



Supreme Court's DECISION

delivered in Stockholm on 27 December 2024

Case no.
Ö 6426-23

PARTIES

Appellant

BM

Counsel: Attorney MW

Respondent

NA

Counsel: Attorney MO

THE MATTER

Leave to appeal in the Court of Appeal in a case concerning change of procedural form

RULING APPEALED

Judgment of the Svea Court of Appeal of 21 August 2023 in case Ö 8539-23.

THE SUPREME COURT'S RULING

The Supreme Court declares that the case is to be dealt with as a simplified civil procedure pursuant to Chapter 1, Section 3d of the Code of Judicial Procedure.

The Supreme Court does not grant leave to appeal in the Court of Appeal. The decision of the Court of Appeal therefore stands.

BM shall compensate NA for costs of litigation in the Supreme Court in the amount of SEK 1,914, relating to counsel fees.

CLAIMS IN THE SUPREME COURT

BM has requested that the Supreme Court grant leave to appeal in the Court of Appeal.

NA has opposed modification of the decision of the Court of Appeal.

The parties have requested payment of their costs of litigation incurred in the Supreme Court.

The Supreme Court has granted the leave to appeal as stated in para. 5.

REASONS FOR THE DECISION

Background

1. NA applied to the District Court for a summons against BM, claiming that she should be ordered to pay him damages of SEK 20,000. According to NA, BM had, in a podcast and in a so-called 'Twitter space' conversation, grossly defamed him or, in the alternative, defamed him. He was therefore entitled to damages. The District Court treated the case as a simplified civil procedure and issued a summons.

2. BM contested NA's action. In her defence, she claimed that the general rules should be applied as regards the procedural form. According to BM, it was the case that the underlying dispute involved a larger amount in dispute or that adjudication of the matter was otherwise of extraordinary importance for the determination of other legal relationships in issue.

3. NA objected to the case being dealt with under the general rules.

4. The District Court considered the question of procedural form and decided that the case should continue to be dealt with as a simplified civil case. The Court of Appeal has not granted leave to appeal.

Leave to appeal

5. The Supreme Court granted leave to appeal and, pursuant to Chapter 54, Section 12a of the Code of Judicial Procedure, decided to examine the question of whether the case was to be handled as a simplified civil procedure pursuant to Chapter 1, Section 3d of the Code of Judicial Procedure, or as an ordinary civil case. Pending that examination, the question of leave to appeal to the Court of Appeal has been stayed.

The question of precedent

6. The question of precedent is whether it is possible, when assessing the necessary condition “the underlying dispute concerns a larger amount” in the exemption rule of Chapter 1, Section 3d, second paragraph of the Code of Judicial Procedure, to take into account non-monetary forms of value.

The legal framework for simplified civil procedure

7. Simplified civil procedure was introduced into Swedish law by *Småmålslagen* (the Small Claims Act).¹ The aim of the Act was to improve the legal protection of individuals, mainly by reducing the costs of litigation for the parties. This was done by simplifying the procedure so that the parties could appear before the court without legal representation and by requiring the court to exercise substantive management of the proceedings (see Govt. bill 1973:87 p. 1).

8. When the Small Claims Act was repealed and some of its provisions were incorporated into the Code of Judicial Procedure, it was stated that the delimitation of simplified civil procedure would be identical to that in the Small Claims Act (see Govt. bill 1986/ 87:89 p. 151). Statements from the legislative history at the inception of the Small Claims Act are thus relevant to the assessment of the scope of application of simplified civil procedure.

9. Simplified civil procedures are cases amenable to out-of-court settlement in which the value of what is claimed clearly does not exceed half of the price-base amount pursuant Chapter 2, Sections 6 and 7 of the Social Insurance Code. Value of the claim means the value prevailing at the time of commencement of the action. If the action was instituted by an application for summary proceedings for an order to pay or summary proceedings for assistance, or as a private claim appended to a criminal case, the value is set as of the time when the court decides that the dispute shall be adjudicated as a regular civil case. Litigation costs shall not be taken into account for the purposes of the evaluation. (See Chapter 1, Section 3d, first and third paragraphs of the Code of Judicial Procedure)

¹ *Lagen om rättegången i tvistemål om mindre värden* (1974:8) (The Act on the Trial of Small Claims).

10. The assessment of whether a case constitutes simplified civil procedure must be made as soon as the case reaches the district court. This procedural form is compulsory when the conditions for simplified procedure are met.

11. An exemption to that rule is provided for in the second paragraph of Chapter 1, Section 3d of the Code of Judicial Procedure. Notwithstanding that the value of the subject matter of the dispute does not exceed half a price-base amount, the procedural form shall not be applied if a party, the first time he or she is to bring an action in the case², requests application of the general rules and demonstrates that the underlying dispute is likely to involve a larger amount in dispute or that adjudication of the matter is of extraordinary importance for the determination of other legal relationships in issue.

12. This form of proceedings differs from the ordinary civil procedure in several ways. In simplified civil proceedings, one legally qualified judge constitutes a quorum. Nowadays, however, even civil cases amenable to out-of-court settlement treated under the general rules can often be decided by a single judge. In this respect, therefore, the difference between the two types of procedure is not as great as when the rules on small claims were introduced.

13. Rather, the main difference between simplified civil proceedings and civil proceedings under the general rules is the limited possibility of being compensated for litigation costs. In simplified civil proceedings, the losing party is not normally obliged to compensate the opposing party for

² If the action was commenced by an application for summary proceedings for an order to pay, the party requesting adjudication by the district court shall at the latest present the claim just stated with that request.

litigation costs beyond the cost corresponding to one hour of legal counselling pursuant to the Legal Aid Act (1996:1619) for each instance. This means that the successful party will not be able to obtain compensation for costs for legal assistance beyond a very limited amount. (See Chapter 18, Section 8a, of the Code of Judicial Procedure.)

14. In simplified civil proceedings, the possibility of obtaining legal aid is further limited in that - in addition to the conditions that must otherwise exist - special reasons are required (see Section 11 of the Legal Aid Act). There are also some other specific provisions, for example on jurisdiction in consumer disputes (see Chapter 10, Section 8a of the Code of Judicial Procedure). In the absence of special rules, the same rules apply as for other civil cases amenable to out-of-court settlement, including the provisions on the court's obligation to conduct substantive proceedings, in Chapter 42, Section 8, second paragraph.

Details of the exemption rule

Introduction

15. The exemption rule thus consists of two parts. The exemption rule applies if it has been demonstrated that the underlying dispute is likely to involve a larger amount in dispute. It also applies if it has been demonstrated that adjudication of the matter is otherwise of extraordinary importance for the determination of other legal relationships in issue.

Importance of adjudication of the matter for the determination of other legal relationships in issue

16. The second part of the exemption rule was added because it was considered necessary from a general point of view to exclude from the simplified procedure cases of great importance beyond the individual case. This referred to disputes where a non-precedential judgment by the court

might be relevant to a large number of similar cases. The intention was to address only other legal relationships that were actually in issue when the court decided on the form of procedure; any precedent-setting effect on future legal relationships would be irrelevant. (See Govt. bill 1973:87 pp. 141 et seq. and 177.)

17. In the case “Goutera's Claim” (NJA 2010 p. 336), the Supreme Court ruled that this part of the exemption rule should be applied very restrictively. Application should not be considered if the common elements of the pending case and the other legal relationships are limited and if it is uncertain whether the other legal relationships will materialise. A party shall only exceptionally be prevented from bringing an action in simplified proceedings because either party has other similar legal relationships.

The underlying dispute involves a larger amount

18. It is clear from the legislative history that the first part of the exemption rule is intended to address situations where the claim in a lawsuit relates to an insignificant amount of money while the lawsuit in fact concerns considerably larger amounts, e.g. when in a tort case compensation is claimed only for destroyed clothes, although there is otherwise a significant amount of damage (see Govt. bill 1973:87 p. 141). In light of this example, the expression “the underlying dispute” may be understood to refer to disputed relationships between the parties to the proceedings that are closely linked to the subject matter of the proceedings, but which are not reflected in any claim made in the proceedings.

19. The word “amount” is also used in the first and third paragraphs of Chapter 1, Section 3d. It is clear from the text of the law in those paragraphs that it is the monetary value of the claim that is meant.

20. In the second paragraph, it is not as clear from the text of the law whether “a larger amount” refers only to a monetary value. However, to use the same word in different senses within one section of law would constitute an unusual legislative technique. The example supplied by the legislative history regarding tort cases (cf. para. 18) also indicates that in Section 2 as well monetary value was intended.

21. Furthermore, the legislative history reached the conclusion that a rule should be introduced prohibiting application of the simplified procedure if the underlying dispute involved an amount that was larger than half of one price-base amount (cf. Govt. bill p. 142). Even if the words “than half of one price-base amount” were not included in the text of the law, it seems clear that the legislator only envisaged the monetary value to be of interest.

22. The question is whether there are sufficiently strong reasons to nevertheless interpret the first part of the exemption rule such that other values could also be taken into account in the assessment.

Rules of procedure for defamation cases

The constitutionally protected area

23. A claim for damages for defamation can be examined in several different types of proceedings. If the disputed speech has appeared in a constitutionally protected medium, the question of defamation is examined as a case concerning freedom of expression or freedom of the press (defamation constitutes an offence against the freedom of the press or freedom of expression under Chapter 7, Article 3 of the Freedom of the Press Act and Chapter 5, Article 1 of the Fundamental Law on Freedom of Expression). In such proceedings - which may also relate to criminal liability or may concern only damages - special procedural rules apply (see Chapter 12 of the Freedom of the Press Act, Chapter 10, Article 1 of the Fundamental Law on

Freedom of Expression and the Act containing regulations in the areas of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression (1991:1559)). A case concerning freedom of the press or freedom of expression will therefore never be dealt with as a simplified civil procedure (cf. Section 3 of the Small Claims Act, Govt. bill 1973:87 p. 179 and Govt. bill 1986/ 87:89 p. 151).

Defamation cases outside the constitutionally protected area

24. Outside the constitutionally protected area, a claim for damages for defamation may be brought in a criminal case concerning the question of criminal liability for the offence. Such a case will be dealt with under the rules of criminal procedure. In the event that a judgment in such a case were appealed solely on the issue of damages, there is no scope for dealing with the case as a simplified civil procedure in the court of appeal.

25. Thus, only in situations where action is brought apart from any question of criminal liability, or where a private claim is disjoined from a criminal matter during proceedings in the district court (see para. 9), does the issue of whether to treat the case under the rules for simplified civil procedure arise.

Rights aspects in defamation cases

26. In defamation cases, freedom of expression is usually balanced against the right to privacy (cf. Chapter 2, Article 1, first paragraph of the Instrument of Government and Articles 8 and 10 of the ECHR). Questions related to the right to a fair trial may also arise (cf. Chapter 2, Article 11 of the Instrument of Government and Article 6 of the ECHR).

27. Among other things, the European Court of Human Rights (ECtHR) has ruled on whether the restriction on the freedom of expression imposed by a defamation conviction was necessary in a democratic society as well as

whether it was proportionate. The ECtHR has seriously considered the impact of self-censorship, disproportionate sanctions or fear of prosecution on societal freedom of expression related to matters of legitimate public concern.

28. Such an impact on freedom of expression has been described by the ECtHR as an inhibiting effect on public discourse and on freedom of expression, in particular as regards the media. In the Court's view, it is important to scrutinise very carefully which rules at national level are capable of having such an inhibiting effect on freedom of expression in general. (See, e.g., *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 64, ECHR 1999-III.)

Measures against so-called SLAPPs

29. In the EU, a directive on strategic lawsuits against public participation, or SLAPPs, has been adopted³ to be implemented by 7 May 2026. The Directive aims to counter unfounded legal proceedings used as a means to silence or intimidate journalists, human rights defenders and others who engage in public participation (see Articles 1, 2 and 4 and recital 6). According to the Directive, these court proceedings are not instituted for the genuine assertion or exercise of a right, but are mainly intended to prevent, restrict or penalise public participation (see Article 4(3)).

30. The Directive applies only to cross-border civil proceedings, which as a general rule are disputes where parties are domiciled in different Member States (see Article 5). The Directive mainly contains procedural rules, including on the allocation of litigation costs.

31. Member States shall ensure that an applicant who has initiated abusive court proceedings in order to impede public participation may be ordered to bear all types of litigation costs recoverable under national law, including the full costs of legal representation incurred by the defendant unless those costs are unreasonable. Where national law does not guarantee full compensation for the costs of legal representation beyond what is set out in statutory fee schedules, Member States shall ensure that such costs are fully covered by other means available under national law, unless those costs are unreasonable. (See Article 14.)

³Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘*Strategic lawsuits against public participation*’).

32. The Commission has issued a recommendation to Member States⁴, inter alia, that Member States shall adapt their procedural rules for national court proceedings to provide protection that is equivalent to that provided by the proposed Directive (see point 4 of the recommendation).

33. At present, there is no information regarding what changes to Swedish legislation will be proposed to implement the Directive or to meet the recommendation.

34. The Council of Europe has also adopted a recommendation focussing on SLAPPs.⁵

Only monetary values to be considered

35. As stated, there is no indication that the legislator intended to include any non-monetary value in the application of the first part of the exemption rule in Chapter 1, Section 3d, second paragraph of the Code of Judicial Procedure (see para. 20 and para. 21).

36. There are several reasons why it should be possible to apply the exemption rule in defamation cases and thus deal with these cases under the general rules. In this way, greater uniformity is achieved in terms of the successful party's possibility to obtain full compensation of litigation costs in defamation cases. For defamation suits that constitute abusive court proceedings, it appears particularly important to ensure that the defendant has access to counsel and has the possibility, if successful, to be fully compensated

⁴Commission recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (*'Strategic lawsuits against public participation'*).

⁵ Recommendation CM/Rec (2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs).

for the costs of counsel. Such a requirement will also be imposed under EU law in disputes with cross-border elements (see para. 31).

37. At the same time, interpreting “a larger amount” to include non-monetary values could cover many different types of cases. It is doubtful whether it would be possible to delimit this interpretation in a precedentiary ruling to cover only freedom of expression issues. A ruling that permits the consideration of non-monetary values rather risks leading to discussions about procedural form in a large number of cases. The simplified civil procedure system would become unwieldy, with an unpredictable impact on issues of procedural form.

38. One essential aim of the simplified procedure is to facilitate parties seeking to bring or to contest small claims. If whether a case will be dealt with as a simplified civil procedure is too obscure, that purpose will be defeated.

39. The interest of ensuring uniformity with regard to the possibility of compensation of litigation costs in different types of defamation cases cannot be considered so substantial as to justify creating the risks just described. The considerations and delimitations that must be made in order to address the situation of abuse of process to prevent public participation are of such a complex nature that they are most appropriately carried out in the context of the legislative process.

40. Overall, there are not sufficiently strong reasons to interpret the necessary condition “the underlying dispute concerns a larger amount” differently from what was intended when the provision was created, i.e., that monetary values are to be taken into account. It is therefore not possible to take into account non-monetary values in the assessment.

The assessment in this case

41. No non-monetary values are to be taken into account in interpreting the first part of the exemption rule in Chapter 1, Section 3(d), second paragraph of the Code of Judicial Procedure. Nor has BM otherwise demonstrated that the underlying dispute is likely to involve a larger amount or that adjudication of the matter is in some other respect of extraordinary importance for the determination of other legal relationships in issue. The issue before the Supreme Court must be answered accordingly.

Leave to appeal

42. In light of the assessment made of the issue in this case, there is no reason to grant leave to appeal to the Court of Appeal.

Costs of litigation in the Supreme Court

43. NA, as the successful party in this part of the proceedings, is entitled to compensation of his legal costs. The case is to be treated as a simplified civil procedure. According to Chapter 18, Section 8a of the Code of Judicial Procedure, compensation for counsel's fees cannot therefore be paid beyond the cost corresponding to one hour of legal counselling pursuant to the Legal Aid Act.

Justices of the Supreme Court Gudmund Toijer, Dag Mattsson, Malin Bonthron (reporting Justice), Jonas Malmberg and Anders Perklev participated in the ruling.
Judge referee: Norah Lind.