

# ***EU 2020: DEMANDING ON DEMOCRACY***

*Country & Trend Reports on Democratic  
Records by Civil Liberties Organisations  
Across the European Union*

## ***SWEDEN***



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# Sweden // Civil Rights Defenders (CRD)



## Key concerns

- Gaps persist in the protection and support of persons with disabilities within the justice system
- Law-making is not immune from shortcomings, including the lack of impact assessments as regards respect of international human rights obligations and disproportionate limitations on public consultations during the COVID-19 pandemic
- The system to guarantee state authorities' accountability for crime needs improvement
- The national human rights institution still to be set up
- COVID-19 exacerbates existing problems as regards the situation of persons in detention facilities

This contribution is meant to briefly highlight some of the most relevant concerns as regards selected rule of law issues in Sweden, concerning in particular the justice system, checks and

balances and the impact of COVID-19 and the measures taken to address it on rule of law and human rights protection. CRD has contributed to a full report on the situation in Sweden jointly drafted with the Swedish section of the International Commission of Jurists, which is being submitted to the European Commission as a separate country report.

## Justice system

Gaps in the protection and support of persons with disabilities are one issue affecting the justice system in Sweden, which CRD has drawn attention to in recent years.<sup>1</sup>

The UN Convention on the rights of persons with disabilities (CRPD) has not been incorporated into Swedish law, but authorities and courts have a duty to interpret and apply national laws in conformity with the Convention.

In 2018, CRD conducted a study to investigate to what extent administrative courts perform an independent assessment of a patient's need for further compulsory psychiatric care and for the transfer from a closed to an open compulsory care centre. The study was conducted on 501 verdicts from three administrative courts

<sup>1</sup> See <https://crd.org/wp-content/uploads/2018/08/Civil-Rights-Defenders-submission-pre-session-Sweden.pdf>

spread over the country over a three-month period. The results of the study showed that the courts are very reluctant to rule against the assessment made by the chief medical officer. In only 2 out of 220 cases concerning compulsory forensic psychiatric care, did the chief medical officer and the court's medical expert express different opinions. The same pattern is shown in the study made on non-forensic compulsory psychiatric care. In only 5 out of 281 cases did the chief medical officer and the medical expert present different opinions. In every instance, the Court ruled following the assessment made by the chief medical officer except rather than the medical expert. Furthermore, the study showed that all three courts would regularly use standard formulations in their decision. The formulations would often refer to the assessment made by the chief medical officer or to the medical material presented to the court by the chief medical officer, without further reasoning in relation to the circumstances of the case and thus casting doubts as to the grounds on which the courts made their decision.

Another area of improvement in this respect is the reasonable accommodation of the specific needs of persons with mental or physical special conditions or disabilities in criminal proceedings. While this is an issue already raised by international monitoring bodies<sup>2</sup>, no real progress has been made to date. Establishing a way to assess whether a person is unable to understand and to effectively participate in

criminal proceedings due to their mental or physical condition or disabilities, or otherwise needs special support, would improve the standards of respect for the right to a fair trial.

## ***Other issues related to checks and balances***

### ***Process for preparing and enacting laws***

Even though Sweden has a well-established democratic process in terms of the way legislation is prepared and enacted, there have been cases where no adequate consideration was given to Sweden's obligations under international human rights instruments. As recently as 2021, the parliament has for instance proposed that no further time limit will be introduced as regards pre-trial detention, which is inconsistent with international human rights standards. All new legislative proposals should undergo an impact assessment to ensure compliance with international human rights standards.

### ***Independent authorities***

Although the government announced that an Independent Institution for Human Rights is to be set up in 2021, a bill on the establishment

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2 Council of Europe, Committee for the Prevention of Torture (CPT), Report to the Swedish Government on the visit to Sweden carried out from 18 to 28 May 2015, page 5.

of such an authority has just been presented and the authority will only be set up in 2022.

### ***State authorities' accountability***

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The “Special Investigation Department” (SU), which consists of three investigative divisions placed in Stockholm, Gothenburg and Malmö, is an independent department within the Swedish Police Authority with the task of conducting criminal investigations and intelligence work in cases concerning holders of certain offices, including police officers. The Department was set up in connection with the reorganisation of the Swedish Police Authority on 1 January 2015. There are concerns that the SU is not impartial and independent enough to ensure State authorities' accountability in line with international human rights standards and to carry out preventive and investigation activities on the basis of a clearer human rights based approach.

### ***Enabling framework for civil society***

A good practice of cooperation between public authorities and civil society is the new dialogue forum between civil society organisations and the Office of the Parliamentary Ombudsmen, in particular the unit that since 2011 functions as the National Preventive Mechanism (NPM), in accordance with the

Optional Protocol to the UN Convention against Torture (OPCAT).<sup>3</sup> The dialogue, which concerns the situation and rights of people deprived of their liberty, enables civil society organisations to share their views and concerns, enable greater control of state's actions and contributes to better compliance with human rights standards. This is a vital exchange of knowledge for both the Office of the Parliamentary Ombudsmen and the organisations. It provides the Office of the Parliamentary Ombudsmen with new perspectives in order for them to carry out their mandate as the national preventive mechanism under OPCAT in the most optimal way possible, and it allows the organisations to have greater insight into the institutions

### ***Impact of COVID-19***

#### ***Accelerated law-making***

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An area of concern is accelerated law-making during the pandemic. Before the government takes a position on a legislative proposal, it is normally sent for consultation to the relevant authorities, organizations, municipalities and other stakeholders. The public also has the right to comment on the proposals. However, during the ongoing pandemic, the government has worryingly resorted to accelerated law-making procedures. In some cases, the consultation procedure has been as short as

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3 Parliamentary Ombudsman, Information about the Opcat unit: <https://www.jo.se/sv/Opcat/Om-Opcat-enheten/>

1 day, which in all circumstances must be regarded as unreasonably short.<sup>4</sup>

### ***Impact on the justice system***

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Statistics show that Swedish courts have not suffered serious case-backlog in general, with the exception of some Administrative Courts and Migrations Courts. Additional funds have been granted to the Migration Courts to avoid unreasonable delays in proceedings.

Statistics show that the General Courts have improved their efficiency due to use of remote technologies, to which they significantly resorted in 2020 compared to earlier years<sup>5</sup>. Concerns however have been raised regarding the respect of fair trial standards and the right to access to justice, as also highlighted by a survey conducted by the Swedish Bar Association.

### ***Situation in detention facilities***

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Restrictions imposed to face the COVID-19 outbreak in closed facilities have in many ways affected the situation for inmates.<sup>6</sup> Criticism expressed by the Parliamentary Ombudsmen has shown that the authorities managing closed facilities were unprepared to manage the COVID-19 outbreak.<sup>7</sup> Overcrowding in detention facilities<sup>8</sup>, an issue for which Sweden has already been criticized by monitoring bodies in the past<sup>9</sup>, exposes inmates to high infection rates. Against this background, the Swedish Prison and Probation Service is struggling to guarantee the respect of health protocols and precautionary measures such as social distancing, while safeguarding inmates' rights such as the right to release from insulation and the right to respect for family life as regards visits in prisons. Should the length of pre-trial detention increase, this also risks deteriorating an already strained situation.

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4 See for instance: <https://www.regeringen.se/remisser/2020/06/remisser-s202005402sf-och-s202005401sf/>; <https://www.dagensarena.se/innehall/coronalagen-kritik-mot-rekordkort-remissrunda/>

5 <https://www.domstol.se/globalassets/filer/gemensamt-innehall/styrning-och-riktlinjer/statistik/2020/201207-diagram-veckovis-videokonferenssamtal-salar-veckva-1-49.pdf>, Accessed: 2020-12-14.

6 Protests occurred at least in three Swedish detention facilities since the introduction of the new anti-infection measures: see <https://www.svd.se/fangar-strejkade-mot-coronaatgarder>

7 See <https://www.jo.se/PageFiles/15549/O%2012-2020.pdf>, accessed on 14 October 2020.

8 See <https://sverigesradio.se/artikel/7558967>

9 See <https://rm.coe.int/1680697f60>

Similar concerns are to be raised with respect to the situation of migrants detained in close facilities pending deportation. Sweden has continued to detain persons facing deportation who end up waiting for several months for enforcement of deportation decisions given that certain countries, such as Afghanistan, do not currently accept deported persons from Sweden due to COVID-19.<sup>10</sup> Against this background, it can be questioned whether decisions on detention can be seen as a necessary and proportionate measure considering the uncertainty of when deportation can be carried out in the light of the current situation and existing COVID-19 restrictions. In April it was reported that detainees in several detention centres initiated a hunger strike to protest against their indefinite detention.<sup>11</sup>

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10 <https://www.svt.se/nyheter/inrikes/coronapandemin-forsvarar-utvisningar-mustafa-har-varit-inlast-i-fem-ma-nader>, accessed on 15 October 2020.

11 <https://www.fplus.se/corona-hindrar-utvisningar-hungerstrejk-mot-vantan-i-forvar/a/g7nGmq>, accessed on 15 October 2020.