REFUGEES IN SWEDISH PRIVATE INTERNATIONAL LAW

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1. Introduction

Article 12(1) of the U.N. Geneva Convention of 28 July, 1951, Relating to the Status of Refugees, stipulates the following:

“The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.”

The reason behind this provision is that the majority of states participating in the conference which elaborated the Convention, including states whose private international law was normally based on the application in personal (mainly family and succession) matters of the law of the country of citizenship (nationality), were of the view that even if a refugee has not lost his original citizenship, it would not be appropriate to consider his personal matters to continue to be governed by the laws of his country of nationality (lex patriae). A particular argument used in this context was that the legislation in the countries generating many refugees had often recently undergone radical, revolutionary changes incompatible with the principles that had prevailed in the country of origin before the revolution, and still prevail in the country where the refugee now resides. Difficulties in obtaining information about the law of the country of the refugee’s nationality, as well about whether he had lost his nationality, were also invoked. Since the refugee was assumed to feel no solidarity or affinity towards his country of origin and did not enjoy that country’s protection, his citizenship was merely formal and he could be considered to be and treated as a ‘quasi-stateless’ person.

However article 42 of the Convention permits contracting states to make a reservation to, inter alia, article 12(1). Sweden has made such a reservation and is, consequently, not bound to apply the refugee’s lex domicilii to his personal matters. The reason for the reservation is that Swedish private international law, as it was at the time of Sweden’s accession to the Convention, was based mainly on the application of the law of the country of which the natural person involved was a citizen. The possibility of giving an increased importance to domicile was at the time of the Swedish ratification of the Convention investigated by the Swedish Department of Justice, and the government and the parliament (Riksdag) were

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1 189 UNTS 137.
3 Ibid.
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obviously not ready to anticipate the result by ratifying a provision that would oblige Sweden to exclude quite generally refugees from the principle of nationality.

Today, domicile can be said to play a more important role than citizenship as a connecting factor in Swedish private international law, but many Swedish conflict rules, ranging from rules on guardianship to rules on succession, continue to point out and use *lex patriae* as the applicable law, albeit sometimes in combination with *lex domicilii* or *lex fori*. In those situations where *lex patriae* is decisive, or where the nationality of the person(s) involved is relevant for the jurisdiction of Swedish courts or recognition and enforcement of foreign judgments, the question of treatment of refugees remains relevant. Should they, as long as they remain citizens of their country of origin and do not acquire the nationality of their country of habitual residence, be treated as any other foreigners or should they be treated as nationals of the latter country? In spite of the above-mentioned Swedish reservation to the Geneva Convention, Swedish private international law contains today a special rule about refugees. Since 1 January 1974, Chapter 7, section 3 of the Act (1904:26 p. 1) on Certain International Legal Relations Regarding Marriage and Guardianship, as amended (hereinafter referred to as 'the 1904 Act'), provides that a ‘political refugee’ shall, as far as the application of that Act is concerned, be treated as “a citizen of the country of his domicile (habitual residence)”. Although directly applicable merely within the field of application of this Act (i.e. with regard to certain issues regarding marriage and guardianship), it can be assumed that the provision expresses a more general principle that is normally to be followed in Swedish private international law as a whole, although there may be exceptions. In fact, even before the entry into force of Chapter 7, section 3 of the 1904 Act, the formal citizenship of a refugee was sometimes disregarded by Swedish courts when dealing with the refugee’s personal matters.

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5 An alien’s citizenship is in some situation relevant even for other aspects of Swedish judicial proceedings, such as the right to legal aid or the duty to deposit security for the other party’s costs, but such fiscal and administrative problems will not be dealt with here. On the Swedish treatment of refugees in these respects see the Act (1969:644) on Certain Rights of Stateless Persons and Political Refugees.

6 Although they concern many refugees as well, the problems of statelessness and of multiple nationalities will not be dealt with in this paper, mainly because they are not specific for refugees and do not seem to require any special regulation with regard to refugees.

7 The Swedish wording uses the term *hemvist*, which should be translated into English as habitual residence, or as domicile in the sense of habitual residence. It is thus not synonymous with the concept of domicile in, for example, English law.


9 It seems, for example, that refugees are to be treated as any other aliens with regard to the application of rules on personal names; see Government Bill 1982/83:38, p. 9.

10 In Swedish legal writing, see e.g. N. Beckman, *Svensk domstolspraxis i internationell rätt* (Norstedts, 1959) pp. 16–18 and 61–62; H. Karlgren, *Kortfattad lärobok i internationell..."