

1970

Nordic Countries

Ruth B. Ginsburg

Recommended Citation

Ruth B. Ginsburg, *Nordic Countries*, 4 INT'L L. 150 (1970)
<https://scholar.smu.edu/til/vol4/iss1/11>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

law, in its section 6, refers expressly to the provisions of the ZPO which, therefore, are applicable accordingly.

(d). Administrative matters are subject to the "Law on Administrative Proceedings" which contains also the provisions about service in its sections 21-31. These provisions are based upon the well approved rules of the Law on Civil Procedure, and it is sufficient here to refer to the latter ones (see *supra* II A).

III. Conclusions.

This article shall not amount to a textbook on Service in Austria. Its aim is only to set forth the general principles thereof, omitting details, in order to enable the reader to compare them to those prevailing in the United States—a matter of comparative law.

For those who are interested in more details, reference is made in the first line to the legal provisions cited above. In addition thereto the principal authorities and sources are *Newmann* "Commentary to the Austrian Civil Procedure" with respect to the sections cited, and *Pollak* "Textbook on Austrian Civil Procedure".

Nordic Countries

Ruth B. Ginsburg*

In General

This summary description of service rules and practices in Nordic countries is based upon studies prepared for the volume *International Co-operation in Litigation: Europe*, Smit ed. (Nijhoff 1965). For further detail and documentation that volume should be consulted. In addition, for fuller treatment of Sweden's domestic service rules, see Ginsburg & Bruzelius, *Civil Procedure in Sweden* (Nijhoff 1965).¹

In the Nordic countries, as in continental systems generally, service, whether of a summons or of other documents, normally has a single function—that of providing notice.² The competence of a court to adjudi-

*Professor of Law, Rutgers Law School (Newark).

¹Both volumes were sponsored by the Columbia University School of Law Project on International Procedure.

²Indicative of this single function, the Swedish Code of Judicial Procedure (33:14) expressly provides that a summons or other document actually delivered to the defendant in a manner that gives him fair notice and adequate time to respond is deemed "served" whether or not statutorily prescribed procedures have been followed.

cate a matter is determined by code rules that relate to the affiliation of the defendant, or of the claim in suit, with the forum. Service within the court's territorial ambit is neither required, nor sufficient, to confer adjudicatory authority upon the court.

If the responding party does not appear, the court will require proof that service was made in an appropriate manner. If the court is not satisfied that service was properly made, or that adequate time for response was afforded, it will stay further proceedings until the defect is cured. However, a curable defect, whether noticed by the court or raised by the defendant, normally does not occasion dismissal of the proceedings.

The Nordic countries (Denmark, Finland, Norway, Sweden) are parties to the Hague Conventions on Civil Procedure of 1905 and 1954. Each country has regulations facilitating service of legal documents domestically upon the request of authorities of other member states. Although the United States is not party to these older Conventions, it was the first nation to ratify the most recent (1965) Hague Convention dealing with service—the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial matters.³ It seems probable that the Nordic countries will accede to this Convention, which expedites in considerable measure service of process and other legal papers for proceedings in foreign tribunals. Finland is already a signatory. Among the Scandinavian States (Denmark, Norway, Sweden), a special agreement provides for direct court to court mail transmission of summonses and other documents.⁴

DENMARK

a. Service within Denmark

Normally, an official process server is used to deliver documents relating to litigation in Danish courts. However, the party who desires service is free to elect mail delivery. Documents to be served by mail are dispatched by the court.

If the addressee is not encountered by the process server or postman, substituted service may be made upon defined persons at the addressee's residence, office or place of employment. For cases in which the ordinary means of service are unavailing, provision is made for service by the police, or by publication.

³The Senate gave its advice and consent to ratification by unanimous vote on April 14, 1967. See Amram, *United States Ratification of the Hague Convention on Service of Documents Abroad*, 61 AM. J. INT'L L. 1019 (1967).

⁴Protocol between Denmark, Norway and Sweden relating to reciprocal judicial assistance, June 26, 1957.

b. Service abroad

When service cannot be effected in Denmark, it may be made abroad in the manner specified by the foreign country, or as prescribed by treaty. Parties in civil proceedings may request that the court arrange service abroad. The papers normally travel from court to the Ministriés of Justice and Foreign Affairs and, from there, through diplomatic channels. When foreign authorities do not facilitate service, a combination of publication and mailing may be utilized. The publication is in Denmark, but the registered mail notification is dispatched to the addressee abroad.

c. Service of foreign documents in Denmark

Denmark has provided by decree for assistance in serving documents pursuant to the request of a foreign authority. The service request may be made by a foreign consul, if a treaty so provides, and in other cases, through diplomatic channels to the Ministry of Justice. The consul, or the Ministry, directs the request to the court of first instance for the territorial unit in which delivery is to be effected. While Danish officials do not lend assistance to diplomatic or consular representatives who seek to effect service through their own offices, a foreign representative may accomplish such service without aid if the addressee voluntarily accepts delivery. Moreover, nothing in Danish law prohibits private persons, including persons designated by a foreign court, from serving official papers in Denmark; however, Danish authorities will not assist in effecting the service.

FINLAND*a. Service within Finland*

Service personally upon the addressee by an official process server is the preferred method. Service by mail, the preferred method in Sweden and an optional first choice in Denmark, is not the Finnish practice. If a resident addressee cannot be located, substituted service may be made upon defined persons. Mail notice of the substituted service must be dispatched to the addressee at his residence. In Finland, as in the other Nordic countries, service by publication may be employed only when the addressee has no permanent place of abode and his whereabouts (or the whereabouts of a person holding a general power of attorney from him) cannot be ascertained.

b. Service abroad

Service of Finnish legal documents abroad is regulated by statute. Requests for service of a summons emanate from the issuing judge; requests relating to other documents are normally made by the interested party. Documents go first to the local county government office, then to the Ministry of Foreign Affairs. The Ministry may forward the request to the appropriate foreign authority or, if more convenient and consonant with the law and policy of the foreign nation, it may call for service by Finnish diplomatic or consular representatives.

c. Service of foreign documents in Finland

The statute regulating service of Finnish legal documents abroad also regulates service of foreign legal documents in Finland. As to the latter, it provides generally for the execution of letters rogatory from foreign authorities. Such letters are to be addressed to the Finnish Ministry of Foreign Affairs. The appropriate county government office attends to the service. Requests stipulating a special method of delivery will be honored unless contrary to Finnish law or policy. While the statute is confined to requests presented by foreign authorities, in practice, parties in proceedings abroad have recourse to other methods of service. For example, foreign consular representatives stationed in Finland may serve documents upon an addressee who voluntarily accepts the documents. Moreover, a Finnish official process server may undertake delivery of any kind of document upon the direct request of a private person, whether Finnish or foreign. Finally, the mails, although not generally used for service of Finnish summonses, may be used for delivery of foreign legal documents.

NORWAY

a. Service within Norway

The Courts of Justice Act contains detailed provisions on service by official process servers. In addition to the prescriptions on personal and substituted service by process servers, the Act provides that private service, for example, by ordinary mail, will be effective if the addressee acknowledges receipt. Unless the addressee is a government official or an attorney, however, the signed receipt must be verified.

b. Service abroad

Three methods are in current use. Requests for service in Denmark and Sweden are transmitted by Norwegian courts, via ordinary mail, directly to the court or other authority competent to execute the request. In other foreign states, service is effected by Norwegian diplomatic or consular officers in accordance with rules governing service within Norway, whenever such service is feasible and consonant with the law and policy of the foreign state. When preferred or required by the foreign state, service is effected by foreign authorities pursuant to requests embodied in letters rogatory forwarded through diplomatic channels.

c. Service of foreign documents in Norway.

Requests for service forwarded through diplomatic channels are generally honored. Letters rogatory embodying such requests pass from the Ministry of Foreign Affairs to the Ministry of Justice, and then to the court of first instance for the place in which service is to be made. The court commissions an official process server to execute the request. A foreign authority or individual may send a summons or other legal document directly to the addressee by registered mail. However, Norwegian authorities do not approve of personal service within Norway by foreign citizens. An official process server may undertake delivery of legal papers upon direct request of a foreign individual or authority, but he is under no obligation to do so.

SWEDEN

a. Service within Sweden

Usually, service of legal documents is arranged by the court, but a party may request permission to attend to service himself. Official process servers may be used by the court or by a private person. Normally, however, when the court attends to service, delivery is made by the local postman. If delivery directly to the addressee cannot be effected, resort may be had to provisions on substituted service. As in Norway, service may be made privately, by messenger or ordinary mail, if the addressee voluntarily acknowledges delivery via a signed receipt.

b. Service abroad

Service may be made in the manner provided for service within Sweden,

or in the manner prescribed by the foreign law for service in that country. The assistance of the Ministry of Foreign Affairs may be invoked by persons who seek service abroad. Normally, the Ministry forwards requests to the Swedish representative at the place in which service is to be made. If preferred or required by the foreign country, however, the Ministry will present the request to the appropriate foreign authority. Consular regulations control in detail the procedure to be followed in effecting service.

c. Service of foreign documents in Sweden

A decree regulating assistance by Swedish officials permits the dispatch of requests to the Ministry of Foreign Affairs. Requests from any nation will be entertained if reciprocity is assured. Requests are forwarded to the appropriate county administrative board for execution. If a particular method of service has been stipulated in the request, the board will attempt to follow the stipulation. Neither legislation nor official policy restricts service of foreign judicial documents on persons within Sweden by foreign officials or private persons without the assistance of Swedish authorities.