



MANUAL – Sweden

for legal practitioners dealing with cross-border enforcement of civil claims



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This Manual is intended to help practitioners (primarily authorities in the field of civil enforcement) facing a foreign enforcement title. It offers answers to the most pressing issues faced in cross-border enforcement proceedings in a step-by-step manner, starting with the visual inspection and identification of the elements of the enforcement title. However, the Manual should only be used as an assisting tool in an unofficial capacity and cannot replace the scrutiny of regular inspection. The materials for this Manual have been sourced from national reports and other deliverables obtained within the EU-En4s project.

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1. Judgement

1.1 Headlines that form part of the judgement

Chapter 17 Section 7 of the Code of Judicial Procedure (*rättegångsbalken*) reads:

A judgment shall be in writing and specify in separate sections:

1. the court, time, and place of pronouncement of the judgment;
2. the parties and their attorneys or counsel [*Parter* and *Ombud*];
3. the operative part [*Domslut*];
4. the parties' claims and defences [or motions and positions, *Yrkanden* and *Inställning*], and the circumstances on which they are founded [grounds, *Grunder*]; and
5. the reasoning in support of the judgment [*Domskäl*], including a statement of what has been proved in the case.

A judgment rendered by a superior court shall, to the extent necessary, describe the judgment of the lower court.

If a party is entitled to appeal from a judgment or apply for the reopening of a default judgment, the judgment shall state the steps he must take to do so. [*Överklagandehänvisning*]

What is mandatory is the contents, not the specific headlines or their respective order. Nevertheless, the headlines found in most judgments are the ones indicated in brackets above, presented in the same order. Sections 1–3 are almost always found in the front/first page(s) of the judgment. At least in more complex cases the judgment often also includes the headline Background (*Bakgrund*) following the operative part and the headline Investigation/Evidence (*Utredning*). Additional subtitles adapted to the specific case are often used. The headlines or subtitles are usually not numbered.

1.2 Structural and substantive division/sequence of the Reasoning

The text in the Reasoning of the first instance judgment usually follows a standard sequence. The text of the Reasoning is usually structured in (sub)paragraphs, which are not marked in any specific way. Apart from the general structure of the judgment, the Reasoning of the judgment is sometimes subdivided with the inclusion of headlines. In order to provide clarity and structure to the Reasoning, the court often choose to address specific issues separately.

1.3 Textual identification of the elements comprising the judgement

“the introduction of the judgement”: *Bakgrund*

“the operating part”: *Domslut*

“the reasoning of the judgement”: *Domskäl*

“legal instruction”: *Överklagandehänvisning*

1.4 Short description of the elements of the judgement

Chapter 17 Section 7 of the Code of Judicial Procedure (hereinafter - RB) reads: A judgment shall be in writing and specify in separate sections:

1. the court, time, and place of pronouncement of the judgment;

2. the parties and their attorneys or counsel;
3. the operative part [*domslutet*];
4. the parties' claims and defences, and the circumstances on which they are founded; and
5. the reasoning in support of the judgment [*domskälen*], including a statement of what has been proved in the case.

A judgment rendered by a superior court shall, to the extent necessary, describe the judgment of the lower court.

If a party is entitled to appeal from a judgment or apply for the reopening of a default judgment, the judgment shall state the steps he must take to do so.

According to Chapter 17 Section 10 of the Code of Judicial Procedure (RB) every judgment shall be separately drawn up and signed by each of the legally qualified judges participating in the adjudication.

1.5 Graphical separation of the elements of the judgement

The different elements of the judgment are separated from one another with headlines. After the conclusion there is often a horizontal line.

1.6 Specification of time-period in which the judgement must be performed

The judgment does not include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant. Nor does it contain a specification of the time-period within which the judgment is not to be enforced, or a specification of the time-period after which the judgment is no longer enforceable.

The judgment creditor applies to the Enforcement Authority (*Kronofogdemyndigheten*) for enforcement. Chapter 4 Section 11 first paragraph of the Enforcement Code (UB) reads:

Before attachment takes place, notification of the case shall be sent to the debtor by post or given in an appropriate manner. The notification shall take place within such time as the debtor can be expected to have sufficient time to protect his rights.

Accordingly, the Enforcement Authority notifies the judgment debtor, usually by mail, that enforcement measures will take place if the judgment debtor does not pay the debt voluntarily within a certain time. In the average case, the debtor has a fortnight to abide by the instructions in the notification. During this time period it is very common that the judgment debtor invokes the national grounds in Chapter 3 Section 21 of the Enforcement Code (hereinafter - UB), trying to stop enforcement, in particular that the claim underlying the judgment is time-barred. Statute of limitation is regulated in the Swedish Act of Statute of Limitation (1981:130, *Preskriptionslagen*), and the time starts to run from the time when a claim is created. Time limits are 3 or 10 years.

1.7 Identification of Parties

There are no provisions on what personal information to be specified in the judgment for the purposes of identifying the parties to the dispute, cf. Chapter 17 Section 7 first paragraph Point 2 of the Code of Judicial Procedure (it was previously discussed in the section 1.4 Short description of the elements of the judgement). When there is no confidentiality regarding any personal data, it is a question of suitability which data should be stated in the judgment. In court practice the names, personal identity numbers/company registration numbers, and addresses are usually included. When published by the courts or the by the Swedish National Courts Administration (*Domstolsverket*) the names in the

judgments are anonymised by replacing the names by their initials. However, the judgments with the names are accessible according to the strong Swedish principle of public access to official documents.

1.8 Indication of the amount in dispute

The parties' claims and defences, and the circumstances on which they are founded shall be specified in a separate section of the judgment according to Chapter 17 Section 7 first paragraph 4 of the Code of Judicial Procedure (as it was previously discussed in the section 1.4 Short description of the elements of the judgement). This includes the amount in dispute and the specific tranches, etc. In cases where amendments to claims have occurred during proceedings the final claim is stated, sometimes with an indication like 'as finally determined'.

1.9 Indication of the underlying legal relationship

The reasoning in support of the judgment, including a statement of what has been proved in the case shall be specified in a separate section of the judgment according to Chapter 17 Section 7 first paragraph Point 5 of the Code of Judicial Procedure (as it was previously discussed in the section 1.4 Short description of the elements of the judgement). If relevant, this might include indications of the underlying legal relationship (legal assessment of the dispute).

1.10 Information contained in the operative part

The operative part [*domslutet*] shall communicate the explicit position of the court on every claim of the parties. There are no regulations on the specific formulations to be used.

The formulation of the operative part of a favourable judgment depends on the formulation used by the claimant. The court is supposed to consider the suitability of that formulation already before issuing a writ of summons.

If the claim is for a specific performance, that performance shall be clearly stated in the operative part, in order to make performance or enforcement possible "N N [the defendant] shall [or: is obliged to etc.] pay the sum of 50,000 SEK to N N [the claimant]" etc. If there are any reciprocal obligations, they shall also be clearly stated.

If the claim is for a declaratory judgment, this nature of the judgment shall be evident through the wording of the operative part ("the court declares that..." etc.).

Usually, no legal provisions are mentioned in the operative part, with one common exception, "interest under [a certain section of] the Interest Act (1975:635)", cf. Section 1.18 Indication of interest (rates).

1.11 Existence of a threat of enforcement

The operative part usually does not contain a legal instruction referring to the possibility of enforcement proceedings if the debtor does not voluntarily perform the obligations imposed by the judgment. A common exception is the threat of eviction from the property at the expense of the defendant if the defendant does not leave the property according to the judgment.

1.12 Final specification of debt

In most cases the specification of the debtor's obligation is finalized by the court and not left to later procedures/authorities.

1.13 Partial rejection of a claim

When an action [*käromål*] is dismissed on the merits the claim is, according to court practice, not specified in the operative part of the judgment, but that part only states “The action is dismissed [*Talan ogillas*]” or a similar wording.

It is not always clear from the operative part that a claim is only partially sustained (or that an alternative claim is dismissed). In order to know, the recital of the judgment – which includes the parties’ claims and defences, and the circumstances on which they are founded – has to be considered. The same goes for deciding the extension of *res judicata*.

1.14 Set-off of a claim

If the debtor invokes set-off, the operative part might be drafted in different ways. There is no legal requirement that the operative part has to specify how the claim and counter-claim are extinguished and to what extent. In order to know, the recital of the judgment – which includes the parties’ claims and defences, and the circumstances on which they are founded – might have to be considered.

At least in a case where there are several different claims and counter-claims and not all counter-claims are sustained a specification might be found in the operative part. An example (based on a judgment from the District Court of Gothenburg (Göteborg) 7 May 2013 in case no. T 18130- 11), where the operative part in principle stated:

1. [The claimant] shall [*ska*] pay [an amount] to [the defendant] and interest from different times under the Interest Act (1975:635), Section 6, running from different dates regarding different tranches of the full amount until the date of payment.
2. [The defendant] has the right to deduct [an amount] from the claim according to 1.
3. The counterclaims of [one amount] and [another amount] are dismissed.

1.15 References to the Reasoning found within the operative part

The operative part usually does not contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment), but it may, for the sake of clarity.

1.16 Wording used to mandate performance

Different formulations are used, e.g. that the debtor shall pay a certain amount to the claimant. The debtor is not always specifically “ordered” to perform by the wording of the operative part, when the operative part only finds the debtor “liable to pay” a certain amount. However, in practice, it is universally understood that this “liability” is to be understood as a duty to perform and not merely as declaratory relief.

1.17 Reciprocal claims

The operative part states that the Claimant against e.g. payment of a certain, specified amount (etc.) shall obtain e.g. a certain, specified object. Cf. Section 1.14 Set-off of a claim.

1.18 Indication of interest (rates)

According to Chapter 18 Section 8 second paragraph of the Code of Judicial Procedure (RB), compensation for litigation costs shall include interest under the Interest Act (1975:635), Section 6, running from the date of the court’s determination until the date of payment. No pleadings are needed

to this end. According to Section Chapter 18 Section 14 of the Code of Judicial Procedure (RB), the winning party is entitled to that interest, despite the absence of a demand.

Despite the fact that this provision on interest has been placed in the Code of Judicial Procedure (RB), it is qualified as a substantive matter under Swedish law. If a foreign law is applicable to the disputed relationship, the interest must be determined in accordance with the applicable foreign law, and not by Swedish law. Nevertheless, Swedish courts, by oversight, sometimes determine the interest by Swedish law.

1.19 Legal ramification for incomplete, undetermined, incomprehensible or inconsistent operative part

According to Chapter 59 Section 1 Point 3 of the Code of Judicial Procedure (RB), a judgment that has entered into final force shall be set aside for grave procedural errors, on extraordinary appeal of a person whose legal rights the judgment concerns, if the judgment (as a whole) is so vague or incomplete that the court's adjudication on the merits cannot be ascertained therefrom. This also presents a ground for appeal of a judgment that has not yet entered into final force, Chapter 49 Section 14 Point 4 and Chapter 50 Section 26 of the Code of Judicial Procedure (RB). According to Chapter 5 Section 2 § first paragraph of the regulation on enforcement [*utsökningsförfordningen*, 1981:981], the Enforcement Authority shall refer the applicant to make an extraordinary appeal as mentioned supra.

1.20 Legal effects of the Reasoning of the judgement

In principle, no legal effects are attributable to the reasoning as such. Sometimes the reasoning has to be consulted to understand the scope of *res judicata* and other effects of the finality of the judgment.

1.21 Obtaining the res judicata effect

A judgment meets the criteria for becoming *res judicata* upon the expiration of the time for appeal. See Chapter 17 Section 11 of the Code of Judicial Procedure (RB), which reads:

Upon the expiration of the time for appeal, a judgment acquires legal force to the extent that it determines the matter at issue in respect of which the action was instituted.

A judgment also has legal force to the extent that it adjudicates a debt claimed as a set-off. A question thus determined may not be adjudicated again.

There are specific provisions applicable to extraordinary remedies.

1.22 Res judicata of negative declaratory relief

The judgment dismissing a negative declaratory action is not enforceable. If the court dismisses a claim for a negative declaration, the judgment is not considered as a finding of positive opposite at the same moment. In this case, the defendant has to initiate independent action.

1.23 Suspensive periods barring the enforcement of a judgement

The judgment creditor applies to the Enforcement Authority for enforcement. The Enforcement Authority notifies the judgment debtor according to Chapter 4 Section 12 of the Enforcement Code (UB), usually by mail, that enforcement measures will take place if the judgment debtor does not pay the debt voluntarily within a certain time. In the average case, the debtor has a fortnight to abide by the instructions in the notification.

2. Court settlements

2.1 Elements of a court settlement

The forms or elements for the court's settlement activities are pretty much left to the judge while still keeping his or her impartiality, when it has been determined that it is appropriate to raise the settlement issue.

2.2 Formal requirements

The court shall assist the parties in drawing a written agreement, if need be. Usually, it is sufficient that the parties orally tell the content of the agreement to the court, and that the agreement is noted in the record. The agreement is then read aloud to the parties. The court cannot change the agreement when the record is printed, even if the agreement is unclear and could gain from rephrasing. The record does not state anything on the merits. Instead it is noted: "After reviewing the case the parties agree to the following settlement." (*"Efter genomgång av målet träffar parterna följande förlikning."*)

The contents of a settlement agreement should as a principle be short. In the average case it is sufficient to state the amount and the day of payment, and that the parties agreement regulates the parties' dealings fully or in partially. If there are ambiguities or incompleteness in a settlement which might lead to problems in enforcement problems, the court should try to remedy this through questions and comments.

After the settlement, the case is closed either by dismissal or by confirmation in a judgment. Chapter 17 Section 10 of the Code of Judicial Procedure (RB) reads:

If the parties agree on a settlement of the dispute, the court, upon request of both parties, shall enter a judgment confirming the settlement.

2.3 Identification of Parties

If the settlement is confirmed by the court, the parties are named and identified in the confirming judgment (Identification of the parties in the judgment was previously discussed in the section 1.4 Short description of the elements of the judgement).

3. Notarial deeds

There are no notarial acts or other authentic instruments under the Swedish legal order, which are considered enforcement titles. In a comparative study covering Sweden it has rightly been stated that 'it does not seem justified to state that the Swedish legal systems builds [*sic!*] upon a concept that is at least comparable to that of the authentic instrument under civil law.'

In the same study it was, also rightly, stated: 'In fact, for Sweden, the study found that there does not even exist a legal term that would serve to adequately translate the notion of the authentic instrument into the Swedish language without running the risk of provoking far-reaching incoherence within the Swedish legal system.'