

# Reflections regarding the Swedish Supreme Court's recent rulings about the required level of proof in criminal cases and its impact on civil cases

**The Supreme Court in Sweden (“SC”) has in February 2023 delivered two new judgements regarding *murder*<sup>1</sup> respective *attempted murder*<sup>2</sup> and established that circumstantial evidence may together reach the required level of proof *beyond reasonable doubt* and the accused may therefore be considered guilty. The SC’s judgements have been mentioned in media and legal professions have argued, with headlines, “The SC tears up an acquittal judgment<sup>3</sup>”, “Fairy like reason or beyond reasonable doubt<sup>4</sup>” and “The SC cleans the balcony<sup>5</sup>”. Our opinion is that these criminal cases will have an impact on the level of proof also in civil cases in such way that the value of the indirect evidence may together reach the evidentiary requirement *proved*.**

On February 14th, 2023, the SC ruled two judgements, *The murder at the bus stop* and *Årsta Plaza*, regarding the evidentiary requirement in criminal cases. The rulings state that indirect evidence may lead to the conclusion that the accused person is guilty to the criminal offence since the evidentiary requirement, *beyond reasonable doubt*, can be reached. The SC found that the standard of proof could be reached with an overall assessment of the circumstantial evidence if there is lack of direct evidence. Common to both cases was that witnesses could not identify the accused and that it was exclusively circumstantial evidence that was subject of examination.

It is well known by the litigation community, that the standard of proof is higher in criminal cases than in civil cases. In civil cases the evidentiary requirement is that a circumstance must be *proved* but this rule can be modified in the individual case depending on which party has the burden of proof and if any party has an alleviation of the burden of proof. In criminal cases the evidentiary requirement is *beyond reasonable doubt*. The conclusion based upon the SC’s judgements brings the following question up to date; How should the burden of proof according to Chapter 35 § 1 in the Swedish Code of Judicial Procedure (1942:740) be applied in civil cases?

If, in an overall assessment, circumstantial evidence can lead to the conclusion that the court considers the accused guilty to the offence *beyond reasonable doubt* shall this assessment also apply in civil cases where the claim shall be *proved*? If a party in a civil case lacks direct evidence the claim could be supported by circumstantial evidence proving the claim to be *proved*. According to our point of view the evidentiary requirement, *beyond reasonable doubt*, has been reduced through the SC’s judgements and affects the general evidentiary requirement, *proved*, in civil cases.

Furthermore, SC’s judgements will lead to an interesting development ahead in Sweden since the SC’s judgement leave a large space for the lower courts to develop case law. We will most likely see several judgements in civil cases be appealed where the ground for the appeal is based upon the above mentioned rulings and we are confident that the last is not said in this topic. To be continued...

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<sup>1</sup> Swedish Supreme Court’s judgement 2023-02-14 in case number B 5952-21.

<sup>2</sup> Swedish Supreme Court’s judgement 2023-02-14 in case number B 2354-22.

<sup>3</sup> Anderberg, Cecilia, *The Supreme Court tears up an acquittal judgement*, Expressen, 2023-02-14. <https://www.expressen.se/nyheter/hd-andrar-tillbaka-livstid-for-mord-i-marsta/>

<sup>4</sup> Hansson, Tommy, *Fairy like reason or beyond reasonable doubt*, Blåljus, 2023-02-14. <https://blaljus.nu/nyhetsartikel/2023/pa-sagolika-skal-eller-bortom-varje-rimligt-tvivel>

<sup>5</sup> Holmgård Lars, *The Supreme Court cleans the balcony*, Lars Holmgård analyzing the Swedish Supreme Courts judgement’s about evaluation of the evidence, 2023, JUNO.