

45th European Presidents' Conference

Country Report

Swedish Bar Association

Vienna 24 February 2017

A selection of items to report from the previous year:

Legal developments

Terrorism

The Swedish Government has adopted a strategy against terrorism that will form the basis of Sweden's long-term work in this area, both nationally and internationally. The strategy contains proposals which can be criticized from a fundamental rights and freedoms perspective. Within the framework of the strategy, the Government has proposed new legislation criminalizing travels for the purpose of terror activities of different kinds (Government Bill 2015/16:78, *Ett särskilt straffansvar för resor i terrorismsyfte*). Furthermore, the Government has proposed new legislation on passport misuse, which according to the Swedish Bar among other things will have negative impact on the free movement of persons. Of great concern are furthermore the measures focusing on giving government agencies new tools for information gathering. The Government has tasked an inquiry committee with producing proposals for how the Swedish Prosecution Authority, the Swedish Security Service and the Swedish Police Authority can be given new tools for information gathering, e.g. by way of secret data interception. Furthermore, the Government wants to investigate the use of camera surveillance for buildings where there is a general threat and for particularly vulnerable places, which naturally would lead to negative effects from a personal privacy perspective. The Government has, however, also appointed an inquiry to consider how a greater degree of overall personal privacy protection can be brought together at one agency.

Data retention

When the Data Retention Directive (Directive 2006/24/EC) was declared invalid by the Court of Justice of the European Union in April 2014, the Swedish Government appointed an investigation to analyse the implemented Swedish law due to the Directive and its relation to EU-law. The conclusion by the investigation was that, although some improvements could be made, the Swedish regulation did not contradict EU-law. This conclusion was shown to be wrong, when the Court (C-203/15 of 21 December 2016) once again upheld its 2014 ruling and annulled the directive on retention of data. In its 2016 ruling the Court stressed that EU Members States may not impose a general obligation to retain data on providers of electronic communications services. A Swedish and a British court had asked the ECJ to clarify whether the respective national regulations on the retention of data corresponded to the European legal requirements. In its new ruling the ECJ answered this question by stating that national regulations which provide a general and indiscriminate storage of data are not in line with the EU law. A national regulation providing for the storage of traffic and location data, is to be regarded as serious interference in fundamental rights. Mem-

ber States must not maintain or re-adopt rules which are based on, or even go beyond, an EU act which has been annulled on grounds of its fundamental illegality. The Swedish Government will now further investigate the decision and need for new legislation.

Anti-Money Laundering

The 2015 Anti-Money Laundering Committee, a Governmental Committee for the implementation of the fourth anti money laundering directive (2015/849), with an expert participating from the Swedish Bar, has worked intensely during the year. The proposal for implementation was presented in February 2016 (*Ytterligare åtgärder mot penningtvätt och finansiering av terrorism – fjärde penningtvättsdirektivet – samordning – ny penningtvättslag – m.m.*, SOU 2016:8). Even though the Government not yet has returned with any legislative proposal for a new Act on the fight against money laundering and terror financing, it is clear that the mandatory administrative pecuniary sanctions will have a major impact on the future disciplinary regime of the Bar. According to the proposals of the Governmental Committee, the Disciplinary Committee of the Swedish Bar shall – if the lawyer has been sanctioned with a reminder or a warning (without or combined with a fine) and there are legal grounds to impose administrative pecuniary sanctions on the lawyer – leave the matter of sanctions before the Chancellor of Justice, who will decide if and how much administrative sanctions the lawyer will have to pay aside the disciplinary sanction decided by the Disciplinary Committee. Furthermore, a lawyer who has been imposed with administrative sanctions can appeal the decision to the Supreme Court. Today, only decisions of disbarment can be appealed (to the Supreme Court). A dissentient opinion has been delivered by the expert of the Swedish Bar. The Governmental Proposal for new legislation is expected in February 2017.

Migration

The Swedish Parliament has decided in 2016 to temporarily restrict the possibility of being granted a residence permit in Sweden. The new legislation also limits asylum seekers' possibilities of being reunited with their families. The new law, which entered into force on 20 July this year, means that a person who is in need of protection will be granted only a temporary residence permit. It will also mean maintenance and housing requirements for more people than previously. The law contains several important changes. A person who is assessed as being a refugee will be granted a residence permit that applies for three years and a person who is assessed as being eligible for subsidiary protection will be granted a permit for 13 months. If the person still has grounds for protection when their residence permit expires, they can be granted an extension of their residence permit in Sweden. If the person can support him/herself, they can be granted a permanent residence permit. Unaccompanied minors under the age of 18 years who are assessed as being in need of protection are not covered by the law if they applied for asylum at the latest on 24 November 2015. The restricted possibilities of being granted residence permits mean that only a husband, wife, cohabiting partner, registered partner or child under the age of 18 of the family member in Sweden has the possibility of family reunification. A residence permit may be refused if one of the spouses or cohabiting partners is under the age of 21 years. Exemptions from the age requirement can be made if they have common children, for instance. Another important change is to do with the possibility of being granted a residence permit in the case of persons who have met someone they want to live with in Sweden. Up until now Swedish citizens, EU citizens and persons who have had a permanent residence permit for more than four years have been exempted

from the maintenance requirement for themselves and their partner and the requirement of a home of a sufficient size. The new law means that this exemption disappears. The requirement does not cover a person who applied for a residence permit no later than three months after their family member in Sweden was granted their residence permit.¹ It can also be mentioned that the Swedish Migration Agency recently adopted new ways of processing asylum applications, which according to the Bar negatively affects the work of public counsels.² After the Swedish Bar in correspondence to the Agency has reacted to these new routines, the Migration Agency has decided to revise the new administrative routines in these cases.³

Alternative dispute resolution

Due to the implementation of directive 2013/11/EU on alternative dispute resolution for consumer disputes and regulation (EU) 524/2013 on dispute resolution online, the Swedish Bar has set up a special regime for small claims between clients and lawyers; the Consumer Dispute Committee – *Konsumenttvistnämnden*. According to the new legislation a discontent client first has to contact the lawyer and try to meet an agreement. If the difference of opinion cannot be resolved, the lawyer has an obligation to inform the client of the possibility to have the issue tried before the Consumer Dispute Committee. The lawyer has an obligation to participate in the Committee procedure. There are a number of reasons for dismissal of consumer complaints, for example if the client not first has turned to the lawyer to find a solution, or the dispute is pending in or has been tried by a court of law. Furthermore, the lawyer must comply with a decision by the Committee. The Committee can only attend to written complaints lodged within one year from the issue was raised with the lawyer, and only complaints to a value of 1 000 – 200 000 SEK (106 – 21 390 €). Normally, the Committee must decide in the matter within 90 days, while a decision of dismissal must be taken within 21 days. There is an application fee of 100 SEK (approx. 11 €) to initiate a procedure before the Committee. The new regime has led to both amendments in the Charter and in the professional code of conducts. 41 complaints were lodged in 2016 and 24 decisions were taken of which the consumers were successful in their claims in ten of these decisions.

In general

As always the Swedish Bar Association has been active in the legislative process and the public debate on legal issues. The Bar Association has contributed to legal development by providing its views on a large number of bills and other proposals for legislation (117 opinions in 2016), and has participated in numerous hearings, conferences and other meetings. The Bar is also represented in a large number of parliamentary and governmental committees drafting new legislation, for example regarding sexual offences, issues of detention and restrictions for detained suspects, different issues related to protection of the personal integrity, penal law for legal entities, trademark law, etc.

¹ For more information, see <http://www.migrationsverket.se/English/About-the-Migration-Agency/New-laws-in-2016.html>.

² See <https://www.advokatsamfundet.se/Nyhetsarkiv/2016/juli/aktuell-information-rorande-migrationsverkets-andrade-arbetssatt-som-paverkar-offentliga-bitradens-arbetsuppgifter/>.

³ See <https://www.advokatsamfundet.se/Nyhetsarkiv/2016/augusti/migrationsverkets-nya-arbetssatt-anders-danielsson-svarar-advokatsamfundet/>.

Guidelines and other documents

Business and Human Rights

In June 2016 the Board of the Swedish Bar Association adopted the report Business and Human Rights, which presented a number of ways for the Swedish Bar to underline the importance and enhance the knowledge of how human rights can and should be implemented in lawyers' every day professional activities. Furthermore the report presented numerous recommendations for business lawyers on how to implement human rights in the law firms' internal business and in relation to their clients. In accordance with a proposal in the report the Board also adopted a new rule in the Code of Professional Conduct for members of the Swedish Bar Association (2.9 of the Code of Conduct), stipulating that an advocate must never give legal advice with the purpose of obstructing or circumventing human rights and fundamental freedoms as they are laid down in the European Convention on Human Rights (including its additional protocol). The rule also says that an advocate also in other respects always should uphold human rights and freedoms in his or her professional activities.⁴

Conflict of interests

In June 2016 the Board of the Bar also adopted a guiding statement on the levelling of interests when a conflict of interest situation arises due to the fact that a lawyer goes from one law firm to another. The background to this initiative was two decisions from the Disciplinary Committee dealing with the “contagions” effects on the issue of conflict of interest that can arise when an associate lawyer or a summer clerk transfer from one law firm to another. In its guiding statement the Board stated a number of circumstances which can be decisive for whether an obligation to resign from the mandate exist or not if a conflict of interest situation has been developed as a result of the transfer of the lawyer.⁵ A new working group has been set up to continue the discussion on conflict of interests in relation to employment of non-advocates and to present its findings in 2017.

Social media

The Board of the Swedish Bar has issued a Policy for Swedish advocates' use of social media, in part based on the 2014 IBA International Principles on Social Media Conduct for the Legal Profession, and the 2011 CCBE Study on the use of social media by lawyers. The policy contains guidance for advocates and associate lawyers on how to use social media in a useful and responsible manner.⁶

⁴ For more information, see

https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_17_2016_information_angaende_en_ny_bestammelse_i_vrga_rorande_foretagande_och_manskliga_rattigheter.pdf.

⁵ For more information, see

https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_18_2016_vagledande_uttalande_angaende_intresseavvagning_vid_jav_i_samband_med_overgang_mellan_advokatbyraer.pdf

⁶ For more information, see

https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_27_2015_policy_for_advokaters_anvandning_av_sociala_medier.pdf

Age assessment in asylum cases

In December 2016 the Board of the Bar marginally revised its 2015 guiding statement on medical age assessment in asylum cases and the role of the lawyer as public counsel in such proceedings due to core values of the legal profession. Age assessment has a decisive effect on the grounds for a residence permit, but it is often very difficult to assess the exact age of an individual. According to the Board of the Bar, a lawyer should not initiate or participate in a medical age assessment if there is a risk for an unfavorable result for the client, unless special circumstances are at hand.⁷

Anti-money laundering

Furthermore, in addition to the inquiry on implementation of the fourth anti-money laundering directive and due to new anti-money laundering legislation recently entered into force (mainly due to implementation of the new FATF-standards), the Bar has decided a new revised *Guidance for advocates and law firms on the Act on Measures against Money Laundering and Terrorist Financing – the money laundering legislation from the perspective of advocates*.⁸

Professional supervision

In order to strengthen the legitimacy of the Bar's supervision of advocates and law firms, to enhance the support to members, to protect a continued independence and self-regulation, and to fulfil obligations under Swedish law, the Bar – in addition to the proactive supervision that was enacted already in 2009 – has decided to initiate a more systematized and wider supervision of advocates and law firms regarding a number of areas, e.g. issues of organization, information security, client funds, professional indemnity insurance, conflict of interests, continuing professional education, anti-money laundering, issues of inside information, prizing and information of legal services. The supervision can be initiated both on special reasons and on random grounds and be carried out either by a written procedure or by predetermined firm visits (*dawn raids* will not occur). During 2016 approx. 100 law firms have been scrutinized (approx. 3 800 lawyers). The outcome of the proactive supervision has so far been very positive. It is obvious that law firms have a high level administration to meet all requirements of legislation and code of conduct. In some cases the Swedish Bar has instigated a follow-up procedure to make sure that specific demands are met better and more accurate.⁹

The Disciplinary Committee

In 2016 the Disciplinary Committee received 439 complaints, which is a decrease of 18 percent compared to 2015. In total, the Disciplinary Committee handled 599 cases last year. Disciplinary sanctions were decided in 127 cases. It is interesting to note that the number of complaints in relation to conflict of interests have increased lately. Furthermore, as part of the intensified proactive

⁷ For more information, see https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_32_2016_reviderat_vagledande_uttalande_angaende_medicinska_aldersbedomningar_i_asylarenden.pdf

⁸ See https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/advokatycket/vagledning-om-penningvatt-och-terroristfinansiering-version-3.pdf.

⁹ For more information, see https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_28_2015_ang_en_effektivare_tillsyn_av_advokater.pdf

supervision of the Swedish Bar, the Board of the Bar initiated 63 disciplinary matters, which is an increase of 70 % compared to 2015. In general, the long-term trend is a decreasing number of complaints despite a substantial increase of members. In 2016 six advocates were disbarred, which is an exceptional high number, since on average this only happens occasionally every year (no advocate was disbarred in 2015).

FATF evaluation

In June 2016 the inter-governmental body FATF (the Financial Action Task Force), evaluated Sweden's implementation of its measures to prevent money laundering and terrorist financing. According to the initial key findings Sweden was perceived to have a sound understanding of risks for ML/TF, but that there are shortcomings as regards supervision in some sectors. The draft of the final outcome was presented at the end of last year and the final report will be adopted at the FATF Plenary meeting in February 2017.

Short updates

In 2016 the *Advokatjouren* was developed on the webpage of the Swedish Bar. This service helps those in need of legal counsel and gives easily accessible information on different legal issues. A possibility to get written legal advice from a lawyer on a specific legal issue will also be introduced during the autumn. There will also be short articles in different legal fields available to the public on the website.

Due to the critical situation for migrants and especially unaccompanied refugee children, the Swedish Bar has initiated a project of legal information at the central train stations in Stockholm and Malmö. The bar has also initiated a specific sponsor project (*Fadderprojekt*) where lawyers introduce refugee children into the Swedish society and help them to establish confiding relations with others.¹⁰ The Swedish Bar is also involved in other projects related to migration. The Bar has also introduced a project of monthly *evening lectures* by advocates and other representatives of the Bar and the legal profession at large, where the public is welcomed to the premises of the Bar for information and discussions on different rule of law issues of current interest. Also free seminars for lawyers are provided in different fields of law.

The sixth annual conference *Advokatdagarna* was also in 2016 a success. Approx. 750 advocates, associate lawyers and other representatives from the Swedish judiciary participated, which is the highest number of participants ever.

Since 2009 the Swedish Bar, in cooperation with IBA and ILAC, has awarded distinguished human rights work at an international level. The laureate of the 2016 *Stockholm Human Rights*

¹⁰ For more information on this sponsor project, see <https://www.advokatsamfundet.se/for-advokater/Advokatsamfundets-fadderprojekt-for-ensamkommande-flyktingbarn/Informationsblad/>.

Award was the former UN High Commissioner for Human Rights, Mary Robinson, also former president of the Republic of Ireland.

The total number of advocates in December 2016 was 5 838 (4 082 men and 1 756 women), the number of associate lawyers 1 984 (842 men and 1 142 women) and there are 21 EU-lawyers registered at the Bar. There are 1 901 law firms in Sweden.

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