

REVIEW OF SWEDISH CASELAW

As agreed I have conducted a limited research into the reported caselaw and caselaw which has been noted in databases and law reviews on the application of Regulation 44/2001 in the Swedish higher courts.

The reported cases, which I have found, do not represent a lot of information on the day-to-day practical implementation and application of Regulation 44/2001 in Sweden. The reported cases and articles do not either provide any statistical information on the number of cases in which the local district courts have applied Regulation 44/2001. The reported cases do not even tell the number of case in which the higher courts, appeal courts and Supreme Court, apply Regulation 44/2001 because not all cases are reported.

The above qualifications unfortunately result in that I am unable to respond to many of the questions in Questionnaire numbers 2 and 3. Many of the questions are of a highly practical nature which only local judges or practitioners could answer. Other questions raise legal issues and related to Sections or Articles of Regulation 44/2001 which have not yet been touched upon in the reported cases. Some of the cases reported during 2005-2006 still concern the Brussels Convention (or even in a few cases the Lugano Convention) rather than Regulation 44/2001. I have however still reported these below since they demonstrate how the Swedish courts have applied the Brussels regime in the broad sense and display which kind of issues have been actualised in recent years in the Swedish courts under the Brussels regime.

The questions in the Questionnaires which are of a more general nature and where the responses require opinions in relation to various provisions of Regulation 44/2001 and own practical experiences I am unable to answer from a specific Swedish law perspective. However, Professor Hess has access to my doctoral thesis in which I deal with certain aspects of Regulation 44/2001 and is therefore privy to my opinions as a researcher. I have also been interviewed by the Finnish *rapporteurs* to the Study in the summer of 2006 for the preparation of their report regarding any practical experiences as a practising lawyer. Therefore, I exclude from this report any own opinions or practical experiences regarding the provisions of Regulation 44/2001.

In sum, based on the limited Swedish caselaw review the response to many of the questions is:

“The sources reviewed provide no information in response to this question.”

I have therefore chosen to hereunder report all the cases that I have been able to find and will indicate for each case if it according to my understanding relates directly to specific questions of the Questionnaire.

SCOPE AND APPLICATION OF THE REGULATION

Case Ö 2773-05, reported NJA 2006:39

Alligator Bioscience AB v. Maxygen Inc.

The Supreme Court found that jurisdiction could not be based on the Brussels I Regulation in an action for a negative declaratory judgment regarding a European patent between a Swedish company as claimant and a US company as defendant. However, the Supreme Court ruled having regard to the European patent system that Maxygen's patent rights could be considered located in Sweden and therefore under Swedish private international law there was jurisdiction in Sweden.

Case Ö 4876-05

The Court of Appeal for Västra Sverige found that the district court of Värmland did not have jurisdiction over a claim raised by a Swedish contract party. The contract being between a Swedish party and a counterparty with his address on the Channel Islands. The Court found that it could not apply the Brussels I Regulation or the Brussels Convention since the Channel Islands did not fall within the territorial scope of the Regulation/Convention. Hence, Swedish private international law rules were applicable and under these rules jurisdiction could not be found in Sweden considering the facts of the case.

Case Ö 3357-05

The case concerns the sale and ownership of shares in an Austrian company between two Swedish companies and the seller company is in liquidation. The purchaser of the shares has not been able to register ownership in Austria because Oberste Gerichtshof has found that the Swedish liquidator did not have authority to dispose of assets in Austria. Now the purchaser is seeking a declaratory judgment in the Swedish district court regarding ownership. The Court of Appeal has found that the Austrian judgment concerns a matter which is regulated in the Insolvency Regulation, (EC) 1346/2000, and therefore excluded from the scope of the Brussels I Regulation. Therefore, there the Austrian judgment does not have to be recognised in Sweden and the declaratory claim can be heard. The case is currently pending in the Supreme Court.

(Questionnaire 3: 1.3)

Case Ö 494-06

The case concerns an insurance dispute between a Swedish company and an insurance company domiciled on the Isle of Man. The claimant had referred to Article 8(2) of the Lugano Convention and Article 9 of the Brussels I Regulation in order to establish jurisdiction in Sweden. Both the district court and the Court of Appeal of Övre Norrland considered that neither the Convention nor the Regulation were applicable but came to different results, the first applying the Brussels regime by analogy and the second not finding reason to do so. The case is currently pending in the Supreme Court.

JURISDICTION

Article 5.1

Case Ö 4286-02, reported NJA 2005:62

A.S v. Rambøll

The Supreme Court found that the district court of Stockholm had jurisdiction over the dispute as the place of performance of the contract. The question which had arisen and which the judgment focussed on was whether Article 5.1 (of the Brussels Convention) could be applied if the defendant contested the existence of the contract and what the burden of proof is for the existence of the contract on which jurisdiction is to be based. The Supreme Court referred to *inter alia* the ECJ judgments *Effer* and *Shevill* to find that Article 5.1 can be applied even if the existence of the contract is in dispute, and that the burden of proof follows national procedural rules as long as the purpose of the Convention was not negated thereby. Applying Swedish law to the question of proof the standard was that it cannot from the claimant's application or other factors be obvious the no contract exists.

(Questionnaire 3: 2.2.5)

Case Ö 2333-04

The Court of Appeal of Skåne and Blekinge found that the district court of Belkinge had jurisdiction over a dispute concerning a contract between a Swedish flying club and a Spanish company. The contract for the sale of an airplane stipulated a Swedish town, Rönneby, as the place of delivery of the airplane. The Court of Appeal found referring to the Brussels I Regulation, the Lugano Convention and Supreme Court caselaw that the place of delivery constituted the place of performance which therefore constituted grounds for jurisdiction.

(Questionnaire 3: 2.2.3 and 2.2.5)

Case Ö 3249-04

The Court of Appeal for Västra Sverige found the district court had jurisdiction over a dispute concerning a contract between a Swedish woman and a German company. The contract was for the provision of a service by the Swedish woman and the Swedish woman had brought a claim for payment under the contract. The Court considered that the provision of service by the Swedish woman and the fact that she was domiciled in Sweden formed grounds for jurisdiction.

(Questionnaire 3: 2.2.4 and 2.2.6)

Article 6.1

Case Ö 1044-04

The Court of Appeal for Västra Sverige found that the district court of Halmstad had jurisdiction over both claims since they were closely connected. Both the declaratory claim against the Swedish car importer and the claim for performance against the Italian company which was supposed to deliver the car under the contract for purchase of a car were considered to be based on the same grounds and there was a risk of irreconcilable judgments.

(Questionnaire 3: 2.2.12)

Case Ö 536-04

Freeport PLC v. Olle Arnoldsson

The Supreme Court has referred three questions for a preliminary ruling to the ECJ, see C-98/06 (OJ C 86, 8.4.2006, p. 20). In the matter a Swedish man has brought a claim in Sweden for contractual damages an English company and its Swedish subsidiary. The English parent company has contested jurisdiction.

(Questionnaire 3: 2.2.12)

Case Ö 4968-04, reported NJA 2005:6

Maersk Sweden v. the Swedish Customs Authority and Fila Sport S.p.A (Italy)

The Supreme Court found applying article 6.1 that the claims were so closely connected that the district court of Stockholm also had jurisdiction over the claim against Fila. The claims against both defendants were based on the same grounds and there was a risk of irreconcilable judgments if the damages claims were dealt with separately. In particular the risk of irreconcilability would arise if the matters were judged separately and neither defendant was found liable on the basis that liability should be allocated to the other defendant.

(Questionnaire 3: 2.2.12)

Article 22

Case Ö 604-03, Reported NJA 2005:17

CUJAB AB v. P. L.

The Supreme Court found that the district court of Göteborg did have jurisdiction in a contractual claim raised by the Swedish company CUJAB against the Danish citizen P. L. who was domiciled in Göteborg because the matter did not fall under the exclusive jurisdiction rule of the Brussels Convention regarding matters which have as their object rights *in rem* in immovable property. The contract concerned the lease of a hotel business. The lease of the business included the lease right to the relevant hotel property in France, which however was owned by a third party. The Supreme Court stated that Article 16 of the Convention should be interpreted strictly as an exception to the main rule. Furthermore the Court referred *inter alia* to the ECJ judgments *Sanders*, *Hacker* and *Dansommer* and found that a contract including the right to use property falls outside Article 16 of the Brussels Convention if the main purpose of the contract is other than the right to use property. Applying these parameters to the facts of the case the Court found that the exclusive jurisdiction rule did not apply.

(Questionnaire 3: 2.2.5 and 2.2.18)

*Case Ö 3937-03, Reported NJA 2005:53**F-H. H. v. R-M. H.*

The Supreme Court found that the district court of Stenungsund had jurisdiction in the dispute between the parties who were both German and the defendant was domiciled in Germany. Jurisdiction was based on the fact that the dispute concerned the ownership of a Swedish freehold property which the claimant claimed the defendant had according to a mutual agreement bought on his behalf. The claimant now wished to assert his ownership and register it and the defendant disputed his right. The Supreme Court found the dispute concerned rights *in rem* in immovable property within the meaning of Article 22 of the Brussels I Regulation. The Supreme Court specified that such a dispute concerning “hidden ownership” had under domestic law not been categorised as a right *in rem*. However, the concept should be given an autonomous interpretation under the Regulation and according to ECJ caselaw and the Jenard report such a dispute as the one in question did unequivocally fall under Article 22 of the Regulation.

(Questionnaire 3: 2.2.18)

Case Ö 893-05

The parties to the dispute are both Danish and the dispute concerns the purchase price for a property in Sweden and the claim for lowering the contractual purchase price due to the property not being in the agreed condition. The district court of Blekinge dismissed the claim due to lack of jurisdiction since the proceedings did not have as their object rights *in rem* in immovable property within the meaning of Article 16 of the Brussels Convention. The Court of Appeal of Skåne and Blekinge however on appeal ruled that the district court’s jurisdiction could be based on grounds not raised by the parties. Since the claim related to a contract the place of performance of the contractual obligation could form the basis for jurisdiction under Article 5.1 of the Brussels Convention. In the matter at hand the location of the freehold property in question constituted the place of performance wherefore the district court had jurisdiction. The case is currently pending in the Supreme Court.

(Questionnaire 3: 2.2.5 and 2.2.18)

RECOGNITION AND ENFORCEMENT

*Case Ö 1620-03, Reported NJA 2006:1**B.L. v. L.M*

The Supreme Court found that the Svea Court of Appeal should not have granted enforceability under the Lugano Convention of a Spanish judgment regarding litigation costs until further investigation had been conducted because it was unclear from the documents presented which party was actually responsible for the costs. Therefore the matter was referred back to the Court of Appeal for renewed review.

Case Ö 151-04

The Supreme Court found that in the absence of specific rules in the Brussels I Regulation or in Swedish rules regarding recognition and enforcement of

foreign judgments a Swedish party was entitled to be awarded litigation costs following an appeal of enforcement against him when the Finnish and Norwegian parties had enforced a judgment which had later on been overturned on appeal. The Supreme Court based the right to be awarded costs on Chapter 18 of the Swedish Procedural Code and caselaw. The right to be awarded costs arises when the matter becomes contested, e.g. from the time of the appeal of the enforcement decision.
(Questionnaire 2: 2.8)

Case Ö 498-04

Svea Court of Appeal declared an English judgment was enforceable first on application of the enforcing party and secondly after appeal from the enforcement defendant. The English judgment concerned a contract between a US company and Swedish one for obligations to be carried out in Sweden and Denmark. The argument of the US company in Svea Court of Appeal that the judgment could not be enforced because the English court did not have jurisdiction was not considered to constitute substantiated grounds for lack of jurisdiction within the meaning of Article 35 of the Brussels I Regulation. Furthermore, the argument that the US company had not been served properly in the underlying English proceedings had neither been substantiated. Thus, the Court of Appeal could not under Article 34 or 35 of the Brussels I Regulation refuse recognition.

Case Ö 3955-04

Svea Court of Appeal found an Italian judgment that was enforceable in Italy also enforceable in Sweden since there were grounds under the Brussels I Regulation to declare the judgment enforceable.

Case Ö 432-05

The case concerns a judgment from the Italian court of Turin that has become legally binding and awarded a declaration of enforceability in accordance with Article 54 of Regulation 44/2001. The Swedish court declared the judgment enforceable in Sweden. The question which arose thereafter on appeal to the Supreme Court was whether the defendant had lodged its appeal against enforcement within the one month time limit in accordance with Article 43(5) of Regulation 44/2001. The declaration had been served on 15.12.2004 and the appeal lodged 17.1.2005 which was a Monday. The Supreme Court found that time limit should be calculated in accordance with Regulation 1182/71 and that the appeal had therefore been lodged within the time limit. There has been no notice in the databases or reports regarding the merits of the appeal and whether it has been decided.

Case 3417-05, Reported NJA 2005:67

TeliaSonera v. Hilcourt Docklands Ltd

The Supreme Court found no grounds to grant TeliaSonera's extraordinary procedural plea that Svea Court of Appeal should not have declared an English judgment enforceable. The justification for refusal was that Svea Court of Appeal's decision on the merits could not be overturned by an extraordinary procedural plea and since Svea Court of Appeal had been the competent court there was no procedural irregularity.

The literature (Pålsson SvJT 2006, p. 867) however notes that in substance Svea Court of Appeal had been wrong because grounds for enforceability under the Brussels I Regulation did not exist in the matter because the English judgment had actually been based on an arbitral award and therefore fell outside the scope of application of the Regulation.

Case Ö 1063-06

The Svea Court of Appeal declared a German judgment enforceable in Sweden under the Brussels I Regulation on application by a German party. However, the Court did not award any litigation costs for this first stage of enforcement application. The Court found that the Brussels I Regulation and Swedish rules regarding recognition and enforcement of foreign judgments are silent on the issue of costs for the enforcement stage. The Court of Appeal thereafter referred to the Supreme Court's caselaw that costs could not be awarded in the first stage of enforcement application where contradictory proceedings between the parties were not yet at hand. Regarding the German company's request to refer the question of costs to the ECJ the Court of Appeal noted that according to ECJ caselaw only courts over which there is no appeal can refer matters and that the German party had the opportunity to appeal to the Supreme Court.

(Questionnaire 2: 2.8)

Case Ö 5557-06

The Svea Court of Appeal declared on appeal that grounds for enforceability were not fulfilled after having first declared a Finnish judgment enforceable under the Brussels I Regulation. The refusal of enforcement was based on the fact that it had not been shown that the legal person applying for enforcement and the Finnish judgment debtor were the same.

Case number not available

Svea Court of Appeal found on appeal that a French judgment on "*separation de corps*" including a ruling on alimony could not be enforced in Sweden under Article 27.3 and 34 of the Brussels Convention. The justification for refusal was the existence of a Swedish irreconcilable judgment on divorce

Eva Storskrubb
30 January 2007