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NORDIC INFLUENCES ON SWEDISH CONSTRUCTION LAW – AN EXAMPLE ON THE VALUE OF COMPARING STANDARD CONTRACTS

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Abstract: *This article investigates the dependence on standard contracts in Swedish construction law, particularly AB 04 and ABT 06, due to a lack of specialized laws. Comparing them to similar contracts from other Nordic countries demonstrates the value of cross-border legal understanding. A 2018 Swedish Supreme Court judgment highlights this technique, implying that comparative analysis might improve legal clarity and predictability in construction law throughout the Nordic area.*

Keywords: *Swedish Construction law, Nordic countries, Standard Contracts, Comparative Law, Default Law, Cross-Border Legal Influence,…*

1. Introduction

A feature of Swedish construction law is the lack of default legal rules. There is no law specifically regulating the rights and duties between the employer and constructor in a commercial construction contract.[1] Even though there are some precedents from the Swedish Supreme Court regarding the interpretation and application of commercial construction contracts, these judgements give limited guidance regarding the rights and duties between the contracting parties.

The lack of legal guidance has left the building industry to regulate itself, by adopting detailed standard construction contracts. These standard contracts exist in several versions and are collectively called *General Conditions*. The main standard contracts today are called AB 04 and ABT 06. AB 04 is intended for projects where the responsibility for the design is on the employer, while ABT 06 is intended for projects where the contractor is responsible for the design. One of the versions of the General Conditions is regularly applied in contracts between employers and contractors in Sweden. They are used both by public employers, such as the Swedish Transport Administration and Swedish regions and municipalities, and private employers, such as real estate and industrial companies.

The situation is similar in the other Nordic countries. Generally, there is a lack of statutes regulating the rights and duties between the parties in construction contracts. Instead, construction contracts are typically governed by detailed standard contracts.

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[1] The rules in the Swedish Consumer Services Act are applicable if the employer is a consumer. There are also legal provisions that are generally applicable within contract law, and therefore also applies to construction contracts, such as the general clause on unfair contract terms in 36 § the Swedish Contracts Act.

Each Nordic country has its own standard contracts. The most central standard contracts in each jurisdiction are stated in the table below.

Country	Contract author	Standard contract (employer design)	Standard contract (contractor design)
Sweden	The board of the Building Contracts Committee, consisting of actors within the building industry	AB 04	ABT 06
Norway	Standard Norge	NS 8405	NS 8407
Denmark	Committee appointed by the Ministry for Climate, Energy and Building, consisting of actors within the building industry	AB 18	ABT 18
Finland	Collaboration of actors within the building industry	YSE 1998	
Iceland	Icelandic Standards	ÍST 30:2012	

Despite the similarities on how to regulate construction contracts, it has historically been a limited exchange between Nordic lawyers in the field. Now, this is beginning to change. There is an increasing interest among legal scholars and practitioners to consider the standard contracts used in the other Nordic countries and to engage in discussions with Nordic colleagues.

In Sweden, the Supreme Court has referred to Norwegian and Danish standard construction contracts and construction law literature when interpreting a version of the General Conditions and creating new default law applicable on construction contracts in Sweden. This has opened new avenues for Swedish construction lawyers when analyzing construction law issues.

In this contribution, I will show how comparisons between the Nordic standard construction contracts can be used to enrich Swedish construction law. Even though the text has a Swedish perspective, this should be perceived as an example. Many of the benefits of considering Nordic material are applicable also in the other Nordic countries. It could also be argued that comparing standard contracts is relevant in many fields of commercial law where there is a lack of traditional legal sources, regardless of jurisdiction.

2. A short background to the General Conditions

The General Conditions are the dominant standard contracts in the Swedish building industry. Their roots can be traced back to the 19th century.[2]

The General Conditions are developed through negotiations in the board of the Building Contracts Committee (BKK). The board members represent the Swedish Transport Administration, the Swedish Construction Clients, the Swedish Construction Federation, the Swedish Installation Federation and the Federation of Swedish Innovation Companies. These organizations often have conflicting interests regarding the design of construction contracts, for example on issues on risk allocation, pricing and variations. New versions of the standard contracts are only published if the BKK board unanimously decides so. This means that the wording in the General Conditions is the result of compromises and sometimes deliberately vague. Because of this, the clauses do not always provide clear regulations on key construction law issues.[3]

Although the General Conditions hold a dominant position in the Swedish construction industry, they do not represent current law. The standard contracts are not traditional legal sources. To be applicable, they need to be incorporated by the parties into each individual contract.[4]

3. Nordic construction law – an ambivalent approach to cross-border cooperation

Given the historical and cultural similarities between the Nordic countries and their reliance on standard contracts to regulate construction contracts, one might think that there has been widespread cooperation between the countries in drafting the standard terms. However, this has not been the case.

Historically, there has been a cooperation between the Nordic countries in the field of private law, even though its intensity has varied over time. During the first decades of the 20th century the Nordic cooperation on private law legislation was intense. During the 1960s and 1970s the view on Nordic cooperation began to change.[5] In 1973, the Swedish cabinet minister Lidbom published an article in which he presented a skeptical view on the future of Nordic cooperation, partly because of a perceived increased pressure on politicians to achieve societal changes.[6] Nowadays, much of the countries' cooperation regarding private law takes place within the framework of the European

[2] Hagman et al., *Den svenska entreprenadrättens framväxt inom bygg- och anläggningssektorerna*, SvJT 2017, pp. 173–181.
[3] This is a recurring point made in Swedish construction law literature, see for example Hedberg, *Kommentarer till AB 04, ABT 06, ABK 09*, 2010, p. 15.
[4] Hedberg, *Kommentarer till AB 04, ABT 06, ABK 09*, 2010, p. 16, Bernitz, *Standardavtalsrätt*, 9th ed., 2018, p. 60 and Samuelsson & Utterström, *Entreprenadrätten*, 2024, p. 26.
[5] Danelius, *Svensk Juristtidning och nordiskt juridiskt samarbete*, SvJT 2016, pp. 1–5.
[6] Lidbom, *Den nordiska rättsenhetens problem i dag*, SvJT 1973, pp. 273–278.

Union. One opinion is that the future for Nordic cooperation on private law, beyond the European Union, is dependent on initiatives from Nordic scholars and lawyers rather than work within the governments.[7]

In the field of construction law, it is worth mentioning an attempt in the 1970s to harmonize the Nordic standard contracts. The Norwegian professor Ole Sandvik was given the task by the Nordic Council of Ministers to present a draft of a common Nordic standard construction contract.[8] The draft was published in 1976 but did not result in a common Nordic standard contract.[9] One explanation for this might be the faltering Swedish interest in Nordic cooperation at that time, as illustrated by Lidboms article.

The interest in Nordic cooperation in the field of construction law is now increasing. This can be seen in discussions between Nordic legal scholars and lawyers on conferences and other arenas.[10] In Sweden, interest in Norwegian and Danish construction law has increased since the Supreme Court in the case NJA 2018 s. 653 referred to Norwegian and Danish standard contracts and construction law literature when interpreting and supplementing a construction contract under Swedish law.

4. The Swedish turn – the Supreme Court opens for Nordic construction law

It is not uncommon that the Supreme Court refers to Nordic legal sources in its reasonings.[11] This includes judgements regarding construction contracts. In NJA 2018 s. 653, the Supreme Court particularly looked at what applied according to Norwegian and Danish standard construction contracts to support its reasoning about what should also apply in Sweden according to default law. Even though the court has referred to Nordic sources prior to this case, the relevance of Nordic materials became clear through the reasoning in the judgement.

A recurring issue in construction disputes – including the few disputes that reach the Supreme Court – is how the terms of the General Conditions should be interpreted. Even though contract interpretation is a recurring issue in many types of commercial disputes, questions on how to interpret the clauses in the General Conditions are so common in disputes regarding construction contracts that they can be seen as a feature of Swedish construction law. One reason for the many interpretation disputes may be

[7] Danelius, *Svensk Juristtidning och nordiskt juridiskt samarbete*, SvJT 2016, pp. 12–14.
[8] Sandvik, *Utkast til nordiske kontraktsbestemmelser for bygge- og anleggsarbeider*, Nordisk utredningsserie 1976:22.
[9] Vagner & Iversen, *Entrepriseret*, 4th ed., 2005, p. 15.
[10] See for example the cross-border debate in the Swedish journal Juridisk Tidskrift on "*global claims*" in Gentele, *Norsk dom om samlade störningsgrav (global claims)*, JT nr 1 2019/20, pp. 172–182 and Brøndby, *Dom fra Norges Høyesterett om sentral entrepriserett*, JT nr 2 2020/21, pp. 545–556.
[11] Herre, *Användning av utländsk rätt i Högsta domstolen på det förmögenhetsrättsliga området*, in Festskrift til Mads Bryde Andersen, 2018, pp. 203–221, with references to the Supreme Court cases NJA 2005 s. 608, NJA 2008 s. 24, NJA 2008 s. 457, NJA 2010 s. 58, NJA 2010 s. 629, NJA 2012 s. 725, NJA 2013 s. 51, NJA 2013 s. 491, NJA 2016 s. 149, NJA 2017 s. 113 and NJA 2018 s. 19.

that some of the provisions in the General Conditions are deliberately vague and unclear. The uncertainty of the legal content of the standard contracts gives the parties grounds for opposing interpretations, which can lead to disputes.

When interpreting commercial contracts, judges may consider the default law.[12] What constitutes default law for construction contracts in Sweden is unclear, as there is virtually no directly applicable legislation. There exists no law on the rights and duties between the employer and the contractor, unless the employer is a consumer. There are only a limited number of cases from the Supreme court, and these often have quite a limited scope. Although the general rules in the law of contracts, for example the rule against unfair contract clauses, applies to construction contracts they give little or no guidance to specific questions relating to the rights and duties of the contracting parties.

The result of contract interpretation may be that the contract does not answer the legal question at hand. In such cases, judges may fill in the caps of the contract with default law. Since it is highly unclear what applies as default law for construction contracts, it is also unclear how contracts should be supplemented through default law. This means that supplementing construction contracts is a complex task, and the result is difficult to foresee. Judges often must consider other sources than statutory text, case law and other traditional legal sources.[13]

In NJA 2018 s. 653 the Supreme Court determined what applied according to default construction law, both as part of interpreting provisions in a version of the General Conditions and when supplementing construction contracts. Doing this, the court considered Norwegian and Danish standard contracts and construction law literature.

The dispute in NJA 2018 s. 653 mainly concerned the following: The contractor had installed pipes, which had been cast into the floor. Problems arose with the pipes during the warranty period. The construction contract was governed by the standard contract ABT 94 (an earlier version of ABT 06). The District Court referred to the Supreme Court to determine whether the contractor was obliged to fully compensate the employer for the costs of accessing the pipes and restoring the work after remedial work was carried out, or whether the liability was limited to 15 % of the contract sum, as ABT 94 stipulates for certain types of damages.[14] The disputed legal issue can be formulated as whether the costs for access and restoration should be considered as part of the remedial works or as loss for the employer. If the costs were seen as part of the remedial works, the contractor was fully liable. On the other hand, if the costs were seen as loss

[12] This is an established order when interpreting commercial contracts in Sweden, see for example NJA 2014 s. 960 and Lehrberg, *Avtalstolkning*, 9th ed., 2020, pp. 211–234.
[13] See Utterström, *Störningar och tidsförlängning*, 2022, s. 46–65 on filling out construction contracts in a Swedish context.
[14] ABT 94 chapter 5 § 14.

for the employer, the contractor was only liable for an amount corresponding to 15 % of the contract sum.

The Supreme Court's reasoning in NJA 2018 s. 653 was mainly as follows: Neither the wording nor the systematics of ABT 94 provided sufficient grounds to resolve the disputed issue. The interpretation of the standard contract should then be conducted in the light of the default law. In determining which default law that applies on construction contracts, the rules of the Sale of Goods Act are of particular interest. They can be applied by analogy or express general principles. However, the rules in the Sale of Goods Act did not provide any guidance in this specific case. The Supreme Court went on to consider what is stated in construction law literature and other Swedish standard contracts. The court then referred to the rules in Norwegian and Danish standard construction contracts and what was written in Norwegian and Danish construction law literature. The Supreme Court found that there was a general view in Norway and Denmark that the contractor should be responsible for all measures required for the construction to be contractually compliant. While emphasizing the existence of a Nordic legal community within the field, the court stated that the rules and views in Norway and Denmark provided "*significant support for the view that both the remedial obligation under ABT 94 and the default law should be considered to have this meaning*".[15] It is not the issue of the scope of remedial works that is of interest in this contribution, but the fact that the Supreme Court took into account the rules and "*general view*" in Norway and Denmark when interpreting the General Conditions and determining the default construction law in Sweden.

The following conclusions can be drawn from NJA 2018 s. 653 regarding the significance of Nordic law when judges decide on the content on default construction law in Sweden: If there are no directly applicable statutory regulations or precedents providing guidance on what applies according to the default law, general principles and analogies from the Sales Act are of particular interest. If neither principles nor related contract types provide sufficient guidance, an adjudicator can consider what applies under Norwegian and Danish standard contracts. This is especially relevant if the Norwegian and Danish standard contracts reflect general construction law principles in these countries. However, the judge should not merely transfer rules from one country to another but needs to analyze whether the rules fit with Swedish construction law or not.

5. Comparing Swedish, Danish and Norwegian standard contracts – an example

An example can illustrate how the reasoning in NJA 2018 s. 653 may give structure

[15] NJA 2018 s. 653 par. 40.

to an argument on what ought to be the content of Swedish default construction law.

Construction works are sometimes performed outdoors and affected by weather conditions. Normal weather conditions should be considered by the contractor when planning and pricing the works. However, extreme weather conditions are typically unforeseeable and can have a negative impact on the progress of the works and cause delays.

What weather conditions that may give the contractor a right to time extension, if the question is not regulated in the parties' contract, is a question that can serve as an example on how a comparison between the Swedish, Norwegian and Danish standard contracts can be of use when considering what ought to be the default construction law in Sweden.

In Sweden, there exists no default legal rule that regulate what weather conditions that may give the contractor in a construction contract the right to time extension. One could consider if the legal concept of *force majeure* gives some guidance on what applies according to default law. This concept does not exist as an independent condition in any Swedish legal rule within contract law but rather captures a specific problem or phenomena that is regulated by several generally applicable legal rules.[16] None of these rules gives a contracting party the right to time extension but may relieve a contracting party from his or her obligation to pay damages because of defects or delays.[17] Shortly said, existing default law does not answer the question on what weather conditions that may give the contractor a right to time extension.

According to the Swedish standard contracts AB 04 and ABT 06 the contractor has a right to time extension according to the following: "*The Contractor shall be entitled to any necessary extension of the Contract Period, if he is prevented from completing the Contract Works within the Contract Period by* […] *weather or water-level conditions which are abnormal for the locality and which have particularly adverse effects on the works*".[18] The conditions on "*prevented*" and "*adverse effects*" relates to the negative impact on the works and is left aside in this example. Instead, the focus is on the condition "*abnormal*" that relates to the weather conditions as such.

According to the Norwegian standard contract NS 8405, the contractor has a right to time extension because of weather conditions as follows: "*The parties may demand an extension of time if the performance of their obligations is prevented by*

[16] The general clause of unfair contract clauses in 36 § the Swedish Contracts Act is one example. Another example is the doctrine of failed assumptions.
[17] See for example the rule on control responsibility in 27 § the Swedish Sale of Goods Act. It is debated to what extent this rule may be applicable by analogy and whether it expresses a general principle. The Swedish Sale of Goods Act is not directly applicable on construction contracts, see 2 § the Swedish Sale of Goods Act.
[18] AB 04 and ABT 06 chapter 4 § 3 p. 4.

circumstances outside their control, such as extraordinary weather conditions […]".[19] According to the Danish standard contract AB 18, the contractor has a right to time extension because of weather conditions as follows: "*The contractor is entitled to extension of time if the execution of the works is delayed as a result of* […] *precipitation, low temperatures, strong winds or other weather conditions that prevent or delay the work when such weather conditions occur to a significantly greater extent than is usual for the relevant season and region*".[20]

Even though the wording of the three clauses differs, the clauses also show significant similarities. The starting point for all three standard contracts is that the contractor bears the time risk for weather conditions. This means that the main rule is that the contractor has an obligation to finish the works in agreed time regardless of the weather conditions. The clauses then regulate in which exceptional cases the employer bear the time risk and the contractor has a right to time extension. These exceptional cases are phrased somewhat differently in the three clauses:

- AB 04 and ABT 06: abnormal weather conditions.
- NS 8405: extraordinary weather conditions.
- AB 18: precipitation, low temperatures, strong winds or other weather conditions that occur to a significantly greater extent than is usual for the relevant season and region.

Common for the three clauses is that the contractor is entitled to time extension when the work is delayed due to weather conditions of a very unusual nature. What constitutes unusual weather conditions should be bases on what is normal and customary for the specific location and season.

A new non-binding legal rule in Swedish law, designed with consideration to the similarities between the three clauses, would be unique for construction contracts and deviate from the rules generally applicable in Swedish contract law. This can be justified by the fact that construction contracts quite often involve work conducted outdoors that are exposed to the elements, and a balanced regulation needs to take this into consideration. Thus, it is reasonable that the contractor may invoke weather conditions in more situations than what is otherwise the case according to Swedish contract law. At the same time, the threshold for what weather conditions that gives the right to time extension is quite high since the three clauses refer to abnormal, extraordinary and significantly unusual weather conditions.

Building on the similarities between the three clauses, judges may argue that a

[19] NS 8405 p. 24.3 par. 1.
[20] AB 18 clause 39 par. 1 p. d.

condition in a default legal rule ought to be that the contractor may have a right to time extension in cases of extraordinary weather conditions.[21] One could have different opinions on whether "*abnormal*" or "*extraordinary*" is the better wording, but it could be argued that "*extraordinary*" better captures the high threshold of unusualness that is necessary for the condition to be met.

This example illustrates how a comparison between Nordic standard contracts can support legal arguments about what should apply as default construction law.

It should be noted that if the parties have incorporated one of the above-mentioned standard contracts, the standard contract provides rules on what applies between the parties. No argumentation regarding supplementation is then required; The issue of supplementation arises in contractual relationships where the contracts do not regulate the conditions under which the contractor is entitled to an extension of time. However, the rules in the Norwegian and Danish standard contracts can also be used when interpreting the provisions in AB 04 and ABT 06, in the manner that the Supreme Court did in NJA 2018 p. 653. The clauses in the Norwegian and Danish standard contracts can then be used for strengthening an argument for interpreting the word "*abnormal*" in AB 04 and ABT 06 as a quite high threshold when it comes to the necessary nature of the weather conditions.

6. The value of comparing standard contracts

6.1. Comparing standard contracts in general

In this section I will show how comparing Nordic standard construction contracts may be of value for Swedish lawyers. However, the value of comparing standard contracts goes beyond Swedish construction law.

Comparing standard contracts could be of interest by the reasons given below, within all commercial legal fields with a lack of traditional legal sources. When drafting contracts, deciding cases, arguing cases and doing legal research it should generally be of value to acknowledge how standard contract drafters have decided to regulate the legal issues at hand. This perhaps has an added value if the standard contracts are the result of negotiations between actors within a specific industry branch, which is the case with some of the Nordic standard contracts.

Comparing standard contracts can be of value regardless of whether the compared contracts show similarities or differences. Similarities can be used as evidence for an argument that the rules are reasonable and balanced. Differences can instead be used as

[21] This would only be one of the conditions that needs to be fulfilled for the contractor to have a right to time extension. As can be seen from the quotations, all clauses also include some condition on how the weather conditions negatively impact the works.

inspiration and analysis when considering different solutions on a specific issue.

Using standard contracts may be actualized by the lack of traditional legal sources. Judges, lawyers and scholars might find themselves forced to work with the sources available. Using standard contracts as grounds for analysis and argumentation has several advantages. Firstly, standard contracts are usually written with a specific type of contract in mind. Because of this, the rules are adapted to suit this type of contract. Secondly, standard contracts are typically drafted for general use and not with two specific parties in mind.[22] The clauses are therefore typically better suited for general reflections than clauses in individual contracts. Thirdly, standard contracts are intended for repeated use and therefore, hopefully, well thought through and drafted with some quality.[23] This increases the relevance of considering the regulations.

6.2. Contract drafters – comparing standard contracts with the purpose of increasing the quality of contracts

When drafting a new – or revising an already existing – construction contract, the authors may look to the different Nordic standard contracts for inspiration. This goes regardless of whether the contract is individual or a standard contract (for example a new edition of the General Conditions).

By identifying differences on how the standard contracts regulate a specific issue, the contract drafter might be given new ideas on what may be an appropriate regulation. If on the other hand, the standard forms show significant similarities in how to regulate an issue, this might be a sign that this is a reasonably balanced regulation. The reasons for creating an alternative rule might then be limited, at least as a starting point.

A difficulty when comparing standard contracts aimed for use in different jurisdictions is that the contracts are written with different legal contexts in mind. Even though the legal orders in the Nordic countries are similar on an overarching level, there are of course differences. The exact content of the background law is highly relevant for contract drafters. Differences between the Nordic standard construction contracts may partly be the result of differences in the respective background law. To fully understand any of the standard contracts, and why they are drafted in a specific way, the legal context needs to be taken into consideration. This is similar to the considerations regarding legal context that always needs to be taken when interpreting and comparing rules from different jurisdictions.[24] Contract drafters should never copy a contract clause from a standard contract aimed for use in another jurisdiction without carefully

[22] This is not always the case. Some companies write their own standard contracts and then one of the contracting parties will be the drafting company.
[23] As been stated above, some of the clauses in the General Conditions are vague and in other ways unclear. It could be argued that these provisions lack the expected quality of standard contracts so widely used.
[24] See for example Bogdan, *Komparativ rättskunskap*, 2nd ed., 2003, pp. 44–48.

considering if the clause "fits" within the drafters' jurisdiction.

6.3. Judges – comparing standard contracts with the purpose of answering legal questions in specific cases and creating new rules

Construction law in Sweden is a legal field marked by uncertainty regarding the content of the default law. Traditional legal sources addressing construction law are scarce. This means that judges – in lack of clear contract terms – must resolve legal issues by considering other sources than the traditional legal sources.

Through NJA 2018 p. 653, the Supreme Court has provided guidance that judges may consider Norwegian and Danish standard contracts, as well as Norwegian and Danish construction law literature, when deliberating on what should apply according to the default rules of a construction contract. This can be of value for judges in several ways.

By referring to NJA 2018 p. 653 and the authority of the Supreme Court, judges may establish a method for creating new default rules.[25] Using this method, the judge may answer the legal question at hand and resolve the dispute. By establishing a method, judges may also increase the predictability for disputing parties. This might prevent some disputes from even reaching the courts and if they do, judges may have a greater possibility to end the dispute through a settlement between the parties.

Nordic standard contracts may also be compared with the purpose of identifying similarities between the rules and using them to enhance a legal argument. Doing this, judges can try to use the similarities to convince the losing party of the reasonableness of the solution to the legal question at hand and thereby reducing the risk of the losing party appealing the case to a higher court.

6.4. Legal counsels – comparing standard contracts with the purpose of finding new and convincing arguments

For legal counsels, comparing the Nordic standard construction contracts might be a way to find new arguments or enhance the strength of an already known argument.

Swedish construction law has historically been the arena for a relatively small group of lawyers in Stockholm. These lawyers knew each other and worked alternately as legal representatives and arbitrators. Among this group, a common understanding on how the General Conditions ought to be interpreted and applied was established. This common understanding was not always supported by the wording of the standard contracts. This environment has lost much of its relevance due to several cases from the Supreme

[25] If the new rule is a legal rule applicable also in other cases (and is thereby expanding the scope of construction law) depends on what court instance the judgement in delivered. It is also dependent of legal theory on what is authoritative legal sources.

Court on how to interpret the General Conditions.[26] Through NJA 2018 s. 653, the court has also expanded the relevant legal material by referring to Nordic legal sources. The openness to Nordic legal sources can be seen as a part of a general trend to "open up" Swedish construction law to influences and ideas beyond the closed rooms in Stockholm. This enriches the legal field, increases foreseeability, reduces the risk of conflicts of interest and makes it possible for legal counsels to explore new lines of argument.

Legal counsels may find new arguments through the Nordic standard contracts regardless of whether the contracts contain similar or different regulations. When searching for support for an already existing argument, similarities between the regulations is generally of greatest value.

6.5. Legal researchers – comparing standard contracts with the purpose of expanding the grounds for what ought to be default law

Legal researchers may compare Nordic standard construction contracts when discussing what ought to be the default construction law. This is of course somewhat the same as judges might do, but the difference lying in the abstract nature of legal research. While judges are bound to the specific case and the circumstances at hand, the doctrinal legal scholars are not, but instead (typically) creates their own legal questions and circumstances.

Legal researchers might also compare the standard contracts to discuss the interpretation of a specific clause in a standard contract or what is a reasonable risk allocation in construction contracts in general.

In my dissertation on disruptions in construction contracts, I compared clauses in the Swedish standard contract AB 04 with clauses in the Norwegian standard contract NS 8405 and the Danish standard contract AB 18, with the purpose of identifying similarities as a foundation for a discussion on what ought to be default construction law in Sweden. This was done based on several fictional typical cases.[27] My experience from this work is that comparing Nordic standard contracts makes it possible to bring the analysis and argumentation one step further than what would otherwise had been the case. I did not have to resort to writings about an "unclear legal situation". Instead, it was possible to make suggestions on what ought to be default law based on identified similarities between the standard contracts.

7. Final words

Swedish construction law can be enriched by comparisons between Nordic standard

[26] See Ingvarson and Utterström, *Högsta domstolens intåg i entreprenadrättens slutna rum*, SvJT 2015, pp. 258–278.
[27] Utterström, *Störningar och tidsförlängning*, 2022.

construction contracts in several ways. As shown by the Supreme Court in NJA 2018 s. 653, comparisons between the standard contracts can be used as a foundation for creating new construction default law. In section 6 above I have shown other ways in which comparisons may be of value for contract drafters, judges, legal counsels and legal scholars.

As far as I can assess, the value of comparing standard construction contracts is not unique for Sweden but applies to lawyers in all the Nordic countries. If so, there is a solid basis for increased Nordic cooperation in the field of construction law, with comparisons between the rules in the Nordic standard contracts naturally taking center stage.

In this contribution, I have focused on construction contracts in the Nordics. However, the scope could be widened. Many of the questions that need to be addressed in a construction contract are the same regardless of whether the works are executed in Sweden, France, Argentina, South Africa or Vietnam. For example, the problem with limited knowledge about ground conditions or weather conditions are the same. All construction contracts should, in some way, regulate how the risk for unforeseen conditions and events are allocated between the parties. The same goes for many other questions, such as how to calculate the costs for variations or under what conditions a party may terminate the contract.

Not all countries have their own standard construction contracts. Instead, international standard contracts such as FIDIC may be used. This does not make comparisons between standard contracts and conversations between construction lawyers in different jurisdictions uninteresting. The experiences of applying international standard contracts may differ. Case law may differ. Typical adjustments and additions to the standard contracts may also differ. All this creates a foundation for an interesting discussion on how construction contracts may be drafted, interpreted and applied.

With this contribution I want to illustrate how comparisons between standard contracts can enrich a legal field and be used as part of a method on considering what ought to be default law. To what extent this can serve as an example for other fields of law and in other jurisdictions needs to be considered by lawyers with expertise within these areas. In any case, standard contracts should be interesting sources for comparisons that can be used as a foundation for considerations on what is a reasonable rule, regardless of whether this rule is expressed in a contract clause or a legal statute. By acknowledging standard contracts aimed for use in another jurisdiction, the material available for comparison and analysis is widened. This creates opportunities for innovative legal thinking.

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