

## Overview (May 2002)

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### [Sources of Civil Procedural Law](#)

#### [Courts](#)

#### [The Legal Profession](#)

#### [The Proceedings](#)

#### [Evidence](#)

#### [Costs](#)

#### [Interim Remedies](#)

#### [Suggested Changes to Procedural Law](#)

## Sources of Civil Procedural Law

The key source of Swedish procedural law is the Code of Judicial Procedure 1948, which provides the framework for both civil and criminal proceedings. Procedural rules are also found in statutes on substantive rules of law, such as insolvency and maritime law.

Sweden has been a member of the European Union since 1995 and EU law accordingly forms an integral part of Swedish legislation.

Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which came into force on March 1 2002, is directly applicable in Sweden because of Sweden's accession to the Treaty of Amsterdam. Sweden is also a signatory to the Brussels Convention of 1968 (now only applicable in relation to Denmark) and the Lugano Convention of 1988.

In addition, Sweden is a party to several multilateral and bilateral treaties relating to procedural law, including:

- the Hague Convention of Civil Procedure of 1954;
- the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965; and
- the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial

Matters of 1970.

Sweden has been a signatory to the European Convention of Human Rights since 1952, although the convention was only implemented into Swedish law on January 1 1995.

## **Courts**

As in many other jurisdictions, there is a general distinction between public law and private law. Matters of public law are, except for criminal law, handled by the administrative courts whereas matters of private and criminal law are litigated in the general courts. The distinction is based on the subject matter of the dispute. For example, litigation of a private law nature against a public body is brought in the general courts.

Matters of public law include taxation, social welfare legislation and appeals against decisions of public bodies. However, claims for damages arising from erroneous decisions by public bodies are considered to be matters of private law.

### ***District courts***

The general court of first instance is the district court. Each district court is allocated its own territorial jurisdiction. A limited number of district courts are designated to deal with property cases, maritime matters, patents and cases arising under the Swedish Environmental Code. At present there are 75 district courts in Sweden, but there is a move towards merging smaller courts to create larger entities.

Cases are generally heard before a panel of three judges in the district court. Preliminary matters, including injunctions, temporary orders and pre-trial conferences, are usually decided by a single judge. If the case is of minor complexity or upon the parties' consent the case may be determined by one judge. Due to the increasing caseload a one-judge trial will usually speed up the process considerably.

There are no special courts for minor claims, although claims for less than Skr18,950 will be handled according to a small claims procedure, according to which the parties, among other things, cannot recover the costs of counsel.

### ***Courts of appeal***

District court decisions may be appealed to an appeal court. An appeal must be brought within three weeks of the district court's judgment or final order. All matters in the appeal courts are brought before a panel of three or four judges. A party is generally entitled to a new hearing in the court of appeal.

If the case involves less than Skr37,900 a leave to appeal is required, which is only granted on certain limited grounds.

### ***The Supreme Court***

There is a limited right of appeal from an appeal court to the Supreme Court. If leave to appeal is granted the Supreme Court's determination is not always confined to questions of law. The Supreme Court may overturn the lower courts' findings of fact.

A board of three justices (in straightforward cases there is only one) decides whether

appeal shall be granted. After having granted leave to appeal, the case will be heard either by a panel of five judges or - in the rare instances when the Supreme Court is considering departing from a legal principle previously adopted by the court - by all judges of the court in plenum or by nine members of the court.

A leave to appeal may be granted only if (i) it is of importance for the guidance of the application of law that the Supreme Court considers the appeal, or (ii) there are extraordinary reasons for such determination (eg, a grave procedural defect has occurred). If the Supreme Court grants leave to appeal it is not bound by the appeal court's determination of the facts.

### ***Special courts***

Apart from the general courts there are several special courts handling distinct areas of law, such as the Labour Court (the court of first instance for actions brought by a union or employers association or initiated by an individual employer bound by a collective agreement) and the Market Court (having jurisdiction over marketing practices, product safety and restraints of competition).

## **The Legal Profession**

### ***Judges***

There are no juries or lay judges adjudicating matters of private law in the general courts. Being a judge is a separate career in Sweden and judges may not become members of the Bar. A judge usually begins his or her career, which is often life-long, with a clerkship in a district court upon obtaining a law degree. Before obtaining permanent tenure associate judges are often seconded to government bodies where, among other things, they assist in the preparation of legislation. After approximately 10 to 15 years in court and government bodies the judge may be appointed to tenure positions.

### ***The Bar***

There is no monopoly on legal services in Sweden, nor is a party to appear in court required to be represented by legal counsel. Anybody may represent him or herself or any other litigant, in a Swedish court. Although most lawyers consider themselves competent to deal with non-contentious work as well as represent parties in court, the litigation work within large commercial firms is increasingly handled by litigation departments with lawyers specializing in that area. There are also niche firms specializing in litigation or different areas of litigation, and some legal departments of accounting firms also represent parties in court. However, in the majority of commercial disputes the parties are represented by a member of the Bar.

The Swedish Bar Association is regulated by law and overseen by the Supreme Court. Only members of the Swedish Bar may use the title '*advokat*'. The Bar Association has some 3,500 members. Multi-disciplinary practice is not allowed, in that members of the Bar are prevented from entering into partnership and sharing profits with other professionals. Members of the Bar are also excluded from taking employment with any company or public entity other than a law firm.

To qualify for membership in the Swedish Bar Association the prospective member must obtain a Swedish law degree and then practice law for five years, the last three being in

private legal practice. Foreign lawyers may practice freely in Sweden and, in doing so, use the title vested in them by the bar association or court where they are admitted. Although they are not technically prevented from appearing on behalf of their clients in a Swedish court, the language poses a barrier. Attorneys admitted in an EU state may become members of the Swedish Bar after three years of practice upon showing necessary knowledge of the Swedish legal system, usually by taking an exam.

## **The Proceedings**

### ***Commencement of proceedings***

The proceedings are commenced in the district court by the filing of an application for a writ of summons. The competent court is usually that of the place where the defendant is domiciled, although there are supplementary provisions which recognize the competence of the court at the place where a contract was entered into. Litigation for property must be brought at the place where the property is situated. The Swedish courts also recognize choice-of-law clauses, which render one district court exclusively competent.

The application of summons must include a statement of the claim, a detailed account of the circumstances invoked as the basis of the claim and a specification of the means of evidence relied upon, stating what shall be proved by each means. As it may be difficult to know at the outset which questions of fact will be disputed, the specification of evidence will often be preliminary at this stage and added to during the preparatory proceedings.

In addition the plaintiff must also include the circumstances rendering the court competent. As a corollary to the principle of *jura novit curia* (ie, 'the court knows the law'), there is no need to state rules of law.

The application shall be signed by the plaintiff or his or her counsel. In the latter case, a power of attorney shall be presented to the court (supplemented with an excerpt from the Companies' Register or similar in which the authority to sign on behalf of the company appears).

Provided the application meets the formal requirements, the court will issue a summons. The court effects service of the summons on the defendant together with a copy of the application for a writ of summons and any documents annexed to the application. If service is to be effected abroad, the court may arrange for the documents to be translated. The costs for such translation will be borne by the court.

### ***The preparatory proceedings***

Upon receipt of the summons the defendant will be required to file a defence, failing which a default judgment may be issued. The defence shall state any procedural objections the defendant wishes to make (eg, objections as to the court's jurisdiction) and the extent to which the plaintiff's claim is contested or admitted. If the defendant contests the claim, he or she shall state the basis for doing so, including his or her position as to the facts alleged by the plaintiff.

During the preparatory stage of the proceedings the court shall seek to clarify the parties' claims and objections, and the extent to which the parties disagree in relation to the alleged facts. Once these issues have been clarified the parties shall state the evidence they wish to

adduce and what they intend to prove by each piece of evidence. The preparatory proceedings are effected by exchange of writings between the parties and, in most cases, by way of a pre-trial conference.

The court is under a duty to help the parties to reach an out-of-court settlement. The courts generally play an active role in this respect, especially at the pre-trial conference. If appropriate, the court may also refer the dispute to mediation by appointing a mediator - often a retired judge. The mediator's fees are borne by the parties. The court proceedings will generally be held in abeyance pending the outcome of the mediation.

### ***The main hearing***

Once the preparatory proceedings are concluded the case will proceed to the main hearing. Due to the increasing caseload of the courts the preparatory proceedings may be protracted, especially in complex commercial litigation. Even in fairly uncomplicated disputes the main hearing will seldom take place until a year after proceedings have been initiated.

At the main hearing the principle of concentration applies, meaning that the case must be prepared so that it can be concluded at one hearing - although this may last for several days depending on the case. The principle of immediacy underpinning the Code of Judicial Procedure also provides that the judgment must be based only on what has occurred during the main hearing. The courts are thus prevented from taking a previously disclosed fact or written evidence into account unless presented at the main hearing.

The main hearing begins with the opening speeches, in which the parties present the claims and defences. The written evidence is usually also presented at this stage. After the parties have given their versions of the facts the hearing proceeds with the presentation of evidence, including hearing of witnesses.

The parties summarize their positions in the closing arguments. At this stage of the hearing the parties normally present legal arguments and refer the court to relevant statutes, case law and legal writing.

The principle of *juria novit curia* applies to the proceedings. This means that the rules of Swedish law need not to be stated or established by the parties, and the court is free to base its judgment on legal rules not referred to by the parties. An exception is made in relation to foreign law, which is considered to be a question of fact.

## **Evidence**

### ***General principles***

The general rules of evidence are contained in the Code of Judicial Procedure but are supplemented by provisions in substantive legislation, especially by provisions on the burden and standard of proof.

The principle of free evaluation of evidence is fundamental to Swedish procedural law. According to this principle, every kind of evidence is allowed, and it is for the court to weigh up the weaknesses and shortcomings of any evidence in order to determine its relevance. However, there is a rule stipulating that evidence shall be presented from the best source available. Hence, the reading of witness depositions is generally not allowed by

the courts unless the witness is unavailable (eg, ill or deceased). Evidence from secondary sources, such as hearsay evidence, is admissible in principle but generally does not carry much weight. The court may, on its own initiative or at the opposing party's request, reject evidence if found unnecessary or, under certain circumstances, if introduced too late in the proceedings.

In contrast to the position in many other jurisdictions, the mere preponderance of the evidence or the balance of probabilities is not a sufficient standard of proof in civil matters under Swedish law. The party seeking relief from the court must prove all circumstances necessary for a favourable verdict, even when the opposing party contesting a fact does not offer any evidence to support its position. However, the standard of proof is lower than that of 'beyond reasonable doubt' applicable in criminal cases.

However, in relation to facts that are generally difficult to establish, it may be sufficient to state the facts as being 'probable'. The litigant may also be assisted by rules on the burden of proof, casting the burden of establishing certain facts on the other party. Guidance in this respect can often be sought from the substantive rules applicable to the dispute or from relevant case law.

### ***Witnesses***

The parties are not heard as witnesses. However, they may be heard under 'affirmation of truth' if this is requested by any of the parties. As under witness testimony, the giving of false statements under affirmation of truth constitutes a criminal offence.

The court summons all the witnesses who are to give evidence at the hearing. There is nothing to prevent counsel for a party from speaking to any of the witnesses before the hearing, including those called by the other party.

The hearing of a witness begins with an examination by counsel for the party calling the witness. Leading questions must not be asked at this stage. The other party may then cross-examine the witness. The party calling the witness will then have an opportunity to re-examine the witness. The court may also ask the witness additional questions. This is usually done once counsel for both parties have completed their examinations.

### ***Experts***

The court may appoint an expert on its own initiative. However, in practice experts are usually heard at the request of the parties. The experts often give written opinions before the main hearing, which will be disclosed during the preparatory proceedings.

### ***Documentary evidence***

There is no extensive discovery procedure in Swedish common law, although the Code of Judicial Procedure contains a provision to the effect that a party has a duty to disclose what documentary evidence it requests if so requested by the other party. There is also a right to obtain access to written documents from the other party or from a third party not participating in the litigation. Any party holding a written document that can be assumed to be important as evidence is generally obliged to produce it. Upon request, the court may issue an order that a particular document or a category of documents be produced. Such request must be sufficiently specific so as to make it possible to identify the document or

documents at issue.

No privilege applies to pre-trial correspondence between the parties or their lawyers, and such correspondence may thus be submitted as evidence.

### **Costs**

As a general rule costs follow the event. The prevailing party will thus recover reasonable legal costs from the opposing party. If the prevailing party is only partly successful, he or she will only be entitled to recover a proportion of his costs. The general rule that costs follow the event may be departed from if the circumstances so justify. This may be the case if the prevailing party caused unnecessary litigation costs.

Compensation for litigation costs shall cover the costs of preparation for trial and presentation of the action, including fees for counsel, to the extent that the costs were reasonably incurred to safeguard the party's interests. Compensation shall also be paid for the time and effort expended by the party himself or herself. Negotiations aimed at settling an issue in dispute that bear directly on the outcome of a party's action are considered as preparatory measures for the trial.

If the reasonableness of the parties' respective costs is disputed, the court will make an assessment in connection with the court's final ruling in the case. The order as to costs forms an integral part of the judgment.

There is a nominal fee of Skr450 for filing an application for a writ of summons. There are no other fees due to the court for the court's services.

Plaintiffs of certain non-EU countries not party to the 1954 Hague Convention on Civil Procedure may, on the defendant's request, be ordered by the court to provide security for costs that may eventually be awarded to the defendant. The security must normally be provided in the form of a bank guarantee or similar.

### **Interim Remedies**

Two forms of interim remedies are available under Swedish law - the arrest of assets and other injunctions. Interim remedies may be sought both before and during the proceedings. Such remedies may also be invoked in support of a claim that is being pursued in a foreign court, or by arbitration in Sweden or elsewhere.

The most important interim remedy in international litigation is the arrest of assets, which is similar to the freezing order available under English law. In order to obtain such an order the applicant must demonstrate that it is likely that he or she has a claim due for payment and that there is a risk that the other party will attempt to evade the effects of a final judgment by disposing of or otherwise dealing with the assets.

The standard of proof for this is significantly lower than the normal requirement in civil proceedings. An order for the arrest of assets will normally first be granted without hearing the other party. The other party will then be given the opportunity to comment on the

application for arrest after which the court will reconsider the arrest order.

Among the other injunctions available is the restraining order, which may be ordered against a party to prevent him or her from continuing to use a disputed trade name.

### **Suggested Changes to Procedural Law**

The Commission of Judicial Procedure has recently suggested changes to the Code of Judicial Procedure to make Swedish court proceedings more flexible and modern. It is likely that the proposals will lead to new legislation.

*For further information on this topic please contact [Paulo Fohlin](#) or [Jonas Rosengren](#) 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](mailto:paulo.fohlin@vinge.se) or [jonas.rosengren@vinge.se](mailto:jonas.rosengren@vinge.se)).*

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