

## **Suggested Changes to the Swedish Code of Judicial Procedure**

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### **Background**

The Commission of Judicial Procedure was assigned the task of investigating ways to improve Swedish court procedures in civil cases. On December 20 2001 the commission delivered its final report (SOU 2001:103) to the minister of justice.

The commission suggests relaxing the Code of Judicial Procedure's three fundamental principles of orality, immediacy and concentration in order to make trials more flexible and modern.

The principle of orality requires that the statements made by the parties at the main hearing be presented orally. The principle of immediacy entails that the court's ruling may only be based upon the case material put forward by the parties during the main hearing. Finally, according to the principle of concentration the proceedings must be concluded at one hearing or at several hearings within a limited period of time.

The main purpose of these principles is to guarantee that the court's ruling will be based upon the best possible examination of evidence.

### **Proposed Amendments**

#### ***Hearings***

The commission suggests that the rules regarding pre-trial hearings become more uniform. All matters during the preparatory stage could be dealt with within this uniform hearing procedure. The same type of hearing should be used, for example, when investigating the parties' views on the case, taking evidence or considering procedural issues.

Further, the commission proposes that in civil cases it shall no longer be the general rule that a main hearing must be held before the court passes judgment. Instead it is suggested that a civil case should be ruled upon after a main hearing only if this is necessary for the

judicial inquiry, is appropriate for any other reason, or is so requested by a party that has had no earlier opportunity to present his or her case orally. In other words, if a party has had the opportunity to present his or her case in the preparatory stage of the procedure, he or she will no longer have an absolute right to a main hearing.

The rule that a judgment may only be based on oral statements made at the main hearing is considered somewhat old-fashioned by the commission. It therefore suggests that the court may allow the parties in a civil case to refer to the documents in the case during the main hearing.

Further, the commission suggests that testimonies given at a pre-trial hearing may, in certain circumstances, replace or complement testimonies given at the main hearing. The court should be able to start the main hearing by playing a recording of a statement from an earlier hearing or reading aloud from this statement, if this can further the hearing or is appropriate for any other reason. Thereafter, the parties are permitted to question the witness.

It is also proposed that the present prohibition against relying on written witness statements be abolished in civil cases. According to the commission's suggestion a party may submit such written statements or recordings if this is acceptable to the other party and not obviously inappropriate.

#### ***Taking evidence outside the main hearing***

The commission suggests that evidence may be taken outside the main hearing more frequently. Examination of a witness outside the main hearing shall always be allowed if the case can be ruled upon without a main hearing or the court decides that a new examination at the main hearing is unnecessary.

In civil cases, which are amenable to out-of-court settlements, it is proposed that evidence taken outside the main hearing shall not be reheard at the main hearing, unless this is requested by one of the parties. The same shall apply in civil cases if a new hearing is held and the evidence has been taken at the first hearing.

#### ***Introduction of evidence by the courts***

As regards civil cases that can be settled out of court, it is suggested that the district courts shall no longer be allowed to introduce any evidence to the case unless this is requested by one of the parties concerned.

#### ***Rejection of evidence***

The commission proposes that the court may reject evidence when it proves impossible to use this evidence despite its best efforts, so that the court's ruling is not further delayed. For example, if a witness cannot be located, the court should have the right to reject such evidence.

#### ***Out-of-court settlements***

The commission has studied the Danish system of 'notices' in which the parties are offered a chance to settle out of court after the main hearing. In Denmark the court gives the parties, with their consent, a preliminary notice of the ruling. If the notice is accepted the parties can reach a settlement, which is confirmed by the court or leads to a dismissal of

the case.

Although there are no obstacles against this under the current legislation, the commission proposes that the Code of Judicial Procedure stipulate that the court may, with the parties' consent, inform the parties of the probable outcome of the case after the main hearing but before ruling on the case.

### ***Agreements not to appeal***

In many cases the parties may wish to have their dispute tried by a court of law but would like to avoid the prolonged court procedure with appeals to higher courts, which may be unnecessary, time-consuming and costly. By an agreement not to appeal the parties can save time and costs. Therefore, the commission suggests that this question should always be raised by the district court at the preparatory stage of the civil procedure.

### **Comment**

The commission's proposals are not designed to make any revolutionary changes in the Swedish Code of Judicial Procedure but merely to improve the procedure. Such cautious changes make it likely that the proposals will lead to legislation.

The suggested changes will benefit the civil procedure and make it more flexible and efficient. As regards major civil cases in which large numbers of documents are often submitted by each party, the proposed rule that the parties may be allowed to refer to the submitted documents when presenting their case at the main hearing is welcome.

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