

Supreme Court Clarifies Interim Security Measures

Contributed by [Advokatfirman Vinge](#)

March 16 2004

[Introduction](#)

[Facts](#)

[Supreme Court Decision](#)

[Comment](#)

Introduction

Under the Swedish Code of Judicial Procedure, the court may make an order for interim security measures in order to secure an applicant's rights. Such an order can be issued if the applicant can show probable cause that he has a claim against another that is or can be the basis of judicial proceedings. The order will only be granted if it is reasonable to assume that the respondent's conduct will hinder, or render more difficult, the realization of the applicant's rights, or substantially reduce the value of those rights.

The interim security measures may include the following:

- prohibition, subject to a default fine, of a certain activity;
- performance of a certain act; or
- action suitable in other ways to safeguard the applicant's right.

No such measures may be granted unless the applicant deposits with the court security for any loss that the opposing party may suffer.

In 1981 the relevant provision of the Swedish Code of Judicial Procedure was changed to its current wording. This change is regarded as having widened the scope for interim measures. However, it has been unclear whether a court can, as a security measure, order the respondent to effect the same performance as is requested in the main proceedings (ie, the claim that the applicant seeks to have established by a final judgment). This question has been answered in a recent Supreme Court decision.

Facts

The respondent in the case had undertaken to repair a lorry that belonged to the applicant.

The work was delayed and the applicant became liable to pay penalty charges to a third party that arose from the delay. The applicant held the respondent responsible for this delay and withheld payment for the repair work. The respondent refused to surrender possession of the lorry to the applicant by reference to the right of retention under Swedish law (ie, a security interest in goods for remuneration of services performed in respect of the goods).

The applicant brought an action requesting, among other things, that the court order the respondent to hand over the lorry to the applicant. The applicant requested that the court grant an interim security measure to safeguard the applicant's rights by ordering the respondent to hand over possession of the lorry immediately. The applicant provided a bank guarantee for the loss that the respondent might suffer as a result of the interim order.

The respondent opposed the request and argued, among other things, that a bank guarantee for a possible claim against the applicant would be inferior, from a security perspective, to retention of the lorry.

The district court found that it was not possible to grant an interim order for the respondent to effect, before a final judgment, the same performance as was requested in the main proceedings. The Court of Appeal affirmed the district court's decision, although one appellate judge dissented.

Supreme Court Decision

In its decision of December 18 2003 the Supreme Court initially noted the change of wording to the relevant provision of the Swedish Code of Judicial Procedure. This has aimed to assure the applicant of the possibility of immediately securing its right in relation to the opponent. The Supreme Court found that it was not clear whether the respondent could be ordered, by way of an interim security measure, to effect the same performance as was sought by the applicant in the main proceedings. Accordingly, the Supreme Court interpreted the provision, having regard to the legislative history and the preparatory works.

The Supreme Court found that the retention of the applicant's property by the opposing party may be interpreted through the provision as an action that would hinder the realization of the applicant's right. The Supreme Court therefore ruled that, although not explicitly mentioned in the relevant provision, there was nothing to prevent the court from issuing an interim order for the respondent to effect the same performance as was requested by the applicant in the main proceedings.

The Supreme Court returned the case back to the district court to examine whether the other requirements for granting the order sought had been met (including whether the applicant had proven probable cause for its claim).

Comment

It is clear from the decision of the Supreme Court that a court may issue an order for an interim security measure to such effect that a party must carry out the same performance as

is requested in the main proceedings.

One may argue that the Supreme Court decision considerably limits the scope of the right of retention. It is true that the applicant has to deposit with the court security for any loss that the opposing party may suffer. However, such a demand may not put the same pressure on the applicant as the retention of its goods.

The Supreme Court did stress in reference to the preparatory works that a court should not grant an order which temporarily determined the rights between the parties during a trial or other proceedings, unless this was justified by compelling reasons. The Supreme Court indicated that the parties' conflicting interests would always need to be balanced. In view of the considerable burden that one may envisage will be placed on the applicant in demonstrating the need for such far-reaching interim security measures, it may be that the Supreme Court's position is reasonable from a commercial perspective - there must be measures available to protect a party from retaining possession of goods in security for spurious claims.

For further information on this topic please contact [Paulo Fohlin](#), [Jonas Rosengren](#) or [Katarina Nilsson](#) at Advokatfirman Vinge by telephone (+46 31 722 35 00) or by fax (+46 31 722 37 00) or by email (paulo.fohlin@vinge.se or jonas.rosengren@vinge.se or katarina.nilsson@vinge.se).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

 [Comment/question for the author](#)

 [Print version](#)

 [Send to a colleague](#)

 [Advanced Search](#)

[Updates by this firm](#)

[Updates for this jurisdiction](#)

[Updates for this work area](#)



[Disclaimer](#) [Privacy Policy](#) © [Copyright](#) 1997-2007 [Globe Business Publishing](#) Ltd