

CONSUMER PROTECTION INSTITUTIONS IN SWEDEN : AN OVERVIEW *

by

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1. INTRODUCTION

In the contemporary world when ideology has finally ceased to be the dominating factor both in internal and external affairs of a state, the individual as a consumer is gaining increasing attention as the primary objective of national policy. The need for consumer protection has long been recognized in countries throughout the world. While Sweden is no exception, it has developed some major innovative approaches to consumer protection both in respect of institutions and legislation the following is a brief overview of the development of institutional framework in the sphere concerned.

Consumer information has been a government responsibility in Sweden since 1940. At that time shortage of goods and the emergence of substitute products motivated the setting up of a government information bureau known as **Active Housekeeping**.¹ The purpose of the Bureau was to supply information which would assist the individual household in working the best of the available resources.

The Bureau operated independently until 1954 when it was merged with the **Home Research Institute** which had been founded earlier.² The main purpose of the Institute was to make house work more efficient by research concerning domestic commodities and tools and by information.

* This article is part of a research monograph by the author entitled Consumer Protection Law and the Swedish Approach, Prudential Publications, Dhaka, 1994.

1. **Consumer Committees Report**. Summary. Swedish Government publication, 25 (SOU 1971:37) .

2. *ibid.*

In 1957 the Government assumed financial responsibility for the organization and changed its name to **National Institute for Consumer Information**. The central purpose of the Institute was "to promote the improvement of working efficiency in private homes and collective households and to encourage the production and consumption of goods and useful consumer goods".³ It was the special function of the Institute to conduct research and supply information concerning the technical, economic hygienic and other problems which are associated with homes and households as centres of consumption and as workplaces. The Institute supplied advice and information to consumers by regionally located "**Home consultants**".

In 1951 the **VDN Institute for Informative Labelling** was founded. Although it was private, its organizational charter and by-laws were approved by the government. The principle objective of the Institute was "to promote the wider use of informative labelling on consumer goods". The labels should include "product specifications that are uniformly formulated and also details of the goods material and functional qualities".⁴

Two important steps toward consumer protection was taken in 1957 : **The National Council for Consumer Goods Research and Consumer Information** was created to sponsor research on consumer matters and to co-ordinate consumer information programmes of the Institute and other bodies. The Council set up a **Public Complaints Board**, as an experimental undertaking to receive complaints from consumers relating to goods and services and resolution thereof.

In the same year, the **National Price and Cartel Office** was established for investigating and researching problems of pricing and restrictive practices.

3. Consumer Committee Report. op. cit.

4. ibid.

From the mid-1960 questions relating to consumer information aroused steadily growing interest in Sweden which was manifest in the appointment of several special commissions.

However, it was not until the beginning of the 1970s that consumer protection became a major issue and significant steps taken to effectuate such policies. On June 29, 1970 a new law called the **Market Court Act** was passed.⁵ This Act became effective January 1, 1971. The Act established a special new court to deal with unfair marketing practices and improper terms in consumer contracts. In connection with it a **Consumer Ombudsman (KO)** was established which is now universally recognized as a major innovation in consumer protection institutions. Less directly affecting consumer is the **Freedom of Commerce Ombudsman** whose function is to enforce legislation promoting fair competition in business and prohibit restraints on trade.

In May, 1971 the **Swedish Consumer Committee** which had been appointed earlier, published a major report advocating that three existing governmental agencies working for some aspects of consumer protection be consolidated into one major agency.⁶ This new Super consumer Agency would develop broad consumer policies and take over the work of a number of the separate agencies concerned with consumer protection.

In 1972, a bill was introduced in the parliament for the establishment of the proposed new consumer agency and passed. In 1973, the new agency, the **National Board for Consumer Policies (Konsumentverket)** began its operations and the earlier established Consumer Institute, the Consumer Council and VDN abolished at the same time.

The legislation administered by the Consumer Ombudsman (KO) was expanded in 1976 when konsumentverket and LO were amalgamated. Now Konsumentverkets Director General is also the KO.

5. The Market Court Act, Act of 29 June, (1970:417)

6. SOU 1971:37

Over the years a variety of mass movements, trade unions and political organisations, women's organisations and adult education associations have shown a great deal of interest on consumer affairs. They take part in the making of consumer policy parallel to and jointly with Konsumentverket and the municipal consumer policy parallel to and jointly with konsumentverket and the municipal consumer guidance officers.⁷ Local consumer support activities exist in nearly all of Sweden's 284 municipalities.

Certain of the Swedish institutions for consumer protection have been tried elsewhere. They are of great importance to the Swedish consumer and also offer other countries possible mode of consumer protection. Such major innovations, therefore, merit a closer look.

2. CONSUMER OMBUDSMAN AND THE NATIONAL CONSUMER BOARD

While the institution of "ombudsman" is old and well established in Sweden, with the Ombudsman of the parliament established in 1809, the idea of a consumer ombudsman is relatively new, and its creation has been dubbed as the "most novel approach to the problem of consumer protection".⁸ It is the first such Ombudsman created anywhere and reflects the complexity and importance attached to consumer protection in Sweden.

The office of the Consumer Ombudsman (referred to as (KO) was established at the beginning of 1971 on the effective date of the **Marketing Practices Act**.⁹ It provides that "for questions concerning marketing practices there shall be a consumer ombudsman".¹⁰ He "shall be appointed by the king-in-Council for a specified term and shall be legally qualified".¹¹ This signifies that the

7. **The National Swedish Board for Consumer Policies.**
Information Booklet. (1990)

8. Donald B. King. Consumer Protection Experiments in Sweden. 3 (1974)

9. The Marketing Practices Act, Act of June 29, 1970 (1970:412)

10. *ibid.*

11. *ibid.*

KO is not legally answerable to the Parliament and subject to political pressures. Rather his position is like that of other civil servants.

The KO is directed to protect individuals as consumers and to act as a special prosecutor when necessary. He is also expected to take initiatives of his own and to respond to complaints from the public. However, the KO is supposed to police the business community and not the government bureaucracy. Moreover, the KO does not intercede in specific disputes. He is directed to protect consumers as a group by way of negotiation and petitions to the Market Court.¹²

Six months after the Marketing Practices Act became effective, the KO was assigned the additional responsibility of enforcing the Contract Terms Act. However, as indicated earlier, in 1976 the KO was merged with the National Consumer Board, created in 1973, into one super agency with the KO retaining his separate identity as the prosecuting authority under the Marketing Practices Act and the Contract Terms Act. The KO was at the same time made **Director General** of the new super agency, designated **Konsumtverket/KO**.¹³

Konsumtverkets board of directors is composed of **ten members**. The Director General of the agency is the Chairman of the board. Two members are representatives of consumer and one of labour interests. Two members are representatives of the business community. Two are members of Parliament, and there is one representative of the municipalities. The Director General of the National Food Administration makes the tenth member. In addition, two representatives for the agency staff serve in a advisory capacity. The Agency's Director General is appointed for six years and the Board's other members for three years. It is the duty of the board to set a general policy for the agency, including the allocation of resources among various functions performed within the agency. This includes setting the budget for taking cases to the Market Court

12. For a distinction of KO from other categories of Ombudsman, especially the parliamentary Ombudsman see **Fact Sheets on Sweden**. FS 71 odc. The Swedish Institute, July (1990).

13. **Supra note 7**. see also: 96-97, 114-117 Prop. 1975/76:34.

under the Marketing Practices Act and Contract Terms Act by the Director General in his capacity as Consumer Ombudsman.

In a nutshell, the work of the Board refers to the following fields, among others:

- i. household economies
- ii. product safety
- iii. corporate marketing and contract terms.

The Boards principle means of furthering the objectives of consumer policy are as follows¹⁴ :

i) **Activities to influence the market situation in order to ensure that goods, services, marketing methods and contract terms are adapted to consumers needs.** The Board carries out tests and evaluates different kinds of goods and services, company marketing activities and the terms of contracts. The Board also contacts producers, distributors and marketers to seek to influence products in a direction favorable for consumers. KO also acts to introduce Standard Contract Forms in areas where they are not used and to generally investigate the fairness of contract terms in entire areas. If voluntary agreement is not possible, the KO may act as a prosecutor in the Market Court on behalf of consumers in those matters regulated in any of the following four laws: **the Marketing Act, the Consumer Contract Terms Act, the Consumer Credit Act and the Product safety Act.**

ii) **Activities to improve the general situation of consumer.** In the sphere of education the Board sees to it that consumer matters receive attention in school curricula at all levels, produces teaching aids and keeps in touch with schools and universities.

The new focus of consumer policy implies greater decentralization and wider duties for municipal consumer advice organizations. The Boards task is to encourage municipal consumer advisers by

14. See. **Fact Sheets on Sweden.** FS 81 mQC. The Swedish Institute. (Nov. 1990.)

supplying them with information and other services. Municipal activities are based on voluntary undertakings.

One of the main aims of municipal consumer policy is to provide individual consumers with **guidance in various questions**. Other aims are to provide general information on consumer issues, to report on consumer problems to central authorities, to provide statements of opinion concerning consumer matters, and to support other consumer policy activities in the community.

iii) **General information to the consumers**. One of the Board's central functions is to provide information. The goal is to disseminate information which will familiarize consumers with matters of consumer policy and which will give them guidance in selecting goods and services as well as in household planning. For this reason the Board publishes periodicals, fact sheets, research reports, booklets etc. Particular mention may be made of **Rad & Ron (Advice and Results)** which publishes information and reports on consumer products.

The duties of the Director General in his capacity as the KO have been largely delegated to the **KO Secretariat**. The Secretariat brings action before the Market Court in cases concerning marketing practices, dangerous products or unfair terms. It also deals with prosecution matters.

When the Board, either as the result of a notification from outside or in the course of its own scrutiny, notices an undesirable marketing action or condition in a contract, it attempts first to have the matter put right voluntarily, by discussing with those responsible. If a correction cannot be agreed upon, the KO can refer the case to the Market Court, **requesting that the entrepreneur be prohibited from continuing to use the undesirable marketing practice or condition in the contract**.

Preliminary injunctions may be sought in the Market Court by the KO when it is necessary to bring the practice in question to an immediate halt. He has this power under both the Marketing Practices Act (13) and the Contract Terms Act (5). However, a preliminary injunction will

be granted only if it appears very likely that a permanent injunction will follow.¹⁵

The KO is empowered to subpoena documents, information, product samples and the like necessary to carry out investigations. Subpoenas are issued when companies refuse to supply requested materials, and the subpoenas, like the decisions of the Market Court are complemented by specific fines.¹⁶

Violations which clearly fall within existing precedents of the Market Court may be dealt with by a method called **Consent Orders** which are provided for under both Marketing Practices Act and the Contract Terms Act.¹⁷ Once the businessman has agreed to a consent order proposed by the KO, the Order has the same force and effect as an injunction of the Market Court.¹⁸

Depending on the nature of a complaint KO can issue a recall injunction, requiring the company to repair, exchange and recall hazardous products which it has sold.

Injunctions are always combined with contingent fines i.e. a substantial penalty which the company can be made to pay if it continues an activity which has been prohibited or fails to supply important information.

Konsumentverket/KO deals with around 4000 cases every year, almost half of which concerning the Marketing Act. About 20 cases a year are referred to the Market Court.¹⁹ Once the KO receives a complaint it is thoroughly investigated. This investigation, together with selection and careful preparation of cases contributes to very high percent of cases won by the KO in the Market Court.²⁰

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15. **Ulf Bernitz & John Draper.** Consumer protection in Sweden. Legislation, Institutions and Practice. Stockholm, (1986)
 16. **Marketing Practices Act § 11 and § 12 Contract Terms Act § 3a.**
 17. **Marketing Practices Act § 14, § 15, Contract Terms Act § 6.**
 18. **More on Consent Orders see: Konsumenträtt och Ekonomi, No.6 30. (1977)**
 19. **Supra note 12**
 20. **For example, in the first 20 cases KO brought before the Court, he lost only one, Supra note 8 at 8.**

3. THE MARKET COURT

In most countries, cases concerning consumer protection must be brought in the regular courts with corresponding delays and lack of special judicial insight into consumer problems, and obviously, with no priority for such cases. In Sweden, on the other hand, there exists a special court—**The Market Court**—which has aptly been regarded by some authors as the "**Consumers court**".²¹ This court constitutes another novelty in consumer protection institutions in Sweden.

The Market Court was created by the **Market Court Act (1970:417)** simultaneously with the office of the KO. its main function is to serve as the precedent-setting authority for the interpretation of the Marketing Practices Act and the Contract Terms Act. It is the first and the last instance for the KO to settle disputes with businessmen/companies arising under these acts. It also enjoys exclusive national jurisdiction under the **Restraint of Trade Act, (§1)**.

The Market Court is composed of a president or chairman, a vice-chairman and six lay members representing in equal numbers business interests and consumer/labour interests. In addition, two economic experts are members of the court, one having special knowledge of trade and industry and handling cases under the Restraint of Trade Act, and the other having special knowledge of consumer problems and handling cases under the Marketing Practices Act and the Terms of Contract Act (§ 3, § 5). Each member has one or more deputies. Members and deputies as well as the chairman and vice-chairman are appointed by the king-in-Council (§ 6). The Act requires the Chairman and Vice-chairman to be learned in the law and have judicial experience (§ 4). The Chairman serves for a term of six years and the other members for three years each.

The procedure before the Market Court in a case under the Marketing Practices Act is as follows: the KO submits a written petition setting out the activity complained of and the reasons for

21. *Supra* note 8 at 15

which it should be enjoined by the Court. The Court then forwards the petition to the respondent who must answer within 21 days. The Court, if it so wishes, may ask for amicus briefs, although this is seldom done.

Statistically, the respondent is represented by a lawyer in a little more than half of the cases.²² A pretrial conference is often held with the chairman of the Court. Almost half of the cases under the Marketing Practices Act are then decided without a hearing before the Court. In cases which do go to hearing, the Court will take evidence and hear argument by the parties or their lawyers. A quorum of the Court is constituted by the Chairman and four other members representing equally consumer and business interests (§ 9).

The Market Courts power is exercised in the form of injunctions. It enjoins businessmen from engaging in misleading advertising or using improper terms of contract. It generally includes in the injunction a provision that failure to follow it is subject to fine.

If the injunction is violated, the matter will be called to the attention of the public prosecutor who will bring an action in regular courts to collect the fine.

The decisions of the Market Court are summarized in the periodical "**Konsumentratt och Ekonomi**" (Consumer law and Economy) published by Konsumentverket. It subscribes to wider awareness both among the business community and lay consumers.

4. THE PUBLIC COMPLAINTS BOARD

An overwhelming majority of consumer disputes in Sweden are referred to the Public Complaints Board (Allmänna Reklamationsnämnden) which is often regarded as "a third major innovation for consumer protection developed in Sweden".²³ This Board was established in its present form in 1968²⁴ and functions from 1981 as an independent agency. A consumer may go to this

22. See **UIF Bernitz & John Draper** 92, *op.cit.*

23. **Supra** note 8 at 19

24. For further information on public Complaints Board see: Jan Hellner. *The Consumers Access to Justice in Sweden*, **40 Rabels Zeitschrift**, 727 (1976) See also, **SOU 1978:40**

Board if he is unable to get any satisfaction from his seller. The importance and confidence attached to the Board by consumers is illustrated by the fact that nearly 3000 complaints per year are lodged with the Board since its creation.²⁵

The public Complaints Board is headed by a chairman and seven vice-chairman who are learned in the law and have judicial experience. The Board also has approximately seventy four members chosen in equal numbers from business and consumer entities, to a certain extent similar to the make up of the Market Court.

The Board is divided into ten divisions: travel, motor vehicles, electrical appliances, boats, textiles, laundry and cleaning, footwear, furs, insurance and miscellaneous. Six to ten members serve in each of these divisions. The Board also has a staff which advises consumers and prepares disputes for resolution by the appropriate divisions.

The consumer complains to one of the divisions. The complaint is then investigated and the office contacts the seller or manufacturer and asks for its side of the story. If the complaint appears justified, the Board may then hold a hearing on the matter. While each party could appear before the Board to argue its case, the usual procedure is for the Board to review the written reports and written arguments presented by the consumer and the business and reach its decision on this basis. It is worthwhile to note that in its discussions the Board centres more upon the question of what is fair as contrasted to legal issues.

Another striking feature of the decision of the Board is that, although a judgement in favour of the consumer will state the amount of damages to which the consumer is entitled according to the division concerned, the decision is not enforceable as a matter of law—it is merely a recommendation and as such, may be disregarded by the business.

25. Memo of November 16, 1972 on **Main Features of Swedish Consumer Policy**, by the office of the Consumer Ombudsman, 6 (1972).

In such a case of non-compliance, the business however, risks being entered on a "blacklist" of uncooperative companies in newspapers and in the publications of the Consumer Board and digest corresponding consequences for such negative publicity. This, it must be construed, has had a marked positive effect on the behavior of the business. While in the early years of the Board forty percent of the recommendations were not followed, the figure has in recent years drooped to less than fifteen percent.²⁶ The statistics by themselves speak of the positive effect of the Board on the business community and thereby, on consumer protection. And in fact, a number of business organizations have bound themselves to follow the recommendations of the Consumer Board and have taken definite steps to that direction.

5. THE SMALL CLAIMS PROCEDURE

The concept of the small claim seprocedur is that persons may come to such a court without having to hire an attorney. Legal formalities and technicalities are stripped away from this type of procedure. The claimant may simply present his case and the judge, after hearing both sides, renders his decision. Justice is thus obtained without expense, delay or the complexities of the usual legal system. Another feature of this procedure as indicated by its name, is that the court handles cases wherein claims do not exceed a certain amount defined by law. The absence of a lawyer, however, presents a drawback in that the case will not be as thoroughly considered and that the risk of substantive miscarriage of justice is much greater—— a sacrifice accepted for the advantages mentioned above.

The innovative character of the Swedish Small Claim sprocedure may be found in that it places primary emphasis on consumer problems.

The Small Claims Procedure was established in accordance with the passing in 1974 of the **Small Claims Act i. e. the Act on**

26. UIF Bernitz et al. 99 op. cit

Simplified Legal Procedure.²⁷ Professor Ulf Bernitz maintains that this court was created to "facilitate the assertion of claims by consumers" under the consumer legislation and "to circumvent shortcomings of the procedures of the Public Complaints Board".²⁸

Non-admission of oral testimony in proceedings before the public Complaints Board makes it quite unattractive to plaintiffs, especially where oral testimony is thought to be necessary, such as in cases arising under the Door-to-Door Sales Act where the commitments by the salesman in the consumers home is at issue. Unlike the decision of the Public Complaints Board, the judgement of the Court in a Small Claims case is enforceable. This is an obvious advantage over Public Complaints Board.

Anyone, *not just a consumer*, may initiate an action in the Small Claims Court, and in practice, many actions are brought by businessmen to collect debts owed by consumers.

As has been indicated above, there is an upper limit to the size of claims brought in the form of a Small Claims case.²⁹ This limit, however, does not apply if the matter has already been heard by the Public Complaints Board and the party refers to the Boards decision in connection with his request that the case be tried under the Small Claims Court.

There are several other provisions of the Act whose aim is to cut down expenses for the consumer and expedite the resolution of the dispute. The Act, contrary to usual practice, allows the consumer to sue the respondent in the consumers home district, resulting in *significant advantage to the consumer*. Moreover, appeals to decisions in the Small Claims case may only be taken with the consent of the Appellate Court, thus bypassing the usual procedure

27. Lagen (1974:8) om rattegagen i tvistemal om mindre varden. See Ulf Bernitz. Standardavtalsratt 48, 3rd Revised Edition, (1978)

28. **Supra note 26** at 102, 103

29. The limit in 1991 was SEK 16,100. 1USD is approximately equivalent to 6 crowns (Kronor)

of appeal to the regional courts of appeal. The consequence is that, a case may come to final solution much sooner than is generally true. Statistics show that the average time between the filing of the complaint and the Courts decision has been about two months, even shorter than the time for cases before the Public Complaints Board.³⁰

6. CONCLUSION

The aforementioned institutions established with the underlying objective of consumer protection reflect the importance of and emphasis on safeguarding of consumer interests in Sweden. Consumer protection has indeed achieved wide recognition as constituting an important element of the "**quality of life**". The establishment of specialized institutions solely for the purpose of consumer protection also manifests the novelty and uniqueness of the **Swedish approach**.

The existence of a Consumer Ombudsman gives a national focus to consumer problems. It also furnishes an effective means for obtaining major consumer protection through negotiation as well as court proceedings. Intertwining of **Consumer Ombudsman** and the **Konsumentverket** also helped avoid duplicity in consumer protection measures and added more substance to the institutional mechanism of safeguarding consumer interests.

The Market Court with its wide jurisdiction in specific areas of consumer protection is a unique Swedish brainchild and has so far produced commendable results. The necessity of having a court with expertise in consumer problems hardly needs to be overemphasised.

Consumer problems are necessarily connected with interests of the business community, and individual consumer and

30. **Supra note 26** at 104.

businessman/company/seller constitute the opposing parties in any consumer dispute. The nature of such disputes demands immediate and, in many cases, extra-judicial resolution. These purposes are met in the Swedish model by the **Public Complaints Board** and the **Small Claims Court**. While the former puts pressure on resolution through decisions which are not binding, the latter ensures immediate resolution by summary trials.

Thus, the Swedish model provides a picture of institutional set-up for protection of consumer interests which can well be termed **full and complete**.