Η πρωτότυπη γλωσσική έκδοση SV αυτής της σελίδας τροποποιήθηκε πρόσφατα. Η γλωσσική έκδοση που βλέπετε τώρα βρίσκεται στο στάδιο της μετάφρασης.
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σουηδικά

Taking of evidence

Σουηδία

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

Swedish law is based on the principles of the mode of proof and admissibility of evidence Following a detailed assessment of everything that has emerged during the case, the court must decide what has been proved. It is the court that decides what value is to be attached to the evidence.

Certain rules on the admissibility of evidence have been established in case-law, including in relation to where the burden of proof lies. A highly simplified main rule, to which there are many exceptions, is that anyone who asserts something must also prove it. If one party has found it easier to secure proof of a certain fact, the burden of proof is often placed on him or her. If a party has found it difficult to produce evidence of a certain circumstance, this may also be of significance for establishing where the burden of proof lies. If, for example, someone demands payment for a debt, he or she must prove that he or she has a claim against the opposite party. If the opposite party pleads that payment has already been made, then it is he or she who has the burden of proving that this is the case. In cases of liability for damages, it is normally the party who claims that he or she has suffered damages who has the burden of proof. It may also happen that the burden of proof for a certain fact may be inverted.

If the evidence produced is insufficiently solid, the court cannot use the circumstance in question as the basis for its examination. If it is a case of estimating the value of damage that has occurred, there is an exception that means that the court may, if it is not possible or very difficult to produce evidence as to the amount of damage, estimate the value of the damage at a reasonable amount.

1.2 Are there rules which exempt certain facts from the burden of proof? In which cases? Is it possible to produce evidence in order to prove that a specific legal presumption is not valid?

Please see the response to question 1.1.

1.3 To what extent must the court be convinced of a fact in order to base its judgment on the existence of that fact?

The requirements that are laid down for the weight of evidence depend on what type of case is concerned. In civil cases the normal requirement is that the fact in question is to be confirmed. In certain civil cases a lower evidence requirement may apply. An example that could be mentioned is that of cases of consumer insurance policies, where it is considered sufficient that it appears more probable than not that the event insured against has occurred.

2 The taking of evidence

2.1 Does the taking of evidence always require the application by a party, or can the judge in certain cases also take evidence on his/her own initiative?

The parties themselves are responsible for the evidence. In indispositive cases, i.e. cases relating to matters concerning which the parties cannot reach conciliation, there is an opportunity for the court to introduce evidence to the case without this being requested by either party. In cases relating to custody or visiting rights, therefore, the court may decide that the investigation must be supplemented by additional evidence. In civil cases where the parties can reach conciliation, which are known as dispositive cases, the court may not introduce new evidence to the case of its own volition.

2.2 If the application by a party concerning the taking of evidence is approved, what steps follow?

The evidence is heard at the main hearing.

2.3 In which cases can the court reject an application by a party to obtain evidence?

The court can reject the evidence if what the party wishes to prove is of no significance to the case. This also applies if evidence is not required or if the evidence would obviously have no effect. In addition, there are rules that mean that written testimony may be relied upon only in special exceptional circumstances.

2.4 What different means of proof are there?

In Sweden there are, in principle, five different basic forms of evidence (means of evidence). These are:
written evidence
examination of witnesses
examination of a party
examination of an expert
inspection.

2.5 What are the methods of obtaining evidence from witnesses and do these differ from the means employed to obtain evidence from expert witnesses? What are the rules in relation to the submission of written evidence and expert reports/opinions?

A witness is, as a general rule, to be heard orally and in the presence of the court. Written witness testimonies must not be referred to. With the approval of the court, however, the witness may use notes to refresh his or her memory. The party who called the witness starts the examination (this is called direct examination), unless the court determines otherwise. The opposite party then has the opportunity to interrogate the witness (cross-examination). After the cross-examination, the person who called the witness and the court may ask supplementary questions.

In the case of evidence from an expert the principal rule is instead that the expert is to give a written statement. If it is requested by one of the parties, and it is does not obviously lack significance, the expert is also to be heard orally during the proceedings. An oral hearing is also to take place if it is essential that he or she is heard directly in the presence of the court.

If the case is to be determined after a main hearing – e.g. in order for the witness to be heard – written evidence and expert statements must in principle be read aloud at the hearing in order for the court to be able to take account of the material in its judgment. The court may, however, decide that written evidence is considered to have been heard at the main hearing without this needing to be read aloud at the hearing.

2.6 Are certain methods of proof stronger than others?

Under Swedish law, the principle of the admissibility of evidence applies. Among other things, this means that there are no set principles laid down in law with regard to the weight that different evidence carries. Instead, the court carries out an independent assessment of everything that has emerged and decides what may be considered as evidence in the case.

2.7 In order to prove certain facts, are certain methods of proof obligatory?

The principle of admissibility of evidence means that there are no rules that specify that certain circumstances require certain types of evidence in order to be confirmed. Instead the court carries out an overall assessment of the circumstances of the case in its examination of what has been proved.

2.8 Are witnesses obliged by law to testify?

Under Swedish law, a general duty to testify applies. This means that, as a main rule, a person called as a witness is bound to testify.

2.9 In which cases can they refuse to give evidence?

A person is not obliged to testify in a case in which a close relative is a party. A witness may refuse to comment on a certain fact if a statement would mean that the witness was thereby forced to reveal that he or she had committed a criminal or dishonourable act. He or she may also, in certain circumstances, refuse to disclose trade secrets. There are certain restrictions on the duty to testify in the case of some categories of professional, such as healthcare staff.

2.10 Can a person who refuses to testify be sanctioned or forced to give evidence?

A person who is to be heard as a witness is summoned to the proceedings under penalty of a fine. If the witness does not appear, the fine is imposed if he or she does not have a valid excuse for his or her non-appearance, e.g. illness. If the witness does not appear, the court can also decide that the witness is to be fetched to court by the police. Ultimately the court has the option of taking into custody a person who refuses to testify without a valid reason for refusing to reply to questions.

2.11 Are there persons from whom evidence cannot be obtained?

If the person called as a witness is under 15 years of age, or suffers from a mental disorder, the court will examine whether he or she may be heard as a witness, taking the circumstances into account. Please also see Section 2.9.

2.12 What is the role of the judge and the parties in the hearing of a witness? Under what conditions can a witness be heard via videoconferencing or other technical means?

The examination of witnesses is normally begun by the person who called the witness (direct examination). Thereafter, the opposite party has the opportunity to ask questions (cross-examination). After the cross-examination, the person who called the witness and the court may ask supplementary questions. The court is to reject questions that obviously have nothing to do with the case or which are confusing or inappropriate in some other fashion.

Parties, witnesses and others who are to participate in a court hearing must be able to participate remotely via video link if this is not inappropriate. The main rule does, however, remain that those who are to participate must attend court in person.

A witness may be examined by telephone if this is suitable taking into account the costs that would be involved if the witness were to appear at court instead and the importance of the witness being heard in person at the hearing.

3 The evaluation of the evidence

3.1 Where evidence has not been obtained legally by a party, are there restrictions placed on the court in reaching its judgment?

The principle of admissibility of evidence means that there are only certain rare exceptions where it is forbidden to use certain types of evidence. That evidence has been acquired in a manner that is not permitted does not therefore, in principle, prevent the proof being relied upon during the trial. It may, however, be of significance if the evidence is given limited evidential value in the weighing of evidence.

3.2 As a party to the case, will my own statement count as evidence?

A party cannot testify, but is instead examined under oath, where the party bears criminal liability for the correctness of the information that he or she provides.

4 Has this Member State in accordance with Article 2(1) of the Taking of Evidence Regulation specified other authorities that are competent to take evidence for the purposes of judicial proceedings in civil or commercial matters under the Regulation? If so, what proceedings are they competent to take evidence in? Can they only request taking of evidence or also assist in the taking of evidence on the basis of a request from another Member State? See also notification under Article 2(1) of the Taking of Evidence Regulation.

No, the hearing of evidence is carried out only by district courts.

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