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2020 Rule of Law Report The rule of law situation in the European Union

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ABSTRACT

The Swedish justice system is characterised by a high level of perceived judicial independence. To further foster judicial independence, Sweden has, in a cross-party inquiry, launched a parliamentary process to examine certain elements of the constitutional framework relating to the judiciary. Additionally, a recent amendment to the Code of Judicial Procedure has codified the rules that govern the allocation of cases. The Government launched a legislative initiative to address challenges relating to the digitalisation of the justice system. In particular, the possibility to complete certain steps of the judicial procedure online is partially available, both as concerns submitting a case and transmitting summons.

According to surveys, Sweden is perceived as one of the least corrupt countries in the EU and the world. The Penal Code criminalises most forms of public and private corruption. While there is no codified comprehensive anti-corruption strategy in place, the Government has announced its initiative to develop a National Action Plan on anti-corruption. The public institutions have built a reputation for transparent administration and a reliable and functional corruption prevention framework. Lobbying is not regulated by law. A broad right to information is a core element of the Swedish approach to corruption prevention and public officials are entitled to disclose information to the media. Measures are in place to ensure whistle-blower protection and a review is ongoing to assess the need for amendments in view of the EU Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. Foreign bribery remains an area of risk.

Sweden has a long regulatory tradition of media freedom and pluralism. Its legal safeguards concerning media freedom and pluralism stem from both constitutional and legislative framework and appear to be fully implemented in practice. The Swedish media regulator possesses strong guarantees of its independence, enshrined in the constitutional provisions. No major issues are reported in the area of media ownership transparency, despite the fact that there are no specific rules for media companies. Sweden also proves to have a robust system concerning journalists' protection. The conditions in which Swedish journalists operate are estimated as one of the most favourable in the world. Nevertheless, some physical and online threats to journalists were reported in 2020.

A particular characteristic of the system of checks and balances is the inclusive and structured process for preparing legislation. This process is being used for the above-mentioned examination of the constitutional framework relating to the judiciary. In this process, a reform of the procedure for amending the constitution will also be considered as a means to enhance the protection of the basic structures of the democratic system. Several independent authorities play a role in safeguarding fundamental rights, and a reform process to extend the mandate of the National Human Rights Institution is ongoing. Furthermore, the Government has implemented specific instruments for dialogue with civil society.

I. JUSTICE SYSTEM

The Swedish justice system has two branches: the general courts, consisting of 48 district courts, six courts of appeal and the Supreme Court; and the general administrative courts with twelve administrative courts, four administrative courts of appeal and the Supreme Administrative Court. There are also two special courts¹. The National Courts Administration, an agency operating under the Ministry of Justice, is responsible for the overall management of the Courts, including allocation of resources, staffing levels and equipment. The independent Judges' Proposal Board² prepares proposals for all judicial appointments³, based on which judges are appointed by the Government⁴. The Swedish Prosecution Service⁵ is independent and separate from the Government. The Swedish Bar Association is an independent and self-governing association established by law.⁶

Independence

The level of perceived independence of the judiciary is consistently very high. Overall, 80% of both the general public and companies consider that the independence of the courts and judges in Sweden is either 'very good' or 'fairly good'⁷. This high level of perceived judicial independence has been stable overall, and has slightly increased for the general public, since 2016.

A reform process to further strengthen judicial independence has been initiated. A Commission of Inquiry⁸ on 'Strengthening the protection of democracy and the independence of the judiciary' was set up by the Government in February 2020, following a request by the Parliament from 2018. The cross-party inquiry is chaired by the President of the Supreme Court and has a mandate to examine several aspects of the Swedish framework for judicial independence, in order to bring forward proposals for legislative and constitutional amendments⁹. The committee will examine whether the number and retirement age of Supreme Court Judges and Supreme Administrative Court Judges should be regulated in the

¹ The Labour Court and the Defence Intelligence Court. For a description of the judicial structure, see CEPEJ (2020), Study on the functioning of judicial systems in the EU Member States.

² The Judges' Proposal Board is composed of nine members: five current or former judges proposed by the courts, two law graduates working outside the court system (one lawyer proposed by the Bar Association, the other proposed by the Swedish Association of Local Authorities and regions and the Swedish Agency for Government Employers) and two representatives of the public. The members of the public are appointed by the Parliament (and are usually members of Parliament), while the seven other members are appointed by the Government.

³ The Judges' Proposal Board, following an assessment of the applicants' qualifications, submits a motivated proposal (ranked list, in general three candidates) to the government, which appoints the judge. If the government intends to select a candidate not included in the proposal of the Judges' Proposal Board, the Board is to have an opportunity to submit an opinion on the candidate. In practice, since 2011, when the current system came into force, the government has always followed the proposal.

⁴ Act on the Appointment of Permanent Judges (2010:1390).

⁵ Instrument of Government, Chapter 12, Section 2.

⁶ Code of Judicial Procedure, Chapter 8.

⁷ Figures 44 and 46, 2020 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁸ Setting up a Commission of Inquiry is often part of the legislative process in Sweden; see section IV.

⁹ The commission will also examine the way constitutional amendments are adopted (see section IV) and possible restrictions to the freedom of association for terrorist associations. Swedish Government, Committee terms: Strengthening the protection of democracy and the independence of the judiciary.

Constitution¹⁰. The mandate of the commission sets out that this reflection takes place *inter alia* in view of the recent case law of the Court of Justice¹¹. According to the mandate, the objective would be to protect judges against possible interference due to a lowering of the retirement age by ordinary law. The question of regulating the number of judges in both Supreme Courts will be assessed in view of the legal academic debate in Sweden, in the context of which it has been suggested that an increase or decrease in the number of judges could be used as a means of political influence. In addition, the commission will examine whether the independence of the National Courts Administration should be strengthened¹². If the commission finds that such a strengthening is warranted, it is within its mandate to propose the establishment of a Council for the Judiciary or of a Board of the National Courts Administration¹³, composed mainly of judges, which would be consistent with Council of Europe recommendations¹⁴. The work of the commission is at an early stage and will include a review of existing systems in other EU Member States. Its results will be presented in February 2023. The inclusive method for preparing such a reform, including the cross-party process and the attention given to recent case law of the Court of Justice are particularly noteworthy.

The rules for the allocation of cases have been codified. The amendment to the Code of Judicial Procedure stipulates that the allocation of cases must be based on objective criteria established by the court in advance and must not be capable of affecting the outcome or progression of the case¹⁵. This codifies the already existing practice and ensures that the standards for allocation of cases are set out in law, which is consistent with Council of Europe recommendations¹⁶. The concrete details for the allocation of cases continue to be specified in rules of procedure or similar standards of the courts¹⁷.

Quality

The National Courts Administration has requested additional resources, to cope with an increased caseload. Following an increase in the resources of both the police and the prosecution service to strengthen their investigative capacities¹⁸, there has been a significant rise in the number of incoming criminal cases in first instance courts. To handle this increased caseload, the National Courts Administration has requested to increase the courts' budget for 2021-2023¹⁹ in order to cover additional court personnel, training and reforms aiming at improving the efficiency of courts²⁰.

¹⁰ Currently the general rules for retirement under the employment protection act apply to judges.

¹¹ Judgment of the Court of Justice of 24 June 2019, *Commission vs Poland*, C-619/18. See p. 7 of the committee terms.

¹² The commission of inquiry will also address whether it should be possible for the Supreme Court and the Supreme Administrative court to meet in a special joint forum for certain cases.

¹³ The National Courts Administration is currently led by a Director-General appointed by the Government.

¹⁴ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 26-27.

¹⁵ Code of Judicial Procedure, Chapter 4, Section 11a.

¹⁶ The Council of Europe recommends that the allocation of cases within a court follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. See in particular Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 24; CCJE Opinion N19 (2016) – The Role of Court Presidents; ENCJ Minimum Judicial Standards IV – Allocation of Cases: ENCJ Report 2013-2014.

¹⁷ Contribution from the Swedish Supreme Court for the 2020 Rule of Law Report, p. 5.

¹⁸ In 2018-19, about 90 new posts were created in the Prosecution Service, including 40 new prosecutors.

¹⁹ Around EUR 60 million (SEK 628 million) were requested for the courts, with additional requests for legal aid and migration courts.

²⁰ National Courts Administration, More and more cases before the country's courts.

Efforts are ongoing to address challenges concerning the use of digital communication in the Swedish judiciary. The possibility to complete certain steps of the judicial procedure online remains only partially available in Sweden, both as concerns submitting a case and transmitting summons, and no possibility exists to monitor stages of a proceeding online²¹. There is also no online access to first instance court judgments²². To enable and facilitate digital communication in court proceedings and improve the service to citizens, the Government has proposed a bill, first presented in August 2019, which aims inter alia to make it possible to submit documents to initiate civil and certain other claims online, submit a power of attorney in digital form, and remove unnecessary requirements for hard copies²³. The proposal was submitted to Parliament in June 2020. If adopted, most provisions are foreseen to enter into force in January 2021.

Efficiency

The Swedish justice system is not facing particular challenges regarding efficiency, despite a particularly high number of incoming administrative cases. The Swedish system performs at an average level regarding the disposition time for both litigious civil and commercial cases as well as administrative cases. The number of incoming administrative cases is particularly high and the number of pending administrative cases has continued to increase slightly since 2016. The clearance rate for administrative cases has in result dropped in 2016 and 2017, but shows a positive trend in 2018, moving back closer to 100%, with the average time to resolve administrative cases still remaining relatively low.²⁴ As there was no general lockdown, courts have mostly continued to operate normally in the COVID-19 pandemic, with some cancellations and postponements of hearings for public health reasons²⁵.

II. ANTI-CORRUPTION FRAMEWORK

Sweden has the legislative and institutional framework to combat and prevent corruption broadly in place. While Sweden has no comprehensive anti-corruption strategy in place codified in writing, the Government envisages to develop a National Action Plan on anti-corruption. The preventive and repressive dimensions of corruption are dealt with through several legal and other regulatory provisions, through specific rules concerning government agencies, as well as through law enforcement and judicial authorities. The National Anti-Corruption Unit is the specialised prosecution agency within the Prosecution responsible for all criminal investigations related to corruption and foreign bribery. The National Anti-Corruption Police Unit, as part of the Swedish Police Authority, has tasks to both investigate corruption crimes and ensure a preventive role by supporting different public authorities in drafting anti-corruption policies. Further agencies such as the National Audit Office, the National Competition Authority, the National Council for Crime Prevention and the Financial police (the Swedish FIU and a part of the Police Authority) are in charge with the prevention, forensic and auditing competence and investigation of corruption.

Sweden scores 85/100 in the Transparency International Corruption Perception Index and ranks 3rd in the European Union and 4th globally. The 2020 Special Eurobarometer on

²¹ Figure 27, 2020 EU Justice Scoreboard.

²² Figure 28, 2020 EU Justice Scoreboard.

²³ Swedish government, Digital communication in court proceedings.

²⁴ Figures 2-15, 2020 EU Justice Scoreboard.

²⁵ E.g. National Courts Administration, Statistics due to coronavirus.

Corruption shows that 40% of respondents perceive corruption as widespread (EU average: 71%) and 9% of people feel personally affected by corruption in their daily lives (EU average: 26%)²⁶. As regards businesses, 30% of companies consider corruption to be widespread (EU average: 63%) and 12% of companies consider that corruption is a problem when doing business (EU average: 37%). 55% of people find that there are enough successful prosecutions to deter people from corrupt practices (EU average: 36%) while 48% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average: 31%).²⁷

Sweden has the legal framework to criminalise corruption broadly in place. The Swedish Criminal Code²⁸ regulates criminal offences such as receiving and giving of a bribe, trading in influence and negligent financing of bribery. The penalty for taking or giving of a bribe can be either fines or imprisonment for a maximum of two years (statute of limitation of five years). The penalty for gross giving/taking of a bribe ranges from six months to six years in prison (statute of limitation of ten years). Moreover, criminal offences such as official misconduct or breach of the duty of confidentiality are regulated in the Criminal Code. In addition, the Public Employment Act adopted in 1994 provides for disciplinary liability for neglect of duty in the form of warnings or wage reduction. The law also prohibits employees' involvement in activities that may adversely affect confidence in their impartiality in their work or that may harm the reputation of the authority.²⁹

While there is no comprehensively codified national anticorruption strategy in place, the Government has announced its initiative to develop a National Action Plan on anti-corruption. The Action Plan is set to be presented at the end of 2020 and discussions with relevant authorities are at an early stage. The intention is to review existing preventive work and identify needs for new measures against corruption, for example by enabling more effective and efficient coordination and collaboration between key authorities.

The responsibility to fight and prevent corruption is distributed across several authorities. The Agency for Public Management manages a national network against corruption since 2017 and conducts research and policy coordination, supporting good governance and anti-corruption.³⁰ The National Audit Office, whose competences include forensic and auditing expertise, covers both financial and non-financial controls within public sector organisations. The National Council for Crime Prevention functions as the Government's body of expertise within the judicial system³¹. The Swedish Association of Local Authorities and Regions (SALAR)³² has coordinated a series of workshops on corruption prevention. In addition, the Financial Police serves as Sweden's Financial Intelligence Unit (FIU) and takes part in investigations within the Police Authority.

²⁶ Eurobarometer 502 (2020).

²⁷ Eurobarometer 482 (2019).

²⁸ Chapter 10, Section 5c of the Criminal Code <https://www.government.se/press-releases/2020/01/an-up-to-date-english-translation-of-the-swedish-criminal-code/>.

²⁹ If a bribery is committed in the exercise of the business activities of a company a corporate fine ranging from SEK 5000 to SEK 500 000 000 can be imposed on the company.

³⁰ For more information see: <http://www.statskontoret.se/var-verksamhet/myndighetsnatverket-mot-korruption/>. The Agency organises 4 - 6 network meetings per year. During 2019, a total of 150 public authorities participated in meetings arranged by the network.

³¹ BRÅ experts are currently taking part in a government working group on the culture of silence in Swedish organisations, notably the use and treatment of e.g. whistleblowers.

³² SALAR functions as an employers' organisation (including all municipalities and regions) and as an organisation that represents and advocates for local government.

According to the Swedish National Council for Crime Prevention (BRÅ) in 2018³³, 297 cases of taking bribes and 143 cases of offering bribes were reported. Foreign bribery remains an area of risk since Sweden has one of the highest number of multi-national corporations per capita and the prosecution of foreign bribery is limited by the dual criminality requirement and the corporate liability requirement³⁴.

The National Anti-Corruption Unit (NACP) within the Prosecution Authority is responsible for all criminal investigations related to corruption and foreign bribery. Around ten prosecutors and two accountants work at the unit, which focuses solely on anti-corruption cases. The Agency has faced challenges in terms of available analytical capacity and resources in view of the number of cases investigated and prosecuted, with a risk of not being able to process a case within the statute of limitation. The National Anti-Corruption Police Unit (NACPU) was created with the aim of bringing together national competences for investigating corruption crimes in one place and consists of 27 staff, including 14 police, 6 civil investigators and 4 forensic accountants. In addition to investigating corruption crimes, it also has a preventive role supporting public agencies in drafting anti-corruption policies. The NACPU also gives trainings to different authorities and organisations in Sweden on anti-corruption.

Some categories of officials as well as members of Parliament and Ministers are required to submit asset declarations. The Act (2018:1625) on the obligation for certain public officials to report holdings of financial instruments contains provisions on the obligation for ministers and certain officials in public authorities, municipalities and regions to report holdings of financial instruments. Ministers must report their holdings of financial instruments to the Government Offices. Members of a public authority's management are also obliged to report in case the authority holds insider information. The Government decides which public authorities are subject to such an obligation to report. Such authorities decide which of its officials outside the management will have to report depending on their access to insider information. Municipalities and regions also decide which of their public authorities should be subject to the reporting obligation. Members of the Parliament are required to declare certain economic assets within four weeks of the first meeting in the Riksdag after elections. The information contained in members of Parliaments' declarations is maintained in a public register kept by the Riksdag Administration. The data is removed from the register after the end of the full parliamentary term. The principle of public access to official documents also applies, which means that members of Parliaments' declarations must also be made available if requested.

Measures are in place to ensure whistle-blower protection and encourage reporting of corruption. Under the Whistleblowing Act 2016:749, an employer may not subject an employee or a temporary agency worker to reprisals by reason of him or her blowing the whistle on serious irregularities in the employer's operations³⁵. The protection has several components: the freedom to communicate information, to procure information and intelligence, the right to anonymity. At the end of May 2019, the Government launched a

³³ Brå, Handled crimes.

³⁴ In this sense see also OECD (2017), Sweden's Laws on Corporate Responsibility for International Bribery need Urgent Reform.

³⁵ Furthermore, according to the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, everyone has the right, with impunity, to provide information on any subject for publication.

review to prepare implementation of the EU Whistle-blowing Directive and assess if any amendments of Swedish law will be required in relation to the Directive.³⁶

Rules on ‘revolving doors’ have been introduced for high-level officials, while lobbying provision remains unregulated. The regulation on ‘revolving doors’ was adopted in 2018³⁷, setting restrictions on ministers, members of the cabinet and department secretaries that move to employment and assignments in organizations other than Government/public sector. This regulation is applicable to transitions to non-state activities, including when ministers and state secretaries intend to take up a new assignment or employment in non-state activities, or set up a business. “Non-state activities” encompass all activities where the state is not the responsible authority. The regulation also applies to companies that are completely or partially state-owned. The special review body, the Committee for Review of the Transitional Restrictions of the cabinet and department secretaries examines transfers to all activities for which the Government is not the employer. As regards lobbying, there is no specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists. GRECO has noted the lack of developed rules to regulate the contact with lobbyists along the trend of former public officials becoming lobbyists.³⁸

A broad right to public access to information is a core element of the Swedish approach to corruption prevention. Public officials are entitled to disclose information to the media, the public is entitled to attend the meetings of decision making bodies (Parliament, county council assemblies) and court hearings. Restrictions to this principle are clearly set out in law to safeguard a limited number of important public and private interests³⁹.

III. MEDIA PLURALISM

The Swedish legal framework concerning media pluralism is based on the safeguards stemming both from the constitutional framework⁴⁰ and from secondary law. The Constitution guarantees freedom of expression in the Fundamental Law on Freedom of Expression and the Freedom of the Press Act. With regard to the media regulator - the Swedish Press and Broadcasting Authority (*Myndigheten för press, radio och tv*), its status and competences are regulated both by the Constitution⁴¹ and by the Radio and Television Act.⁴² The Swedish legal system does not envisage any sector specific laws concerning the transparency of media ownership.⁴³

³⁶ According to the authorities, certain provisions of the EU Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law, lack any equivalent in Swedish law, for instance regarding the obligation of companies of a certain size to establish internal channels for reporting violations. Furthermore, the Directive protects a broader group of people than the Whistleblowing Act. (Input from Sweden for the 2020 Rule of Law Report.).

³⁷ Regeringen, Karens införs för statsråd och statssekreterare. <https://www.regeringen.se/pressmeddelanden/2018/02/karens-infors-for-statsrad-och-statssekreterare/>.

³⁸ GRECO Fifth Evaluation Round – Evaluation Report.

³⁹ Freedom of the Press Act.

⁴⁰ The Swedish Constitution consists of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and, especially with regard to the Swedish Broadcasting Commission, the Fundamental Law on Freedom of Expression.

⁴¹ Relevant parts of the Constitution: the Instrument of Government and the Fundamental Law on Freedom of Expression

⁴² Radio and Television Act.

⁴³ Sweden ranks on the 4th position in the 2020 Reporters Without Borders World Press Freedom Index.

Sweden has in place effective regulatory safeguards for the independence of the media regulator. The Swedish Press and Broadcasting Authority has a status of an independent administrative authority⁴⁴. The Authority has a statutory obligation to support freedom of expression, diversity, independence and accessibility. Within the authority, there are two independent decision-making bodies: the Swedish Broadcasting Commission and the Media Subsidies Council. The latest edition of the Media Pluralism Monitor (MPM 2020)⁴⁵, has reported a very low risk with regard to the independence and effectiveness of the Swedish media regulatory authority. In 2018, an inquiry was launched to examine Sweden's implementation of the revised Audio-visual Media Services Directive (AVMSD), including the provisions for the independence and effectiveness of national media regulators.⁴⁶ The resulting report⁴⁷ was presented to the Government in August 2019 with the conclusion that the Swedish governance model provides a high level of independence for all Swedish authorities, including the media authority. According to the report and as confirmed by the representatives of the Swedish Press and Broadcasting Authority, the most important safeguard stems from Chapter 12, Article 2 of the Instrument of Government, which establishes a general principle of the independence of Swedish administrative authorities.⁴⁸ Sweden is currently in the process of transposing the revised AVMSD. This might include further legislative changes aimed at strengthening the independence of the media regulator, in particular in the context of the appointment of its members.⁴⁹ The representatives of the Swedish Press and Broadcasting Authority also indicated that they expect an increased budget attribution.⁵⁰

Sweden has a well-established self-regulatory framework in the media sector. The system is entirely voluntary and financed by four press organisations and four broadcasting companies⁵¹. The Media Ombudsman, in charge of handling complaints on the editorial content of newspapers, magazines, broadcast media and their websites and social media, is appointed by a committee consisting of the Chief Parliamentary Ombudsman, the chairman of the Swedish Bar Association and the chairman of the National Press Club. The Media Ombudsman also ensures the compliance with the self-regulatory Code of Ethics for Press, Radio and Television.⁵² Appeals against the decisions of the Media Ombudsman are examined by the Media Council, which is composed of four judges, 16 representatives of the media organisations participating in the self-regulatory scheme and 12 representatives of the general public.

⁴⁴ Set out in the Instrument of Government, the Fundamental Law on Freedom of Expression and the Radio and Television Act.

⁴⁵ 2020 Media Pluralism Monitor.

⁴⁶ It should be recalled that the revised Audio-visual Media Services Directive (AVMSD) sets out a range of specific guarantees for the independence and effectiveness of national media regulators.

⁴⁷ 2019 report "A modernized radio and television law - implementation of amendments to the AV Directive"

⁴⁸ According to its Article Art. 2. "no public authority, including the Riksdag (the Parliament), or decision-making body of any local authority, may determine how an administrative authority shall decide in a particular case relating to the exercise of public authority vis-à-vis an individual or a local authority, or relating to the application of law.

⁴⁹ Contribution from Sweden for the 2020 Rule of Law Report, points 28-29.

⁵⁰ Information received during the virtual country visit to Sweden in the context of the preparation of the 2020 Rule of Law Report

⁵¹ This includes the Swedish Media Publishers' Association, the Magazine Publishers' Association, the Swedish Union of Journalists, the National Press Club, Swedish Radio (SR), Swedish Television (SVT), Swedish Educational Broadcasting Company (UR) and TV4.

⁵² Available at: <https://medieombudsmannen.se/about-the-media-ombudsman/code-of-ethics-for-press-radio-and-television-in-sweden/#>.

With regard to the transparency of media ownership, the Swedish legal system does not provide for any media-specific legislation. As reported by the MPM 2020⁵³, all companies are required to comply with the general framework based on the Swedish Law of Financial Relations (the Transparency Act) which requires companies to be transparent about ownership structures. They should also comply with the Competition Act, which regulates the ownership concentration. Under this regime, all Swedish companies are required to inform the Swedish Competition Authority about their ownership structure and provide annual reports, which also cover information on ownership. Such reports should be publicly available (including publication of their websites). Due to the lack of a media specific framework, the MPM 2020 reports however medium risk for the transparency of media ownership. At the same time, according to the representatives of the Swedish Press and Broadcasting Authority⁵⁴ there have not been any concerns related to the identification of owners of media services.⁵⁵

Sweden has a robust framework for the protection and activities of journalists. The conditions in which Swedish journalists operate are estimated as one of the most favourable in the world. The MPM 2020 reported a low risk concerning editorial autonomy in Sweden.⁵⁶ In this regard, the Freedom of the Press Act regulates autonomy in appointing and dismissing editors-in-chief. Additionally, a large number of media and journalist organisations have developed self-regulatory initiatives related to the editorial independence. With regard to defamation, imprisonment is among the envisaged sanctions for defamation and insult committed through print and audio-visual media, according to the Freedom of the Press Act (Chapter 7) and the Fundamental Law on Freedom of Expression (Chapter 5) read in conjunction with the Swedish Criminal Code.⁵⁷ However, as reported by the International Press Institute,⁵⁸ criminal prosecutions for defamation involving the media are rare in Sweden, due to extensive requirements for conducting such cases envisaged in the above mentioned acts. Still, some sources, including Reporters without Borders⁵⁹ and the Swedish National Council for Crime Prevention (Brå)⁶⁰, reported that some journalists experience threats as a result of their professional activity. The number of journalists exposed to abusive or derogatory comments online has decreased from 80% in 2013 to about 70% in 2019.⁶¹ In 2019, the Council of Europe Platform to promote the protection of journalism and safety of journalists⁶² did not report any alerts concerning Sweden. In 2020 three alerts, concerning both the cases of physical and online attacks on journalists, were published on the platform.⁶³ The Swedish Police Authority has launched specific actions aiming to address the

⁵³ 2020 Media Pluralism Monitor.

⁵⁴ Information received during the virtual country visit to Sweden in the context of the preparation of the 2020 Rule of Law Report

⁵⁵ To be noted that the revised AVMSD encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners.

⁵⁶ 2020 Media Pluralism Monitor.

⁵⁷ Mapping of decriminalisation of defamation (2020).

⁵⁸ International Press Institute, Media Laws Database, available at: <http://legaldb.freemedia.at/legal-database/>.

⁵⁹ Reporters without borders, Sweden.

⁶⁰ Brå, Threats and violence.

⁶¹ JMG, Continued hatred and threats against Swedish journalists.

⁶² Council of Europe Platform to promote the protection of journalism and safety of journalists – Sweden.

⁶³ The reported cases concerned: the threats and hate speech on social media (including death threats) towards a cartoonist, following a publication of his satirical illustration, the death of the editor-in-chief of the online news magazine Balochistan Times (the initial autopsy was inconclusive and a possibility that the death was related to his professional activity cannot be excluded) and the attack on a blogger of Chechen origin, most likely related to his online activities.

fundamental rights and freedoms, including crimes against journalists. This includes setting up national contact points, additional staff to support victims of such crimes, and allocating additional funding⁶⁴ to better investigate crimes against democracy and hate crimes.⁶⁵ An inquiry chair⁶⁶, appointed by the Government in May 2020, is currently reviewing, among other matters, the criminal law protection for certain vital functions in society, including journalists. This process is expected to examine if any further legislative safeguards concerning freedom of speech should be considered.⁶⁷ In addition, journalists benefit from a robust framework for access to information. According to the MPM 2020,⁶⁸ the legal provisions concerning access to information and the restrictions on grounds of protection of privacy and confidentiality are clearly defined and stakeholders, such as the Swedish Media Ombudsman, considers that this right is fully respected and well implemented in practice.⁶⁹

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Sweden has a unicameral, parliamentary system of government, in which a Council of Legislation ensures ex-ante constitutional review, while courts can carry out an ex-post constitutional review in concrete cases. Legislative proposals can be submitted by Parliament or the Government, with the latter submitting the vast majority of proposals in practice. The Chancellor of Justice, the Parliamentary Ombudsmen and the Equality Ombudsman play an important role in the system of checks and balances.

The enactment of legislation is characterised by a particularly inclusive process. The process of preparation of laws starts with the inquiry stage, where the matter in question must first be analysed and evaluated, normally by officials from the responsible ministry, a commission of inquiry, operating independently of the Government, or an inquiry chair (one-person inquiry)⁷⁰. The inquiry draws up a draft legislative proposal. As required by the Constitution⁷¹, authorities concerned and stakeholders must have an opportunity to express an opinion, which happens through the so-called referral process, for a standard period of three months. While it is addressed to the authorities and stakeholders concerned, it is open to any other organisation or individual as well. The referred proposal and the opinions received are both published on the Government website. Based on the outcome of the inquiry and referral process, the Government prepares its draft bill. This process includes the preparation of an impact assessment, which for proposals with an impact on companies' working conditions or competitiveness needs to be submitted to the Swedish Better Regulation Council.⁷² The Commission of Inquiry on 'Strengthening the protection of democracy and the independence of the judiciary' is a good illustration of the importance of such an inclusive process for

⁶⁴ Around EUR 970,000 (SEK 10 million).

⁶⁵ Contribution from Sweden for the 2020 Rule of Law Report, points 33-36.

⁶⁶ Swedish Government, The government is holding talks with the media industry and the police about threats and hatred against journalists.

⁶⁷ In that respect, it should be recalled that, in line with European standards, a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear is recommended by the Council of Europe. CM/REC(2016)4 of the Committee of Ministers of the Council of Europe.

⁶⁸ Media Pluralism Monitor 2020.

⁶⁹ Information received during the virtual country visit to Sweden in the context of the preparation of the 2020 Rule of Law Report.

⁷⁰ Riksdag, Making Laws.

⁷¹ Instrument of Government, Chapter 7, Section 2.

⁷² A decision not to carry out an impact assessment needs to be justified, as set out in the Ordinance (2007:1244) on impact assessment in regulations. On consultation of the Better Regulation Council, see Ordinance (2011: 118) on authorities obtaining an opinion from the Swedish Regulatory Council.

sensitive matters such as the rule of law. It ensures the representation of different political parties and the judiciary, with the President of the Supreme Court as its chair. The timetable for the commission also avoids carrying out this process under tight deadlines, with its results being due in 2023.

The Council on Legislation is responsible for ex-ante constitutionality review of laws. Before they are submitted to Parliament, the Council on Legislation, composed of former and current judges of the Supreme Court and Supreme Administrative Court⁷³, examines legislative proposals by the Government and submits a non-binding opinion on the conformity of the proposal with the Constitution and the legal system as a whole, ensuring that the principles of rule of law are upheld⁷⁴. A committee of the *Riksdag* (Parliament) can also solicit an opinion by the Council on Legislation. While Sweden does not have a Constitutional Court, all courts can review the compatibility of laws with the Constitution or with superior statutes when adjudicating concrete cases and must disapply any incompatible provisions (this is called norm assessment). If a law was adopted in conflict with the opinion of the Council of Legislation, courts can take this into account in the context of the norm assessment⁷⁵.

Sweden is considering a reform of the procedure for amending its Constitution. Currently, constitutional amendments can be adopted by simple majority, but require two consecutive decisions by Parliament with a parliamentary election between them⁷⁶. In addition to the reform of the judiciary, the Commission of Inquiry on ‘Strengthening the protection of democracy and the independence of the judiciary’ will also examine a number of possible changes to the way constitutional amendments are adopted. According to the commission’s mandate, this is under consideration in light of recent developments in other countries showing the importance of robust protection of the basic structures of the democratic system⁷⁷. In particular, the Commission of inquiry will assess if a qualified majority should be required, whether there should be a requirement for a minimum number of members of the Parliament to take part in the decision, and if the elections held between the two decisions must be an ordinary election. The results of this part of the inquiry will also be presented in 2023.

Several independent authorities play a role in safeguarding fundamental rights. The Equality Ombudsman is the Swedish National Human Rights Institution (NHRI) and equality body, accredited with B-Status in 2011 by the Global Alliance of National Human Rights Institutions as regards its compliance with the UN Paris Principles, as its mandate is limited to equality matters and does not cover human rights more broadly⁷⁸. In 2018, the Government appointed an inquiry to prepare a proposal for the establishment of a NHRI with a full human rights mandate. The inquiry report was presented in 2019⁷⁹ and has undergone consultation; in its Government declaration in 2019, Sweden announced formally that a NHRI will be

⁷³ Members are usually appointed for one year in accordance with principles established by the courts.

⁷⁴ Exceptions can be made for legislation where an examination by the Council would lack significance or where it would delay the process in such a way that it would result in serious detriment.

⁷⁵ Contribution from the Swedish Supreme Court for the 2020 Rule of Law Report, p.15.

⁷⁶ Instrument of Government, Chapter 8, Section 14.

⁷⁷ Swedish Government, Committee terms: Strengthening the protection of democracy and the independence of the judiciary. pp. 2-5.

⁷⁸ Contribution by the European Network of National Human Rights Institutions for the 2020 Rule of Law Report, p. 215.

⁷⁹ Swedish Government, Proposal for a national institution for human rights in Sweden.

established⁸⁰. The European Network of National Human Rights Institutions (ENNHRI)⁸¹ has provided comments on the inquiry report, stressing the need to ensure sufficient safeguards for the independence and public accountability of the new institution. In addition, both the Parliamentary Ombudsmen (appointed by and acting on behalf of Parliament) and the Chancellor of Justice (appointed by and acting on behalf of the Government) supervise the application of laws and other regulations by public authorities, including courts and judges. Both institutions can initiate disciplinary procedures against higher public officials, including judges⁸², and can provide non-binding opinions on the handling of a matter by a public authority or a court (this concerns only the application of laws and procedures by a court or judge but not the substance of a court decision). In February 2020, the Parliament decided to appoint a parliamentary inquiry reviewing the constitutional status, remit and activities of the Parliamentary Ombudsmen, which is to be submitted in May 2022⁸³.

The Government has implemented specific instruments for dialogue with civil society. Sweden is considered as having an open civil society landscape⁸⁴. The Government has, since 2017, implemented a specific method for different forms of dialogue with civil society called ‘*sakråd*’ (thematic consultation forum)⁸⁵ and a national body for dialogue and consultation between the Government and civil society, established in 2018, provides a forum for structured cooperation and joint problem-solving⁸⁶.

⁸⁰ Swedish Government, Government declaration 10 September 2019, p.18.

⁸¹ European Network of National Human Rights Institutions, Regarding the consultation on the proposal for the establishment of a National Human Rights Institution in Sweden (Ds 2019:4).

⁸² Except for judges of the Supreme Courts, who are exempted from disciplinary liability but can be subject to legal proceedings regarding a criminal act committed in the performance of their appointment. For such proceedings, a separate system applies, which means that the matters are examined by the Supreme Courts after initiation by the Parliamentary Ombudsmen or the Chancellor of Justice.

⁸³ Riksdag, Inquiry on the review of the Parliamentary Ombudsmen (JO).

⁸⁴ Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

⁸⁵ Swedish Government, *Sakråd*.

⁸⁶ *Nationellt organ för dialog och samråd mellan regeringen och det civila samhället*.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).

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Virtual country visit to Sweden in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Sweden

The Commission services held virtual meetings in June 2020 with:

- Agency for Public Management
- Committee of Inquiry on Independence of Courts
- Council on Legislation
- Economic Crime Authority
- Ministry of Finance
- Ministry of Justice
- National Courts Administration
- Office of the Chancellor of Justice
- Office of the Prime Minister
- Press and Broadcasting Authority
- Press Ombudsman
- Prosecution Service
- Supreme Administrative Court
- Supreme Court
- Swedish Association of Judges
- Swedish Bar Association
- Swedish Journalists' Association
- Transparency International Sweden

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU