



SUPREME COURT'S DECISION

delivered in Stockholm on 28 November 2024

Case no.
Å 3500-24

PARTIES

Appellant

BAG

Counsel and Public Defender: Attorney UB

Respondent

Swedish Prison and Probation Service

Slottsgatan 78

601 80 Norrköping

THE MATTER

Transfer of the enforcement of a sentence

RULING APPEALED

Decision of the Svea Court of Appeal of 11 April 2024 in case

B 4624-24

THE SUPREME COURT'S RULING

The Supreme Court declares that consent is required from BAG and from the competent authorities in Spain in order to forward the judgment of Solna District Court of 21 December 2023 in case B 8637-23 to Spain for the purpose of its recognition and enforcement there.

The Supreme Court grants leave to appeal in respect of the remainder of the case, modifies the decision of the Court of Appeal and sets aside the decision of the Swedish Prison and Probation Service of 24 January 2024 (ref. no. 2023-23882-28) to forward the judgment, together with a certificate, to Spain for the purpose of its recognition and enforcement.

UB shall receive compensation from public funds for the representation of BAG in the Supreme Court of SEK 10,155. Of that amount, SEK 6,124 relates to work, SEK 2,000 relates to outlays and SEK 2,031 relates to value added tax. The State shall bear the cost.

CLAIMS IN THE SUPREME COURT ETC.

BAG has requested the Supreme Court to set aside the decision of the Swedish Prison and Probation Service to forward the judgment of Solna District Court in case B 8637-23, together with a certificate, to Spain for the purpose of its recognition and enforcement.

The Swedish Prison and Probation Service has opposed the setting aside of the decision.

The Supreme Court has granted leave to appeal as set out in paragraph 6.

REASONS FOR THE DECISION

Background

1. BAG is a national of Spain. He has lived in Sweden since 2019.

2. On 11 October 2023, BAG was sentenced to 7 years' imprisonment for, inter alia, aggravated rape. In the judgment, it was decided that he would be deported from Sweden and prohibited from returning here indefinitely. The Swedish Prison and Probation Service then decided to forward the judgment to Spain for the purpose of its recognition and enforcement. Both the judgment and the decision of the Swedish Prison and Probation Service have become legally binding.

3. On 21 December 2023, BAG was again convicted of aggravated rape and attempted robbery. The offences had been committed before the judgment of 11 October 2023. The offences had originally been included in the indictment for the first judgment but, due to the fact that the victim was not served at the time, they were removed to be processed separately. It was therefore stated in the judgment, with reference to Chapter 34, Section 1, first paragraph, and Section 2 of the Swedish Criminal Code, that the offences constituted newly discovered offences, that a new penalty was imposed for those offences and that the penalty imposed under the previous judgment had been taken into account. The sanction was set at one year and six months' imprisonment. The judgment did not include a deportation order. This judgment has also become legally binding.

4. The Swedish Prison and Probation Service issued a decision on sentence length covering both judgments. Thereafter, the Swedish Prison and Probation Service decided to forward also the second judgment to Spain for its recognition and enforcement. They did not have consent from BAG or from the competent authorities in Spain. The Swedish Prison and Probation Service deemed that neither consent was required, as BAG was to be deported from Sweden after serving the prison sentence.

5. Both the District Court and the Court of Appeal upheld the Swedish Prison and Probation Service's decision. The courts found that the judgment of December 2023 could be forwarded to Spain for the purpose of its recognition and enforcement without consent, despite the fact that it did not

contain a deportation order. The courts referred, inter alia, to the facts that the Swedish Prison and Probation Service had issued a decision on sentence length covering both the previous judgment containing the deportation order and the current judgment, that the general rule is that all charges against a defendant are to be considered at the same trial, that the Swedish provisions are to be interpreted in the light of a framework decision and that the Framework Decision appears to have wider scope in that it does not require the deportation order to have been issued in the judgment.

Leave to appeal and the precedential issue

6. The Supreme Court has granted leave to appeal concerning the question of whether consent from BAG and the competent authorities in Spain is required in order to forward the judgment to Spain for its recognition and enforcement. The issue of leave to appeal in respect of the remainder of the case has been stayed.

7. The precedential issue is whether the provisions concerning exceptions to the requirements of consent apply when the sentenced person is being deported from Sweden by virtue of an order in a different criminal judgment than the judgment that is to be forwarded to another Member State for recognition and enforcement.

The legal framework

The Swedish legislation and the Framework Decision

8. The Act on the recognition and enforcement of sentences involving deprivation of liberty in the European Union (2015:96) implements a framework decision from 2008.¹ The rules aim to facilitate the social

¹ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

rehabilitation of the sentenced person. The consent of both the competent authorities in the executing State and the sentenced person is therefore normally required in order for a judgment to be forwarded. (See Chapter 1, Section 1, Chapter 2, Section 1, point 3, Section 2, first paragraph, and Section 3, first paragraph, and Articles 3(1), 4(1)(c) and 6(1) of the Framework Decision.)

9. The Framework Decision contains certain exceptions to the requirements for consent. If the sentenced person is a national of the other Member State but does not reside there, the judgment may be forwarded to that State, provided that the sentenced person will be deported to the other Member State on the basis of an order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment (see Articles 4(1)(b) and 6(2)(b)).

10. The exceptions are implemented in Swedish law through statutory provisions which state that consent is not required if the sentenced person is a national of the other State and will be deported to that State after the enforcement of the penalty as a result of “a deportation order issued in the judgment” pursuant to Chapter 8a of the Aliens Act (2005:716). See Chapter 2, Section 2, second paragraph, point 2, and Section 3, second paragraph, point 2.

11. In the Legislative Council consultation document that preceded the Swedish implementation, the wording of the exception provisions was broader. There was no requirement that the deportation order be issued in the judgment. The Legislative Council, however, indicated that the provisions on exceptions should be modelled more closely on the Framework Decision and suggested the wording that then became law. (See prop. 2014/15:29 pp. 177, pp. 277 and 299.)

Details of the application of the exceptions

12. The wording of the Swedish legislation is clear. For the exceptions regarding the consent of the sentenced person and the other Member State to apply, it is necessary that the sentenced person is to be deported as a result of an order issued in the judgment. As indicated in the first paragraph of the respective sections, “the judgment” refers to the judgment that is to be forwarded to the other Member State (see Chapter 2, Section 2, first paragraph and Section 3, first paragraph).

13. It is out of the question to interpret the statutory exception to the requirement for the sentenced person’s consent to his or her detriment in a way that departs from the wording of the provision. The fact the Swedish Prison and Probation Service may have taken a decision on sentence length that applies to several judgments is irrelevant.

14. As mentioned above, the statutory exception for when the consent of the executing State is not required is formulated in the same way as the exception regarding the consent of the sentenced person; the deportation order must be issued in the judgment. The system of recognition and enforcement is based on the Member States acting in good faith towards each other (see, for example, recital 5 in the preamble to the Framework Decision). It is clear from the wording of the Swedish legislation that, in line with this principle of cooperation in good faith, an assessment is to be made as to whether the requirements are met for applying the exception that the consent of the other State is not required. The Framework Decision also makes clear that these are criteria which have to be fulfilled and which must be examined by the issuing State (see Article 4). In this respect, too, the text of the law must be applied according to its wording.

15. It may be added that the implementation in Swedish law of the exceptions under consideration follows the Swedish system whereby deportation for having committed a criminal offence is a special legal consequence of an offence which must be decided by the court dealing with

the criminal case (see Chapter 8a, Section 8, of the Aliens Act). The fact that the Framework Decision allows Member States to have different systems for regulating deportation as a consequence of committing a criminal offence is irrelevant with regard to the application of Swedish legislation.

Conclusion

16. In conclusion, if the sentenced person has been deported from Sweden only by virtue of a decision in a different criminal judgment than that which is to be forwarded to a Member States in the EU for recognition and enforcement there, the consent of the sentenced person and of the executing State is required. The exceptions to consent require that the decision on deportation be issued in the judgment which is to be forwarded for recognition and enforcement.

The assessment in this case

17. BAG has not been deported from Sweden by virtue of an order issued in the judgment which is the subject of the appealed decision on forwarding, i.e., the judgment of Solna District Court of 21 December 2023 (see paragraph 3). The exceptions to the requirement for his consent and for the consent of the competent authorities in Spain therefore do not apply. The fact that the Swedish Prison and Probation Service issued a decision on sentence length that covers more than one judgment is irrelevant.

18. The question raised in the decision on leave to appeal must therefore be answered such that BAG's consent and the consent of the competent authorities in Spain are required in order to forward the judgment to Spain for the purpose of its recognition and enforcement.

19. In the light of the foregoing, leave to appeal should be granted in respect of the remainder of the case.

20. Since the prerequisites for forwarding the judgment for recognition and enforcement have not been met, the Court of Appeal's decision shall be modified and the decision of the Swedish Prison and Probation Service shall be set aside.

Justices of the Supreme Court Gudmund Toijer, Dag Mattsson, Malin Bonthron, Christine Lager (reporting Justice) and Anders Perklev participated in the ruling.
Judge referee: Dennis Andreev.