



**British Institute of  
International and  
Comparative Law**

# COLLECTIVE REDRESS SWEDEN



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**British Institute of  
International and  
Comparative Law**

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To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

## Table of Contents

<b>I.</b>	<b>General Collective Redress Mechanism.....</b>	<b>5</b>
1.	Scope .....	5
2.	Procedural Framework.....	5
a.	Competent court .....	5
b.	Standing.....	5
c.	Availability of Cross Border collective redress.....	5
d.	Opt-in; opt-out procedure.....	5
e.	Main procedural rules.....	6
3.	Available remedies .....	7
4.	Costs & funding .....	7
5.	Lawyers' Fees .....	8
6.	Funding.....	8
7.	Enforcement of collective actions/settlement.....	8
a.	Framework for enforcement .....	8
b.	Efficient enforcement of compensatory /injunctive order.....	9
c.	Cross border enforcement.....	9
8.	Number of claims .....	9
9.	Impact of the Recommendation /problems and critiques.....	9
a.	Incompatibilities with the Recommendations principles .....	9
b.	Problems relating to access of justice/fairness of proceedings.....	10
<b>II.</b>	<b>Sectoral Collective Redress Mechanisms.....</b>	<b>11</b>
A.	Consumer Law- group action at the National Board for Consumer Disputes.....	11
a.	Scope .....	11
b.	Procedural framework.....	11
c.	Available remedies .....	12
d.	Costs .....	12
e.	Lawyers' fees .....	12
f.	Funding.....	12
g.	Number of claims.....	12
h.	Other interesting legislation .....	13
III.	Competition Law .....	13
<b>IV.</b>	<b>Information on Collective Redress.....</b>	<b>14</b>
1.	National registry .....	14
2.	Channels for dissemination of information on collective claims .....	14

V. Case Summaries .....15

# I. General Collective Redress Mechanism

## 1. Scope

The Class Action Act, the so called Group Proceedings Act (2002:599)(“GRL”), provides the possibility of binding together a plurality of claims against the same defendant into one group action, which are based on the same or similar circumstances (commonality) and when the claims cannot be equally well pursued through other procedural forms (superiority).

The possibility of group actions covers civil cases, which belong to the competence of the general courts as well as cases concerning environmental damages in environmental courts<sup>1</sup> and cases concerning competition damages in the Patent- and Market Court.

## 2. Procedural Framework

### a. Competent court

Selected ordinary district courts designated by the Government are competent to try cases under the GRL and there is least one such designated court in each county<sup>2</sup>. The Government has decided to designate those district courts that are competent to hear real estate disputes. The reason for those particular courts being selected to handle group actions is that they often have considerable resources and experience of handling complex and complicated disputes with many persons involved. They are also geographically spread across the country<sup>3</sup>.

### b. Standing

Class actions in Sweden can be one of three types: individual group actions, governmental (public) class actions, and suits by organizations<sup>4</sup>. An individual, who is a member in the group concerned, can bring a claim against a defendant in an individual group action. Both natural and legal persons can pursue the individual group action<sup>5</sup>. In suits brought by organizations, the plaintiff must be a non-profit-making-association representing consumers or employees<sup>6</sup>. In environmental cases, non-profit associations can bring class actions if they work for the interests of nature- or environmental conservation. In addition, the associations for fishermen, farmers, reindeer management and forest societies can bring the organizational suit on environmental issues<sup>7</sup>.

The public class action is possible in the cases where a suit has not been brought under an individual class action or by the organization named above<sup>8</sup>. The authorities, with the power to bring a public class action, are the consumer ombudsman and conservation authorities in environmental cases<sup>9</sup>.

### c. Availability of Cross Border collective redress

There is no specific regulation on international class actions. Normal rules, which cover international procedural law and private international law apply. The same forum must be competent to determine the case with all plaintiffs.

### d. Opt-in; opt-out procedure

The Swedish system is based on the opt-in – method<sup>10</sup>. The conditions of the opt-in method are prescribed by law. Once the lawsuit is initiated, members of the group must affirmatively opt-in via a communication to the judge if they wish to be part of the action, otherwise they will be excluded. Group members are not parties to the action and customarily do not appear at the trial. However, they may intervene in the proceedings and

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<sup>1</sup> Class Action Act, Section 2 and Code of Environmental matters, Chapter 32, Section 13.

<sup>2</sup> Class Action Act, Section 3.

<sup>3</sup> Per Henrik Lindblom, Gruppåtal i Sverige. Bakgrund och kommentarer till lagen om grupprättegång, Lustus 2008, p. 300.

<sup>4</sup> Class Action Act, Sections 1, 4, 5 and 6.

<sup>5</sup> Class Action Act, Section 4.

<sup>6</sup> Class Action Act, Section 5.

<sup>7</sup> Code of Environmental matters, Chapter 32, Sections 13 and 14.

<sup>8</sup> Government bill 2001/02:107, p. 54.

<sup>9</sup> Class Action Act, Section 6.

<sup>10</sup> Class Action Act, Section 14.

appeal the judgment, in which case they are treated as parties. The ruling takes legal force both for and against all who have opted-in as if they had claimed personally.

The claimant shall identify the group members by their names and addresses in his/her application. Exceptionally this is not needed at the application level if the group is otherwise identifiable enough. There is no specific measure related to the fact that affected persons are not identifiable but the risk will be that the group does not fulfil the necessary prerequisites. As soon as the group proceedings have been instituted, the group members will get notifications. According to the Section 14 (Group Proceedings Act) a member of the group who does not give notice to the court in writing, within the period determined by the court that he or she wishes to be included in the group action shall be deemed to have withdrawn from the group.

#### e. Main procedural rules

##### **Certification criteria**

According to Section 8 of the GRL, a group action may only be considered if:

1. the action is founded on claims that are common or of a similar factual nature;
2. group proceedings are not inappropriate owing to the grounds of claims differing substantially from one another;
3. the majority of the claims to which the action relates cannot be equally well pursued by individual actions brought by the members of the group;
4. the group, taking into consideration its size and ambit, is otherwise appropriately defined, and;
5. taking into consideration the plaintiff's interest in the substantive matter, the plaintiff's financial capacity to bring a group action and the circumstances generally, is appropriate to represent the members of the group in the case.

##### **Single or Multi stage process**

There is no multi-stage process but the court decides according to normal procedural rules if the class action is admissible or not.

##### **Case-management and deadlines**

A group proceeding can be initiated by a plaintiff of a group of members. It is only the group representative who is the plaintiff and therefore the party to the proceedings. This representative is also the case-manager.

There are no specific deadlines in the Group Proceedings Act but the normal deadlines in the Code of Judicial Procedure (CJP) are used. The court will fix the timetable for the case and the rules on the preclusion are applicable.

##### **Evidence/ discovery**

According to the Chapter 35, Section 6 of the Swedish Code of Judicial Procedure, the presentation of evidence is the responsibility of the parties. If necessary, the court may also arrange for the presentation of evidence on its own motion. In cases amenable to out of court settlement or in criminal cases concerning offences not within the domain of public prosecution, however, the court may neither hear a witness unless a party requests that the witness be heard or the witness was previously heard on request of a party, nor, except on request of a party, direct the production of documentary evidence. Therefore, in most cases the initiative of parties is needed in order to obtain evidence.

In Sweden, the concept of full discovery is as yet unknown. A party is, however, under the duty to state what evidence they rely upon. Discovery may also be ordered against any holder of a document which may be presumed to have evidentiary value. The difficulty is, however, that to obtain a court order the applicant will have to identify the document with such clarity that, if need be, the order can be enforced by a bailiff.

One of way in which the problems with discovery may be overcome is for the requesting party to ask the court for permission during the pre-trial hearing to call witnesses who may be privy to the existence and the contents

of relevant documents. This approach has gained increasing popularity in recent years and it tends to make the documentary discovery rules more efficient<sup>11</sup>.

The parties are free to put questions to each other during the pre-trial proceedings and in the main hearing. However, there is no general sanction available to force an answer.

### **Interim measures**

The Court may order appropriate measures to safeguard an applicant's rights under Chapter 15, Section 3 of the Code of Civil Procedure. For example, by making prohibitory injunction ordering the defendant not to work on certain goods listed in a competition clause. Under certain conditions such an order may be made on an interim basis by the Court.

### **Court directed settlement option: during procedure**

Settlement may occur during the proceedings. There are no specific rules as to how the settlement discussions are to be conducted. Settlement activities vary from court to court and from judge to judge.

In addition to "normal settlement negotiations", the court may appoint special mediators. Such a decision requires the parties' consent of right. The court shall order the parties to attend a meeting before a mediator appointed by the court, the court shall further specify in the order the period within which the mediation is to be finalized.

### **In case of out of court settlements: judicial control**

If the case is settled out of court and there is no need to get the court's confirmation for the settlement, there is accordingly no specific judicial control mechanism..

## **3. Available remedies**

Several different remedies are available including injunctions and the payment of damages. In this regard the ordinary procedural rules apply. However, punitive or extra-compensatory damages are not available.

An appeal of the decision is possible under the general rules of civil procedure<sup>12</sup>. The Class Action Act allows a member of the group to appeal against a judgment or final decision on behalf of a group and also a decision on approval of a risk agreement. A member of the group is also entitled to appeal, on its own behalf, against a judgment or a decision that concerns its rights<sup>13</sup>.

## **4. Costs & funding**

For group proceedings, the ordinary rules on litigation costs (namely the losing party pays) apply in principle. The plaintiff in a group action thus bears the litigation costs (including those of the defendant) if he or she loses the case<sup>14</sup>. The rules on litigation costs represent a compromise. They try to create a balance between providing sufficient stimulus for bringing group proceedings, on the one hand, and eliminating or at least minimizing possible abuse of such proceedings for unfair profit purposes<sup>15</sup>.

Members of the groups are in principle not liable for litigation costs. They can be held liable to bear only part of the litigation costs corresponding to their benefit from the proceedings and only if the defendant has been ordered to pay and cannot pay, or if as a result of their conduct they have incurred additional litigation costs<sup>16</sup>. The same applies to additional costs in connection with risk agreements which the defendant has not been ordered to pay<sup>17</sup>.

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<sup>11</sup> Chapter 42, Section 8, Paragraph 1 in the Code of Judicial Procedure and Lundblad 1990, pp. 151 - 152.

<sup>12</sup> Class Action Act, Sections 42 - 48.

<sup>13</sup> Class Action Act, Section 47.

<sup>14</sup> The Code of Judicial Procedure, Chapter 18.

<sup>15</sup> Class Action Act, Sections 33 - 36.

<sup>16</sup> Class Action Act, Sections 33 - 36.

<sup>17</sup> Class Action Act, Section 41.

## 5. Lawyers' Fees

The Class Actions Act permits a lawyer to enter into what has been termed a 'risk agreement' with a claimant in a group action, whereby they agree that the attorney will receive a reduced fee if the case is lost and increased fees if the case is won<sup>18</sup>. There are several mechanisms by which the members of the group and the court can control the fairness of such agreements (approval by the court; possibility for notice of dissatisfaction; and appeal of court decision to approve a risk agreement by members of the group). The idea of 'risk agreements' provides no excessive incentives for conducting group proceedings but may overcome the reluctance of some attorneys to engage in what can sometimes be complicated group proceedings. The Swedish legislature categorically rejected any schemes of compensation long the lines of the American "contingency fee" idea. It should be noted that insurance companies in their litigation insurance are inclined to exclude or limit their litigation insurances in respect of group proceedings. This has been considered to be an impediment to the use of the scheme<sup>19</sup>.

## 6. Funding

The law does not envisage that the class representative in a private group action should receive any additional compensation or profit from its participation. If it wins the case, his or her litigation costs will be paid by the losing party. If it loses, the representative in principle will be solely responsible for his or her litigation expenses. However, the representative is in most case expected to receive financial support from outside sources, for example via the Legal Aid Act, from the insurance for legal expenses of the group members, or through a 'risk agreement' with an attorney<sup>20</sup>. The only provisions that provide for relief of the burden of litigation costs are the ones mentioned above, i.e. concerning the liability of group members for the litigation costs if the losing defendant is not in a position to compensate the plaintiff for the litigation costs, in the case of a risk agreement, or for litigation costs incurred through the group members' own negligent conduct, minimizing possible abuse of such proceedings for unfair profit purposes<sup>21</sup>.

A special situation is regulated in Sections 30-32 of Class Action Act. If, in the course of group proceedings, the group representative is found no longer appropriate to represent the group and the court appoints someone else who is entitled to bring an action in accordance with the Sections 4 - 6 in Class Action Act to conduct the group's action as plaintiff, this person is entitled to compensation for litigation costs and for their own work and time expenditure from public funds<sup>22</sup>.

As explained above - the funding of the group proceedings is mainly based on the normal rules on legal costs (the loser pays) and in addition, there are some specific regulation in the Group Proceedings Act. It is also possible that the parties agree on costs. Also, the above described risk agreement is allowed. Then the legal aid from the state (limited) or the private insurance (varies) are possibilities to get funding.

In addition, there are many creative chances to finance group proceedings in Sweden. In many cases, third party funding is allowed, although the attorney may not pay by himself since that would run contrary to good ethical practices. However, the private entrepreneur or public foundation may provide finance. Also, group members can assist in funding by subscriptions.<sup>23</sup>

## 7. Enforcement of collective actions/settlement

### a. Framework for enforcement

As regards enforcement, there are no special rules for class action judgments and the usual enforcement system applies. Therefore, in enforcement, the group members have a role of a full party even if during the proceedings

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<sup>18</sup> Class Action Act, Sections 38 - 41.

<sup>19</sup> See Lindblom, P H., Lagen om grupprättegång - bakgrund och framtid, SvJT 2005 p.183.

<sup>20</sup> Government bill 2001/02:107, p. 47.

<sup>21</sup> Class Action Act, Sections 33 - 36.

<sup>22</sup> Class Action Act, Section 30.

<sup>23</sup> Lindblom 2008, pp. 163 – 167.



it is the representative of the group who represents the members and the latter have only restricted a party role<sup>24</sup>.

#### b. Efficient enforcement of compensatory /injunctive order

As just mentioned, the group members have a role as a full party even if during the proceedings it is the representative of the group who represents the members and the latter have only restricted a party role<sup>25</sup>. This can be criticised from the access to justice point of view. This kind of individual enforcement system is also very bureaucratic. Some kind of system of group enforcement should exist in order to minimize bureaucracy and maximize access to justice. In addition, the class 'members' who did not opt-in are outsiders and they have no rights based on the class action judgment. Still, the judgment has no *res judicata* effect on them. Therefore, it is open to them to start a new procedure if they like and if they need the execution title for themselves. The above described lack of collective enforcement procedure has been criticised and it has been suggested that the system should be changed in the future in order to make class actions more powerful. In the *travaux préparatoires*<sup>26</sup> the group enforcement in the name of the representative of a group was suggested but the proposal did not go through<sup>27</sup>.

#### c. Cross border enforcement

There is no specific regulation on international class actions. Normal rules which cover international procedural law and private international law therefore apply.

### 8. Number of claims

In Sweden, we have the longest tradition of class actions out of the Nordic countries and there have also been some successful class action cases<sup>28</sup>. Others have been dismissed<sup>29</sup> or cancelled<sup>30</sup> or they have ended with a friendly settlement<sup>31</sup>. Even in the latter cases, the possibility to continue with the help of class action may have played a significant role in negotiations. Most of the class actions have been individual class actions, however, most were sued by associations which are established solely for the purpose of bringing the class action<sup>32</sup>. The first public class action against the electricity company was successful and the company had to pay damages to its clients<sup>33</sup>. The total amount of all cases is under 25.

### 9. Impact of the Recommendation /problems and critiques

#### a. Incompatibilities with the Recommendations principles

The Swedish legislator has not yet taken any steps in promulgating the conditions of the Commission Recommendation from the 11 June 2013 on common principles for injunctive and compensatory collective redress mechanism in the Member states concerning violations rights granted under Union Law (2013/396/EU). However, this is not surprising as most of the points raised in the Recommendation are already fulfilled by the present legislation. However, there is no national registry yet as the number of cases are so few, but the legislation is considered to work well.

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<sup>24</sup> Class Action Act, Sections 15 and 29.

<sup>25</sup> Class Action Act, Sections 15 and 29.

<sup>26</sup> SOU 1994:151, pp. 459 - 462.

<sup>27</sup> For this discussion, see for instance Lindblom 2008, pp. 103 - 104.

<sup>28</sup> For instance, so called SLU -case, RH 2009:90.

<sup>29</sup> Stockholm district court, T 17333-04 (and10992-04). The court decided that the Aftonbladet case did not fulfill the requirements to be litigated as class action. The same covers Nacka district court T 855-12 which covered the case against the children-home. The case on private alcohol import was partly cancelled and partly dismissed, Nacka tingsrätt, 29.4.2011, T 1286-07.

<sup>30</sup> Skandia case, Stockholm district court T 97-04. Instead of class actions the case was resolved by arbitration and the plaintiffs got their compensation. Therefore the case was anyways successful.

<sup>31</sup> For instance Stockholm district court T 3515-03/ Nacka district court, T 1281-07 and Gothenburg district court T 7247-05.

<sup>32</sup> The first 12 cases are commented in Lindblom Per Henrik: Grupptalan i Sverige. Norstedts Juridik 2008, pp. 209.

<sup>33</sup> The Court of Appeal in Övre Norrland 2011-11-04, T 154-10.

## b. Problems relating to access of justice/fairness of proceedings

There are some critiques of the Swedish Group Proceedings Act. The system is based on the opt-in system only, which is neither effective nor simple from the consumers' perspective. The opt-out system could be better to cover the interests of consumers. As long as procedures (regardless of whether they are individual or collective proceedings) are too complicated and time consuming<sup>34</sup>, access to justice is not fully achieved.

Based on the existing Nordic experiences, building up a group to start the class action takes approximately two years. It is considered to be too complicated and long-lasting especially if interest in the case is low<sup>35</sup>. Even if the aim of class action acts were to assist in getting single consumers access to court, the same problem still exists. In addition, there is no case-law at all or at least there is a low level of experience. Therefore, there are many questions which are still open in legislation and doctrine.

*Res judicata* is limited to the members of the group who have opted-in. The systems are totally based on the opt-in method<sup>36</sup> and the *secundum eventum litis*-phenomenon does not exist. In addition, there are no differences between *res judicata* in different types of claims but the usual *res judicata*-effect covers all kinds of judgments in the similar way and there is no difference depending on the fact if the judgment is favourable or not. Even if the class action is facing a public body or administration, there are no specialties in relation to *res judicata* but the normal doctrine is followed.

Regarding enforcement, there are no special rules for the enforcement of judgments obtained following a class action and the usual enforcement system applies. Therefore, in enforcement, the group members have a role as a full party even if during the proceedings it is the representative of the group who represents the members and the latter have only a restricted party role<sup>37</sup>. This can be criticised from the access to justice point of view. This kind of individual enforcement system is also very bureaucratic. Some kind of system of group enforcement should exist in order to minimize bureaucracy and maximize access to justice. In addition, the class 'members' who did not opt-in are outsiders and they have no rights based on the class action judgment. Still, the judgment has no *res judicata*-effect on them. Therefore, they can start a new procedure if they like and if they need the execution title for themselves.

The lack of effective enforcement procedures described above has been criticised and it has been suggested that the system should be changed in the future in order to make class actions more powerful. In the *travaux préparatoires*<sup>38</sup> the group enforcement in the name of the representative of a group was suggested but the proposal did not go through<sup>39</sup>.

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<sup>34</sup> About the length of the Nordic class actions, please, see Viitanen, Klaus: Nordic Group Actions: First Experiences and Future Challenges, JFT 3-4/2009 pp. 599-613.

<sup>35</sup> Similar thoughts and experiences in the Nordic report: TemaNord 2006:583 "Consumers' right of action in antitrust cases - Current problems and future solutions". Available on the web: <http://www.norden.org/fi/julkaisut/julkaisut/2006-583>, last visited on 24 November 2012.

<sup>36</sup> Class Action Act, Section 29 and the Finnish Act on Class Action, Section 11.

<sup>37</sup> Class Action Act, Sections 15 and 29.

<sup>38</sup> SOU 1994:151, pp. 459 - 462.

<sup>39</sup> For this discussion, see for instance Lindblom 2008, pp. 103 - 104.

## II. Sectoral Collective Redress Mechanisms

### A. Consumer Law- group action at the National Board for Consumer Disputes

#### a. Scope

The main scheme for settlement of disputes between individual consumers and individual business operators in Sweden is through the Swedish National Board for Consumer Disputes (*Allmänna reklamationsnämnden*, ARN). This is a public body for out-of-court dispute settlement specialising in business-to-consumer matters.

The legal basis for group proceedings at the National Board for Consumer Disputes is Section 9 of the Standing Instruction for the board.<sup>40</sup> The National Board of Consumer Disputes, ARN, may consider consumer disputes between a group of consumers and an individual business operator where:

- a) there are several consumers who are likely to have a claim against the trader on substantially similar grounds;
- b) the disputes concerns conditions that may be considered by the Board and;
- c) an examination of the disputes is justified in view of the public interest.

The ARN is competent to give recommendations in disputes concerning goods and services that have been provided by the tradesman to the consumer. However, the following types of disputes are outside the scope of competence of the ARN: disputes between individuals or between business operators, disputes concerning health care, disputes concerning the purchase or rent of real estate, tenant-ownership, or leasehold, rental disputes that concerns another issue than money. A dispute cannot be decided by the Board if it is pending before, or is already decided by, an ordinary court; or if the dispute can be tried, or has been tried, by a public authority; or by a board that has been approved as a board for alternative disputes resolution or if an ARN recommendation has already been issued in the same matter.

Additional limitations have been set by the Board. A complaint must be lodged no later than a year after the consumer has made a complaint to the trader, 8 § p. 3. There is also a threshold in terms of the minimum value of disputes decided by the Board.

#### b. Procedural framework

##### a. Competent authority

The National Board for Consumer Disputes (*Allmänna reklamationsnämnden*, ARN) was already set up in 1968, as part of the then consumer policy. The Swedish National Board for Consumer Disputes consists of the Chairman (who is also the administrative head of the agency), a Vice-chairman, external Chairmen of the different departments and their members. The Chairman, Vice-chairman and Chairmen of the divisions are lawyers qualified for the bench (§ 26 Instruction). The Chairman and Vice-chairman of the Board (after proposal from the Chairman) and the Chairmen of the departments are appointed by the Government. The other members of the Board are nominated by consumer, labour, industry and other groups 11-16 §§.

##### b. Standing

According to section 9 of the Standing Instruction, proceedings can be initiated by the Consumer Ombudsman on behalf of a group of consumers (group action); or by a group of consumers if the Consumer Ombudsman has declined to initiate proceedings.

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<sup>40</sup> Förordning 2015:739 med Instruktion för Allmänna reklamationsnämnden, c.f. lag (2015:671) om alternativ tvistelösning i konsumentförhållanden, directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and EU regulation 524/2013 of the 21 of May 2013 on alternative dispute resolution online for consumer disputes, c.f. Förordning 2009:607, updated 2015:122 med Instruktion för Konsumentverket (Standing instruction of the Swedish Consumer Agency)

The Director General of the Swedish Consumer Agency is the Consumer Ombudsman (Konsumentombudsman, KO). The Swedish Consumer Agency is a state agency whose task is to safeguard consumer interests. The KO can represent consumer interests in relations with business traders and pursue legal action in the courts.

### c. Opt-out procedure

Group proceedings before the National Board of Consumer Disputes are based on an opt-out principle. The claim extends automatically to all members of the group without a need for an active step to be made by every consumer. This makes the procedure feasible.

### d. Main procedural rules

The procedure is entirely in written form without any oral evidence. The Board informs the trader against whom a complaint has been lodged and gives him or her the opportunity to make written observations. The dispute is considered by the Board even if the trader does not make any observations. The parties are not entitled to be present at the meeting of the panel.

A department constitutes a quorum when the Chairman, Vice Chairman or external Chairman and four members are present, representing equally consumers and tradesmen, 30 § of the Standing Instructions of ARN. A department also constitutes a quorum with the chairperson and two other members, unless one of the members requests that four members participate. A matter can be decided only by the Chairman, Vice Chairman or external Chairman if it is of simple nature or if the business has not commented upon it.<sup>41</sup> If the members of the Board disagree on the verdict, the rules in Chapter 16 of the Civil Procedural Code<sup>42</sup> apply (Chapter 16 concerns voting in civil cases). The ARN decision is not subject to appeal, but can, subject to certain conditions, be reviewed.<sup>43</sup> The decision may be reviewed where a decision was obviously incorrect due to a clear oversight or error by the Board and correction of the decision cannot be considered. As already mentioned, no oral evidence can be collected.

### c. Available remedies

The ARN issues a recommendation as to how the dispute should be settled. The Board can only pronounce itself on issues of contractual liability.

It can recommend both conduct and monetary remedies. The most typical remedy is compensation for damages due to breach of contract. ARN issues a recommendation in which it can recommend how the dispute should be settled. The decision is not enforceable. Nevertheless, there is a high rate of compliance among business operators with the recommendations of the Board, approximately 77 % (end of June 2016). The duration of handling a case in 2016 averaged 85 days.

### d. Costs

Proceedings are free of charge for the parties. The parties are, at the same time, not entitled to compensation for the costs of legal representation or other costs for preparing and participating in the procedure. The absence of any fees is one of the main advantages of the procedure. In case the Consumer Ombudsman initiates the group proceeding, the cost of legal representation etc. stays on the Consumer Agency.

### e. Lawyers' fees

See above under 3 and 4.

### f. Funding

See above under 3 and 4.

### g. Number of claims

As mentioned above, the duration for handling a complaint was in 2016 on average 85 days. The number of cases was 13 537, mostly regarding travel (2 636), motors (2 369), electronics (2 143) and housing (real estate,

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<sup>41</sup> 30-31 §§ of the Standing Instructions

<sup>42</sup> See SFS 1942:740.

<sup>43</sup> 35-36 §§ of the Standing Instructions

tenant- ownership etc, 1 795). The Board also found itself forced to reject 3 507 applications, because the consumer did not submit additional information, which the Board had requested. Another cause for rejection was that the dispute did not reach the demands in terms of value of the claim. A third cause was that the case was too complex, to time-consuming for the Board to handle.

#### h. Other interesting legislation

The Swedish Consumer Ombudsman can act as a representative of individual consumers before ordinary courts in proceedings between a consumer and a business operator.<sup>44</sup>

A prerequisite for the Consumer Ombudsman to intervene in a lawsuit in support of the consumer is that the case is of particular importance for law-building and legal interpretation and that there is a general consumer interest in the dispute being tried by a court of law (cf. § 2).

The Consumer Ombudsman may also act in protection of collective consumer interest in market law and unfair contracts terms. The consumer Ombudsman may in certain cases of minor importance issue a prohibition order or information disclosure order (§ 28 of the Market Practices Act, 2008:486). A trader whose marketing is unfair may be prohibited from continuing with it, 23 §. A trader who, in his marketing, fails to provide material information may be requested to leave such information, 24 §. A service provider under the Act on Electronic Commerce etc., 2002:562, who fails to provide the technical means provided for in the Act, may be required to provide such aids. If the Consumer ombudsman gives such an order and it is approved by the trader, it has the effect of a decision by the Patent- and Market Court, 28 §. The Consumer ombudsman may determine that the injunction (prohibition order or information disclosure) should apply immediately.

The Swedish Patent- and Market Practices Court is a specialized court competent to examine cases under a number of market law statutes, like the Market Practices Act and the Unfair Contract Terms Act.<sup>45</sup>

The Consumer Ombudsman has also the possibility to initiate proceedings under the Market law Act or the Unfair Contracts Terms Act at the Patent- and Market Court, 47 §.

### III. Competition Law

The Swedish Competition Authority has the power to issue prohibitory orders within the area of competition.<sup>46</sup> The Swedish Competition Authority, which is a state agency under the Ministry of Enterprise, places particular emphasis on anti-cartel enforcement, intervening when private and public stakeholders abuse a dominant position in the market, and intervening in respect of anti-competitive sales activities by public entities. The directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the member states has been implemented in the Swedish konkurrensskadelagen (2016:964).

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<sup>44</sup> The legal basis is stated in Lag (2011:1211) om Konsumentombudsmannens medverkan i vissa tvister (Act on Participation of the Consumer Ombudsman in certain disputes)

<sup>45</sup> see lag (1994:1512) om avtalsvillkor i konsumentförhållanden

<sup>46</sup> See 2008:579, Competition Act

## IV. Information on Collective Redress

### 1. National registry

At the moment there is no national registry as the cases are so few in number.

### 2. Channels for dissemination of information on collective claims

The dissemination of information can occur in a number of different ways and there is a wide discretion to find the most suitable way. In this consideration, practical and economic reasons are the most important factors. When the notifications are concerned, the court may even order a party to attend the notification provided this has significant advantages for the processing. This possibility covers both the plaintiff and the defendant. However, the party is in such a case entitled to compensation from public funds for expenses. The court may use, for instance, letters, e-mails, notice boards, newspapers, TV, radio, social media or court's webpage to give the notification. The possibility of using the parties, especially the defendant, to do this is a very practical way to realize the notification whenever the defendant still has regular correspondence with the members, for example in the form of invoicing. In that case, the notification can be done at the same time and only the extra costs caused by the notification are compensated from public funding to the party. The party has to cover the normal invoicing costs even in that case by itself. The court may use fines as a coercive measure to get the party to fulfill its duties in notification.<sup>47</sup>

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<sup>47</sup> Group Action Act, Section 50, Lindblom 2008, pp. 572 – 578 and Government bill 2001/02:107, pp. 181 – 182.

## V. Case Summaries

### 1. General

#### A. Table

Year Court	Subject	Keyword
2016 Nacka district Court	Sales Law	Private Group Action
2016 Nacka District Court	Private law	Private Group action
2014 Nacka District Court	Damages for indignity	Organisational group action
2013 Göta Court of Appeal	Damages	Organizational group action
2012 The Supreme Court, T 2045-12	Public law, Free movement of goods, restitution	Private group action.
2011 Svea Court of Appeal, Ö 6573-11	General principles of law	
2009 The Court of Appeal for northern Norrland, 4 November 2011, T 154-10	Consumer law, contract law	Public group action, Breach of contract, damages awarded
2009 Svea Court of Appeal, T 3552-09	Discrimination law, Higher education act	Private group action, Damages awarded
2006 Svea Court of Appeal, Ö 6868-06	Contract law	Private group action
2005 Svea Court of Appeal, Ö 810-05	Contract law	Breach of contract, procedural hindrance
2012 District Court of Gothenburg, T 7211-03	Contract law	Action withdrawn
2011 District Court of Nacka, T 3385-09	Contract law, services, claim	Banking Settlement out of court
2009 District Court of Malmö, T 9330-09	Discrimination law	Damages awarded, settlement out of court
2009 District Court of Nacka, T 5127-09	Public law	Unfair commercial practice, Claim for restitution of time lost
2009 District Court of Gothenburg, T 271-09	Contract law	Ambiguous contractual terms
2006 District Court of Stockholm, T 9593-06	Public law	Case dismissed
2006 Environmental Court of Nacka, M 1931-07	Environmental law	Proceedings are stayed
2005 District Court of Gothenburg, T 7247-05	Contract law	Ownership, settlement
2004 District Court of Stockholm, T 97-04	Declaratory claim	compensation Claim for compensation, settlement in arbitration
2003 District Court of Stockholm, T 6341-03	Public law, personal data act	Damages awarded
2003 District Court of Nacka, T 1281-07	Contract law	Settlement out of court

## **B. Summaries**

1. District Court of Nacka, T 37-15, 9<sup>th</sup> of February 2016

Jerod Mund ./ KnCMiner AB

Private group action. Questions regarding sales law. Action dismissed as the certification criteria in Section 8 in the GRL was not met. The case was appealed to Svea Court of Appeal who decided not to try the case. The plaintiff sued the company later on in a normal civil case at the District Court of Stockholm where the plaintiff lost the case, case T 14917-14, 2016-04-29.

2. District Court of Nacka, T 7124-15, 28<sup>th</sup> of January 2016

Mikael Ljunggren ./ Dalbo Båtsällskap

Private group action. The action was dismissed as the plaintiff had claimed that the counterparty should apologize, which was a claim that not could be enforced.

3. District court of Nacka, T 1982-14, 11<sup>th</sup> of September 2014

**Reclaimjustice vs Sverige .7. Staten genom Justitiekanslern**

Organization group action. Action dismissed as the criteria in Section 5 in the GRL was not met.

4.. Court of Appeal, Göta hovrätt, 3<sup>rd</sup> of June 2013, Ö 3152-12.

**Intresseföreningen för spararna i Habo Finans ./ A. Claesson med fl.**

Organizational group action. Damages for mismanagement. Action dismissed as the criteria in Section 8 in the GRL was not met. See also case at the District Court of Jönköping, 2012-10-16, case 1108-12.

5. Supreme Court, 3 May 2012, T 2045-12, Vinimport

**Torkel Jörgensen ./ Sweden**

Private group action. Question of damages due to alcoholic beverages being confiscated by the state. Question about restitution. The action was rejected by the district court of Nacka; Svea Court of Appeal affirmed the judgement, T 4402-11. Appealed to The Supreme Court, which did not review the case. Decision by the Supreme Court 2013- 08-15.

6. Svea Court of Appeal, 25 November 2011, Ö 6573-11, Eritreanska föreningen

**Eritrean association of Husby ./ Eritrean national federation of Sweden**

Question of abolishing the annual meeting of a non-profit association. Case dismissed due to no section of law being applicable. Svea Court of Appeal denied the appeal.

7. Court of Appeal for northern Norrland, 4 November 2011, T 154-10, Kraftkommission

**The Consumer Ombudsman ./ Stävrullen Finance AB**

Public group action. Damages due to the defendants' failure to supply electric power. On-going case. Intermediate judgement is delivered, affirmed by the Court of Appeal for Northern Norrland. The Supreme Court denied review permit for the intermediate judgement.

8. Svea Court of Appeal, 21 December 2009, T 3552-09, Veterinärutbildningen

**Olivia Rozum ./ Sweden**

Private group action. Damages due to discrimination regarding university entrance. Affirmed by Svea Court of Appeal.

9. Svea Court of Appeal, 25 September 2006, Ö 6868-06, Telia

**Devitor AB ./ TeliaSonera AB**

Private group action. Refunding of the difference between the amount being billed during a particular period and the agreed rate. Case dismissed due to the members of the group could not be defined. Appealed to Svea Court of Appeal but was later withdrawn.



10. Svea Court of Appeal, 5 January 2005, Ö 810-05, Aftonbladet

**Linus Broberg & Henrik Skeppland ./ Aftonbladet Nya Medier AB**

Private group action. Compensatory damages when participants could not participate in online gaming, due to data transmission problems. Claim was denied due to procedural hindrance. Svea Court of Appeal remanded T 10992-04 to the district court of Stockholm. Svea Court of Appeal denied the appeal of T 17333-04.

11. District court of Gothenburg, 10 February 2012, T 7211-03, NCC

**Guy Falk & Lisbeth Frost ./ NCC AB**

Private group action. Demand for performance of contractual obligation. Action withdrawn.

12. District court of Nacka, 17 June 2011, T 3385-09, Handelsbanken

**Tobias Karlsson ./ Svenska Handelsbanken AB**

Private group action. Damages due to negligence from the bank when a person, who did not have the right to do so, withdrew money from an account.

13. District court of Malmö, 4 March 2010, T 9330-09, Psykologutbildningen

**Elin Sahlin ./ Sweden**

Private group action. Damages due to discrimination regarding university entrance. Settlement out of court.

14. District court of Nacka, 22 March 2009, T 5127-09, Norrtäljeanstalten

**Jan-Erik Mariniusson ./ P&M Reklam AB & Swedish Prison and probation service**

Private group action. Claim for damages due to the difference in payment between divisions in the prison. Claim for refunding of the difference between the actual price of goods in the prison kiosk and the price that would have been fair. Case dismissed due to procedural hindrance. Review permit denied by Svea Court of Appeal also claim for restitution of time lost.

15. District court of Gothenburg, 4 March 2009, T 271-09, Parkeringservice

**Marie Lundberg ./ Hojab Parkeringservice**

Private group action. Claim of repayment of parking fine due to ambiguous contractual terms. The case was first filed at the district court of Solna as T 5918-08. The case was transferred, due to court competence, to the district court of Gothenburg, where the case was dismissed due to the larger part of the claims being held to be equally well pursued through personal actions by the members of the group.

16. District court of Stockholm, 26 June 2006, T 9593-06, Stulen barndom

**Peter Lindberg ./ Municipalities of Storstockholm**

Private group action. Question of compensatory damages due to poor care in municipal orphanages. Case was dismissed due to the special investigation that was needed for each member of the group, which would go against the intent of the law.

17. Environmental court of Nacka, 29 August 2006, M 1931-07, Arlanda

**Carl de Geer et al. ./ Air Navigation Services of Sweden**

Private group action. Question of damages due to aviation noise. On-going case, proceedings are stayed, to be resumed on request from litigant.

18. District court of Gothenburg, July 2005, T 7247-05, Fjärrvärme

**Lars Elnér & Vuokko Elnér ./ Göteborgs Egnahems AB**

Private group action. Question of the ownership to an electric power facility. Settlement out of court.

19. District court of Stockholm, 5 January 2004, T 97-04, Skandia

**Grupptalan mot Skandia ./ Skandia AB**

Private group action. Right to compensation due to the fact that policyholders of a company suffered injury when proceeds of sales were transferred to another company. An arbitration tribunal settled the case and the group action was withdrawn.

20. District court of Stockholm, April 2003, T 6341-03, Dataregister 1

#### **Johan Asplund et al. ./ Falck Security AB**

Private group action. Information collected regarding suspected, but not convicted, taggers. An action regarding the right of registration of personal data. Case was appealed to Svea Court of Appeal by the defendant but was later withdrawn.

21. District court of Stockholm & Nacka, January 2003, T 3515-03 & T 1281-07, Aer Olympic

#### **Bo Åberg ./ Elefterios Kefalas**

Private group action. Damages due to several hundred passengers having been left stranded at the airports when the company went bankrupt. Settlement was made in 2007.

## **1. Consumer law**

### **A. Table**

<b>Year</b>	<b>Court</b>	<b>Subject</b>	<b>Keyword</b>
2003	The National Board for Consumer Disputes, 2003-6529	Consumer contract law	law, Breach of contract
2010	The National Board for Consumer Disputes, 2010-4253	Contract law	Unreasonable contractual terms
2010	The National Board for Consumer Disputes, 2010-6177	Contract law	Dissenting opinions
2014	National Board for Consumer Disputes, 2014-09369	Contract Law	Damages
2014	National Board for Consumer Disputes, 2014-11304	Financial law	Compensation for overcharging a management fee

### **B. Summaries**

1. The National Board for Consumer Disputes, 4 July 2004, 2003-6529

#### **The Consumer Ombudsman ./ Kraftkommission i Sverige AB**

Damages due to the defendants' failure to supply electric power. This case was later tried in The Court of Appeal for Northern Norrland, case number T 154-10.

2. The National Board for Consumer Disputes, 14 March 2011, 2010-4253

#### **The Consumer Ombudsman ./ Hammarö Energi AB**

Question about adjustment of contractual terms due to increased administrative costs in a contract which was limited in time.

3. The National Board for Consumer Disputes, 9 May 2011, 2010-6177

#### **The Consumer Ombudsman ./ Viking Airlines AB**

Declaratory claim for damages due to cancelled aircraft transportations between Iraq and the Nordic countries. The case was partly dismissed and partly rejected due to court competence.

During 2010, for example, ARN received a group complaint concerning district heat delivery. The complaint was filed by KO against a district heating company (Hammarö Energi AB.) ARN stated that the company was not entitled to charge certain of its district heating customers for administrative overheads, no provision to this effect being made in the contract between the parties<sup>48</sup>.

4. National Board for Consumer Disputes, 2014-09369, final decision 18<sup>th</sup> of March 2016

**Konsumentombudsmannen ./ Gotlandsbåten AB**

The Swedish consumer ombudsman recommended the company Gotlandsbåten AB to compensate the consumers who had entered into an agreement with the company for certain travel trips for the damage caused to them due to the cancellation of the trip.

5. National Board for Consumer Disputes, 2014-11304, 1<sup>st</sup> of July 2015.

**Sveriges Aktiesparares Riksförbund ./ Swedbank Robur Fonder.**

The cases involved compensation for overcharging a management fee. The National Board of Consumer Disputes decided not to review the case as the case needed oral evidence and oral preparation of the case.

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<sup>48</sup> See case 2010- 4253, decided on 2011- 03-14. See further [www.arn.se](http://www.arn.se).

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