

26. SWEDEN

Contributing correspondent
Kerstin NORMAN, *Supreme Court*

Author
Gilbert MOUTHON, *Expert*

Other administrative order

UNSPECIFIED

I. procedural rules in calling for an expert examination

I. 1) On the initiative of

Generally the judge appoints an expert at the request of one of the parties and not of his own motion.

I.2) Mandatory expert examinations

In civil cases that are not part of a conciliation procedure, for example in child custody cases, an expert is generally appointed by the judge.

I. 3) Decision-maker

The judge

I.4) Is a pre-trial expert examination possible?

UNSPECIFIED

II. choice and appointment of the expert(s)

II. 1) Register

There is no official register.

Selection depends on the person's experience, competence, and reputation.

He must take an oath before the court when summoned to give his testimony.

II. 2) Oath

Yes, experts who give oral testimony must also take an oath.

II. 3) Choice of the Expert

When the judge chooses an expert, he often consults a government body to find a person with the required qualifications.

Sometimes the Court deems it necessary to submit its question to a trade or industrial association.

II. 4) Participation by the parties in the appointment process

The judge and the parties are entirely free in selecting an expert.

The judge and the parties themselves can appoint experts but it is however more frequent for the parties to appoint a private expert.

Civil servants can be legally appointed as experts.

In civil cases that are not part of a conciliation procedure, it is common for experts to be chosen among persons belonging to a regulated profession.

Before the expert is appointed by the Court, the parties have the possibility to give their opinion on the proposed expert.

II. 5) Nationality

UNSPECIFIED

II. 6) Recusal by the litigant parties

Recusal of an expert is admissible even when it is not explicit.

The Code of Procedure sets out the rules guaranteeing experts' impartiality. There is a law regulating recusal for judges and it is generally admitted that experts can be recused by the parties based on the same grounds as those for judges.

II. 7) Expert's withdrawal (refusal of a mission)

See above

Legal documents governing experts are in Chapter 40 of the Code of Procedure.

II. 8) Possibility of adding another expert

An expert can be assisted by another expert. Depending on the circumstances, an agreement by the parties or the judge who appointed the expert may be needed.

II. 9) Possibility of being assisted by a colleague

UNSPECIFIED

III. DEFINITION OF THE EXPERT'S MISSION

III. 1) Who determines the mission?

The judge

The expert prepares his report completely independently.

He must follow the time limits set by the judge.

If necessary, the judge can ask the expert additional questions.

III. 2) Type of mission

UNSPECIFIED

IV. PROGRESS OF THE EXPERT'S MISSION

IV. 1) Judge supervision

The expert prepares his report completely independently.

He must conform to the time limits set by the judge.

In certain cases, the judge can also provide the expert with detailed instructions as to how to carry out his mission: for example, the judge can ask the expert to carry out an inspection in the presence of the parties.

IV. 2) Form of contradictory procedure

Unspecified

IV. 3) Participation in the hearing

On request

VI. Close of the expert examination

V. 1) Does conciliation put an end to the expert's mission?

UNSPECIFIED

V. 2) Form imposed on the report

Unless otherwise stated, experts submit a written report to the Court or to the parties. The parties who have appointed a private expert can decide whether or not they need the expert's conclusions during the proceedings.

V. 3) Does the report put an end to the expert's mission?

Having lodged a written report with the court, the expert can also present an oral report at the parties' or the judge's request.

V. 4) Is there an imposed structure for the report?

UNSPECIFIED

V. 5) Is a preliminary report mandatory?

UNSPECIFIED

V. 6) Is the judge bound by the expert's conclusions?

Judges are not bound by the expert's conclusions.

V. 7) Possibility of a second opinion

UNSPECIFIED

VI. Funding for the expert examination

VI. 1) Security-Payment

UNSPECIFIED

VI. 2) Determining the amount of payment due

UNSPECIFIED

VI. 3) Possibility of additional payment

UNSPECIFIED

VI. 4) Determining fees and costs

In civil cases where settlements are possible, experts appointed by the parties are paid by the parties themselves. In other cases, the expert's fees are borne by the State.

VI. 5) Possibility of contesting the fees

UNSPECIFIED

VII. Expert liability within proceedings

VII. 1) Are there any laws governing expert examinations?

The legal texts governing experts are in Chapter 40 of the Code of Procedure.

VII. 2) Expert liability

Civil and criminal liability

VII. 3) Mandatory insurance for the expert

UNSPECIFIED

VIII. The expert's status

VIII. 1) Existence of selection criteria (accreditation)

UNSPECIFIED

VIII. 2) Classification of skills

UNSPECIFIED

VIII. 3) Required qualifications

UNSPECIFIED

VIII. 4) Grant of accreditation

UNSPECIFIED

VIII. 5) Possibility of accrediting a legal person

A legal person can be appointed as an expert.

VIII. 6) f) Validity period for the accreditation

UNSPECIFIED

VIII. 7) Regular assessment tests

UNSPECIFIED

VIII. 8) Supervision of the expert's mission

UNSPECIFIED

VIII. 9) Expert's activity report

UNSPECIFIED

VIII. 10) Code of ethics

The appointed expert must respect his duty as judicial expert.

There is a difference between a private expert and a court-appointed expert.

VIII. 11) Good practice

UNSPECIFIED

VIII. 12) Possibility of penalties

Penalties can be imposed on judicial experts: the court can impose a suspended fine on an expert who has not respected the Code of Procedure. In certain circumstances, the expert can also bear the costs of the legal procedure.

For civil servants, disciplinary penalties can be applied for 10 severe cases.

VIII. 13) Laws governing the expert's status

YES

The legal texts governing experts are in Chapter 40 of the Code of Procedure.

IX. Bibliography

Edelstam, Henrik, Sakkunnigbeviset, En studie rörande användningen av experter inom rättsväsendet, Iustus förlag, 1991

- Ekelöf, Per Olof, Rättegång IV, 7:e upplagan, Norstedts förlag, 2009

- Fitger, Peter, Rättegångsbalken, Norstedts Laghandböcker

- Nordh, Roberth, Allmänna bevisfrågor: om ansvaret för bevisning, vittne, syn, sakkunrig m.m., Iustus förlag, 2009