

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

SWEDEN

PREPARED BY:

**ROBERT WIKHOLM & HOMAN HAMZEH
VINGE
SMALANDSGATAN, 20
111 87 STOCKHOLM - SWEDEN**

(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

The main legal source of the rules of jurisdiction in civil and commercial matters is the Swedish Code of Judicial Procedure (SFS 1942:740)¹ (“the Code”). The Code contains no general provisions defining competence of Swedish courts in cases with international aspects.

2. Specific Rules (or Not) for Transnational Disputes

In cases where the Brussel I Regulation and the Brussels/Lugano Convention are not applicable, the courts normally apply by analogy the jurisdiction rules found in Chapter 10 of the Code. The jurisdiction rules regarding transnational disputes are thus derived from those applied in internal disputes. Chapter 10, section 4 of the Code could serve as an example of the procedure. Although the wording of the provision regulates national disputes, the provision could by analogy grant jurisdiction to the district court in the place where the contract was entered or a debt incurred.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

There are no specific set of national rules pursuant to article 4 of the Brussels I regulation. The jurisdiction rules regarding transnational disputes are derived from those applied in internal disputes. Jurisdiction therefore exists if an internal jurisdiction rule has designated a forum for review of the dispute in question.

4. Influence of EU Law

The application or interpretations of national jurisdictional rules are influenced by the Brussels I Regulation and the case law of the European Court of Justice. The Supreme Court has in NJA 1994 p 81 stated that the Brussels /Lugano Conventions express generally accepted international jurisdiction principles that should influence interpretation of national jurisdictional rules. The Court of Appeal has also in RH 2005:95 specifically referred to case law of the European Court of Justice in deciding a matter regarding national jurisdictional rules.

To conclude, the interpretation of national jurisdictional rules are influenced by the Brussels I Regulation but case law does not permit far-reaching conclusions as to the extent of such influence.

¹ See Appendix 1.

5. Impact of Other Sources of Law

There are no such analysis in Swedish jurisprudence regarding impact from other sources of law on national jurisdiction rules.

6. Other Specific Features

Chapter 10, section 3 of the Code constitutes a specific feature when compared to the Brussels I Regulation. The provision states that the district court in the place where the property is located may try the case regardless of the defendant's residence.

7. Reform

There are currently no proposed changes regarding jurisdiction rules applicable in cross-border cases.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

Following international conventions ratified by Sweden contains jurisdiction rules:

- The Convention on Freight Contracts Concerning the International Delivery of Goods by Road. (CMR) (Geneva 19.5.1956) *Cf.* the enabling act (SFS 1969:12)
- The Convention on International Railway Traffic (COTIF) (Bern 9.5.1980) *Cf.* the Act on International Railway Traffic (SFS 1985:193)
- The International Convention on Sequestration and Similar Interim Enforcement Measures Regarding Shipping (Brussels 10.5.1952)
- The Warsaw Convention on International Air Transport (Warsaw 12.10.1929). *Cf.* Chapter 9 of the Aviation Act (SFS 1986:166)

9. Practical Impact of international conventions with third states

The international conventions mentioned in section 8 do not provide for general jurisdictional rules in civil and commercial matters. The practical impact of international conventions is therefore rather limited since they apply to specific disputes (e.g. shipping, aircraft etc.).

(C) Applicable National Rules Pursuant to Article 4 of the Brussels I Regulation

10. Structure

There is no general provision defining jurisdiction in cases with international aspects. The principal rule is that the district court in the place where the defendant is sojourning has jurisdiction in cases where the defendant has residence outside Sweden.² However, there are provisions competing with the principal rule. These rules apply regardless of defendant's residence and regulate specific situations, e.g. chapter 10, section 3 of the Code states that the district court in the place where the defendant's property is situated has jurisdiction.³

11. General Jurisdiction

As described in detail under section 15, the Code includes two rules regarding general jurisdiction for cross-border cases: Chapter 10, section 3, paragraph 1 and section 4 of the Code. These rules are often applied to construct jurisdiction although the link between the defendant and Sweden is weak. However, due to the rules broad scope of application, the sections in question has to be interpreted narrowly.

Section 3 allows jurisdiction for the district court in the place where the defendant's property is located. However the property must have some asset value. By way of example, a left behind umbrella does not constitute property in the meaning of the statute since it has a limited asset value. Furthermore, it is unclear to what extent intellectual property constitutes property in the meaning of the statute.

Section 4 allows jurisdiction for the district court in the place where the contract was entered or a debt incurred. Case law relating to these sections is brought forward under section 15.

12. Specific Rules of Jurisdiction

a) Contract

According to Chapter 10, section 4 of the Code, the district court in the place where the contract was entered has jurisdiction over non-resident defendants.

It shall be noted that the provision requires that the contract must have been entered when the defendant or his legal representative was in Sweden. It is thus not sufficient that a preparatory negotiation has taken place within Sweden. Moreover, in NJA 1940 p 354, the Supreme Court stated that a contract concluded by telephone between a Swedish and a foreign company is not sufficient for jurisdiction.

² See Chapter 10, section 1 para 5 of the Code.

³ See also Chapter 10, sections 6, 8-8a and 10 of the Code.

b) Tort

Tort claims may be filed in Sweden if either the tortious act was committed or the injury was suffered here.⁴ The district court in the place where the tortuous act occurred or had its impact is therefore competent to adjudicate the case.

c) Criminal Proceedings

There is no specific ground for jurisdiction as regards civil claims based on acts giving rise to criminal proceedings. However, Chapter 22, section 1 of the Code enables the plaintiff to cumulate his/her claim with criminal proceedings related to the criminal act. When the civil claim is not entertained in conjunction with the prosecution, an action shall be instituted in the manner prescribed for civil actions in general, i.e. the jurisdiction rules provided in Chapter 10 of the Code.

d) Secondary Establishment

Chapter 10, section 5 of the Code provides jurisdiction in the place where the establishment is located. The dispute must arise directly out of the business activity carried out at the establishment. Unrelated claims are therefore not sufficient for jurisdiction.

e) Trust

The legal entity trust is not a part of the Swedish legal system. Jurisdiction rules are therefore not provided for trusts.

f) Arrest and/or location of Property

There are no specific provisions of jurisdiction based on the arrest of property. Chapter 15, section 5 of the Code states that arrest of property is subject to the general rules of jurisdiction applicable in civil cases, i.e. a provision in Chapter 10 of the Code must be applicable by analogy. Otherwise, the court cannot issue an arrest of property.

13. Protective Rules of Jurisdiction

a) Consumer Contracts

The district court in the place where the consumer resides has jurisdiction concerning consumer disputes less than approximately SEK 20.000.⁵ The general jurisdiction rules are applicable in consumer disputes exceeding mentioned amount. However the dispute must have some, albeit minor, connection to Sweden. Since the referred situations above lack

⁴ See Chapter 10, section 8 of the Code.

⁵ See Chapter 10, section 6 of the Code.

any connection to Sweden, there is no venue designated for such cases. The cases would therefore be dismissed.

b) Individual Employment Contracts

The Labour Disputes (Judicial Procedure) Act (SFS 1974:371) provides internal jurisdiction rules regarding employment contracts. Chapter 2, section 2 of the Labour Disputes Act states that the district court in the place where the employee resides is competent to adjudicate disputes related to employment contracts. However, the employee may bring action to other venues if jurisdiction exists according to Chapter 10 of the Code of Judicial Procedure. The provision in the Labour Disputes Act is thus not exclusive.

It shall be noted that the provisions in the Labour Disputes Act does not regulate international disputes. International labour disputes are regulated in the same way as other international disputes in civil and commercial matters, i.e. the courts apply by analogy the jurisdiction rules found in Chapter 10 of the Code. The jurisdiction rules regarding international labour disputes are thus derived from those applied in internal disputes.

The referred cases in (iii) and (iv) can be adjudicated in Swedish courts if there is a connection to Sweden. An employee can therefore bring a claim before Swedish courts if a jurisdiction rule in Chapter 10 of the Code is applicable, e.g, Chapter 10 section 3 or 4. An employee can therefore not bring an action towards an employer domiciled in a non-EU state if the case lacks connection to Sweden. The connection may however be minor, e.g. the work has been done or the contract was concluded in Sweden.

c) Insurance Contracts

This matter is subject to the general rules of jurisdiction found in Chapter 10 of the Swedish Code of Judicial Procedure.

d) Distribution Contracts

These matters are subject to the general rules of jurisdiction found in Chapter 10 of the Swedish Code of Judicial Procedure.

14. Rules for the Consolidation of Claims

The general rule of internal jurisdiction regarding consolidation of related claims is found in Chapter 10, section 14 of the Code:

“Claims based on essentially the same ground against several defendants, when brought simultaneously, may be instituted in the court in which any defendant is required to respond under the preceding provisions in this chapter. If the matter at issue is such that all interested persons will be bound by the same judgment, the action may also be instituted in the court in which any defendant is

required to respond.”

a) Co-Defendants

According to case law and legal doctrine, jurisdiction over non-EU state co-defendants could only be allowed in exceptional cases.⁶ The general rule is that the internal jurisdiction rules found in Chapter 10 of the Code must, when applied by analogy, allow jurisdiction over the co-defendant.

However, the Supreme Court has in NJA 1986 p 729 stated that a minor connection to Sweden is sufficient for jurisdiction in spite of the fact that no jurisdiction rule in Chapter 10 of the Code was (by analogy) applicable towards the co-defendant. The Supreme Court held that a Swedish citizen domiciled in England is able to become co-defendant together with two other Swedish defendants on the basis of the connection between the claims and a minor relation to Sweden.

It shall be noted that a jurisdiction agreement between the defendant and the applicant cannot be used to create jurisdiction for a Swedish court in relation to the co-defendant.

b) Third Party Proceedings

According to Chapter 10, section 14, paragraph 3 of the Code the district court in which the main claim is pending has jurisdiction in internal disputes. A defendant domiciled in a non-EU state can be sued as a third party, provided that the district court in which the main claim is pending is competent by analogy of Chapter 10 of the Code.

c) Counter-Claims

The general rule found in Chapter 10, section 14 paragraph 2 of the Code states that the district court in which the main claim is pending has jurisdiction, provided that the counter claim is connected to the main matter in question. According to NJA 1989 p 36 and legal doctrine⁷, the general rule applies by analogy to counter claims towards non-EU state parties. Counter claims towards non-EU state parties are thus allowed in the district court in which the main claim is pending, provided that the counter claim is connected to the main matter at issue.

d) Related Claims

The general rule found in Chapter 10, section 14 paragraph 2 is the only provision governing such issues. Counter claims towards non-EU state parties are thus allowed in the district court in which the main claim is pending, provided that the counter claim is connected to the main matter at issue.

e) Any Problems Pertaining to Lack of Harmonisation

⁶ Fitger, *Rättegångsbalken* p 10:32. 2005 and NJA 1986 p 729.

⁷ See Fitger, *Rättegångsbalken* p 10:33. 2005 and Pålsson, *Svensk rättspraxis i internationell processrätt*, 1989.

The legal doctrine and case law has not reported any specific problem.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) The rules listed in annex I

Chapter 10, section 3, paragraph 1 of the Code is listed in the annex of the Brussels I regulation. The section allows jurisdiction for the district court in the place where the defendant's property is located. Since annex 1 is not exhaustive it is also likely that Chapter 10, section 4 of the Code is exempted from application. Section 4 allows jurisdiction for the district court in the place where the contract was entered or a debt incurred.⁸

b) Practical use of the rules listed in Annex I

These rules are often applied to construct jurisdiction although the link between the defendant and Sweden is weak. The rules above have been applied in some cases regarding international jurisdiction.

Case Law regarding Chapter 10, section 3 of the Code:

NJA 1981 p 386 – A Swedish court may not exercise jurisdiction over a foreigner that has property intended for his personal use during a temporary stay in Sweden.

NJA 1988 p 440 – A bill of lading has been considered to be without market value after the delivery of the goods. The court could therefore not exercise jurisdiction.

NJA 1998 p 361 – The Supreme Court stated that an unprivileged claim has market value. The district court could therefore exercise jurisdiction.

NJA 2004 p 891 – The foreign defendant owned shares in a Swedish limited liability company which had not issued any share certificates. The Supreme Court stated that jurisdiction could not be allowed since the Swedish company had not issued any share certificates. Hence, the shares alone did not constitute property in the meaning of the statute in question. It shall be noted that the case has been criticized in the legal doctrine.⁹

Case Law regarding Chapter 10, section 4 of the Code:

NJA 1940 p 543 – An agreement concluded by telephone between a Polish and a Swedish company is not sufficient for jurisdiction. The Supreme Court found that the agreement had not been concluded in Sweden. The district court could therefore not exercise jurisdiction.

⁸ See Lindell, Bengt, "Civil Procedure in Sweden", p 220.

⁹ See e.g. Michael Bogdan in *Juridisk Tidskrift* 2004-05 p 674 ff.

NJA 2001 p 800 – A representative for a foreign company made an offer in Sweden. He then left the country before the Swedish company's acceptance. Since both the offer and the acceptance were given in Stockholm, the Supreme Court ruled that the agreement had been concluded in Sweden. The district court could therefore exercise jurisdiction.

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

Neither the jurisprudence nor the official court records accounts for cases where article 4 (2) has been applied.

16. Forum *necessitatis*

There is no general rule allowing a Swedish court to exercise jurisdiction merely because there is no other forum available abroad. However, Swedish courts seem to find themselves obliged to provide jurisdiction by extensive interpretation of the Code in cases where no other foreign court exercises jurisdiction.¹⁰

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

Judgments from a non-EU State may be denied if they concern real property located in Sweden. According to section 10, Chapter 10 of the Code, the district court in the place where the real property is situated has exclusive jurisdiction over title issues regarding the property.

¹⁰ See NJA 1971 p. 417, 1980 p 188, 1985 p 832, 1989 p 143 and Bogdan, Michael, *Svensk internationell privat- och processrätt*, 5:th ed. pp.109-110 with further references.

(E) Declining Jurisdiction

18. Forum Non Conveniens

There is no general rule or practice allowing courts to decline jurisdiction. As described above, the subject matter of dispute must have, albeit minor, connection to Sweden.¹¹ As regards *forum non conveniens*, leading scholars state that although jurisdiction may formally exist on basis of a provision in Chapter 10 of the Code, the dispute may be declined due to the inappropriateness of settling the dispute in Sweden. The legal doctrine has not reported whether or not this rule differs between non-EU States.

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

(a) Non-EU Jurisdiction Agreements

The overriding principle is that a choice of court clause bars possible trials in Sweden. It shall be noted that choice of court clauses are normally not accepted in consumer and labour cases.

(b) Parallel Proceedings in a non-EU court

The Swedish court may grant jurisdiction provided that the foreign court is seized to try the case. It shall be noted that regarding *lis pendens* issues relating to pending disputes in foreign courts, the Swedish court normally declines jurisdiction if the foreign judgment may constitute *res judicata*.

(c) "Exclusive" Jurisdiction in a non-EU State

Swedish courts cannot exercise jurisdiction over immovable property situated outside the county. This has been confirmed in a number of judgments from the Supreme Court.¹² However, in order to avoid a legal vacuum the courts may exercise jurisdiction if the foreign court declines jurisdiction.¹³

In respect of registered intellectual property, the courts are most likely not able to declare a foreign registration of an intellectual property null and void since this is closely related to the public-law interest of the foreign country. However, claims regarding compensation for infringement of a foreign trademark or patent, the Swedish courts should be able to exercise jurisdiction.¹⁴

¹¹ See Bogdan, Michael , *Svensk internationell privat och processrätt*, 5th ed, Chapter 8.4 with further references.

¹² NJA 1968 p 78, NJA 1923 p 669 and NJA 1929 p 466.

¹³ NJA 1985 p 832.

¹⁴ See Bogdan, Michael *Svensk internationell privat och processrätt*, 5 th ed, Chapter 8.9 with further references.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

a) Non-EU Choice of court clause

The parties are free to enter into an agreement conferring jurisdiction to countries outside the EU. The validity and scope of such an agreement must be determined according to the national law of the member states concerned. As described above, a choice of court clause designating a foreign court bars possible trials in Sweden.¹⁵

b) Non-EU Parallel proceeding

See section 19 b.

c) Non-EU Exclusive jurisdiction

See section 19 c.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

There are no known cases in such matters.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

(a) Claims from EU Consumers against non-EU defendants

There are no known cases in such matters.

¹⁵ See e.g. O'Malley, Stephen and Layton, Alexander, *European Civil Practice* pp. 557-558 and section 16, Chapter 10 of the Code.

(b) Claims from EU Employees against non-EU Employers

In AD 27/1997, a Swedish citizen was employed by an Ethiopian corporation. The district court ruled that the subject matter of dispute had a minor connection to Sweden and therefore it was of no legal interest for Swedish courts to try the case.

(c) Claims from EU Plaintiffs in Community Regulated Matters

There are no known cases in such matters.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

There are no known cases in such matters.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

There are no known cases in such matters.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

The main ground of jurisdiction is Chapter 3, section 6 of the International Matrimony and Guardianship Act¹⁶ (SFS 1904:26). The Act states that parental issues may be tried in the same proceeding as matrimonial cases, if the issue of parental responsibility is brought forward in conjunction with a matrimonial case.

It shall be noted that the court is not obliged to consolidate the cases. A consolidation of the cases would likely occur when there is a practical need to try the matters together. This is normally the case when the child resides in the country. Swedish courts have also exercised jurisdiction in cases where there is no connection to Sweden. In RH 1998:81 the court held that in view of the parents' consensus regarding the parental responsibility it was in the interest of the child that the case should be settled in Sweden, regardless of the absence of connection to Sweden¹⁷

¹⁶ Sw. lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap.

¹⁷ See Bodgan, Michael, *Svensk internationell privat och processrätt*, 5 th ed, Chapter 12.5 for further reading.

The International Act on Matrimony, Adoption and Guardianship Act (SFS 1931:42)¹⁸ is applicable in relation to the Nordic countries. The ground for jurisdiction is identical with the one described above. However, paragraph 2 extends the jurisdiction. The parents can agree that the matter can be settled by a Swedish court. The court may also find it to be in the child's interest and on that basis grant jurisdiction.

Otherwise, when parental issues are subject of dispute outside matrimonial cases it is sufficient for jurisdiction that the custody holder is residing in Sweden, provided that such person is the defendant.¹⁹

¹⁸ Sw: lag om vissa internationella rättsförhållanden rörande äktenskap, adoption och förmynderskap.

¹⁹ See NJA 1993 p 65 and NJA 1995 p 770.

APPENDIX 1

PROCEEDINGS IN CIVIL CASES

Chapter 10 of the Swedish Code of Judicial Procedure

COMPETENT COURT

Section 1

The competent court for civil cases in general is the court for the place where the defendant resides.

When the defendant has civil registration in Sweden, the place where he was registered on the first of November of the preceding year shall be considered to be his residence.

A corporation, partnership, cooperative, association or similar society, foundation or similar institution is considered to reside at the place where the board has its seat or, if the board has no permanent seat or there is no board, at the place from which the administration is carried out. This rule also applies to municipalities or similar public authority.

The estate of a deceased person may be sued at the court where the deceased would have been required to respond.

A person with no known residence in or outside Sweden may be sued at the place where he is sojourning. If he is a Swedish citizen and sojourning outside the Realm or at an unknown place, he may be sued at the place within the Realm where he last resided or sojourned. (SFS 1991:485)

Section 2

In civil cases the Crown may be sued at the place where the public authority charged with attending to the suit has its seat.

Section 3

In disputes concerning debt obligations, a person with no known residence in the Realm may be sued where property he owns is located. In disputes involving movable property, he may be sued where the property is located.

A debt evidenced by a negotiable promissory note or by any other document, the presentation of which is a condition precedent to demand payment, is deemed to be located where the instrument is kept. Other debt claims are considered to be located

where the debtor resides. If the debt is secured, the place where the security is kept may be deemed to be the location of the debt.

Section 4

A person with no known residence within the Realm who has entered into an obligation or otherwise incurred a debt in the Realm may be sued in a dispute concerning the same at the place where the obligation was created or the debt incurred.

Section 5

A person engaged in farming, mining, manufacturing, handicraft, trade, or similar activity with a permanent establishment may be sued, in a dispute arising directly from the activity, where the establishment is located.

Section 6

A person who has entered into an obligation or otherwise incurred a debt at a place where he has been residing for a considerable period may be sued there with respect to the obligation or debt while he is present at that place. The same rule shall apply to debts incurred for food, lodging, and the like at a place of temporary sojourn.

Section 7

Proceedings concerning disputes relating to administration by administrators, custodians, or guardians may be instituted at the court at the place where the minor or the person for whom a guardian or administrator is or has been appointed resides, or in the court at the place where the administration has been performed.

If a person has otherwise administered property belonging to another, disputes relating to that administration may be instituted in the court for the place where the administration has been performed. (SFS 1994:1435)

Section 8

An action regarding injurious actions may be instituted in the court at the place where the act was done or the injury occurred. When the act was done or the injury occurred in two or more court districts, the action may be instituted in any of those districts.

Section 8a

In disputes between consumers and commercial enterprises concerning goods, services, or other commodities offered mainly for personal use, an action against the commercial enterprise may be instituted in the court for the place where the consumer resides. However, this rule shall apply only in cases presumptively qualifying for adjudication by a single legally qualified judge, pursuant to Chapter 1, Section 3d. (SFS 1989:656)

Section 9

Disputes concerning succession or the validity of wills shall be entertained by the court in which the deceased would have normally been required to respond in civil cases.

Disputes concerning the division of marital or cohabitants' property shall be entertained by the court in which either of the spouses or cohabitants is normally required to respond in civil cases. If one spouse or cohabitant is dead, proceedings for such a dispute shall be entertained by the court in which the deceased would have normally been required to respond in civil cases.

If the rules stated in the two preceding paragraphs do not yield a competent court, the case shall be entertained by the Stockholm City Court.

Special provisions apply to complaints against an administrator's or executor's division of marital or cohabitants' property or distribution of the estate of a deceased. (SFS 1987:792)

Section 10

Disputes concerning title to immovable property, the use and enjoyment of immovable property, a servitude or other special right in the property, or possession of the property shall be entertained by the court for the place where the property is situated. This rule also applies to disputes concerning the liability of an owner or possessor of the property to perform any obligation required of him in this capacity or, when a right to the use of, or other special right in, land has been granted, to disputes concerning the consideration for the granted rights, the maintenance of buildings, or similar matters. However, this section does not apply to disputes concerning leases.

For the purpose of applying this section, disputes relating to temporary grants of the use of ground, or a building, or part of a building to park vehicles shall not be considered disputes concerning leases.

When the land is located in more than one court district, or when a dispute involves two or more units of land located in different court districts, proceedings for the dispute shall be entertained by the court of the district where the main part is located. (SFS 1990:1128)

Section 11

The following may also be instituted in the courts indicated in Section 10:

1. disputes concerning the purchase price for immovable property or similar claims arising out of the transfer of ownership of the property;
2. actions against the owner of immovable property for personal satisfaction of a debt in respect of which the property is mortgage, provided that payment is simultaneously sought against the property;
3. disputes concerning damage to, or other intrusion upon, immovable property;
4. claims for compensation for work done on immovable property; and
5. claims for compensation for breach of a covenant of title.

Section 12

For the purpose of applying the rules of this chapter, immovable property includes buildings situated on the land of another, mines, and mine buildings and installations.

Section 13

Disputes concerning attorneys' fees and costs, the division of litigation costs among several obligated persons, and similar claims arising out of litigation may be instituted in the court that first adjudicated in the matter.

Section 14

Claims based on essentially the same ground against several defendants, when brought simultaneously, may be instituted in the court in which any defendant is required to respond under the preceding provisions in this chapter. If the matter at issue is such that all interested persons will be bound by the same judgment, the action may also be instituted in the court in which any defendant is required to respond.

Counterclaims shall be entertained by the court in which the main case is pending.

Claims pursuant to Chapter 14, Section 4 or 5, shall be entertained by the court in which the main action is pending.

Section 15

After the summons has been served upon the defendant, any alteration of the facts concerning the competence of the court shall have no effect.

Section 16

If a written contract stipulates that an existing dispute, or one that may arise in the future stemming from a specified legal relationship, may be instituted in a certain court, or that a certain court is exclusively competent, this shall apply unless otherwise prescribed.

Section 17

A court is not competent, by reason of the provisions in this chapter, to entertain:

1. disputes that shall be entertained by an authorities other than a court, or a by special court or required by an act or regulation to be determined directly by arbitrators;
2. disputes for which an act or regulation designates a certain court as exclusively competent to deal with such disputes;
3. disputes assigned by law exclusively to designated district courts, if proceedings for the dispute are instituted in another court;
4. disputes referred to in Section 9 or 10 or otherwise are required by act or regulation to be entertained exclusively in the court thereby designated, if proceedings for the dispute are instituted in

- another court;
5. marriage cases;
 6. disputes concerning seized property or the validity of a sales contract concerning personal chattels and as to which special provisions designate the competent court; or
 7. disputes of a kind that may be entertained by the courts without a summons.

Nor, by reason of the provisions in this chapter, may an action be instituted in a court of another kind than that prescribed by law for entertainment of the dispute; this provision, however, shall not apply to disputes referred to in Section 13.

A claim setoff against a debt may not be entertained by a court that, pursuant to the first paragraph, is not competent to entertain a dispute concerning the said debt. (SFS 1981:828)

Section 18

If rules of competence other than those set out in Section 17 indicate that a court is not competent to entertain proceedings for dispute instituted in that court, the dispute shall nonetheless be deemed to have been instituted in a competent court, unless the defendant has made a timely objection to the competence of the court or has failed to appear in court at the first hearing or, if the preparation is in writing, omitted to submit an answer. If the defendant fails to appear or to submit an answer, the plaintiff's statement as to the circumstances that render the court competent shall be assumed correct, provided that the defendant has been notified of the statement and that there is no reason to believe that the statement is incorrect.

Section 19

Once a lower court has entertained a dispute, a superior court may not consider the competence of the lower court unless pursued on appeal or raised at the appeal, by a party entitled to do so, or unless the dispute falls within the competence of an authority other than a court or the competence of a special courts, or unless the dispute must be entertained originally by a superior court or, by act or regulation, the dispute must be determined directly by arbitrators.

Section 20

When a superior court declares that a lower court lacks competence to entertain a case instituted in that court, the superior court, on request of a party, may refer the case to a competent lower court.

When more than one court has, by a decision which has entered into force, been declared to lack competence the Supreme Court may, if one of the courts nonetheless is competent, refer the case to that competent court on application of a party.

The decision of the Supreme Court shall determine the competent court for cases that, according to Chapter 14, Section 7a, shall be consolidated in a single proceeding. (SFS 1987:747)

Section 20 a

If on receiving an application the court considers that it is not competent to entertain the case or determine the application by another procedure but that another court is competent, the application shall be transferred to that other court unless the applicant objects to this and provided there is no other reason against the transfer. An application shall be deemed to have been received by the later court on the same day as it was received by the court that first received the application. (SFS 1996:247)

Section 21

If provisions concerning the competence of courts contained in any act or regulation deviate from the rules contained in this chapter, the former shall govern.

| |
|---|
| <p style="text-align: center;">SUPPLEMENTAL REPORT FOR:</p> <p style="text-align: center;">SWEDEN</p> <p style="text-align: center;">PREPARED BY:</p> <p style="text-align: center;">ROBERT WIKHOLM & JULIA LANNERHEIM VINGE SMALANDSGATAN, 20 111 87 STOCKHOLM - SWEDEN</p> |
|---|

26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

The Haag Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children

The Haag Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect to Parental Responsibility and Measures for the Protection of Children [Sweden has not acceded the convention yet, but will probably do so in a near future]

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

28.1 Main Legal Sources

While the [Brussels II regulation](#) is inapplicable to non EU states, the issues of recognition and enforcement of foreign judgment are not uniformly regulated in Swedish international procedural rules.

²⁰ The main rule in these cases will be that a foreign judgment cannot be enforced or recognised unless there is support for it in Swedish law for such recognition or enforcement. The foreign judgment always has effect as evidence in a Swedish proceeding, since Swedish courts apply so called "free evidence valuation".²¹

In 1974 the Supreme Court stated in a judgment that "foreign judgment relating to matters of parental responsibility is not, without support in law, enforceable in Sweden."²²

28.2. Specific Rules for some non EU states

This general rule has a few exceptions (see part 2.1 above):

Judgments from non-EU states Norway and Switzerland will be recognized and enforced in Sweden. (See "The law regarding recognition and enforcement for awards rendered in Switzerland"(SFS 1936:79) and "The law regarding recognition and enforcement for Nordic awards in international procedural matters"(SFS 1977:595))

If the foreign state has entered the Luxembourg Convention of 1980 the judgment cannot be denied recognition or enforcement. (See "The law regarding recognition and enforcement of foreign parental responsibility awards etc."(SFS 1989:14)). In these cases the application for enforcement is made in such cases to the county administrative court. Only European countries have approved this convention.

2.3. Jurisdiction in Sweden

Questions regarding parental responsibility can be tried in Swedish courts if the question arises in connection with matrimony cases and the children live in the country. Chapter 3, section 6, "The law regarding some international relations concerning matrimony and guardianship" (SFS 1904:26).

Swedish courts also have jurisdiction, if the child has habitual residence in Sweden (according to Chapter 6, section 17 The Children and Parents code).

While foreign awards generally cannot be enforced in Sweden it is sometimes necessary to extend the Swedish courts jurisdiction to avoid leaving parties without a legal remedy.²³

*
* *

²⁰ See e.g. Michael Bogdan, *Svensk internationell privat- och processrätt*, 5 th ed, p 286.

²¹ See e.g. Campell D, *Enforcement of foreign judgments* p 409.

²² NJA 1974 p 629.

²³ See e.g. Michael Bogdan, *Svensk internationell privat- och processrätt*, 5 th ed, p 198.