

42nd European Presidents' Conference

Country Report

Swedish Bar Association

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A small selection of items to report from Sweden:

Legal development

The Swedish Bar Association has continued to be active in the legislative process and the public debate on legal issues, perhaps even more so due to the intensity of the discussion on personal integrity over the last couple of years. The Bar Association has contributed to legal development by providing its views on a large number of bills and other proposals for legislation, and has participated in numerous hearings, conferences and other meetings. The Bar is and has over the years been represented in a large number of parliamentary and governmental committees drafting new legislation.

Just recently one of the most progressive legislative reform proposals were made from such a committee; *Straffprocessutredningen*. The Committee has put forward a large number of proposals, some very far-reaching, in order to make the criminal proceedings more economical, efficient, transparent and foreseeable. Many of the proposals are good and longed-for, while some of the proposals by some is criticised to endanger the rule of law and the principle of equality of arms, e.g. by mandatory leave to appeal in all criminal cases in the courts of appeal and by strengthening the procedural role of the prosecutors, at the courts' and the defendants expense.

Furthermore, the Swedish Government recently appointed a committee of inquiry in order to investigate the possible need for changes of the law regulating appointments of legal counsels and their remuneration (legal counsels according to Swedish law is public defence counsels, counsels for injured or aggrieved persons, legal aid counsels, etc). The inquiry body is composed of represents from the Swedish Judiciary, the Swedish Ministry of Justice and from the Swedish Bar Association. It is more than obvious that the Government through the committee wants proposals on how to cut expenses even more in relation to legal aid and legal representation. Thus, the Swedish Bar has a very important role to fill during the committee work in order to secure at least some access to justice and rule of law for the Swedish people. Since one important aspect for the work of the inquiry body is how and under which prerequisites legal counsels are appointed in neighbouring countries, as well as how and in what way legal counsels are remunerated abroad, the Swedish Bar may be helped along in its effort to limit any reductions on the legal aid area, since there are a number of statements recently taken by the EU-institutions and also by member states in favour of a strong and effective justice system in Europe. Unfortunately these European signals will however not be enough to secure a legitimate level of legal aid and right to legal representation.

Lately, we have also seen how the Swedish Tax Authority challenged the tax returns of the shareholders of a Swedish accounting firm and deemed the purchase price of shares to be below fair market value and thus classified the deemed discount as a benefit taxable as income. Several critics, of which the Swedish Bar Association is one of the most pronounced, to these decisions argue that these decisions will impair the operation of firms and companies in such regulated industries mainly since the decisions undermine the tax code rule ("3:12 rule") which so far has enabled tax relief to shareholders in legal entities that have a limited number of individual shareholders, by classifying dividends as capital gains and not as income. In the long run the decisions by the Tax Authority may entail severe consequences for shareholders in cer-

tain companies, e.g. firms of accountants and law firms, as it – just to mention one of many dangers – might become more difficult to recruit new partners. According to the critics, the Tax Authority has not considered the fact that shares are not freely transferable in firms and companies where shareholders according to law have to be accredited/authorised professionals, which have negative impact for the fair market value of the shares of such firms and companies. Additionally, the critics argue that the decisions disregard the fact that, in order to become shareholders, newly appointed partners are required to also commit to future working efforts in addition to the cash purchase price.

Confidentiality

As a result of the criticised case where the Prosecution Authority and the Police entered a law firm in Stockholm and seized documents protected by legal professional secrecy claiming suspicions of insider crime and a decision from the Supreme Court (NJA 2010 s. 211), the Swedish Bar has decided on specific guidelines¹ in relation to confidentiality and legal professional secrecy in order to assist and give practical guidance to advocates. In addition to these guidelines the Bar has also put together guidelines on legal services and inside information.²

Pro bono activities

Advocates in Sweden are not obliged by law to do pro bono work and there is no regime or statutory system for pro bono work in Sweden. This does however not prevent individual advocates and the Bar from being involved in different pro bono activities. The Swedish Bar improves and supports different pro bono activities when supporting law firms and individual advocates in pro bono

¹http://www.advokatsamfundet.se/Documents/Advokatsamfundet_sv/Cirkul%c3%a4r/Cirkul%c3%a4r_15_2012_V%c3%a4gledning%20om%20advokatens%20tystnadsplikt.pdf

²http://www.advokatsamfundet.se/Documents/Advokatsamfundet_sv/Cirkul%c3%a4r/Cirkul%c3%a4r%2016%202012%20V%c3%a4gledning%20om%20advokatverksamhet%20och%20insiderinformation.pdf

work in human rights, CSR and humanitarian issues. One very interesting ongoing pro bono mandate is to assist the human right organisation *Reprieve* and its *death penalty team*, in a case where an American prisoner is facing execution in Arizona, U.S.A. Together with a Swedish advocate, the Swedish Bar has e.g. worked to implement the strong claim to Swedish citizenship for the prisoner on death row (he has connections to Sweden and many of his relatives are Swedish citizens). It is believed that such a connection to another State is the only thing that can restrain the US authorities from executing this prisoner, notwithstanding compelling evidence of his severe psychiatric problems. One could say that this case is an archetype of good and useful pro bono work.

Professional supervision

To protect a continued absolute independence and self regulation of the Bar and to fulfil obligations under Swedish law the Bar has continued its proactive supervision of advocates. The results of the money laundering supervision continues to show positive results, which cannot be said for the fulfilment of the mandatory professional continued training of at least 18 hours a year. Unfortunately, many advocates have also this year been subject to disciplinary proceedings for not having fulfilled their professional duty to develop his or her professional competence.

Professional Continuing Training

The Board of the Swedish Bar Association decided in December 2013 to revise the regulation for continuing professional training. With effect from 1 January 2014 it is accepted to undergo training by e-learning as a way to fulfil the mandatory training requirements for lawyers. It is allowed to undergo 6 of the required 18 hours of professional training by e-learning, but only if the e-learning module fulfils a number of mandatory conditions (interactivity, sound and picture, possible supervision, etc.).

Networks

Nätverket Advokat i Framtiden – a network for young lawyers

The network *Advokat i framtiden*³ (“Advocate in the future”), a forum for young advocates and associate lawyers, celebrates its 5th anniversary this year. The network has been very successful in its endeavour to increase the participants’ influence of their professional future and to prepare them for partnership and other career advancements. Many of them who originally were part of the network are today partners.

Hilda – a network for women lawyers

The women lawyers’ network *Hilda*⁴, has continued arranging conferences and mentor projects with the goal of encouraging women lawyers to aspire for leading positions in their organizations. Within the *Hilda*-project, the *Ruben-network* has continued its work where a number of the most qualified and high profiled male legal practitioners of the Swedish judiciary are mentors for female lawyers in order to enthusiasm, support and make them take the appropriate steps towards becoming partners of law firms and heads and directors in the Swedish judiciary.

³ See <http://www.advokatsamfundet.se/Advokat-i-framtiden/>

⁴ See <http://www.advokatsamfundet.se/Hilda/Hilda/> .