Sweden 2024

Information from: Swedish Institute for Human Rights

Follow-up to last year’s rule of law recommendations

State authorities' follow-up to regional actors’ recommendations on rule of law

The European Commission issued in its 2023 Rule of Law Report several recommendations to Sweden. Below the Swedish Institute for Human Rights (the Institute) provides information on the implementation of those recommendations by national authorities.

Recommendation: Ensure that the nomination system of lay judges safeguards their independence, taking into account European standards on judicial independence.

The Institute is not aware of any concrete steps taken by the government to adhere to the recommendation by the European Commission. The issue was however, to some degree, brought up during the year in an inquiry about public assigned counsels. As part of the assignment certain issues relating to the participation of lay judges in decisions of the migration courts was to be looked into. The inquiry concluded that a reason why the assignment of lay judges to some extent is perceived as political is the strong connection it has to the political parties. It is the political parties that nominate the lay judges, and the political parties largely have internal rules that require membership for nomination. Even though the investigator came to the conclusion that there is no need for further measures to clarify that the assignment of lay judges is not political, the investigator concluded that a better alternative to strengthen the political independence of the lay judges would be to deprive the political parties of the power of nomination and develop a new recruitment model. However, since the nomination and appointment system of lay judges was not part of the terms of reference of the inquiry, the investigator did not analyse the issue further. Thus, the need to examine the system of politically appointed judges and propose a new recruitment model remains.

It should also be noted that the 2020 Committee of Inquiry on the constitution that was tasked with investigating for example the need to further strengthen the independence of courts and judges in the long term did not in their report, that was submitted during the year, look into the matter of lay judges.

Recommendation: Evaluate the scope, impact and implementation of

the rules relating to revolving doors that cover top executive functions in the Government.

In 2022 the government initiated an inquiry of the Act concerning restrictions when ministers and state secretaries transition to non-state operation ("the Restrictions Act"). The purpose of the inquiry was to evaluate the Restrictions Act from 2018, as well as to consider whether the categories of people subject to the regulation should be expanded, if the restriction period should be extended, and, whether sanctions should be introduced. Further, the inquiry should map the prevalence of moves from public to non-public employment and activities. It should also propose generally applicable restriction regulations and consider who should be bound by such regulation.

On 28 August 2023, the results of the inquiry were presented in a report. In the report it is concluded that the Restriction Act on an overall level has fulfilled its purpose and has had certain self-regulating effects. It finds that the duty of notification appears to have been complied with. The inquiry proposes generally applicable regulations on, 1) the duty to notify the employer before a move to a job outside the public sector, 2) restrictions in the form of a waiting period and 3) compensation entitlements for employees subject to transitionary restrictions. The inquiry suggests that a new Act, containing both regulations concerning restrictions for government ministers, state secretaries and heads of government agencies and the generally applicable regulations, should replace the current Restrictions Act. The new Act should enter into force on 1 January 2025.

Recommendation: Continue efforts to ensure that the on-going reforms to the legal framework for the funding and operation of civil society organisations do not unduly affect civil society engagement.

In 2023, civil society organisations increasingly experienced an uncertainty in funding. Many organisations argue that this is due to economic factors, but also political decisions. One such example is the new Swedish development cooperation policy which was adopted in December 2023.

On a broader scale, several organisations note that funding is becoming more directed towards civil society organisations as service providers rather than those providing voice to a broader group. An example of the latter is the cancelled funding to ethnic based organisations and some public education programmes. Furthermore, the demands on civil society organisations to comply with regulations regarding financial reporting and audit have increased and the government has in a report to the Parliament accounted for initiatives it has embarked on to enhance financial follow up and control. Criticism has been raised by civil society organisations that argue that focus is rather on control than on trust. This can also be seen in the continued debate around the so called "democratic governance criteria" which have been proposed as

criteria for state funding to civil society organisations. A proposal was presented by the previous Government but withdrawn by the new Government following the election in September 2022. The criteria were supposed to be presented in 2023, but now seem to have been pushed back to early parts of 2024.

Hate crimes and harassments targeting members and representatives of civil society organisations continue to be a major problem. This poses challenges not only to the organisations themselves as they have to put in place systems to manage potential threats against them, but also to the society as a whole when voices are silenced. During the past years, efforts have been made to protect civic space and support actors such as politicians, journalists, public officials and artists. For example, in 2023 the criminal code in Sweden was amended in a way that crimes targeting journalists should be seen as more aggravating which will be considered when the sentence is decided. It is noted that a similar rule does not exist in relation to civil society representatives.

NHRI’s follow-up actions supporting implementation of regional actors’ recommendations

In order to ensure that lay judges both act, and are perceived to be able to act, independently in relation to the political parties, the Institute has twice during the year proposed to the government that a special investigator should be appointed with the task to investigate how a new recruitment system for lay judges should be designed without the involvement of the political parties. The proposals have been submitted as part of the Institute’s referral responses in consultation processes for new and changed legislation.

The inquiry report about the Restriction Act (i.e. regarding rules relating to revolving doors) is currently being circulated for consultation. The Institute is one of the consultation bodies and will submit its response in February 2024. The response will be available on the Institute’s website.

State authorities' follow-up to NHRI’s recommendations regarding rule of law

Recommendation 1: To engage on the forthcoming findings of the Institute´s gap analysis on adherence to the Paris Principles and criteria for reaching A-status;

Initiatives taken by the Institute

During 2023, the Institute has taken a series of initiatives to convey the content of the recommendation and request corresponding follow-up from the

government. The first initiatives took place in the spring, with the launch of the Annual Report for 2022 on April 3, 2023. It provided a detailed account of the Institute's preparations for accreditation up to that point and drew attention to potential needs for supplementing the enabling law in some areas assessed as weak from the perspective of the Paris Principles. Information about the preparations and a reminder of the impending supplementation needs were also included in the management's handover and oral presentation of the report to the government the same date.

On April 14, the Institute submitted a formal request for accreditation and membership in GANHRI (Request for accreditation, reg.no: 1.4.1-199/2023), the receipt of which was confirmed on April 17.

Information about the preparations and a reminder of the impending supplementation needs were also subject to a special presentation during the minister and her staff's visit to the Institute on April 19, 2023, and during the management's meeting with the Parliamentary Committee on the Constitution in May 2023.

On June 14, the Institute asked ODIHR for a legal opinion on the enabling law of Institute. The legal opinion was finalized on August 28 (after OHCHR commented on the draft) advocating, among other things on the need for strengthening the Institute's independence and financial autonomy.

On October 18 the Institute hosted a High-Level Webinar on the Paris Principles which focused on the possible measures needed to ensure a satisfactory outcome for the accreditation process. Following interventions by the minister, the chairperson of the Parliamentary Committee on the Constitution, civil society, OHCHR, ENNHRI and GANHRI, ODIHR presented its legal opinion, and the Raoul Wallenberg Institute presented the preliminary conclusions from its analysis.

Therefore, on October 23, the Institute turned again to the GANHRI Sub-Committee, on Accreditation (SCA) declaring itself ready to have its application reviewed and assessed during the autumn meeting in 2024, a proposal confirmed by ENNHRI shortly thereafter.

Finally, on December 5, the Board of the Institute decided to update its recommendations to the government on this matter. On 24 January 2024, the Institute submitted a letter to the government (“Behovet av att stärka implementeringen av Parisprinciperna” - reg. no. 3.4.2-31/2024), drawing attention to the immediate need to further enhance the implementation of the Paris Principles in view of the legal opinion from ODIHR and the Institute's application for international accreditation and membership in GANHRI, both in the short and long term.

Initiatives taken by other stakeholders

As reported in the 2023 ENNHRI Rule of Law report, shortly after the Annual Report for 2022 was launched, a representative of the government's coalition partner, the Sweden Democrats, stated that the Institute should be closed. Shortly thereafter, during an open question session in the Parliament, the Prime Minister also expressed that the future of the Institute may be questioned, citing the current needs for economic austerity and public expenditure cuts. This stance was reiterated by the responsible minister during the subsequent visit to the Institute on April 19.

As a result of the stance taken by the government the Institute received important support from the international community. The Institute provided relevant stakeholders with written updates followed by bilateral meetings facilitated by ENNHRI's role and contacts in the field.

In the latter part of April, OHCHR, FRA, and ENNHRI publicly expressed support for the Institute's independence and financial autonomy. The Council of Europe, ODIHR, GANHRI's representation, the EU Commission and the Nordic sister institutions also showed interest in the development. In addition, UN High Commissioner for Human Rights Mr. Volker Türk confirmed his support for the work of the Institute in his bilateral contacts with the government.

The information campaign continued nationally. On May 2, the Swedish civil society published an open letter to the Prime Minister, signed by more than 55 leaders of various non-governmental organizations. The letter is titled "Not an Ordinary Authority" and advocates that the government must provide the conditions necessary for the Institute to continue working and developing its operations in line with the Paris Principles.

After a longer period of concern, which began with the Prime Minister's statement on April 13 in an open session in the parliament, the government finally manifested its support for the recommendation in the budget proposal, presented on September 20. Therein, the government elaborates relatively extensively on the Institute's basis in the Paris Principles and describes the steps and application towards membership in GANHRI. The government further claims that the Institute should continue to play a central role in the Swedish human rights structure "… by comprehensively monitoring, investigating, and reporting on how human rights are respected and realized in Sweden." The budget allocation is in the same order of magnitude as in previous years, with a forecast of a slight increase in the following years, i.e., 2025 and 2026.

The stance in the budget proposal was also conveyed by the responsible minister's presence and statement at the Institute's High-Level Webinar on the Paris Principles on October 18.

Recommendation 2: To improve protection against hate crimes as well as inflammatory and racist manifestations;

In recent years, Sweden has witnessed a spate of Quran-burnings resulting in rioting and calls for a ban on burning religious texts. These events have brought to the fore questions regarding the limits of Sweden's extensive right to freedom of expression.

During the summer, the government tasked a special investigator to review whether national security should be considered when granting permits for public gatherings (for example to burn the Quran) in accordance with the Public Order Act. The findings of the investigation will be presented in July 2024.

During the year, a first judgement from a Swedish court was issued examining whether Quran-burnings constitute hate crime (Linköping District Court, Case B 1406-21). The case involved the burning of a Quran wrapped in bacon in front of a mosque. The event was filmed and the clip, accompanied by a soundtrack of anti-Muslim music, was spread on social media. As such, the case included a number of elements that, considered together, were deemed to amount to the crime agitation against a population Group ("hets mot folkgrupp"). As of yet, however, there have been no judgements determining whether other public burnings of the Quran constitute crime.

During the year the Institute also took note of inflammatory statements made by members of Parliament as a consequence of the Quran-burnings. For example, in reaction to calls for boycotts of Sweden from Islamic groups, the Chair of the Committee on Justice for example publicly stated that if this is their attitude Sweden should "burn another 100 Qurans". At the end of the year statements by the leader of the Sweden Democrat's party provoked strong reactions and received a lot of media attention when he at a conference argued for an immediate stop to the construction of mosques and for starting to confiscate or demolish existing mosques where anti-democratic, anti-Swedish, homophobic, anti-Semitic propaganda or general misinformation about Swedish society was spread.

The Institute notes that during the year some initiatives were taken by the government to work to fight racism and hate crime, particularly aimed at combating antisemitism. The Swedish Public Management Agency (Statskontoret) presented its findings as a follow up to the Swedish national action plan against racism, similar forms of hostility and hate crime. The report criticised the plan as being too weak, lacking concrete goals and unclear as to what authorities are covered by the plan and how such authorities should mainstream their work to fight racism and hate crime. Furthermore, following up on another assignment given to it by the Government, the Swedish Crime Victim Authority (Brottsoffermyndigheten) presented public information on how individuals can report crimes committed with Islamophobic motives.

In early 2023, a high-level working group was established within the Government offices consisting of several State secretaries from different

ministries as well as representatives of Jewish civil society organisations and Government agencies. The role of the working group is to improve the conditions for Jewish life and prevent and combat antisemitism in Sweden, through enhanced cooperation and dialogue. Following the attacks on 7 October 2023, this type of support was intensified. Increased funding was given to authorities like the Living History Forum (a Swedish agency working for democracy and equality between all people using lessons learned from the Holocaust), academia and Jewish civil society organisations.

On 10 January 2024 the inquiry into a national strategy to strengthen Jewish life in Sweden was submitted to the government. In June 2022, a special investigator was given the task of submitting proposals for a national strategy for strengthening Jewish life in Sweden with a focus on the transmission of Jewish culture and Yiddish to today's young people and to future generations. In addition to this, the inquiry was for example tasked with describing the conditions for living a Jewish life in Sweden based on Sweden's international commitments regarding the protection of national minorities and minority languages.

With the aim of ensuring enhanced compliance of EU Council framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, an inquiry was presented with suggested amendments to relevant criminal legislation in Sweden.

Recommendation 3: Improve adherence to good practice and/or due process requirements when it comes to draft legislation, stakeholder consultations with NGOs and follow-up of UN Human Rights Treaty Bodies' recommendations.

The trend of short deadlines for the submission of opinions from referral bodies has continued. The government has expressed a determination to further speed up the legislative process as part of a drive to tackle serious crime. The Institute has expressed concerns regarding rushed drafting processes, including inter alia inadequate analysis of the human rights implications of legislative proposals.

During the first year of its existence, the Institute was not included as a referral body in a systematic manner in the legislative process. This has been pointed out to relevant ministry and the Institute is now more frequently included as a referral body. There were however still a few inquiries relevant to the Institute's mandate that the Institute did not receive in 2023. The Institute nevertheless submitted responses to these inquiries. These responses were not automatically published on the website of the Swedish Government Offices which is something that the Institute would advocate for, in order to ensure broad access to the Institute's analysis. The Institute has however been in dialogue with relevant Ministries in order to rectify this oversight and have

noted that the Institute's referral responses now have been published.

The Institute notes that there is a lack of systematic and clear handling of the recommendations that Sweden receives from the UN treaty bodies and from special procedures. This is partly due to the fact that the reporting and follow-up involve different ministries which makes it difficult to monitor the work that is being done. During the year the Institute raised the issue both at a meeting with the leadership of the Ministry of Employment (which is the ministry that has the overall responsibility for coordinating the implementation of human rights in Sweden), and at a meeting with the interdepartmental working group for human rights, which consists of representatives from several different ministries. The Institute raised that it would be crucial to create a structure for dealing with recommendations in the field of human rights, with the involvement of government authorities, municipal and regional actors, as well as independent actors such as civil society and the Institute. This is in line with a recommendation in a letter from the UN High Commissioner for Human Rights to the Swedish Minister of Foreign Affairs in December 2020 urging Sweden to establish a national mechanism for reporting and follow-up in relation to all recommendations received from all international and regional human rights mechanisms and to all treaty obligations. The issue will be followed up by the Institute in different ways in the future, including in the continued dialogue with the Ministry of Employment.

In relation to adherence to UN Human Rights Treaty Bodies' recommendations, the Institute notes for example that the Government has taken steps to lower the age for criminal responsibility by appointing a special investigator to carry out an inquiry and suggest changes to the juvenile criminal justice system. This is in direct contradiction of a recommendations from the UN Committee on the rights of the Child in its Concluding observations on the combined sixth and seventh periodic reports of Sweden. The Committee urges Sweden to maintain the minimum age of criminal responsibility at 15 years of age.

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Information from: Swedish Institute for Human Rights

Independence, effectiveness, resilience and establishment of NHRIs

International accreditation status and SCA recommendations

The Swedish Institute for Human Rights was created and commenced

operations on 1 January 2022. It was established with reference to the UN Paris Principles. The Institute is a non-accredited associate member of ENNHRI.

The Swedish Institute for Human Rights will be considered by the SCA for first time accreditation during the SCA fall session of 2024.

Follow-up to SCA Recommendations and relevant developments

On April 14, 2023, the Institute applied for the first-time accreditation and in October, SCA decided that the application would be processed and assessed during its fall session of 2024.

During the preparations, the Institute has been guided by SCA's general observations, obtained a specific legal opinion on the enabling law from ODIHR, and held bilateral discussions with experts from OHCHR, GANHRI's representation in Geneva and ENNHRI regarding the requirements for A-status. Since October 2022, the Institute is an associate member of ENNHRI and has had regular exchanges of experiences regarding the accreditation system with sister institutions in the Nordic region.

Regulatory framework

The enabling law or other parts of the regulatory framework has not changed since January 2023.

Note however that the Institute in January 2024 submitted a letter to the government, drawing attention to the need to further enhance the implementation of the Paris Principles.

NHRI enabling and safe environment

In line with ODIHR's legal opinion, completed after OHCHR's comments on the draft, and the Institute's own gap analysis, the mandate should be considered sufficiently broad and robust to meet the Paris Principles. Further, the Institute has sufficient powers - explicit or implied - to fulfil that mandate operationally. This conclusion assumes however that the mandate is understood in accordance with SCA's recommendation to interpret the mission extensively, rights-based, and purposefully.

Secondly, regarding the composition and the pluralism of the Institute, the conclusion is also positive. The Institute now has three distinct organs:

- The Board, with 7 members with expertise in the field of human rights and experience in qualified work within civil society, the judiciary and legal practice, and/or research and higher education who

are nominated by the Advisory Council the Swedish Bar association, and Academia and higher research and formally appointed by the government.
- The Director and the Office with approximately 30 employees with high education in the field of human rights and extensive professional experience.
- The Advisory Council, with 20 prominent representatives from various human rights movements in civil society.

Concerning the Institute's independence, the situation is a bit more complicated. The starting point is that the Institute acts entirely independently and autonomously regarding its activities and the design of the non-regulated forms of organization, in other words the institute decides over its internal forms of its organisational set-up (units, departments, staffing etc). This means that the Institute, without oversight or guidance from the government or other external actors, makes its own operational priorities, completes its reports, upholds partnerships, including internationally, recruits and sets salaries for employees, and so on.

However, there are some deficiencies in the appointment process for the Board, primarily related to the steps between the nomination by the nominating actors, as mentioned earlier, and the appointment, which is made by the government. The Institute does not claim that it has been a problem in practice. Still, on the basis of the legal framework, there is not sufficient detail as regards the government’s ranking of the nominations received or what specific preferences are used to ensure diversity and anchoring with other human rights actors in the Board, taken as a whole.

The Institute also believes that the rules for dismissal should be clarified, both for the Board Members and the Director.

Regarding potential rule of law issues, the Institute particularly wants to draw attention to one issue. The government does not exempt the Institute from the condition that applies to other government authorities, which is that the government determines how many and which legislative proposals they should provide opinions on. This could potentially lead to an indirect control of resources and operations of the Institute, especially during the high legislative pace that currently prevails in Sweden. In addition, the government’s approach contains an unspoken signal about what would be the human rights priorities for new legislation. However, the Institute’s response will be to only submit substantial opinions on legislative proposals relevant to the Institute’s own priorities, while others will only receive a very short reply.

Finally, there is a need for a guarantee that the Institute's reports are considered by the Parliament and not just the government. The authority to submit reports to the Parliament is missing in the law but has nevertheless

proven possible to achieve in practice. However, the Institute believes it is such an important issue that it cannot be solely protected by good practice.

As regards threats against the Institute and as reported above, from April 13 to September 20, 2023, the situation was that the government questioned the significance of a Swedish NHRI on economic grounds, a stance further supported by the coalition partner Sweden Democrats for political reasons, expressing the opinion that Sweden has no problems with racism and discrimination. Since the responsible minister did not confirm continued funding for the Institute in both open and closed meetings with the Institute, and during the EU conference on the institutional protection of human rights during crises in Lund on April 20-21, 2023, the Institute assessed that it could be under a threat.

Above all, the Institute became very concerned that this stance resulted in a complete lack of transparency and foresight in the budget processing during 2023. The situation stood in stark contrast with the Paris Principles and SCA's general observations, stating that the funding needs of national NHRI institutions should be assessed on neutral and mandate-based evaluations. A similar reasoning is also found in the preparatory work for Swedish law, hence making the government’s standing problematic also in the domestic legal context.

It should also be noted that the Institute did not receive an explanation of why its own budget proposal was not followed. It amounted to SEK 63 million for 2024 and was justified by statements about staffing needs in the preparatory work for the enabling law.

However, apparently, the threat diminished after the government presented the budget proposal for 2024 on September 20, 2023, in which it confirmed the previous government's commitment to fully comply with the Paris Principles and the Institute's important position in that regard, along with a budget allocation that does not imply significant changes compared to the previous year.

NHRI’s recommendations to national and regional authorities

The following two recommendations are formulated with a view to increase the implementation of the Paris Principles ahead of the SCA consideration of the accreditation request from the Institute, scheduled for the fall of 2024. This does not imply that there are no additional needs relevant to ensuring the independence and effectiveness of the Swedish NHRI.

Recommendation 1:

The government is urged to act in accordance with the Institute's specific submission on the immediate need to strengthen the implementation of the Paris Principles, including by:

- Instructing the 2023 Freedom and Rights Committee with the additional task of developing proposals for constitutional protection for the Institute's mandate, independence and premise on the Paris Principles.
- Ensuring adequate and long-term funding for the Institute in accordance with the provisions of the Paris Principles on budget management and the Venice Commission's recommendation on minimum guarantees for funding independent ombudsman institutions.
- Clarifying appointment and dismissal rules regarding the Institute's board members, which can be initially addressed through written procedures in the short term and subsequently clarified through legislation.

Recommendation 2:

The Parliamentary Committee on the Constitution is encouraged to establish written procedures for receiving, tabling and handling reports from Institute, in particular its Annual Reports.

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Democracy - checks and balances, disinformation, and law-making processes

Separation of powers

Salary criteria for non-political civil servants

The Swedish Government Offices are comprised primarily of non-political civil servants who remain in their positions irrespective of which political parties are in government. During the regular salary process at the end of the year, media outlets reported that one of the criteria on which salary levels were to be based was ‘working toward the goals of the Tidö-agreement’, the political agreement between the ruling coalition and the Sweden Democrat party. The criterion was added after the negotiations between the local union and the employer had been finalised. According to the tradition of political neutrality of civil servants the salary structure should be founded on the principle of meritocracy. Voices have been raised that the added criterion appears to be attempted political interference in the civil service.

Political influence on courts

During 2023, a few cases have been reported where politicians have publicly commented on individual judgements. One example is when the chair of the Parliamentary Committee on Justice commented on a court case. This was heavily criticised by for example judges particularly from the perspective of rule of law principles, including the independence of the judiciary. Another example that raises questions regarding political influence of courts concerns lay judges. In the aftermath of a heavily criticised verdict the connection between lay judges and political parties came to light. In the verdict, a man was acquitted by the Court of Appeal for Western Sweden in a case involving the rape of a ten-year-old girl. The verdict was strongly condemned and received media attention. A week after the verdict was announced, the two lay judges who had participated in the Court of Appeal's decision left their positions. They had both been appointed after nomination by the Social Democrats and resigned after being called to a meeting with the Social Democrats in Gothenburg.

In order to ensure that lay judges both act, and are perceived to be able to act, independently in relation to the political parties, the Institute has in two referral responses during the year proposed to the government that a special investigator should be appointed with the task to investigate how a new recruitment system for lay judges should be designed without the involvement of the political parties.

The process for preparing and enacting laws

The legislative pace in for instance the fields of criminal law and migration law has been high for several years. However, it has escalated since the current Government came into office in 2022 and started implementing the political agreements in the so-called Tidö agreement. The Institute, amongst several other actors, has therefore continued to raise concerns that reforms, in e.g. criminal law and procedure, of recent years need to be evaluated before new reforms are initiated, and has expressed concerns that inquiries into related areas in many cases are running in parallel. The result is that inquiry reports often fail to adequately conduct and present analyses of the impact proposals may have on human rights, and that the proposed legislation will be unclear and difficult to apply with legal certainty.

Nevertheless, in his Statement of government policy on 12 September 2023, the Prime Minister argued that legal reform processes must be quicker. One of the measures to resolve this is to establish a new inquiry function within the Prime Minister’s office that are supposed to conduct quicker “targeted inquiries”, possibly twice as fast, but with maintained high standards of legal precision. The new system has not been evaluated, but risks, in the view of the Institute, resulting in inquiries being conducted in a way that does not live up

to the Swedish legal tradition of legislative proposals, as a rule, undergoing thorough analysis and evaluation of inquiry bodies operating independently of the Government and often involving co-opt experts, officials and politicians.

Before the Government adopts a position on the recommendations of an inquiry body, its report is referred for consideration to, amongst others, central government agencies and special interest groups. The referral process is supposed to provide the Government with feedback on the proposals, and the consequences of their implementation, from a number of actors offering a diversity of perspectives. In this manner, the referral process strengthens democracy and the rule of law. A meaningful referral process is preconditioned on the various actors having sufficient time on their hands to analyse the proposals and submit comments. In several cases in 2023, the time allocated for comments has been very short without the Government providing persuasive arguments for this. In a judicial preview published on 30 December 2022, the Council on Legislation (Lagrådet) argued that the referral process for a bill concerning secrecy related to electricity support, did not live up to the constitutional requirements for preparation of legislation and that the bill for that reason could not serve as a basis for legislation. In this particular case, the effective time given to the referral bodies to prepare comments was half a working day (the time allowed for comments is normally three months). Another example of a rushed referral process concerned a proposal for introduction of so-called security zones allowing for increased possibilities for the police to conduct stop-and-search measures of individuals and vehicles only was open for comments for five weeks over the Christmas and New Year holiday.

It can also be noted that during the year, the Institute and other actors also criticized the Government for deciding to fund the construction of special youth prisons before the referral process for establishing such prisons in law had come to an end.

Council of Legislation

The task of the Council on Legislation (the Council) is to examine bills that have been referred to them and to issue opinions on the proposed bills. Only the Government and the parliamentary committees can request opinions from the Council. It should be noted that the review by the Council is not in itself a prerequisite for new legislation to be decided upon or applied. It is ultimately the Government that initiates and is responsible for the preparation of legislative proposals, and the Parliament, which decides on new laws, that are responsible for the quality of the legislation. The reviews of the Council are presented in the form of statements and are not binding for the government or Parliament. The reviews focus on for example how the proposed bill relates to the constitutional laws and the legal order in general, how the proposal's provisions relate to each other and on rule of law issues, including the quality

of the preparatory work.

In a survey launched in January 2023 conducted by the Confederation of Swedish Enterprise (Svenskt Näringsliv), it is established that 23.5 percent of the bills referred to the Council between 2006 and 2022 were criticized. In 4.8 per cent of the opinions, the Council chose either to reject all or part of the bill or stated that all or parts of the proposal could not form the basis for legislation.

According to the survey, the Council writes an average of 125 opinions per year, which corresponds to about 25 percent of the laws adopted in a normal year. According to the report it is not possible to see any systematic differences in quality in the legislative proposals between different governments during the period. The proportion of critical opinions is at the same level throughout the period examined.

A crucial part of the concept of rule of law is that laws and regulations should hold high quality. Without a proper preparation process and solid impact analyses this cannot be guaranteed. The review however shows that the government's proposed bills often fail in relation to for example proper preparation processes. Even though the views and recommendations of the Council are not binding on the Government or Parliament, they are considered of crucial importance to ensure that legislation live up to constitutional requirements. The views of the Council on Legislation have still been disregarded in some instances. For example, the Government decided to go ahead with the introduction of a new terrorism offense criminalizing involvement in a terrorist organization, even though the Council deemed the proposal to be too unprecise. The same proposal has also been questioned by several UN Special Rapporteurs in a letter to the Government of Sweden in July 2023

New internal inquiry function within the Prime Minister’s office

When the Government wants to introduce a new law, an independent inquiry or committee is usually appointed to investigate the issue. During the year the Prime minister however presented plans to establish a new a function within the coordination office in the Prime Minister's Office to take on targeted inquiry assignments. One of the goals of the new function is to shorten the investigation time. The Institute is concerned with how the new function will affect the independence of the inquiries.

Access to information

In early November, the Institute was invited to support a forthcoming paper by the UN Special Rapporteur on Environmental Defenders with a basic follow-up on the situation of environmental defenders in Sweden. The invitation came a

few days after his intervention at the National Network for Human Rights Specialists, a regular on-line forum organised by the Institute. The follow-up focused on the potential threats and violations that Swedish environmental defenders claim they face in their efforts to ensure respect for the Aarhus Convention, where the right to information holds a central position. In the communication with the special rapporteur the institute highlighted relevant parts of its 2023 Annual Report where it is stated (page 66) "In 2022, there were numerous climate protests in Sweden utilizing civil disobedience as a method. Activists, citing the climate emergency, blocked motorways and thoroughfares, attaching themselves to aircraft, roadways, and bridges. Several activists faced arrest and prosecution, including charges of sabotage and disobeying a police order. Some activists have received prison sentences." Furthermore, "According to several civil society organizations, there has been a recent shift in the classification of crimes related to civil disobedience, transitioning from disobeying police orders and arbitrary actions to sabotage. In a statement from September 2022, Amnesty, Civil Rights Defenders, and Greenpeace argued that the sabotage classification of climate protests and civil obedience is new and could lead to sanctions that are no longer proportionate to the act committed."

The Institute has encouraged the Special rapporteur to visit Sweden next year.

Independence and effectiveness of independent institutions (other than NHRIs)

The Parliamentary Ombudsmen has undergone a review in recent years, and a new law (“the Act with Instructions for the Parliamentary Ombudsmen”) governing the work of the Parliamentary Ombudsman entered into force on 1 September 2023. The review also resulted in proposals for constitutional changes that would strengthen the protection of the Ombudsmen, inter alia through ensuring that decisions to remove an Ombudsman from office will require a qualified parliamentary majority of 3/4 and must be supported by more than half of the members of Parliament. However, other proposed changes on e.g. terms of office and procedures for removal do not fully live up to the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles). For instance, the length of a term will be six years rather than seven years as recommended in the Venice Principles. The new law also allows for re-election which is not in line with the Venice Principles. Moreover, the new law fails to provide an exhaustive list of conditions that sets out when removal from office may be allowed.

When the bill was voted on, the Parliament made a statement calling on the Government to conduct a review of all forms of regular monitoring, to ensure that the Ombudsmen’s role as an extraordinary monitoring body is strengthened.

In its referral response to the proposals, the Institute called for a further review on the Ombudsmen's mandate to monitor private actors, and a strengthened functional independence of the Ombudsmen's OPCAT unit.

In 2023, the 2020 Committee of Inquiry on the Constitution (the Committee) issued its final report. The Committee was an all-party committee tasked with investigating the procedure by which the Constitution could be amended and the need to further strengthen the independence of courts and judges in the long term.

In the final report, it is proposed that the requirement to obtain an opinion from the Council on Legislation should be extended to include constitutional amendment proposals regarding fundamental freedoms and rights. In its referral response to the proposal the Institute supported this proposal.

In the final report it is also proposed that the current provision on the administration of justice in the constitutional law is to be amended to make it clear that justice is administered by independent courts. In its referral response to the proposal the Institute supported the proposal, but highlighted the importance of introducing a provision in the constitution stating that courts should not only be independent, but also impartial.

The Committee furthermore proposed that that Chancellor of Justice's (JK) supervisory duties regarding courts and judges be abolished. The Institute supported this proposal in its referral response but highlighted that, for the same reasons as courts should be excluded from JK's supervisory duties, it should be clarified that also the Swedish Institute for Human Rights should be excluded from such supervision.

Enabling environment for civil society and human rights defenders

Questions about the protection of the rights of individuals and civil society organisations involved in climate and environmental issues were raised during the year, including in relation to protests using civil disobedience as a method (for example through blocking highways in rush hour traffic). In 2023, the environmental defenders have increasingly been prosecuted for disobedience of law enforcement and more severe crimes such as sabotage. Jurisprudence is uneven and the application of the law is not clear, hence there have been both dismissals and convictions. Several civil society organisations and legal experts have criticised the application of the rules on sabotage, arguing not only that it is disproportionate to the activities, but also that it should be restrictively applied as the constitutionally protected freedom of assembly should outweigh the disruption of traffic. Furthermore, 2023 has seen an increased polarized debate in media in relation to environmental defenders' peaceful civil obedience actions.

The Institute has been engaged in the issue of environmental defenders primarily through dialogues with the environmental defenders themselves who are involved in, or support, peaceful civil obedience. The Institute has also during the latter parts of 2023, had dialogues with the Special Rapporteur on Environmental defenders, Michel Forst, to share information of the developments in Sweden.

- NHRI’s recommendations to national and regional authorities
- Appoint a special investigator with the task to investigate how a new recruitment system for lay judges should be designed without the involvement of the political parties.
- Amend the legislation so that the Institute for Human Rights is excluded from the Chancellor of Justice’s (JK) supervisory duties.

Sweden 2024

Information from: Swedish Institute for Human Rights

Securitisation's impact on the rule of law and human rights

Gang-related violence is one of today's biggest social problems in Sweden. The violence affects not only the gang members, but also their families, friends and neighbours. It also affects many in the general public who have their everyday lives restricted through increased insecurity, and who, in the worst case, risk becoming direct victims of violence.

During the last ten-year period, the number of confirmed cases of fatal violence in which firearms were used has gradually increased, from 25 cases in 2013 to 63 cases in 2022. In 2023, 53 persons were killed in shootings and 149 explosions took place around the country. That is on average one fatal shooting per week and explosions almost every second day.

The Institute is very concerned with the gang-related violence in Sweden. It is crucial that the government takes relevant measures to increase security in society and stops the violence. In this work, however, it is of utmost importance that the measures taken adhere to Sweden’s human rights obligations as regulated in the Swedish constitutional laws and the international conventions that Sweden has ratified.

During the year the Institute expressed concern with a number of individual legal proposals (as explained further below). However, even if the Institute has been critical towards several individual proposals, it is the general trend and

the effects of the proposals combined that is overall worrisome. There is a risk that the new proposed legislation combined will have huge negative implications on Sweden's human rights track record, rule of law and the democratic society in general. The Institute is concerned with the high legislative pace which often results in that inquiry reports often fail to adequately carry out proper human rights impact assessments. Below are a few examples of legislative proposals put forward by the government during the year aimed at increasing security in different ways in Sweden (note that the list is not exhaustive):

Expanded opportunities to use coercive preventive measures

In 2023, new legislation was introduced allowing for preventive surveillance by the police outside of criminal investigations. This was made possible by expanding the legislation allowing for such surveillance for prevention of crimes falling under the remit of the Swedish Security Service, such as terrorist offences and espionage. Since 1 October 2023 it is also possible for the police to get a permit to conduct preventive surveillance when there is a real risk of criminal activities being conducted within an organization or a group of persons. The criminal activities must involve serious crimes, such as murder, abduction and serious drug offences. In its referral response the Institute questioned whether the measures are necessary and proportionate to the restriction of personal integrity that the measures entail, and that the cumulative effect on crime prevention measures ought to be evaluated and reviewed before new measures are being introduced. The Institute fears that some of these measures may have different impact on individuals depending on e.g. their age, place of living or origin, and that the risks of new tools put in place with a view to combat the current wave of organized crime and gang-related violence being made permanent. The Institute questioned whether the safeguards for the measure are effective. One such safeguard is the involvement of public legal representatives when deciding on permission to use secret surveillance measures. These public legal representatives are not representing the suspect per se but supposed to be a safeguard against unwarranted intrusions into his or her personal integrity. However, figures show that appeals from the public legal representatives on the use of covert surveillance measures are almost non-existent.

Law on preventive stay-bans

With the aim of increasing safety and reducing crime, it is proposed that it should be possible to limit the right of individuals to visit certain areas of society, even without them having been sentenced to a penalty for a crime. In its referral response the Institute advised against the proposal since it was of the opinion that the proposed law would risk violating in particular the freedom of movement. The proposal meant that an individual, that was not even suspected of having committed a crime, could be banned to visit a certain area

(including where he/she lived or worked) for up to six months by a decision of a prosecutor, i.e. without a court decision.

A new act regulating when witnesses can be examined anonymously

An inquiry was carried out to assess the circumstances and procedures in which it should be possible for a witness to testify anonymously. In its referral response the Institute advised against the proposal since it was of the opinion that an application of the law in accordance with the intention of the legislator and the case-law of the European Court of Human Rights, is unlikely to lead to the intended results, namely, to reverse the trend with the increased gang violence and break the culture of silence. On the contrary, the Institute concluded that there could be a risk that the proposed legislation would make it more difficult to get individuals to testify since numerous witnesses might request to be anonymous as a pre-condition to testify. The Institute also pointed out problematic issues with the proposed law in relation to for example general fair trial rights principles, the principle of equality of arms and the right to have adequate time for the preparation of defence.

New regulation introducing stop-and-search zones

An inquiry was commissioned to assess and propose how a system with stop-and-search zones (security zones) could be introduced in Sweden. The Institute advised against the proposal for several reasons. Firstly, the consultation period for the proposal was extremely short and took place over the Christmas break which limited the opportunity for many important actors to carry out an in-depth analysis of the proposal and submit referral responses. The Institute highlighted the importance of sufficient time for the consultation process, in particular in relation to proposals that concern fundamental human rights. The Institute was furthermore of the opinion that new regulation could not be considered to be necessary in a democratic society since it was doubtful how effective the regulation would be to decrease the gang violence. Further, the Institute was also of the opinion that in case the regulation was introduced it should be the courts who decide on introducing stop-and-search zones (and not the police) and that there should be a geographically limited maximum area defined in the law. The Institute finally highlighted the risk of discrimination when the law would be applied since the police could stop-and-search individuals in the zones that they thought were part of a criminal gang based on for example their clothes or their general behaviour.

Another area that is relevant for review in relation to securitisation and rule of law is initiatives taken to counter terrorism. The Institute notes:

Terrorism Offences Act

The Government's Bill 2022/23:73 concerning special criminal provisions for participation in a terrorist organisation entered into force in June 2023. In July

2023, several UN special rapporteurs wrote a letter to the Government of Sweden questioning the changes in the Terrorism Offences act concerning the introduction of special criminal provisions for participation in a terrorist organization. The rapporteurs held that the legislation is overly broad and may have negative and disproportionate impacts on the exercise of freedom of opinion and expression, freedom of peaceful assembly and association, as well as the right to privacy. They asked the Government to review and reconsider key aspects of the law to ensure that it complies with Sweden's international human rights law obligations. In its response of 26 July 2023, the Government argued that the provisions are compatible with both the Swedish constitutional provisions safeguarding these rights as well as the European Convention on Human Rights.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

During the year the Institute:

- Submitted several referral responses to proposed legislation for example in relation to: 1) expanded opportunities to use coercive preventive measures, 2) law on preventive stay-bans, 3) a new act regulating when witnesses can be examined anonymously and 4) new regulation introducing stop-and-search zones
- Issued press-releases about some of its referral responses and were invited to comment in media, including on both state television and radio.
- Published a longer article on its website regarding human rights and the gang-violence highlighting different human rights aspects of the issue.
- Highlighted the importance of adherence to human rights in times of crises at the EU High-level Conference on Institutional Protection of Fundamental Rights in Times of Crises, in Lund, Sweden 20-21 April.

NHRI's recommendations to national and regional authorities

- Introduce clear rules that legislative inquiries must include impact analyses on how proposals relate to Sweden's human rights obligations.
- In its important work to increase security in society and stop the gang-related violence, the government must ensure that proposed measures comply with Sweden's human rights obligations as regulated in the Swedish constitutional laws and the international conventions that

Sweden has ratified.

Sweden 2024

Information from: Swedish Institute for Human Rights

Implementation of European Courts' judgments

On 7 June 2023, the Committee of Ministers who supervises the execution of final judgments of the European Court of Human Rights (European Court) declared that Sweden had executed the judgment of the European Court in the case Arlewin against Sweden dated 1 June 2016 (application number 22302/10).

In May 2021, the European Court of Human Rights delivered its judgement in the case of Centrum för Rättvisa vs Sweden (application number 35252/08). The case concerned the Swedish legislation on bulk interception and its compatibility with article 8 of the European Convention on Human Rights. The European Court found a violation of article 8 primarily due to a lack of sufficient so called "end-to-end" safeguards that would provide effective guarantees against the risk of abuse. In essence, the European Court found shortcomings in relation to three areas of Swedish legislation, 1) absence of rules on destroying intercepted material that does not contain personal data, 2) absence of a clear requirement in the bulk interception legislation to consider the privacy interest of individuals before deciding to transmit intelligence material to foreign partners and 3) the absence of an effective ex post facto review. In 2022, the Government commissioned an inquiry to review the Swedish legislation on bulk interception and as a part of this, suggest legislative amendments to ensure implementation of the judgement in the European Court of Human Rights. As a result of the inquiry an interim report was presented in 2023 primarily focusing on the European Court case and the three identified shortcomings.

NHRI's actions to support the implementation of European Courts' judgments

Following the interim report presented by the Government-commissioned inquiry in 2023, the Institute, as one of the assigned referral bodies, provided comments. The two main concerns raised by the Institute concerned the process around communicating data to other governments and international organisations, and the ex post facto review.

In terms of transferring data abroad, the Institute supported the suggested inclusion of a proportionality assessment where personal integrity is weighed against the purpose of the transmission before transferring it to a foreign recipient but felt that there were insufficient safeguards in place to ensure a minimum level of protection of personal data on the side of the foreign recipient.

In terms of the ex post facto review, the inquiry proposed that an independent decision-making body would be placed under the existing Swedish Foreign Intelligence Inspectorate but at the same time being independent from it. The Institute rejected this suggestion questioning its independence. Lastly, and with the aim of protecting individual interests and contributing to addressing misconduct, the Institute suggested the inclusion of a security clearance lawyer that would take part in the ex post facto review.

Sweden 2024

Information from: Swedish Institute for Human Rights

Other challenges to the rule of law and human rights

For several years the criminal policy in Sweden has taken a more repressive direction, with tougher and extended punishments and increased powers for law enforcement agencies. 2023 further boosted this development and basic rule of law principles were challenged. For example, several proposals for legislation focused on restricting fundamental rights and freedoms of non-convicted individuals as a preventive measure, for example expanded opportunities to use coercive preventive measures, law on preventive stay-bans and the introduction of stop-and-search zones.

A consequence of the increasingly repressive direction and harder penalties is an increase in the number of people incarcerated. It should be noted that the Prison Service is already flagging an unsustainable situation and the situation will increase the risk that inmates' rights are not respected. In addition, rehabilitation and reintegration into society after serving a sentence will be more difficult. The Correctional Service is planning a huge expansion, from today's 9,000 prison and detention places to 27,000 within ten years.

As mentioned above, 2023 was characterized by a high pace of legislation, especially in criminal policy - despite the fact that it concerns complex legislation that could potentially be in conflict with Sweden's international commitments. It is important that such legislation is carefully investigated and

considered, which requires time and resources.

Finally, and as also noted above, even though many proposals should be criticized from a human rights perspective, it is not necessarily the individual proposals or statements that is the major problem. It is the overall trend and all the proposals combined that could pose risks to the foundation of the Swedish democracy and principles of rule of law by more substantively limiting the individual's human rights.

The legal protection against discrimination in several areas including the police, courts and many public agencies remains weak. An inquiry has proposed some positive changes to strengthen the protection against discrimination in the entirety of public sector to create a protection as wide as possible. The inquiry has this far, however, not led to legislative or other changes. The institute notes that the International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement in their report after their visit to Sweden recommends “the amendment of the Anti-Discrimination Act so that it fully applies to the conduct of State agents, including law enforcement and officials in the criminal justice system as a whole.”

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