Sweden

Swedish case law

Swedish case law on Internet-related private international law disputes

2.1. Contractual obligations

Högsta domstolen (Supreme Court of Sweden), 15 July 2016, Case no. Ö357-15/NJA 2016 p. 779 (NJA 2016:65)

Court: Högsta domstolen (Supreme Court of Sweden)

Articles referred to by the court: the Brussels I Regulation and the 2007 Lugano Convention in general

Object: Payment of financial guarantee

CJEU case law cited by the court:

- 16 January 2014, Ralph Schmid v. Lilly Hertel, Case C-328/12, ECLI:EU:C: 2014:6.

Summary: contractual obligations: Jurisdiction for an action enforcing a financial guarantee

The claimant was a Swedish bank which had granted credit to a Swedish company. The credit had been partially covered by a personal security provided by a Swede. The bank brought a suit against the guarantor, a Swedish citizen that was domiciled in the Principality of Monaco at the time of the commencement of the proceedings.

In consideration of the defendant's domicile, the Court excluded the application of the Brussels I Regulation or the 2007 Lugano Convention.

Under the Swedish Code of Judicial Procedure, the jurisdiction of Swedish courts was, prima facie, not given. The two main rules considered by the court were:

- Chapter 10 § 3 Swedish Code of Judicial Procedure [Rättegångsbalk (1942:740)], according to which a person without known domicile in Sweden but owning an asset in the state may be sued where the property is located. In particular, 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, while 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.

- Chapter 10 § 4 of the Swedish Code of Judicial Procedure [Rättegångsbalk (1942:740)], pursuant to which a person without known residence in Sweden may be sued, in a dispute concerning his/her debt, at the place where the obligation was created or the debt incurred.

The Supreme Court excluded the applicability of Chapter 10 § 3 because of the extremely low value of the assets (only SEK 888) compared to the judicial request (SEK 20,000,000 plus interest). Furthermore, it excluded the applicability of Chapter 10 § 4 because the guaranty had been provided by the defendant via telephone and via email at the time when he was already established in Monaco.

Nevertheless, the Supreme Court of Sweden declared Swedish jurisdiction to be established because of the sufficient connection of the dispute with Sweden (the beneficiary was a Swedish bank and the guaranteed was a Swedish company) [cfr. NJA 1985 p. 832; NJA 2013 p. 22; NJA 2015 p. 798]. In assuming jurisdiction, the court also made reference to the need to avoid denial of justice and to efficiency reasons (cfr. NJA 1985 p. 832; NJA 2013 p. 22; NJA 2015 p. 798).

Svea hovrätt (Court of Appeal of Svea), 18 August 2008, Case no. Ö9017-05/RH 2007:67

Court: Svea hovrätt (Court of Appeal of Svea)

EU-law articles referred to by the court: article 13 of the Brussels Convention; article 1, 15(1), 16(1) of the Brussels I Regulation; article 234 EC Treaty

Object: Consumer contract

CJEU case law cited by the court:

- 19 January 1993, Shearson Lehmann Hutton Inc. v TVB, Case C-89/91, ECLI:EU:C:1993:15

- 3 July 1997, Benincasa v Dentalkit, Case C-269/95, ECLI:EU:C:1997:337

- 10 June 2004, Magali Warbecq v Ryanair Ltd., Case C-555/03, ECLI:EU:C:2004:370

- 4 June 2002, Lyckeskog, Case C-99/00, ECLI:EU:C:2002:329

Summary: consumer contract: Applicability of consumer rules on jurisdiction to online-learning disputes A Swedish claimant brought an action for contractual liability against an English University. The dispute arose after the claimant enrolled in an Online MBA (Master for Business Administration). The defendant disputed Swedish jurisdiction affirming that it was not possible to rely on the head of jurisdiction provided for consumers, arguing that the claimant had enrolled in the Masters program for professional purposes (i.e. building his career).

The Svea Court of Appeal reversed the first instance decision, stating that the notion of 'consumer' within the scope of the Brussels regime is intended to cover the situation at stake. In particular, the court took into account that the ECJ in the Benincasa case excluded that a person could be regarded as a 'consumer' when the contract has been concluded with the view of pursuing a trade or profession, not only at the present time but also in the future. However, it noted that the ECJ case dealt with a franchising contract; in the present case, instead, the contract was not concluded for a direct professional purpose but for achieving an academic title.

That was demonstrated by the fact that the claimant studied in his free time and personally bore all the costs related to his studies. Moreover, the court observed that affirming the contrary would lead the courts to consider all persons pursuing education in order to improve their professional opportunities as professionals for the purpose of the EU private international law rules on consumer protection. Finally, the court considered that the English company had targeted students in Sweden by directing its commercial activities towards Swedish consumers. Consequently, the case fell within the scope of article 15(1)(c) of the Brussels I Regulation and, thus, the consumer had the right to bring proceedings in the state where (s)he was domiciled (Sweden) according to article 16 of the Brussels I Regulation.

2.2. Non-contractual obligations

Högsta domstolen (Supreme Court of Sweden), 13 November 2015, Case no. Ö3223-13/NJA 2015 p. 798 (alt. NJA 2015:73)

Court: Högsta domstolen (Supreme Court of Sweden)

EU-law articles referred to by the court: Article 5(3) of Council Regulation (EC) 44/200; Articles 97-98 of Council Regulation (EC) no.

207/2009 of 26 February 2009 on the Community trade mark

Object: Trade mark violation

CJEU case law cited by the court:

- 22 January 2015, Pez Hejduk v EnergieAgentur.NRW GmbH, Case C-441/13, ECLI:EU:C:2015:28.

- 1 October 2002, Verein für Konsumenteninformation contro Karl Heinz Henkel, C-167/00, ECLI:EU:C:2002:555. [referred to by the Court of Appeal]

Summary: trade mark violation: Jurisdiction in actions relating to infringement of trade marks against a non EU-based company The claimants, two Swedish companies, held exclusive licences to three EU trade marks, and two of them were also nationally protected. They bought a lawsuit against a Hong Kong-based company that was selling products on the Swedish market via a website, alleging trade mark infringement. That website had a Swedish top-level domain ".se".

The defendant disputed the court's jurisdiction arguing that all connecting factors led to the jurisdiction of Hong Kong courts. In fact, the defendant had its seat in Hong Kong, it operated the website directly from Hong Kong, and the server was located in Hong Kong.

The Supreme Court of Sweden posited that neither the Brussels I Regulation (Regulation no. 44/2001) nor the 2007 Lugano Convention were applicable because the action did not fall under their territorial scope of application given that the defendant had its seat in Hong Kong. Since the Swedish legal system did not provide any supplementing PIL rule applicable to the issue, the solution was the application by analogy of national venue criteria. The Brussels regime, furthermore, was considered a source providing international accepted principles on allocation of jurisdiction.

The court affirmed Swedish jurisdiction based on the fact that Sweden was the place where the infringement of exclusive rights provided for under Swedish law occurred or might have occurred

(cf. Chapter 10, § 1-5-8 of the Swedish Code of Judicial Procedure [Rättegångsbalk (1942:740)]; Chapter 8, § 3 of the Swedish Trademark Act [Varumärkeslag (2010:1877)]; rticle 5(3) Brussels I; NJA 2007(287); articles 97-98 of Council Regulation (EC) no. 207/2009).

Svea hovrätt (Court of Appeal of Svea), 4 February 2008, Case no. Ö6063-07/RH 2008:4

Court: Svea hovrätt (Court of Appeal of Svea)

EU-law articles referred to by the court: Article 5(3) of the Lugano Convention (so, indirectly, it refers also to article 5(3) of the Brussels I Regulation)

Object: Copyright violation

CJEU case law cited by the court:

- 30 November 1976, Handelskwekerij Bier BV v Mines de potasse d'Alsace, Case C-21/76, ECLI:EU:C:1976:166

- 19 September 1995, Marinari v Lloyds Bank, Case C-364/93, ECLI:EU:C:1995:289.

- 7 March 1995, Shevill and Others v Presse Alliance, Case C-68/93, ECLI:EU:C:1995:61.

Summary: copyright violation: Jurisdiction in actions relating to infringement of copyright on the Internet A Norwegian newspaper published, without authorization, a photograph in which the Swedish claimant held rights.

The claimant brought a suit for compensation and damages in Sweden because the photograph was published not only in print but also on the newspaper's website which was accessible from Sweden.

The defendant alleged that the newspaper was only directed towards the Norwegian public and that the online version was fully accessible only by subscribers. Furthermore, the defendant argued that only 60 readers from Sweden had a subscription to the newspaper at the time of the publication of the image. On this basis, the defendant contested the jurisdiction of the Swedish court, arguing that both the harmful action and the alleged damage had taken place in Norway.

The Svea Court of Appeal distinguished between printed and online publication for the purpose of the identification of the locus delicti. As far as printed publication is concerned, the place of damage is deemed to be the place where the newspaper is distributed; regarding online publication, the place of damage can be considered the place where the newspaper is accessible from.

In the light of the above, the court, by relying on Article 5(3) of the Lugano Convention, established Swedish jurisdiction in relation to the portion of damage suffered in Sweden. In affirming so, it reversed the decision of the tribunal of first instance which, previously, had denied Swedish jurisdiction by applying the legal principles governing trade mark protection, which requires a court to verify whether the violation of the IP right can be held to produce a business effect in the state where the damage occurred (see the WIPO Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet).

3. Swedish case law on Internet-related disputes with a public law dimension

Marknadsdomstolen (Commercial Court), 6 May 2015, MD 2015:7

Court : Marknadsdomstolen (Commercial Court)

EU-law articles referred to by the court : Articles 34 and 36 of the TFEU; Directive 2001/83/EU on Consumer Rights; Directive

2002/58/EC on Privacy and Electronic Communications

Object : Advertising of alcoholic beverages and public health

CJEU case law cited by the court :

- 23 April 2009, Joined cases VTB-VAB v Total Belgium and Galatea BVBA v Sanoma Magazines Belgium NV, Case C-261/07 and Case C-299/07, ECLI:EU:C:2009:244

Summary : advertising by mail: Law governing the issue of the limits of direct mailing

The Swedish Consumers' Ombudsman took an action against a German company which had allegedly violated Swedish law by advertising wine through direct mailing. The German company argued that German law was applicable in accordance with the country-of-origin principle as set out in the E-commerce Directive.

The court excluded the applicability of the E-commerce Directive because the matter did not involve online marketing, but rather offline marketing. Furthermore, the court excluded the existence of an EU rule on the matter and stated that national law should be applied according to the country-of-reception principle. It went on to affirm that Swedish law was consistent with EU general principles on the free circulation of goods within the internal market, and concluded that the marketing activity of the German company complied with Swedish law.

Gröta hovrätt (Court of Appeal of Gröta), 7 April 2004, Case no. B747-00/RH 2004:51

Court : Gröta hovrätt (Court of Appeal of Gröta)

EU-law articles referred to by the court : preamble and article 3(3) of the Data Protection Directive (95/46/EC); article 234(2) of the Treaty of Rome [article 267 of the TFEU]; article 10 of the CEDU

Object : data protection

CJEU case law cited by the court :

- 6 March 2001, Bernard Connolly v European Commission, Case C-274/99, ECLI:EU:C:2001:127

- 12 November 1969, Erich Stauder v City of Ulm – Sozialam, Case 29/69, ECLI:EU:C:1969:57

- 17 December 1970, Internationale Handelsgesellschaft mbH v Einfurr, Case C-11/70, ECLI:EU:C:1970:114

- 14 May 1974, Nold KG v Commission, Case 4/73, ECLI:EU:C:1974:51

- 7 July 1976, Watson e Belmann, Case 118/75, ECLI:EU:C:1976:106

- 13 December 1979, Liselotte Hauer v Land Rheinland-Pfalz, case 44/79, ECLI:EU:C:1979:290

Summary : data protection: Application of the Data Protection Directive (95/46/EC)

A Swedish maintenance worker was charged of having breached the personal data of her colleagues by publishing their personal information on a website.

The court stated that the national law on data protection needed to be interpreted in conformity with EU law. For that reason, the case was referred to the ECJ for a preliminary ruling on the interpretation of the Data Protection Directive (cf. ECJ, 6 November 2003, Criminal proceedings against Bodil Lindqvist, Case C-101/01, ECLI:EU:C:2003:596). The ECJ took the position that referring, on an Internet page, to various persons and identifying them by name or by other means (for instance, by their telephone number or by giving information on their working conditions) constitutes 'the processing of personal data wholly or partly by automatic means' within the meaning of the Data Protection Directive. However, the simple uploading of personal data onto a website which can be consulted from foreign states is not sufficient to qualify the action as a 'transfer of data to a third country'. Furthermore, the ECJ declared that while the directive does not undermine the general principle of freedom of expression, it is up to each EU country to apply the relevant national legislation in a way as to ensure a fair balance among the rights.

Högsta domstolen (Supreme Court of Sweden), 15 June 2001, Case no. Ö3448-00/NJA 2001 p. 445 (NJA 2001:63)

Court : Högsta domstolen (Supreme Court of Sweden)

EU-law articles referred to by the court : none

Object : Freedom of expression and Holocaust denial

CJEU case law cited by the court : none

Summary : constitutional rights: Applicability of Swedish criminal law with respect to a website with the server located in the USA Swedish prosecutor filed hate-crime charges against a Swedish website owner accused of having published material that denied the Holocaust and promoted white supremacy and racism.

Addressing the issue of the applicability of the Swedish Fundamental Law on Freedom of Expression (the Yttrandefrihetsgrundlag (1991:1469)), the court took into account the fact that the server was situated in the United States. Despite the server's location, the court considered the link with the Swedish territory to be predominant: the material published online was created in Sweden and addressed to a Swedish audience, whereas the US server was simply used in order to publish content. In the light of the above, the Court affirmed the territorial applicability of Swedish law and ascertained the criminal liability of the defendant.