SUPREME COURT'S
JUDGMENT

delivered in Stockholm on 24 October 2024

Case no.
B 1793-23

PARTIES

Appellant

EB

Counsel and Public Defender: Attorney MB

Respondent

Prosecutor General

Box 5553

114 85 Stockholm

THE MATTER

Commercial money laundering, gross offence, etc.

RULING APPEALED

Judgment of the Göta Court of Appeal of 10 February 2023 in case B 1691-22

____

Visiting address
Riddarhustorget 8

Telephone
+46 8 561 666 00

Office hours
Monday-Friday
08.45–12.00
13.15–15.00

Postal address
Supreme Court
Box 2066
103 12 Stockholm

Email
hogsta.domstolen@dom.se

Website
www.hogstadomstolen.se

JUDGMENT

The Supreme Court modifies the judgment of the Court of Appeal in that the penalty is set as a conditional sentence and 200 day-fines of SEK 50.

MB shall receive compensation from public funds for the representation of EB in the Supreme Court of SEK 23,922, of which SEK 19,138 relates to work and SEK 4,784 relates to value added tax. The State shall bear the cost.

CLAIMS IN THE SUPREME COURT

EB has requested the Supreme Court to reduce the sentence.

The Prosecutor General has opposed the modification of the judgment of the Court of Appeal.

REASONS FOR THE JUDGMENT

Background

1. The District Court and Court of Appeal convicted EB of one count of gross commercial money laundering and one count of aiding the infringement of a ban on business activity.

2. The commercial money laundering count related to EB having received just over SEK 3 million in her private bank accounts between 2017 and 2020. The funds were deposited by her then husband and came from the scrap yard he operated without recording revenues, including during a period when he was banned from exercising business activities. There were almost 400 deposits. The highest amount was SEK 200,000 and the lowest amounts were under SEK 1,000. EB used the money for private consumption and, inter alia, for payments and transfers to private individuals and businesses.

Doc.Id 300504

3. The District Court imposed a conditional sentence and 240 hours of community service. The length of imprisonment that would have been imposed is ten months.

4. The Court of Appeal sentenced EB to one year and six months' imprisonment.

5. Before the Supreme Court, EB argued that the penalty should be reduced for the sake of her child. She also submitted that she was in a situation similar to necessity, that a long time has passed since the offence, and that she provided information that was of vital importance for the investigation of crimes committed by others. Furthermore, she emphasised that she should be convicted of several counts of ordinary-level commercial money laundering instead of one count of gross commercial money laundering, and that, accordingly, the charges for the first four counts of commercial money laundering should be dismissed on the grounds of limitation.

What is at issue in the case

6. The case before the Supreme Court concerns, firstly, how the penalty value should be determined in commercial money laundering cases and, secondly, how the best interests of the child should be taken into account when determining the penalty for a parent.

Assessing penalty value in cases of commercial money laundering

7. Taking into consideration the interest of uniform application of the law, penalties are determined within the framework of the applicable scale of penalties according to the penalty value of the offence or of the combined offences. When assessing penalty value, consideration is given to, inter alia, the damage, violation or danger involved in the act. (See Chapter 29, Section 1 of the Swedish Criminal Code.)

Doc.Id 300504

8. The scale of penalties for commercial money laundering is the same as for money laundering offences. The penalty for an ordinary-level offence is imprisonment for at most two years. If the offence is gross, the penalty is imprisonment for at least six months and at most six years. (See Sections 3, 5 and 7 of the Act on Penalties for Money Laundering Offences (2014:307).)

9. The purpose of the legislation is to combat activities that are intended to conceal the fact that money or other property derives from an offence or criminal activities or to promote the possibility of someone appropriating the property or its value. The main harm and danger caused by money laundering activities is that they prevent financial redress for the injured party and make it difficult or impossible for law enforcement authorities to access the proceeds of crime. The activities may also contribute to the proceeds of crime entering into and circulating in financial systems. (Cf. Government Bill 2013/14:121, p. 49.)

10. Money laundering offences may be carried out in different ways and various kinds of predicate offences may occur. The question of what considerations are relevant when assessing penalty value therefore cannot be answered in general terms (see, for example, the "Recipient Bank Accounts" case, NJA 2020, p. 344, para. 23).

11. One factor that is taken into account is the value of the property to which the activity relates. With regard to money laundering offences that are linked to property offences, the Supreme Court has adopted the same approach to value as it applies to the offence of receiving or dealing in stolen goods, which has the same scale of penalties as money laundering offences. For example, the penalty value, taking into account only the amount involved in the predicate offence, has been considered equal to imprisonment for six months when the value amounts to five base amounts.

Doc.Id 300504

At the same time, it has been underlined that a penalty value that is assessed in this way is not the only decisive factor. A nuanced assessment of the circumstances of the individual case must be made, taking into account factors other than the value to which the offence relates, such as the nature of the money laundering activities and the role a person played in the money laundering. (See, inter alia, the “Money Laundering Assistance I–III” cases, NJA 2018, p. 1010, the “Painting Fraud” case, NJA 2019, p. 305, and the “Recipient Bank Accounts” case.)

12. Commercial money laundering is considered to be as serious an offence as money laundering, and therefore the benchmarks developed for the assessment of the penalty value of money laundering offences should also be used as a starting point for commercial money laundering (cf. the “Commercial Money Laundering at Dackom Bygg” case, NJA 2022, p. 42, para. 24).

13. One difference between the offences, however, is that, unlike money laundering offences, in the case of commercial money laundering, the prosecution does not have to prove that the property derives from an offence or criminal activities. For criminal liability, it is sufficient to take part in an act that can be reasonably assumed to have been committed for money laundering purposes. The punishable act consists of reprehensible risk-taking by the perpetrator and is punishable even if it later turns out that the property did not derive from an offence or criminal activities. (See the “Money Laundering at Dackom Bygg” case, para. 16, and Government Bill 2013/14:121, pp. 60.)

14. Against this background, the penalty value of a commercial money laundering offence cannot be linked to the penalty value of property offences in the same way as for a money laundering offence. When assessing the penalty value of commercial money laundering, greater

Doc.Id 300504

weight should be placed on the nature of the risk-taking involved in the offence. The role the perpetrator played in the commercial money laundering is also significant. On the other hand, since there is no requirement that the property does actually have a criminal origin, the concrete danger or harm caused by the offence is less likely to be established.

Determining a penalty and the principle of the best interests of the child

The determination of penalties and equitable considerations in general

15. Under Chapter 29, Section 5 [1] of the Swedish Criminal Code, when determining a penalty, in addition to the penalty value of the offence, courts must, to the extent reasonable, take into consideration certain enumerated types of circumstances, known as equitable considerations. The list in the section ends with point 8, which states that the court may take into consideration whether any other circumstance requires that the accused receive a lower penalty than that warranted according to the penalty value of the offence. The point includes so-called third party reasons, i.e. consideration is given to the fact that someone other than the offender, e.g. his or her child, is affected in a completely disproportionate and unreasonable way (see Government Bill 1987/88:120, p. 96).

[1] The wording prior to 1 July 2022 is applicable in this case (Swedish Code of Statutes 2015:78). The provision has since been amended by Swedish Code of Statutes 2022:792 and Swedish Code of Statutes 2022:1016. The amendments are not relevant to the issues to be decided in this case, but they resulted in the partial reordering of the listed points. References are hereinafter to the current wording.

Doc.Id 300504

16. Equitable considerations may be taken into account both when determining a penalty and when choosing a sanction (see Chapter 29, Section 5, and Chapter 30, Section 4, first paragraph).

17. When choosing a sanction, pursuant to Chapter 30, Section 4, the court pays particular heed to circumstances that speak in favour of a less severe sanction than imprisonment. As grounds for imprisonment, the court may take into consideration the penalty value and nature of the offences and whether the accused has previously been guilty of an offence.

18. If the offence has a penalty value equal to or exceeding one year of imprisonment, it is considered to mean there is a presumption that imprisonment will be chosen as the penalty. If the penalty value is that high, but a prison sentence, if imprisonment had been chosen as the penalty, would have been set at less than one year, the intended shorter sentence length - the so-called penalty determination value - will determine whether there is a presumption in favour of imprisonment, taking into account the penalty value. This is generally the case even if the reduction in sentence is justified on the basis of equitable considerations (see, for example, the “Positive Developments” case, NJA 2023, p. 1118, para. 9, and the “Court-imposed Care Order and Deprivation of Liberty” case, the Supreme Court's judgment of 20 May 2024 in case B 8385-23, para. 10). Some equitable considerations are, however, primarily relevant for determining a penalty, while others are primarily relevant for choosing a sanction (see, for example, “Maunday Thursday Judgment” NJA 2008, p. 359, and the “Life-threatening Illness” case, NJA 2021, p. 687, para. 15).

Taking children into account when determining a penalty

19. When determining the penalty for a parent, the negative consequences of the penalty for his or her child may constitute an equitable consideration under Chapter 29, Section 5, first paragraph, point 8, and

Doc.Id 300504

thereby affect the choice of sanction pursuant to Chapter 30, Section 4 of the Swedish Criminal Code. The legislation must be applied in this regard in the light of the United Nations Convention on the Rights of the Child, which is applicable Swedish law. The fact that the Convention applies as law has concretised and, to a certain extent, enhanced the significance of a child's interests in this context. The best interests of the child is a legally protected interest which must be taken into consideration (cf. the “Children's Residence” case, NJA 2021, p. 1065).

20. The principle of the best interests of the child is laid down in Article 3 of the Convention. According to this fundamental provision, the best interests of the child must be a primary consideration in all actions concerning children. The provision also applies to actions taken by the courts. Pursuant to the provision, the best interests of the child must be investigated, taken into consideration and assessed (see, for example, the “Cartridge and the Car” case, NJA 2020, p. 761, para. 22, and the “Children's Residence” case, para. 11).

21. If a parent who is responsible for a child's care is sentenced to a term of imprisonment, that is an action which affects the child in such a way as to render the article applicable.

22. The requirement to investigate the best interests of the child primarily means that there must be decision-making processes in place to ensure that the consequences of an action for the child are highlighted when the decision on the action is taken. In criminal proceedings, the court, the prosecutor, the

Doc.Id 300504

defendant and the defence counsel must endeavour to ensure that circumstances relevant to the determination of the penalty are adequately investigated. As in the case of other personal circumstances, in practice it is mainly up to the defendant and the defence counsel to provide information on the consequences of a potential prison sentence for the defendant's child. There may cause for the court to draw the parties' attention to that fact through substantive direction of proceedings.

23. It is for the court to assess how and to what extent it is likely to affect the best interests of the child concerned if their parent is sentenced to imprisonment. In this assessment, the child's interest in preserving the home or family environment and maintaining close relationships is a key factor. In this regard, it should be borne in mind that the social services and the Swedish Prison and Probation Service, among others, have a responsibility to limit the negative consequences of the penalty for the child.

24. The fact that the best interests of the child are to be a “primary” consideration does not mean that the best interests of the child will always be decisive. The best interests of the child must be balanced against other interests and rights (see, for example, the “Children's Residence” case, para. 12). The choice of the term “primary” in the Convention may reflect the fact that children’s interests tend to be overlooked if light is not shone on them.

25. When a question arises as to whether to sentence a parent to imprisonment, the best interests of the child must be balanced against the public interest in prosecuting offences that have been committed and enforcing sentences that have been imposed, as well as against the interest in the uniform application of the law. The Convention does not give any guidance on how those interests should be balanced against each other specifically.

Doc.Id 300504

26. A precondition for consideration of the child affecting the parent’s penalty is that the penalty is likely to result in more substantial negative consequences for the child. The fact that a child may face negative social reactions as a result of a parent being convicted of an offence, for example, disapproval from people around them, is unlikely to be sufficient. Principally, it is when a parent with sole caring responsibilities risks being sentenced to imprisonment that the consideration of the defendant's child may have an impact on the determination of the penalty (cf. the “Mother and the Penalty” case, NJA 1989, p. 564, the “Fraud against Friskars” case, NJA 1989, p. 810, and the “Cashier’s Embezzlement” case, NJA 1997, p. 781; cf. also the “Cartridge and the Car” case). In the “Fentanyl Theft” case, NJA 2023 p. 9, in which the children lived with both parents, it was held that consideration of the best interests of the child was not a strong enough reason to affect the determination of the penalty.

The assessment in this case

27. The case was not appealed on the issue of guilt. The Court of Appeal’s finding that it is a question of one and not several cases of commercial money laundering is to be accepted. The duration of the offence extends over multiple years and involves a significant amount of money in total. The offence should therefore be classified as gross.

28. When assessing the penalty value, it should be taken into consideration that the funds received by EB were transferred from accounts to which her husband had access. According to the indictment, EB did withdraw a smaller portion of the funds in cash and return it to her husband. However, it is not otherwise established that she took part in any more sophisticated activities in order to conceal the origin of the funds. Although significant funds were involved, the value of the property should not be given the same weight here as in money laundering offences (cf. para. 14).

Doc.Id 300504

An overall assessment of EB’s offence leads to the conclusion that the penalty value is be considered equal to one year’s imprisonment. EB’s submission that she was in a situation similar to necessity is not sufficient to affect the penalty value.

29. EB’s submission that a long time has passed since the offence and that she provided information that was of vital importance for the investigation of crimes committed by others does not constitute grounds for setting the penalty determination value lower than the penalty value of the offence. In this case, the consideration of her child should be taken into account only in the choice of penalty.

30. The penalty determination value speaks in favour of EB being sentenced to a term of imprisonment. Neither the nature of the offence or previous offences speak in favour of imprisonment.

31. In the Supreme Court, the following information was put forward, inter alia, in an opinion from a child and adolescent psychiatric clinic. EB and her former husband have a son who is now six years old. Their relationship was marked by violence and threats against EB and their son. They have moved away from the father and are now living elsewhere with protected personal data due to exposure to violence. EB has sole custody by court order. The father has no contact. She and her son are both undergoing treatment for problems resulting from trauma. He shows symptoms that are common in children who have been exposed to violence. The symptoms fulfil the criteria for post-traumatic stress disorder. His mother is his primary attachment figure and carer. If he were to be separated from her, he would be exposed to further trauma, which risks retriggering previous trauma. If the mother is sentenced to imprisonment, the ongoing treatment, which requires her involvement, would not be able to continue, which would put the son's health and development at risk.

Doc.Id 300504

32. There is reason to believe, in the light of the information presented, that her son would be affected disproportionately and unreasonably severely, if EB were to be sentenced to imprisonment and he would thus need to be separated from her. A prison sentence, therefore, would clearly be incompatible with the best interests of the child. Taken together, the circumstances are such that, even taking into account the penalty determination value, there is scope for imposing a conditional sentence. The conditional sentence shall be combined with day-fines.

____

Justices of the Supreme Court Dag Mattsson, Eric M. Runesson, Jonas Malmberg (reporting Justice), Christine Lager och Anders Perklev participated in the ruling.
Judge referee: Oscar Lindberg.

Doc.Id 300504