

The country visit 9 February 2022

Participants

Ministry of Justice

Pillar I - Justice System

1. Can you please elaborate on the increased budgetary allocation to the Swedish courts? Are these allocations aimed at addressing primarily the growing caseload or also for other aspects? Was the National Courts Administration consulted in the process? To what extent is the National Courts Administration free in determining the allocation of the budget within the courts? **Ministry of Justice**
2. In your contribution, you state that decisions to appoint or to promote judges to another post cannot be appealed but are subject to 'constitutional responsibility'. What is understood under the notion of 'constitutional responsibility'? Does the impossibility of appeal also apply to decisions not to appoint a judge (unsuccessful candidates)? Are there any possibilities for appeal/judicial review in the different stages of the appointment procedure? **Ministry of Justice**

We understood that there is indeed no possibility to appeal a decision not to appoint a judge. In your response, you also mentioned a(n) (extraordinary/exceptional) means of redress with the Supreme Administrative Court. Could you please provide us with a few sentences on this?

As regards the possibilities to appeal decisions by the Government to appoint judges there is no rule in Swedish domestic law that explicitly grants the right to appeal, and the same applies to both decisions to appoint and not to appoint judges. Such decisions are subject to constitutional responsibility as described in the Swedish national contribution to the Rule of Law report of 2022.

However, there is a regulation called the Law on the Judicial Review of Certain Government Decisions (lagen [2006:304] om rättsprövning av vissa regeringsbeslut). According to this law the Supreme Administrative Court shall examine whether Government decisions, relating to civil rights and obligations, are in conflict with a legal rule. The purpose of this judicial review is to provide an opportunity for judicial review of decisions which, according to the European Convention for the Protection of Human Rights and Fundamental Freedoms, should be possible to bring before a court or tribunal. The judicial review of certain Government decisions is therefore a rule of law mechanism (En moderniserad rättsprövning, m.m., prop. 2005/06:56 p. 9). It is not characterized as an extraordinary remedy because the court is obliged to review a decision if the statutory conditions are met.

The law affords an individual the right to apply for judicial review within three months from the Government decision. There is no requirement of leave to appeal to have an application for a judicial review considered.

Once the Supreme Administrative Court has received an application for a judicial review, it will examine whether the Government's decision is in conflict with a legal rule in the manner

presented or in any other manner that is immediately clear given the circumstances. However, this does not apply if it is obvious that the error is irrelevant to the decision. If the Court deems the decision to be in conflict with a legal rule, the Court will annul the decision. The Court has no authority to change a Government decision. The Court shall, if necessary, refer the matter back to the Government. If the Government's decision is not annulled, it stands.

3. In the past year, what has been the impact of the COVID-19 pandemic on the functioning of the justice system? Has the Ministry taken or considers taking any specific actions as a follow-up? **Ministry of Justice**

In your presentation, you mentioned the adoption of a law (adopted in September 2021, entered into force in January 2022) that allowed for a possibility for a court to adopt a judgment without a hearing. Could you please provide us with a reference/link?

A government bill (2020/21:214) with proposed amendments in the Swedish Code of Judicial Procedure aiming to strengthen the possibilities for courts to decide cases without a hearing was submitted to the Swedish Parliament on 7 September 2021 and was adopted on 17 November 2021. The amendments concern criminal cases in district courts and civil cases in courts of appeal. The amendments entered into force on 1 January 2022.

The objective with the amendments is to enhance the possibility to handle and decide cases effectively and efficiently with respect to the rights of the parties. In criminal cases, the District Courts may decide a case without a hearing if the sentence is not more severe than a fine or a conditional sentence combined with a fine. Previously it was only possible if the sentence was a fine. The court shall still arrange a hearing on the request of a party. Concerning the civil cases, the Court of Appeal can handle and decide a case without a hearing if a hearing is unnecessary. Previously the condition was if the hearing was manifestly unnecessary. The amendment means that the rules concerning the civil procedure is in line with the correspondent rules concerning criminal cases in the procedures in the Court of Appeal.

4. We understand that last year marked a significant increase in the use of videoconferencing in Swedish courts (about 40%). Could you please elaborate on this development and its impact on efficiency at Swedish courts in the past year?
5. Have there been any notable developments (or are any planned) in terms of the digitalisation of justice in Sweden, for example related to the work and the proposals of the council on digitalisation of the justice system or the strategic plan for digitalisation of the judiciary)? **Ministry of Justice**

Pillar II – Anti-corruption

6. In relation to the integrity of civil servants in the public sector, could you give your assessment of the situation as regards possible cases of corruption within the public service? In particular, are there any cases whereby organised crime groups try to infiltrate the public service through corrupt practices? **Ministry of Finance**

In your presentation, you mentioned a potential government decision on an official inquiry into these issues (infiltration / corruption linked to organised crime). Grateful if you could share the official decision, when taken.

Yes, we will share the official decision when taken.

- On welfare fraud, we understand there have been calls to increase information sharing between various agencies and ministries (especially regarding access to databases). Are there any measures you are looking at?

In your presentation, you mentioned an internal investigative report (that is public) published on 31 January in relation to social welfare fraud. Grateful if you could share the link

Information exchange to ensure correct decision-making documentation for payments from welfare systems and cooperation in controls of workplaces – see separate enclosed appendix

7. Conflict of Interest – Code of conduct: We understand work is ongoing on an ‘overall’ code of conduct covering most of the public sector / top executive functions (in line with recommendation ii and iii of the GRECO Fifth Round Evaluation) – in your input you mention this process is quite a challenge: Could you clarify the timeline of adoption and the scope of application? Could you outline how the code will fulfill the GRECO recommendations? Are any provisions foreseen in relation to supervision and/or training? **Administrative department of the Government Offices**
8. Foreign bribery remains an area of risks with Sweden having one of the highest number of multi-national corporations per capita. Can you elaborate on the challenges of the investigation and prosecution of foreign bribery? Could you elaborate on the challenges to reform Sweden’s anti-bribery laws? **Ministry of Justice.**
9. Review of statute of limitations: we understand this work is ongoing, and that the government would propose an extension of 10 to 15 years in cases of “gross taking of a bribe or gross giving of a bribe”? Could you outline the timeline/process of adoption of these changes? **Ministry of Justice**

For written reply

Could you update us on the state of play regarding the applicable ‘revolving doors’ rules following their adoption in 2018? Would you have any available statistics since entry into force of rules in 2018?

The Board for the Examination of Transitional Restrictions for Ministers and State Secretaries examines matters relating to transitional restrictions for individuals who are or have been ministers or state secretaries, and who intend to start a new assignment or new employment that is not connected with central government activities or to set up business operations.

The Board is appointed by the parliament (the Riksdag) and consists of a former judge chair and four other members. The Board has been in force since the law was adopted in July 2018. One (1) declaration was made by a state secretary in autumn 2018, nine (9) notices were made in 2019 by ministers and state secretaries and two (2) notices were made in 2020. Statistics for 2021 will be presented by the Board in April 2022. None (0) of the notices referred to above did lead to a decision on transitional restrictions. This does not mean that the legislation is useless. Ministers and state secretaries are top ranking politicians in Sweden and the preventive effect of the legislation should be noticed. A top ranking politician who are aware of that the legislation on restrictions may be applicable to his or hers future plans for career will probably take the content of the legislation in thoughts of next step. He or she will potentially then not give publicity and potential media debate on this topic rather than notice the Board in such a case.

Are you planning to introduce any rules in relation to lobbying, in line with what GRECO has recommended?

We are not presently planning to introduce binding rules in relation to lobbying. Overall, however, the disclosure of information to the public, transparency and access to information remain the cornerstone in Sweden's corruption prevention approach. See also section III; 2020 Rule of Law Report, country chapter on the rule of law situation in Sweden, p. 10.

We understand the new law on whistleblowers was adopted in December 2021. Could you please update us on how the law will be implemented?

A new Act on reporting of wrongdoings the Whistleblowing Act entered into force the 17 of December 2021. The new act implements the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (the Directive).

The new Act applies in all private and public organizations, i.e. not only in the areas and regarding the breaches that fall within the material scope of the Directive.

In Swedish law there are provisions that protect whistleblowers, inter alia, in the Constitutional Acts, the Employment Protection Act and the Co-determination Act. Protection can also be found in case law. The Whistleblowing Act do not limit the protection that already exists, but instead supplement it. It is therefore possible for a whistleblower to be compensated for damage due to retaliation both on the grounds of the new Act and other law.

The meaning of the protection

A reporting person (a whistleblower) should not be liable for breaches of restrictions on disclosure of information, except in exceptional cases. A reporting person should not either be made liable for the acquisition of or access to information. Furthermore, reporting persons must be entitled to remedies and compensation for damage from the person who exposes the reporting person to retaliation because of the reporting or has hindered or has tried to prevent reporting. The protection also applies when a person considers reporting and for that reason consults his or her trade union.

The scope of persons to be protected is wide and includes workers, self-employed persons, volunteers and trainees, persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, and shareholders who are active in the undertaking. The protection should also apply before the work-based relationship has begun and after it has ended. Protection should also be provided in cases where retaliation is directed at persons who facilitate in the reporting or are connected to the reporting person and at legal entities that the reporting person owns, works for or are otherwise connected with in a work-related context.

Obligation to establish internal reporting channels

Employers who at the start of the calendar year had 50 workers or more are according to the proposal obliged to establish internal reporting channels and procedures for reporting and follow-up

Protection when reporting through reporting channels

A reporting person is protected if the person uses internal or external reporting channels when reporting.

If the reporting is done in a different way than via internal or external reporting channels, protection will be provided under certain conditions. Protection should apply for internal reporting that is conducted in a manner other than through internal reporting channels if there are no such channels or if the available channels do not meet the requirements of the Act.

External reporting to a public authority is also protected even if the reporting is not done via external reporting channels in some cases, e.g., if the reporting has first been done internally but no appropriate action was taken in response to the report.

Public disclosures are protected in certain cases, e.g., if the reporting has been done via internal or external reporting channels, without the authority or the operator having taken reasonable follow-up measures in response to the report.

The Swedish Work Environment Authority is proposed to supervise that operators meet the obligations in regard to establishing internal reporting channels and procedures.

Pillar III – Media

10. Could you provide us with an update concerning the safety and security of journalists and the main challenges for ensuring their independence and protection? Could you provide us an update on the actions and projects of the Swedish government aiming at preventing hate crime and other crimes that threaten the fundamental rights and freedoms in the context of the protection of journalists? **Ministry of Culture, Ministry of Justice**

In your presentation you mentioned a Handbook on personal security including for journalists, could you provide us with a link to the relevant documents?

Link to the Handbook:

<https://www.sakerhetspolisen.se/publikationer/personskydd/personlig-sakerhet.html>

11. Could you provide us with an update concerning the review of the criminal law protection for certain vital functions in society, in particular concerning journalists? Are there any additional legislative measures being considered to increase media pluralism, freedom of speech and protection of journalists? **Ministry of Culture.**

Investigation report:



SOU 2022_2.pdf

For written reply

Could you provide us with information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance?

The only specific requirements for media companies in relation to operational activities, capital capacity or requirements in relation to corporate governance are the requirement in

the Radio and Television Act (2010:696) that only broadcasters with adequate financial and technical resources to broadcast the full licence period can be granted licences to broadcast tv or radio (Chapter 4 section 5 and Chapter 13 section 4 and 23). There are additional requirements in relation to public service broadcasting.

Could you provide us with information on the legislative and policy framework in place for the public service media, which ensures independent governance and operational independence (e.g. related to reporting obligations)?

The starting point for the Swedish public service system is that media independence is guaranteed by the Fundamental Law on Freedom of Expression, in this respect there is no difference between commercial or public service media. The systems for the governance, financing, and remit-setting of the three public service companies: Swedish Radio (SR), Swedish Television (SVT) and Swedish Educational Radio (UR), have developed throughout the years. The overall objective has been to ensure accountability in regard to funding and remit combined with full operational and editorial independence within that framework.

The Swedish Parliament (The Riksdag) decides on the general remit and the organisational framework as well as the allocation of funding for public service media. This is done ahead of each new licensing period and for the full period. The length of the licensing period is since 2019 regulated in the Radio and Television Act and will from 2026 be eight years (Chapter 4 section 12 and Chapter 11 section 4). The regulation of the length of the licensing periods in the Radio and Television Act was made explicitly to increase independence and stability for the public service companies. During the licence-periods there should normally be no changes of the framework, and if there exceptionally is a need for change of the terms of the licensing (the remit) such changes must be accepted by the companies (Radio and Television Act Chapter 4 section 13 and Chapter 11 section 4).

The Riksdag decision on the public service remit is based on a Bill from the Government. This Government Bill is in turn based on the proposals of a Commission of inquiry – normally in the form of a cross-party committee of inquiry. The inquiry is independent from the Government. The task is to make an in-depth inquiry into the functioning of the public service companies. The task is mainly forward-looking but should be based on an assessment of how the remit has been fulfilled since the last evaluation. The task normally includes dialogues with a wide group of stakeholders. The public service-companies are normally in very close contact with the Inquiry and sometimes also have designated experts who take active part within the Inquiry.

Once the Government receives the report from the Inquiry and its proposals, the report is sent out on a wide public consultation before the Government Bill is drafted. Both the report and the Government Bill normally contain an overview of the whole system and quite detailed deliberations and reasonings in relation to the central issues. The Riksdag decision, however, is taken on a more basic and general level.

After the Riksdag decision it is for the Government to draft the licensing requirements (for the terrestrial network) and the conditions for funding. According to the Law on financing of public service broadcasting (2018:1893) the funding conditions shall apply for the full licensing period. All terms and requirements of the broadcasting licence must be in accordance with the Radio and Television Act and apply for the full licence term. These two instruments are then

complemented by Government decisions on accessibility requirements which are valid for a shorter period to take account of the fast technical developments in this area (the present decision is valid for three years).

Neither the Government nor the Parliament is involved in how the remit from these three Government decisions is made operational within the companies. However, the companies are required to report yearly on how they live up to the remit and its terms and conditions. These extensive reports are made public and are sent to The Broadcasting Commission which is an independent decision-making body within The Press and Broadcasting Authority. The Broadcasting Commission makes a yearly assessment of how the remit is fulfilled including whether the reports are of such a quality that it is possible to determine how well the task is carried out. The Government reports yearly to the Riksdag with a summary of the public service-reports and a summary of the assessment of The Broadcasting Commission.

The Broadcasting Commission is also tasked with the monitoring of specific programmes after they have been broadcast. This is done in accordance with the legal provisions in the Radio and Television Act and the specific requirements in the broadcasting licence.

Could you indicate how the management boards of these public service media are nominated and/or dismissed? Are there in place any safeguards or procedures for evaluating the fulfilment of their role?

The Swedish public service media are private limited companies. They are owned by a non-profit foundation (Förvaltningstiftelsen för Sveriges Radio AB, Sveriges Television AB och Sveriges Utbildningsradio AB). According to the charter of the foundation its overall aim is to promote the independence of the public service-companies. The foundation owns the shares of the three companies and fulfil the legal obligations of a sole shareholder. The main tasks are to nominate the board of directors of all three companies and to receive and adopt the yearly accounts of the companies and grant financial discharge for these boards. The follow-up conducted by the owning foundation is solely financial. It has no task to look into other parts of the operation or follow up the remit.

The charter of the foundation lays down that the board of the foundation should consist of 12 members and a chairperson. The 12 members are nominated by the political parties in the Riksdag according to the division of mandates, and formally appointed by the Government for a term of eight years. The charter also states that members of the Riksdag or employees of the Government offices may not be members of the board of the foundation. The chairperson is appointed by the Government. Half of the members are nominated after an ordinary election (in SE ordinary elections are held every fourth year). This is to ensure continuity also when political majorities change after an election. The charter of the foundation lays down that the appointed board members should include persons from different spheres of society as well as different parts of the country and that the nominations should be based on competence, integrity, and suitability. The same goes for the Government appointment of the chairperson.

The owning foundation has no possibility to influence the operation of the three companies outside the task to appoint and dismiss the members of their boards of directors. All such appointments or dismissals are done in line with the legal system for private limited

companies. The three boards of directors should consist of persons with the specific competences needed to oversight and support the executive officers running the companies. It is for the board of directors to appoint the managing director who also serves as a member in the board of directors.

Pillar IV: Checks and balances

- 12.** At the beginning of last year, a new legal framework empowering the government to adopt restrictive measures to combat the COVID-19 pandemic was adopted. In your written contribution, you put forward that the validity of laws has been extended first until January 2022 and then until May 2022. Could you please elaborate on the decision-making process for the extensions? What have been the lessons learnt in applying this legal framework?
Ministry of Health and Social Affairs

In your presentation, you mentioned the inquiry on the communicable diseases act (due in August 2023). Could you please provide us with a link to the relevant documents?

Relevant links:

[Författningsberedskap inför framtida pandemier - Regeringen.se](#)

[Författningsberedskap inför framtida pandemier, dir. 2021:68 \(regeringen.se\)](#)

- 13.** Could you please elaborate on the Government's decision to appoint a committee of inquiry to review whether the Constitution needs to be amended to enable faster action in future crises, such as a pandemic? What are its tasks and what is the timeline for its work?
- 14.** Since the last report, in terms of ex ante constitutional checks of legislation, in how many cases in the past year has the Council of Legislation given a negative opinion? What has been the follow-up given by the Government to these opinions? **Prime Ministers' Office**
- 15.** In December 2021, the Inquiry into the review of support to civil society handed over its final report to the Government. Could you please elaborate on the key findings and the next steps?
Ministry of Culture

Ministry of Culture

Pillar III – Media

- 16.** What legal safeguards are in place to ensure editorial independence of media?
- 17.** Would you have any updates concerning COVID-related financial support to the media sector during the last year? **Ministry of Culture**
- 18.** Could you provide us with an update concerning any possible measures taken to ensure the fair and transparent allocation of state advertising in Sweden?
- 19.** Could you provide us with and update concerning any action taken to increase transparency of media ownership since last year, in particular following the envisaged amendments to the Radio and Television Act? **Ministry of Culture**
- 20.** Could you elaborate on the rules regulating media concentration and any possible action recently taken to tackle the matter? **Ministry of Culture**

21. Could you elaborate on the procedures for the concession/renewal/termination of operating licenses in particular following the legislative proposal amending the Radio and Television Act? **Ministry of Culture**
22. Could you elaborate on the appointed government Inquiry Chair on the obligation of pre-assessment of significant new services offered by public service broadcasters and possible risk to media freedom? **Ministry of Culture**

Ministry of Finance

Pillar II/Anti-corruption

23. Could you elaborate overall on your activities in the area of corruption prevention, especially regarding any awareness-raising activities? **Ministry of Finance**
24. Implementation of the National Anti-Corruption Plan:
- Could you update us on who leads the overall coordination of the implementation of the Plan? We understand that both the Agency for Public Management and the Ministry of Finance have a key role here?
 - How did implementation of the plan progress in 2021? What are your views on the interim report on implementation?

You mentioned the conclusions of the interim report on implementation of the national anti-corruption action plan. Could you share the report with us?

The interim report:

[Statskontoret: Arbete mot korruption är under utveckling](#)

- We understand there was some criticism of the plan by local stakeholders (who cited a lack of clarity and ambition and the lack of a broad stakeholder consultation). Has there been any further dialogue with these stakeholders?
- As part of the Plan, we understand various institutions have to develop risk assessments / risk prevention plans. Are you involved in this work? What are your initial impressions of the main trends/challenges?

Ministry of Finance

Ministry of Labour

For written reply

[In June 2021, the Riksdag adopted the Act on the Human Rights Institute. Can you please elaborate on the process of setting up the institute up to its taking up activities in January 2022?]

In April 2021 the government appointed an inquiry to prepare for and carry out the formation of the new agency. Among other things, the Inquiry has presented proposals for instructions and appropriation directions, as well as appointed some of the agency's staff. In October 2021 the

government appointed the members of the board of the Institute. The Human Rights Institute commenced its activities on 1st of January 2022.

[Other languages – Institutet för mänskliga rättigheter \(mrinstitutet.se\)](https://mrinstitutet.se)