the Union and Security Act – which was adopted in 1789. By virtue of this act, the king enjoyed a stronger position and the power of the aristocracy was diminished. King Gustav IV Adolf was deposed when Sweden lost the war against Russia in 1809 and, thereby, Finland among others. This chaotic situation confronting Sweden gave rise to

Launch of the Faculty of Law's yearbook, *De Lege 2024*, which was dedicated to the Instrument of Government as a consequence of its 50-year jubilee

In the foreground, former and current Presidents of the Svea Court of Appeal Johan Hirschfeldt and Mari Heidenborg in conversation with Justice and former President of the Svea Court of Appeal Anders Perklev (with his back to the camera)

the need for a new instrument of government which would limit royal power and bring to bear an allocation of power according to which even Parliament and the Government exercised influence. A proposal was made after a mere several weeks' work by the Committee on the Constitution and, most of all, its secretary, Hans Järta. The 1809 Instrument of Government was adopted on 6 June and endured until the adoption of the 1974 Instrument of Government. At that time, it was one of the oldest constitutions in the world.

The work involving the new Instrument of Government had its origins in a desire to constitutionally anchor the democratic form of government which had been instituted in 1919 by virtue of the decisions regarding universal and equal voting rights for men and women. The Instrument of Government was also to codify the manner in which Swedish society had actually come to be governed.

In one way, the 1974 Instrument of Government may be said to be a break from history in that the governmental function of the monarchy was done away with and, with it, the royal oath of the Middle Ages. Yet, the Instrument of Government may also be said to be a continuation of a long tradition of gradual adaptations of the Constitution.

The 1974 Instrument of Government has changed throughout the years. Important reforms have included the expansion of the protection of the fundamental freedoms and rights as well as the incorporation in the Constitution of the right of the courts to conduct judicial review, both implemented in the 1970s. A substantial reform was also carried out in 2010. Among other things, the independent position of the courts was highlighted and the conditions for judicial review by the courts were altered in that the so-called *obviousness requirement* was done away with.

Completely untouched since its promulgation, the initial paragraph states simply:

All public power in Sweden proceeds from the people.

Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. It is realised through a representative and parliamentary form of government and through local self-government.

Public power is exercised under the law.

History echoes these words. This formulation may be described as the way of expressing in our time that the country shall be built by laws. Yet, this section of law does not merely express lofty words. The Supreme Court has in mind the last paragraph of this section in many precedential cases. The fact that public power is to be exercised under the law is brought to the fore in the balance between the jurisdiction of the Supreme Court and the legislative authority of Parliament. It is one way in which the Instrument of Government makes itself applicable in the day-to-day work of the Court.

The 50-year jubilee celebrating the Instrument of Government was marked by the Supreme Court with a seminar in cooperation with the Supreme Administrative Court and the Uppsala University Faculty of Law. This seminar was occasioned by the law faculty's dedication of the 2024 edition of its annual publication series to addressing the jubilee. One chapter in the book, by senior lecturer and associate professor in legal history Bruno Debaenst, places the 1974 Instrument of Government in the context of legal history and has served as a source of inspiration for this brief account of the Instrument of Government and Swedish constitutional history.

The Supreme Court's library and legal research

During its first years of existence, the Supreme Court's library was small enough to be accommodated on the judges' tables in the courtroom. Today, the collection comprises over 20,000 titles and is managed by a full-time librarian. The library also plays a central role in the work of the Court.

Sofia Sternberg started working as the Supreme Court librarian in 2016. Formerly, she was the librarian at the Uppsala University law library and worked as a lawyer prior to assuming that position. She considers this a great asset in her day-to-day work.

"It makes it easier both to get an overall view of the material which is available in a legal area and to then produce the relevant material. When I get a request, I can hopefully also offer some additional reading tips."

However, possessing such a high degree of specialisation in a library is unusual in Sweden.

"I believe that the Supreme Court is unique in this way. One of my predecessors also had a law degree. Nowa-

days, however, there are hardly any large, purely legal libraries remaining. They are mostly found in the courts, some large law firms, the Swedish Prosecution Authority and some of the university towns which still have them. In other countries, however, large legal libraries with librarians who have worked as lawyers are more common. Sometimes they have also completed doctoral studies in law."

In addition to legal literature and case collections, the library also contains great quantities of public documents and periodicals. Not even Sofia knows how extensive the collections are.

"Through the years, the library has grown substantially through, among other things, donations and consolidations with other libraries. When the old card catalogues were replaced with digital library systems, not all material was uploaded into the system."

Even if the library primarily consists of material concerning Swedish law, it contains some international materials, primarily from the Nordic countries. As regards the foreign elements, the library has a practical focus rather than a theoretical one.

"The international literature consists mostly of commentaries on regulations and conventions. There are also standard works on Nordic law. This applies in particular to the area of property law. The legislation of the Nordic countries in this area is similar, which is why these works are used relatively extensively."

Like the Court in general, the library has been digitalised more and more in recent years. Currently, the largest annual expenditure for the library is subscriptions to various legal databases.

"Today, essentially all court rulings and much of the core legal literature is digitally available via legal databases, and the Parliament and National Library of Sweden have digitised older preparatory works. There is also a project I am engaged in to make older legal literature digitally available to the public without charge at www.juridikbok.se. Even so, many of the older and printed legal sources available in the library's storage are still used. Some of the materials I lack in digital format in particular are older editions of the *Journal of Collected Judgments II, the Ministry Publications Series* and the older Swedish statutory documents – these really should be digitised.

In some fashion or other, the library is put to use in practically all cases decided by the Court. It is used principally by the drafting law clerks and judge referees both for legal research prior to examining leave to appeal and the final substantive review which illuminates the issues in the case. The legal research varies in scope depending on the character of the case. When a case is to be adjudicated, all relevant legal sources are to be produced.

"The library provides assistance mainly during the preparation of the presentation of a case in which leave to appeal has been granted. It is not uncommon that the legal research then covers both domestic and European statutes, preparatory works, case law and legal books and articles."

The amount of help needed from Sofia and the stage at which she provides it also varies.

Christoffer Stanek
Judge Referee

Sofia Sternberg
Librarian

"It is mostly when needed to produce material relating to international or foreign law. It may then necessitate searches in special legal databases or even orders from other libraries. The judge referees working from Gothenburg and Lund need my help most since they do not have physical access to the library in Stockholm. Overall, the assistance required varies greatly. Some request help in finding some additional material only at the end of their legal research. Others pose more general questions throughout the process.

For her part, Sofia currently wields a great deal of knowledge about how she can best do searches in the library.

"I usually begin with the more readily accessible sources such as legal commentaries, other standard works and e-zines, and then I look further through references to other works. In our library catalogue, a number of books are also searchable at the chapter level, e.g. commemorative articles. Furthermore, thesis papers from the university law programme are not to be underestimated. They often contain relevant sources in the area."

Also, Sofia thinks that it is particularly stimulating to assist with legal research in precedential cases.

"Following the thought processes during the legal research until the final ruling is really interesting, particularly in the more extensive or complex cases."

She also specifically remembers some of the legal research projects in which she has assisted.

The *Girjas* case, case NJA 2020, p. 3, was exciting given all the very old material to be sought. In addition, the international component of the *Universality Principle* case, case NJA 2022, p. 796, was also stimulating.

Cases in brief 2024

CIVIL LAW

Insurance covered the losses incurred when the roof collapsed in a furniture store

(The "Furniture Store in Boden" case, case NJA 2024, p. 52)

The roof of a furniture store in Boden collapsed and rendered, among other things, the shop part a total loss. The owner of the property had a combined business insurance policy. He requested compensation from the insurance company and stated that defects in the roof construction had caused the collapse. The insurance company stated that the event of loss was caused by the snow load and that this was not covered by the policy. The Supreme Court stated that the policy contained a basic component which covered certain natural losses such as snow loads and an all-risk component which covered other losses. The Court concluded that the compensation pursuant to the all-risk component was excluded only in the event of losses covered by the basic component. The all-risk component – where the loss was sudden and unforeseen – could cover events of loss associated both with snow loads on the roof and deficient building construction. According to the Court, the loss was sudden and unforeseen. Accordingly, compensation was to be paid from the all-risk component.

Late fees in consumer credit agreements

(The "Late Fees" case, case NJA 2024, p. 86)

The Consumer Ombudsman brought an action and claimed that a bank was to be prohibited from using a contract term according to which a consumer was obliged to pay a late fee in conjunction with a delay in payment. According to the Consumer Ombudsman, the term was contrary to compulsory legislation in the Collection Costs Act. The Supreme Court concluded, however, that the term was not in contravention of the compulsory rules.

In conjunction with an application to register title, consent from the transferor's former spouse can be required even where a lengthy period of time has elapsed since the divorce

(The "Consent to Property Transfer" case, case NJA 2024, p. 244)

A man transferred half of a property to his cohabitee. The property had previously been a joint residence of the man and his then wife. The marriage was dissolved more than 30 years ago, but distribution of the estate assets had not yet occurred. An application for registration of title for the cohabitee was declared stayed by the registration authority since no written consent had been submitted by the transferor's former spouse. It follows from the rules in the Marriage Code and the Land Code that such consent must, as a rule, be granted when distribution of the estate has not occurred in the previous marriage. The Supreme Court was of the position that the consent requirement cannot be waived merely on the basis that a long period of time had elapsed since the marriage was dissolved and rejected the appeal.

A judgment regarding evidentiary requirements in a case regarding compensation to an injured patient

(The "Treatment Injury II" case, case NJA 2024, p. 277)

According to the Patient Injury Act, a care provider must have patient insurance which provides patients the right to patient injury compensation. Compensation for so-called treatment injuries is to be paid where there is a predominant probability that a personal injury has been caused by a treatment provided that the injury could have been avoided in some manner. The patient bears the burden of proof for both facts. The Patient Injury Act states that a less stringent evidentiary requirement – predominant probability – is to be applied to

the question of causal connection. The Supreme Court found that the less stringent evidentiary requirement is to be applied also to the issue of whether the injury could have been avoided.

A school student was discriminated against in that the student did not receive adequate support

(The "Primary School Student's Support Need" case, case NJA 2024, p. 386)

A municipal school carried out an investigation which demonstrated that an elementary school student needed special support, but the school never took any steps to provide such support. Six months later, the student was diagnosed with autism and then changed schools. The Swedish Schools Inspectorate criticised the school for having violated the requirements of the Schools Act imposed in situations when the need for special support arises. The student brought an action against the municipality and requested compensation for discrimination by insufficient accessibility. The Supreme Court observed that the school had already found, prior to the diagnosis, that the student needed special support but failed to arrange for the same. The tangible consequences were that the student, during a period of six months prior to the diagnosis, was deprived of a substantial part of their schooling. This was the tangible negative consequence of the discrimination. Accordingly, the municipality was ordered to pay the student discrimination compensation in the amount of SEK 20,000.

Damages pursuant to the European Convention on Human Rights were time-barred

(The "Foster Care Placement" case, case NJA 2024, p. 424)

In the beginning of the 1970's, a woman was placed in foster care by the municipality. In December of 2021, she brought an action, among other things, for sexual abuse which she allegedly suffered in foster care. She requested damages and referred to the municipality's failure to fulfil its supervisory responsibility and violation of her rights under the European Convention on Human Rights. The Supreme Court concluded that the claim for damages was time-barred. According to the Limitation Act, a claim is time-barred ten years after it has arisen unless the limitation period is interrupted before then. The judgment explains the manner in which the application of the Limitation Act relates to the requirements of the Convention. The right to damages in the event of a violation of the Convention has developed in case law since 2005. As a consequence of the legal development, the European Court of Human Rights has ruled that, since 3 December 2009, a generally applicable principle in Swedish law does permit damages to be awarded for a violation of the Convention. According to the Supreme Court, that date shall also form the starting point for the limitation period for a claim based on an earlier violation of the Convention.

The principal's assumption of risk and risk awareness in conjunction with tax advice

(The "Structure" case, case NJA 2024, p. 445)

The Swedish Tax Agency raised the tax assessment on partners of a close company and taxed the funds paid to them as salaries. The partners then demanded damages from their tax advisor for negligent tax advice. An advisor has a responsibility in relation to their principal for losses caused by the advice provided. As regards liability in damages, it is normally insufficient that the advice does not lead to that which was sought but, rather, it is necessary that the advisor has caused the loss through carelessness. The principal's assumption of risk and risk awareness must be taken into account in the determination. The tax advice in the relevant case had major flaws. The partners, however, must have understood that there were tangible risks in the arrangement and that it entailed that the funds were taken out of the company without being taxed and that they themselves received substantial un-taxed amounts. Taking into account the partners' assumption of risk and risk awareness, the advice was accordingly not the basis for damages and their action was rejected.

Ruling regarding custody and visitation

(The "Visitation Failure" case, case NJA 2024, p. 480)

In connection with the separation of two parents in 2015, the mother and children, nine and ten years' old, moved to sheltered housing. Thereafter, they resided at a location far from the father and had protected personal data. The district court granted visitation with the father, but it occurred on only a few occasions. The mother opposed additional visitation by reference to the risk that the children could disclose their residential address. The Supreme Court made the determination that the protected personal data was not an adequate reason to withhold from the children the right to visitation. Accordingly, the mother had failed in her care of the children as regards seeing to their need to have contact with the father.

Following an overall assessment, the Supreme Court nonetheless came to the conclusion that it was in the best interests of the children that the mother retained custody. Consideration was given, among other things, to the fact that one of the children had been diagnosed with autism and was in great need of consistency and predictability in their environment. At the same time, it was established that the children would continue to have a right to visitation with the father for which the mother was ordered to participate under penalty of a fine.

Ruling regarding the Planning and Building Act

(The "Starting Clearance in Barkaby" case, case NJA 2024, p. 549)

Normally, a building permit is necessary for new construction. Construction work which requires a building permit may not get underway before the local building committee has given starting clearance. Starting clearance entails a certain position as to whether the buildings, when they are complete, will meet the requirements of the Planning and Building Act. A building normally cannot be put to use before the local building committee has issued a final certificate. In the current case, the local building committee had granted a building permit for new construction of a multiple family dwelling in Barkaby and granted starting clearance. During the construction, the question arose as to whether the fire brigade could evacuate the dwellings in a sufficiently short period of time. The local building committee refused to issue the final certificate by reference to the deficiencies in fire safety. The Supreme Court found that the question regarding multiple family dwellings is such that the requirement that persons present in the building can be rescued in the event of a fire is part of the so-called technical performance standards and that the starting clearance does not entail that the committee has adopted a final position as to whether the technical performance standards are fulfilled. The starting clearance did not thereby constitute any impediment to deny the final certificate.

No dividends on redeemed shares

(The "Redeemed Preference Shares" case, 14 November)

In a limited company which was a so-called CSD-registered company, the general meeting resolved to pay dividends to the preference shareholders on certain record dates. Before all dividends had been disbursed, the company redeemed the preference shares. The question in the case was whether the limited company was obliged to pay to the previous preference shareholders the dividend which had already been decided notwithstanding that the shares had become invalid by virtue of the redemption procedure. The Supreme Court reached the conclusion that, in conjunction with a decision regarding dividends on a share in a CSD company, unless otherwise prescribed, a condition for the dividend claim is that the relevant share has not been struck out on the record date and rendered invalid due to a lawful redemption process. The claim which per se arose by virtue of the relevant dividend decision was conditional upon the existence of the share on the record date. Accordingly, no right to the dividend could be asserted.

CRIMINAL LAW

A theft in a residence was not deemed to constitute gross theft

(The "Piano Mover" case, case NJA 2024, p. 12)

A man was to provide moving help in conjunction with a piano purchase and was accordingly allowed into the seller's residence together with the buyer. When the seller and the buyer went into another room, the man took a wallet from a jacket in the hallway. The district court and court of appeal found the man guilty of gross theft. The Supreme Court stated that the fact that the theft occurred in a residence does not mean that the grounds for the qualification, "immediate vicinity", was to be applied in any manner other than as applies to other locations. Immediate vicinity means that the object is in physical proximity to the victim. In this case, the wallet was not in physical proximity to the victim. Nor were there any other circumstances which could classify the crime as gross. The man was found guilty of theft of a normal degree.

Assault causing death was deemed to be murder

(The "Cause of Death" case, case NJA 2024, p. 36)

A man assaulted his cohabitee in a particularly gross manner and she died shortly thereafter. The man was prosecuted for murder. The court of appeal was of the opinion that, even if the most likely cause of death was the injuries to the woman's brain which were caused by the violence, it was possible that the death could have been caused by drug poisoning. Accordingly, the court of appeal found the man guilty of exceptionally gross assault. The question in the Supreme Court was whether the violence

and the injuries resulting therefrom had caused the woman's death. The Supreme Court found that, where there are several possible causes of an effect, it is sufficient for criminal responsibility that the accused's actions constituted a contributing cause of the effect. It is not necessary that it was the only or principal cause. It is an evidentiary question whether the action had a particular effect, and it is the prosecutor who is to prove that the causal connection exists. The Supreme Court reached the conclusion that the woman's brain injuries were, in any case, a contributing factor to her death. Accordingly, the Supreme Court sentenced the man for murder to life imprisonment.

A case about rape

(Case NJA 2024, p. 106)

A man was prosecuted for rape. He inserted fingers in his girlfriend's vagina, according to him for the purpose of verifying whether she had been unfaithful. The Supreme Court stated that the girlfriend, at the relevant time, had voluntarily participated in certain sexual acts, but that this did not mean that other types of sexual acts, occurring on the same occasion, were also to be considered voluntary. According to the Court, the act prosecuted clearly differed in its nature and in the manner in which it was carried out from the other acts in which the girlfriend voluntarily participated. It was an act for which she was not at all prepared. The Supreme Court was of the opinion that it was further shown that the man carried out the measure despite knowing that she did not wish to be subjected to such an act. He was found guilty of rape, less serious offence.

The accused did not have a fair trial

(The "Doctor Witness" case, case NJA 2024, p. 166)

A woman was prosecuted for having stabbed her then husband in his stomach with a knife. She was acquitted in the district court. During the main hearing in the court of appeal, witness testimony was obtained via video link with the doctor who had operated on the husband. At the time of the testimony, the doctor was in custody for gross drug crimes. The prosecutor was aware of this. The court of appeal was aware that the doctor was in custody, but did not know for which type of crime. The accused and her attorney, on the other hand, had not received any information that the doctor had been placed in custody. The court of appeal, which relied on certain of the doctor's information, among other things, found the woman guilty of gross assault and gross violation of a child's integrity. The Supreme Court found that the prosecutor and the woman were not on equal footing in the proceedings and that the woman did not have adequate possibilities to defend herself against the prosecution. The judgment of the court of appeal was set aside and the case was remanded to it.

A man was convicted of aggravated drunken driving despite assertion of sleep-driving

(The "Sleepwalking Defence" case, case NJA 2024, p. 174)

A man who was under the influence of alcohol drove a passenger car at nighttime for approximately seven kilometres before the journey came to an end at a roundabout. The man, who was charged for aggravated drunken driving, objected that he had been driving in his sleep. The Supreme Court clarified that the criminal significance of somnambulism should be assessed as a question of intent. Intent presupposes that the offender was in some degree of awareness regarding his actions. The Court observed that it was a matter of rather complex and protracted actions involving a not-inconsiderable number of observations, decisions and active manoeuvres by the vehicle operator. It seemed extremely unlikely that he was so unaware of his context and surroundings that he failed to realise while driving that he was driving. The man was deemed to have acted intentionally and was convicted of aggravated drunken driving.

Seizure of memory card with journalistic material was in violation of the Fundamental Law on Freedom of Expression

(The "TV4's Memory Card" case, case NJA 2024, p. 502)

A photographer from TV4 was suspected of having filmed in or into a court room during a court hearing, which is punishable. The police authority decided to confiscate the memory card that was in the camera. The question was whether the seizure was compatible with the freedom to procure information and the prohibition against obstructive measures as stated in the Fundamental Law on Freedom of Expression. The Fundamental Law on Freedom of Expression contains certain fundamental principles which govern intervention by public authorities which may be carried out in respect of material protected by the constitutional regulation. One such principle is the freedom to procure information. It means that everyone is free to procure information on any subject for the purpose of communicating or publishing it in a constitutionally protected medium.

The prohibition against the ban on obstructive measures entails that it is not permissible for an authority or other public body to prohibit or prevent the production, publication or dissemination to the public of an article or other written material, or of programmes or technical recordings. The Supreme Court clarified that the application of the prohibition against photography in the Code of Judicial Procedure does not conflict with the constitutional freedom to procure information. The reason for this is that the penal provision only concerns the method of procurement, which is not covered by the constitutional protection. The seizure of the journalistic material in question was contrary to the prohibition against obstructive measures. There was therefore no legal basis for confiscating the memory card.

A teacher was acquitted of sexual molestation

(The "Teacher's Comment" case, case NJA 2024, p. 564)

During a lesson, a 15-year-old student tried a weightlifter's belt by affixing it outside her sweater. When the teacher saw this, he said, "Wow, what large breasts you have now." The district court and court of appeal sentenced the teacher to day-fines for sexual molestation. In order for someone to be found guilty of sexual molestation, it is necessary that the act had a clear sexual bearing or tone. According to the Supreme Court, the comments by the teacher appeared to be a spontaneous reaction to what had occurred and did not entail any sexual connection other than that it pertained to precisely the student's breasts. In the Court's view, the statement was inappropriate and unsuitable but did not regard it as having such clear sexual bearing or tone that it fell within the punishable area. Accordingly, the Supreme Court acquitted the teacher.

A request for release of film material was rejected

(The "Filmed Riot" case, 20 September)

A riot broke out in conjunction with the burning by a demonstrator of the Koran. A number of photographers filmed the events for news reporting. Following the events, a preliminary investigation was launched which, among other things, related to the question of whether any of the demonstrators had committed gross sabotage of emergency service activities. The media companies did not wish to voluntarily surrender their raw material of the events and the prosecutor turned to the court and requested that the material be surrendered. The Supreme Court made the determination that there was no risk that a surrender would entail that the media companies' sources would be disclosed but observed at the same time that it involved material which had been obtained for publication purposes and in respect of which the media companies had a fundamentally strong interest in not being compelled to surrender it. Since the prosecutor had not specified criminal suspicions, the Court was of the opinion that a determination could not be made whether the prosecutor's interests in obtaining access to the material was sufficiently strong to set aside the interests of the media companies. Accordingly, the prosecutor's request was rejected.

The best interests of the child were taken into account in the choice of sanction for a parent who had sole custody of the child

(The "Mother's Commercial Money Laundering" case, 24 October)

A parent was sentenced by the court of appeal for, among other things, commercial money laundering, gross offense, to one year and six months' imprisonment. The Supreme Court found that the penalty value for the crime committed was equal to one year's imprisonment. The Court emphasised that the penalty value of commercial money laundering cannot be linked to the penalty value of property crimes in the same way as in the case of money laundering offences since, in the case of commercial money laundering, the prosecution does not have to prove that the property derives from an offence or criminal activities. The Supreme Court further observed that, when the penalty for a parent is to be determined, the negative consequences of the penalty for his or her child can affect the sentencing and choice of sanction. The importance of a child's interests has been concretized and, to a certain extent, enhanced by virtue of the fact that the United Nations Convention on the Rights of the Child applies as Swedish law. The Court concluded that the child would be disproportionately and unreasonably affected if the parent were sentenced to imprisonment, and that this would be clearly incompatible with the best interests of the child. The parent accordingly received a conditional sentence and imposition of day-fines.

Fraud by means of false information in an application for home loan

(The "Home Loan Fraud" case, 20 November)

A person purchased a cooperative apartment and, in conjunction therewith, was granted a loan in the amount of just over SEK 1.5 million. In the loan application, the home loan customer claimed a substantially higher income than was the case in reality and he provided erroneous information according to which he was debt-free and had permanent employment. Together with the application, he submitted falsified wage statements and work certificates. When the bank subsequently learned of this, the bank terminated the loan, as a consequence of which no actual loss was incurred by the bank. The Supreme Court observed that a loss arising from credit fraud exists where the lender, as a consequence of a deception, assumes a more tenuous claim than that which can be determined based on the information in the loan application or, in other words, that the loan granted was associated with a greater risk of loss than that which could be foreseen. In conjunction with fraud, the mere risk of ultimate loss involves financial damage. Such is also the case even where the loss is never actually realised. The home loan customer was thus found guilty of gross fraud by use of false documents. The sanction imposed was a conditional judgment and fine.

An employer's actions against an employee's media statements were considered criminal

(The "Care Company's Reprimand" case, 20 November)

Two representatives of a care company issued a written reprimand to an employee for critical statements she had made in the media about the company's handling of the COVID-19 pandemic. Since 2017, there has been a special law which provides employees in certain private enterprises the same right as public employees to communicate information to the media without the risk of reprisals. Only certain specifically designated acts on the part of the employer carry criminal liability. The Supreme Court noted that an employer's issuing of a warning, if given due to an employee exercising his or her freedom to communicate information, may constitute a criminally punishable act on the part of the employer. In order to involve criminal conduct, it is necessary that the warning carries a strikingly firm message. The Supreme Court was of the opinion that the communication in the relevant case carried such a message. Accordingly, it involved a criminal imposition of a disciplinary sanction. The Supreme Court affirmed the judgment of the court of appeal imposing day fines.

An exclusion order during parole which covered the convicted person's residence was not proportionate

(The "Dwelling Exclusion Order" case, 19 December)

A person was on parole from a prison sentence. The Swedish Prison and Probation Service decided that he could not be present within certain areas which also included his dwelling place. The Supreme Court stated that it is necessary that such a compulsory measure is proportionate. The prohibition is to reduce the risk that the sentenced person re-offends or otherwise facilitate the sentenced person's adjustment to society. Since a prohibition against being present in the dwelling place is a highly intrusive measure, it is necessary that the Swedish Prison and Probation Service can present at least some clear, tangible circumstance for the measure which may be associated with precisely the dwelling place. In the relevant case, no such circumstance had been provided and the convicted person had become homeless as a consequence of the decision. A mere minor adjustment to the exclusion order– that a short stretch of road was excepted – was necessary in order for the dwelling place not to be covered. The Court thereby determined that it was not proportionate that the exclusion order covered the residence.

Criminal liability for deficient supervision of a child

(The "Hökmosse Beach" case, 20 December)

A father requested that his adult son keep an eye on three younger siblings who were at a bathing platform. One of the siblings, who was three years' old, fell into the water and nearly drowned. The district court and court of appeal found the adult son guilty of causing bodily injury. The Supreme Court examined what was required for someone to be deemed to have undertaken to temporarily supervise a child in such a way that criminal liability can arise in conjunction with the failure to fulfil such undertaking. The Court concluded that it is required that the person assuming the responsibility has the capacity to carry out the task and that he or she has understood the meaning of his or her undertaking. The second prong of the requirement was not deemed to be fulfilled in this case. The adult son was acquitted.

The year in brief

19 January
Justice Johan Danelius attended the opening ceremony and seminar of the International Criminal Court in The Hague.

26 January
Head of Division Gudmund Toijer and Justice Stefan Johansson attended the opening ceremony and seminar of the European Court of Human Rights in Strasbourg.

14 February
Reconstruction of the Supreme Court's main entrance with a new security passage was inaugurated. Swedish National Courts Administration Director-General Thomas Rolén, a number of heads of courts and persons involved in the planning and execution of the reconstruction were present.

10 April
The Supreme Court was visited by Crown Princess Victoria and Prince Daniel and entourage. President Anders Eka, Head of Division Gudmund Toijer, Justice Malin Bonthron, Administrative Director Jens Wieslander, Judge Referee Anton Dahllöf, Drafting Law Clerk Sonia Sadik and Administrative Junior Judges Oskar Persson and Ingrid Axelsson attended from the Supreme Court.

22 April
The Supreme Court visited Örebro District Court. The visit concluded the Supreme Court's study-visit project which entailed that all district courts and courts of appeal in the country were offered a visit to or from the Supreme Court. Justice Svante O. Johansson, Head of Drafting Division Sofie Westlin, Judge Referee Axel Johnsson, Drafting Law Clerk Amanda Wigow, Court Clerk Charlotta Luthman and Administrative Junior Judge Ingrid Axelsson participated from the Supreme Court.

1–3 May
President Anders Eka participated at the Court of Justice of the European Union's judges conference in Luxembourg.

17 May
The Supreme Court received a visit from upper-secondary school students from Katedralskolan in Lund. Justice Johan Danelius, Administrative Director Jens Wieslander, and Administrative Junior Judges Oskar Persson and Ingrid Axelsson participated from the Supreme Court.

26–29 May
President Anders Eka participated at a meeting in Dublin, Ireland arranged by the Network of the Presidents of the Supreme Judicial Courts of the European Union.

3 June
The Supreme Court, the Supreme Administrative Court and the Faculty of Law of Uppsala University arranged a joint launch of the Faculty of Law's yearbook, *De Lege 2024*, which was dedicated to the Instrument of Government as a consequence of its 50-year jubilee.

9 June
The final of the Nordic Law Competition on Human Rights was held at the Supreme Court. Justices Eric. M. Runesson and Johan Danelius participated as judges in the competition.

22–23 August
Several Justices, judge referees and drafting law clerks from the Supreme Court participated in the Nordic Conference of Jurists in Copenhagen, Denmark.

28–30 August
Administrative Director Jens Wieslander participated in a meeting for administrative directors of the Nordic Supreme Courts arranged in Reykjavik, Iceland.

4–6 September
The Supreme Court and the Supreme Administrative Court jointly arranged a meeting of the presidents of the Nordic Supreme Courts. The meeting was held in Tällberg. President Anders Eka, Head of Division Gudmund Toijer and Administrative Director Jens Wieslander participated from the Supreme Court.

9–12 September
The Supreme Court received a judge from the French Court of Cassation within the context of an exchange programme arranged by the Network of Presidents of the Supreme Judicial Courts of the European Union.

10 September
President Anders Eka participated in the opening of Parliament.

19 September
The Supreme Court arranged a meeting for retired and current Justices.

20 September
The Supreme Court received a visit from the Northern Dahl Association of Lay Judges. Administrative Director Jens Wieslander and Administrative Junior Judge Mattias Lindner participated from the Supreme Court.

27 September
President Anders Eka participated in the recognition of the Gothenburg District Court's 400-year jubilee.

27 September
The Supreme Court received a visit from the Värmland Association of Lay Judges. Administrative Director Jens Wieslander and Administrative Junior Judges Ingrid Axelsson and Mattias Lindner participated from the Supreme Court.

2–5 October
President Anders Eka participated in a conference in Athens, Greece, arranged by the Network of Presidents of the Supreme Judicial Courts of the European Union. The conference addressed issues such as the impact of European law on national law and the attractiveness of the judge profession.

23 October
The Supreme Court received a visit from the Supreme Administrative

Photograph of the visit to the Supreme Court by Crown Princess Victoria and Prince Daniel

Court of Italy. Justice Eric M. Runesson, Head of Drafting Division Jenny Engvall and Administrative Junior Judges Ingrid Axelsson and Mattias Lindner participated from the Supreme Court.

23–24 October
The Supreme Court and the Supreme Administrative Court jointly arranged the autumn Stockholm Package during which fifty associate judges from Sweden's courts of appeal and administrative courts of appeal visited several state employers in Stockholm including the Supreme Court, the Parliamentary Ombudsman, the Office of the Chancellor of Justice, and the Government Offices. Justices Stefan Reimer, Malin Bonthron and Petter Asp as well as Judge Referees Mathilda Rydstern, Veronica Olofsson and Leo Nilsson Nannini participated from the Supreme Court.

5 November
The Supreme Court received a visit from the Hälsingland Association of Lay Judges. Administrative Director Jens Wieslander and Administrative Junior Judge Mattias Lindner participated from the Supreme Court.

6 November
A seminar was arranged at the Supreme Court for the Justices of the Supreme Court and Supreme Administrative Court with, among others, an external speaker from the University of Stockholm. Justice Petter Asp from the Supreme Court held a speech.

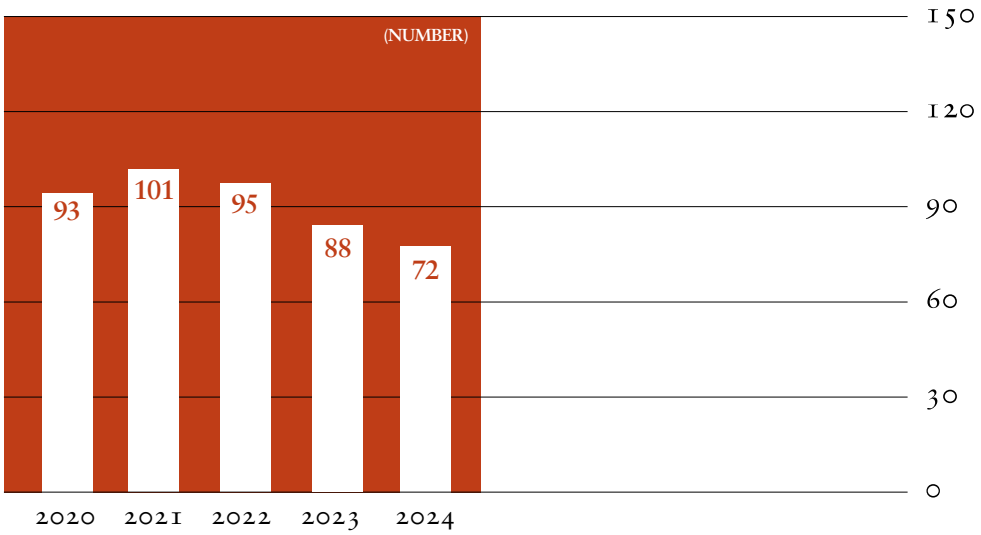
20 November
The Supreme Court received a visit from European judges and prosecutors who visited Sweden within the context of the European Judicial Training Network exchange programme (AIAKOS). Head of Division Gudmund Toijer, Administrative Director Jens Wieslander and Administrative Junior Judge Mattias Lindner participated from the Supreme Court.

4 December
The Supreme Court received Minister of Justice Gunnar Strömmer and delegation. President Anders Eka, Head of Division Gudmund Toijer, Justices Agneta Bäcklund and Stefan Johansson, Administrative Director Jens Wieslander, Head of Drafting Division Jenny Engvall, and Administrative Junior Judges Ingrid Axelsson and Mattias Lindner participated from the Supreme Court.

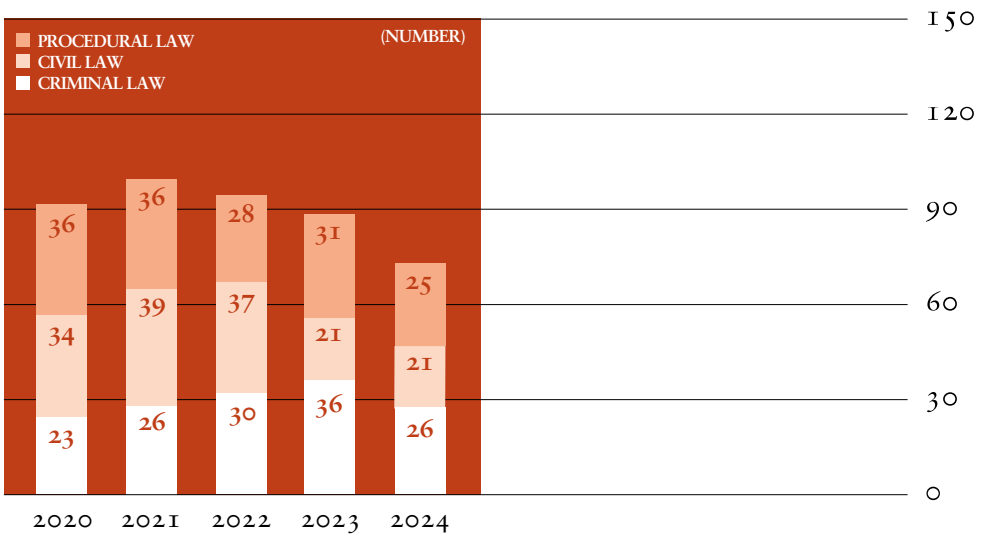
9 December
A criminal law seminar was arranged for employees of the Supreme Court with external speakers from the University of Uppsala and the Committee on Penal Reform. President Anders Eka and Justices Agneta Bäcklund, Stefan Johansson, Petter Asp and Anders Perklev participated from the Supreme Court.

STATISTICS

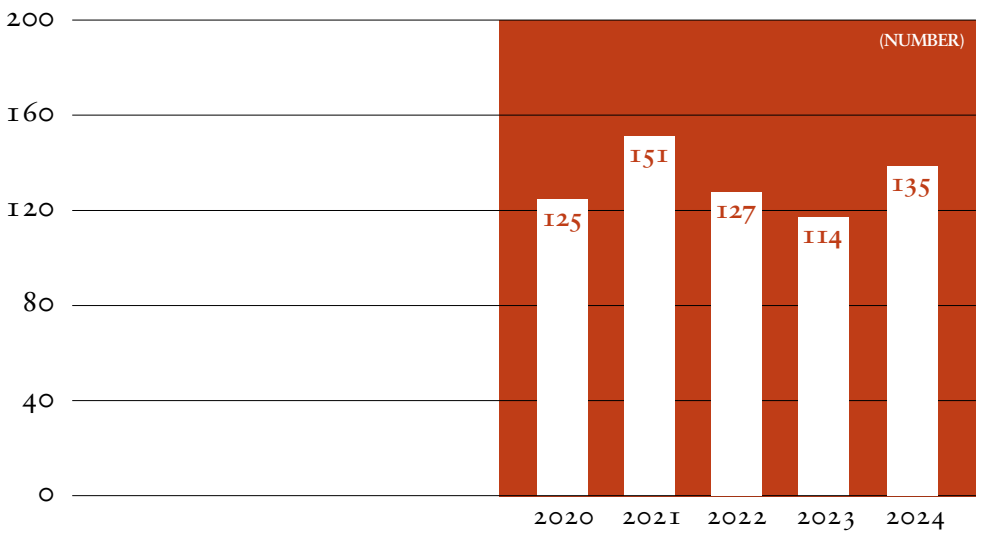
Precedents



Precedents per area of the law

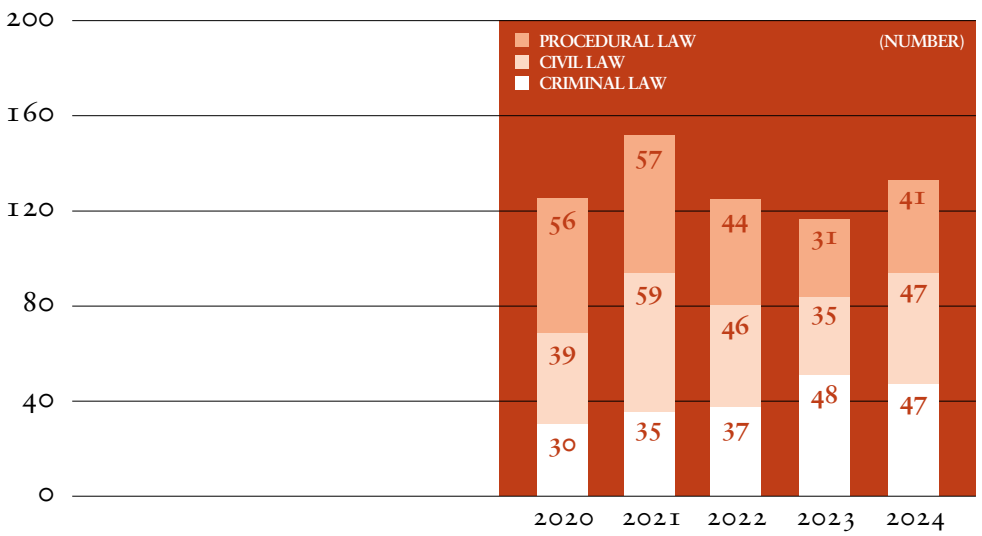


Cases for which leave to appeal was granted*



*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)

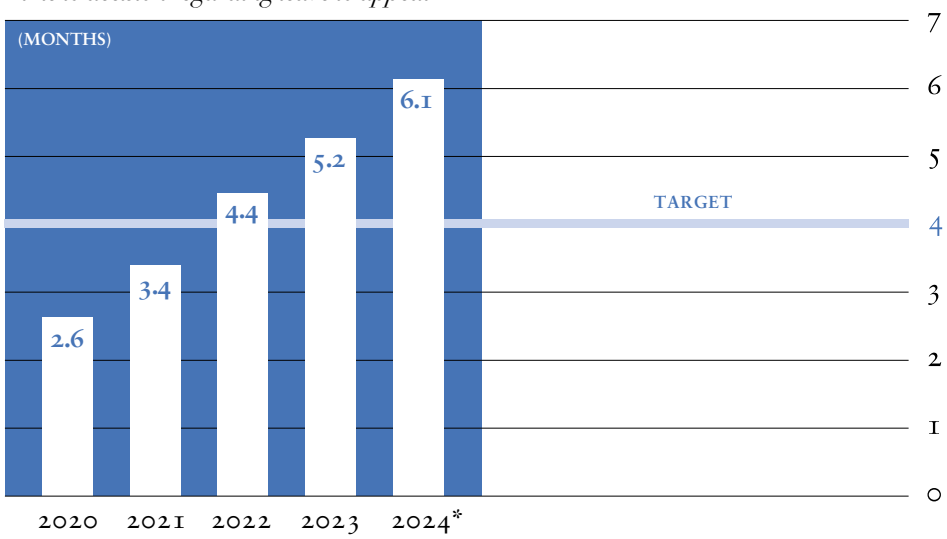
Time to decision regarding leave to appeal

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

90th percentile:
Nearly all cases.

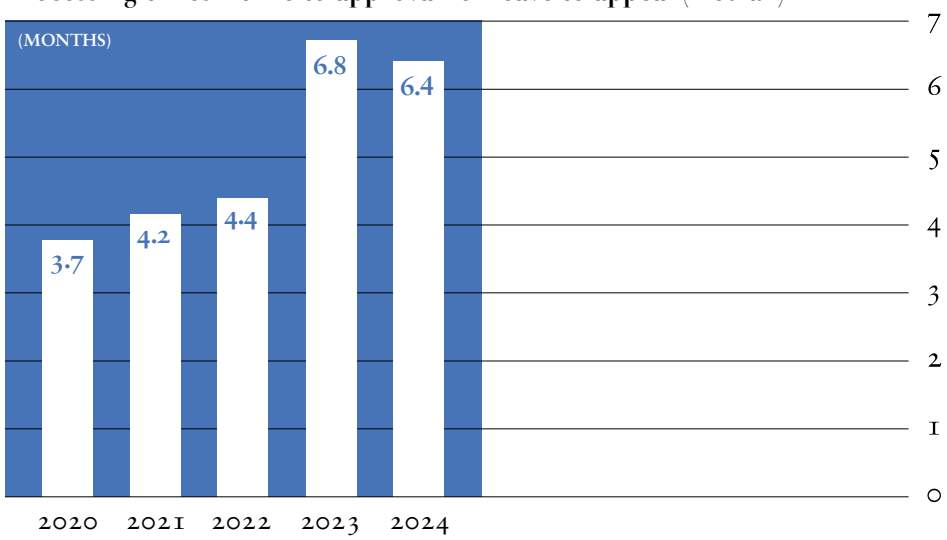
*Total number of cases considered: 8,359

Percentage decided by
- 1 Justice: approx. 97%
- 3 Justices: approx. 3%

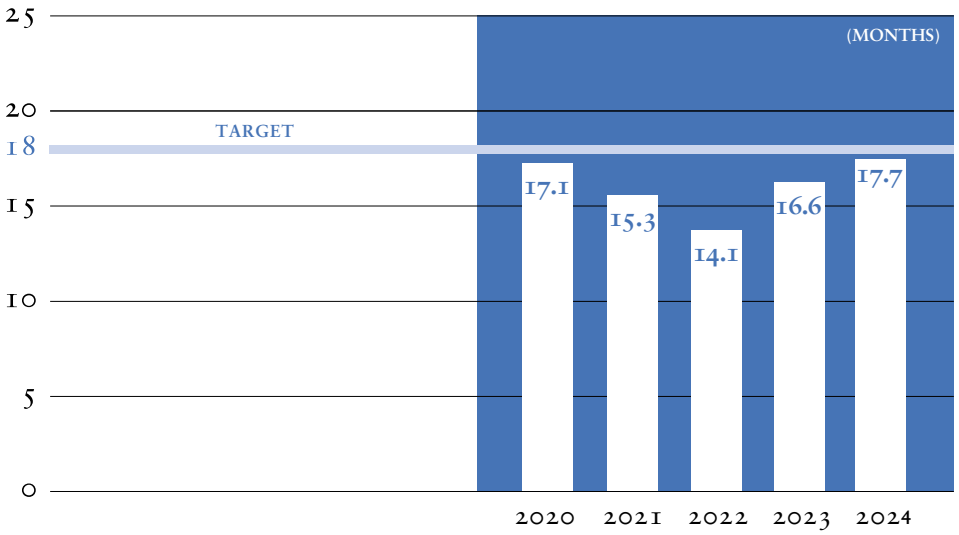


Processing times **time to approval for leave to appeal** (median)

Median:
The normal processing time.



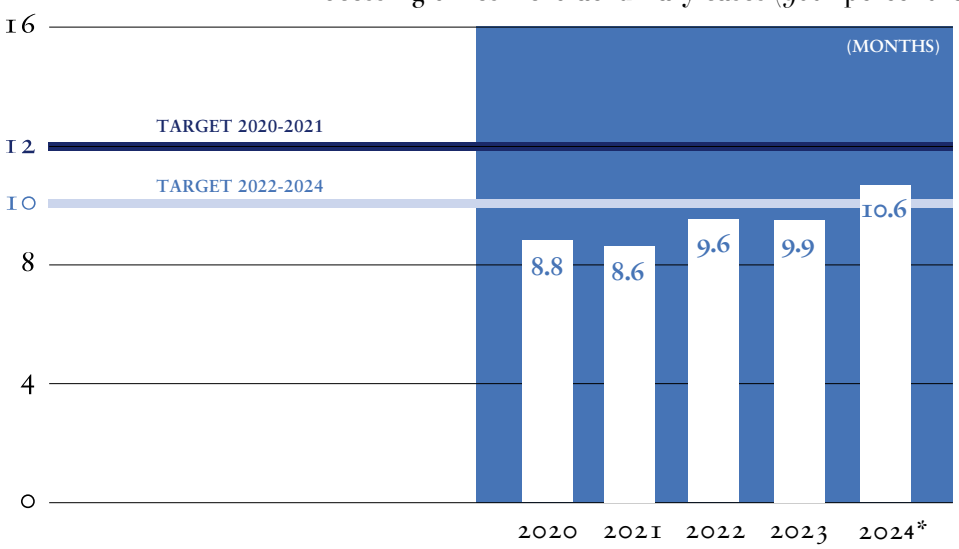
Processing times approved cases (90th percentile)



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

90th percentile: Nearly all cases.

Processing times extraordinary cases (90th percentile)



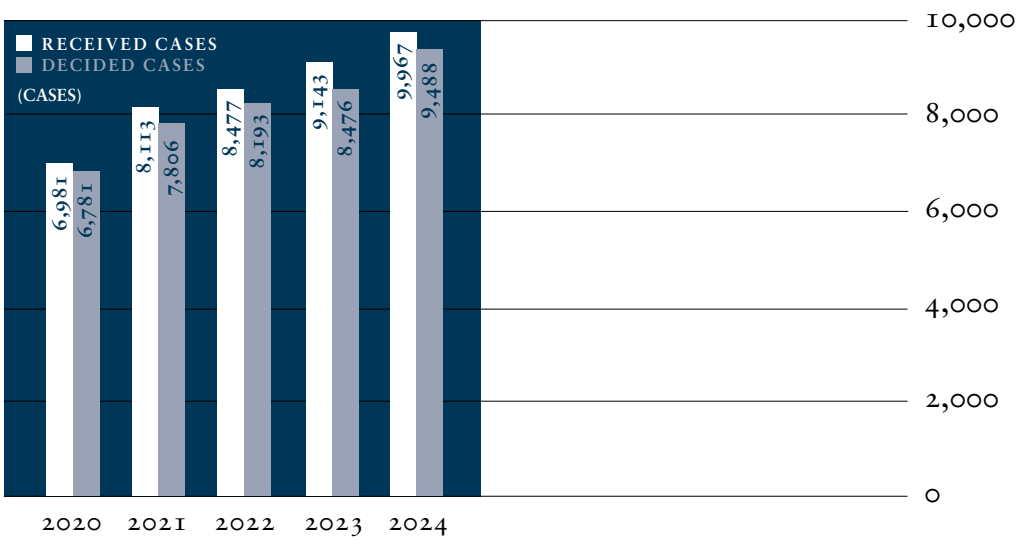
Extraordinary cases: Grounds for new trial, grave procedural error, etc.

90th percentile: Nearly all cases.

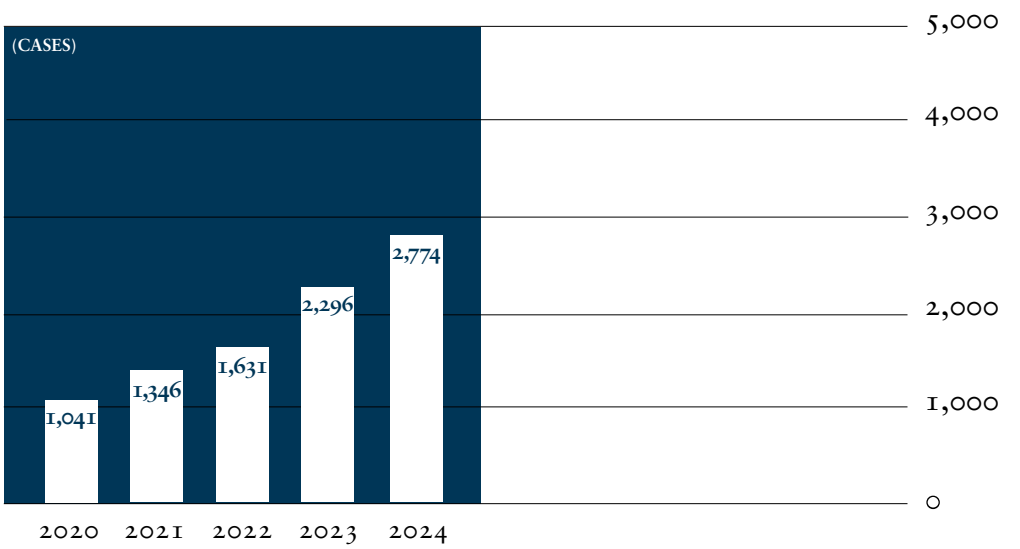
Total number of cases decided: 779

Percentage decided by
- 1 Justice: approx. 92%
- 3 Justices: approx. 7%
- 5 Justices: approx. 1%

Total number of cases received and decided

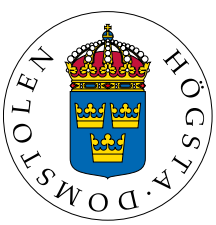


Total number of cases not decided



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
Agneta Bäcklund	born 1960	justice since 2010
Svante O. Johansson	born 1960	justice since 2011
Dag Mattsson	born 1957	justice since 2012 (not shown)
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
Anders Perklev	born 1960	justice since 2023
Margareta Brattström	born 1966	justice since 2023



Postal address: Box 2066, SE-103 12 Stockholm
Visiting address: Riddarhustorget 8, Stockholm