

Country Report 2018

Swedish Bar Association

The Swedish Bar Association (SBA) would like to provide the following selection of information to our European colleagues.

Legal developments

Sexual offences

In October 2016 a Governmental Inquiry Commission made a number of proposals to change the sexual offences legislation (SOU 2016:60).¹ The Government put forward its proposals largely in line with these proposals before the Council on Legislation (*Lagrådet*) and proposed e.g. that the offence of rape should be replaced by a offence of sexual abuse, that participation in a sexual act must be voluntary and that liability for negligence is introduced for sexual offences. However, the Council on Legislation rejected the Government's legislative proposal on multiple grounds as not being in accordance with general rule of law principles.²

Terrorism

The Swedish Government has adopted an extensive strategy against terrorism that will form the basis of Sweden's long-term work in this area, both nationally and internationally. The strategy contains a number of proposals which can be criticized from a fundamental rights and freedoms perspective. Within the framework of the strategy, the Government has e.g. proposed new legislation criminalizing travels for the purpose of terror activities of different kinds. A special Governmental Inquiry Committee has recently even proposed a ban on participation in organisations which can be connected to terrorism. There have also been proposals on 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 increase 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.

Data protection

As the EU Regulation on Personal Data Protection will enter into force and apply in the members states from 25 May 2018, a special commission appointed by Swedish Government has proposed a national legislation supplementing the Regulation; a new Act on Data Protection.

¹ See <http://www.regeringen.se/contentassets/8216d40ecc814613bccb394b4b1dfa38/ett-starkare-skydd-for-den-sexuella-integriteten-sou-2016-60.pdf>.

² See <http://www.lagradet.se/ytranden/En%20ny%20sexualbrottslagstifning%20byggd%20pa%20frivillighet.pdf>.

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 then 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 EU Court (C-203/15 of 21 December 2016) upheld its previous ruling and annulled the directive on retention of data. The Swedish Government therefore decided to appoint a second investigation commission to further investigate the decision and the need for new legislation. The proposal of the commission for new legislation was presented in October 2017.³ The Swedish Bar presented its opinions in December 2017.⁴

Furthermore, a report has been presented on data retention specifically in criminal cases (the report *Brottsdatalog*, [SOU 2017:29](#)), where new legislation is proposed in relation to the protection of personal data in criminal cases implementing the 2016 EU directive on data protection.⁵ The SBA has provided its [consultation response](#) to the Government.

Preliminary investigations in criminal cases

The 1st of April in 2017 new rules on preliminary investigations in criminal cases entered into force ([prop. 2016/17:68](#)). The new legislation will enhance the procedural safeguards and give the suspect and defence better possibilities to follow and take part of measures during the preliminary investigations (hearing of evidence etc.). Furthermore, the legislation states that all evidence must be video recorded and not only documented in writing. This will have positive effects on the suspect's right to a fair trial.

Anti-Money Laundering

The Governmental proposal for implementation of the fourth anti money laundering directive (2015/849) was presented in April 2017 with legislative proposal for a new Act on the fight against money laundering and terror financing ([prop. 2016/17:173](#)). The Parliament accepted the proposal and the Act entered into force on 1 August 2017. Due to the new legislation, the SBA has recently adopted a new guidance from a lawyer's perspective.⁶ However, the investigation of how to regulate issues relating to supervision and sanctions of lawyers are still pending and will not be presented until the beginning of 2018. It is though already clear that both the mandatory administrative pecuniary sanctions and the supervision stipulated by the fourth directive will have a major impact on the future disciplinary regime of the Bar.

³ See the legislative report *Datalagring – brottsbekämpning och integritet* (SOU 2017:75).

⁴ https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/remissvar/617195_20171213105617.pdf

⁵ See Directive (EU) 2016/680 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

⁶ See https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_19_2017_ptl_vagledning.pdf.

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 (135 opinions in 2017), 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.

Example of guidelines and other documents

Data protection

In order to investigate which practical effects the regulation and national legislation specifically likely will have on the legal profession, as well as the administration of the Bar, the SBA has appointed a special Task Force to investigate how the new Regulation will affect the SBA, law firms and individual lawyers and to draw up some recommendations in this regard. The Task Force has in January 2018 presented its deliberations, views and proposals, which has been enacted by the Board of the Bar.⁷ In addition national legislation in many different legal fields has been proposed to implement the EU Data Protection Regulation.

Conflict of interests when hiring associate lawyers and trainees

In December 2017 the Board of the Bar adopted revised guidelines on the levelling of interests when a conflict of interest situation arises due to the fact that an associate lawyer goes from one law firm to another or a trainee is hired.⁸ 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 previous guiding statement the Board also has 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.⁹

Business and Human Rights

The Board of the Swedish Bar Association has also adopted the [report Business and Human Rights](#), which underlines 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

⁷ See also the [CCBE adopted Guidance on the main new compliance measures for lawyers regarding the General Data Protection Regulation \(GDPR\)](#).

⁸ See https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_28_2017_vagledning_bitradande_jurister.pdf and https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_29_2017_vagledning_juristpraktikanter.pdf.

⁹ See also https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_18_2016_vagledande_uttalande_angaende_intresseavvagning_vid_jav_i_samband_med_overgang_mellan_advokatbyraer.pdf

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.

Professional supervision

In addition to the disciplinary supervision, the Swedish Bar also supervises its members in a proactive manner. In 2016 the Swedish Bar 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, pricing and information of legal services. This is done in order to strengthen the legitimacy of the Bar's supervision, to enhance the support to members, to protect a continued independence and self-regulation, and to fulfil obligations under Swedish law. 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* do not occur). 150 law firms were scrutinized in 2016-2017, which means that 4 220 lawyers (2 806 advocates and 1 414 associate lawyers) has been supervised. 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.¹⁰

The Disciplinary Committee

In 2017 the Disciplinary Committee received 427 complaints, which is the lowest number of the century (439 in 2016). In total, the Disciplinary Committee handled 566 cases in 2017 (599 in 2016). Disciplinary sanctions were decided in 201 cases. It is interesting to note that the number of complaints in relation to conflict of interests have increased lately. In general, the long-term trend is a decreasing number of complaints despite a substantial increase of members. In 2017 three advocates were disbarred (six in 2016).

Short updates

The total number of advocates of the 1st of January 2018 was 5 918 (4 064 men and 1 854 women), the number of associate lawyers 2 092, the number of EU-lawyers registered at the Bar were 23 and the number of law firms in Sweden 1 924.

¹⁰ For more information, see https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_28_2015_ang_en_effektivare_tillsyn_av_advokater.pdf.

In 2018 the annual fee to the Bar is 5 400 SEK (approx. 540 €), which is a decrease with 400 SEK (from 5 800 SEK in 2017) and the service fee for 2018 is 6 800 SEK excl. VAT (approx. 680 €). The sixth annual conference *Advokatdagarna* was also in 2017 a success. Approx. 750 advocates, associate lawyers and other representatives from the Swedish judiciary participated, which is the highest number of participants ever. In 2018 the conference will be held on the 25th and 26th October.

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 2017 *Stockholm Human Rights Award* was the International Criminal Court, ICC.

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 of receiving written legal advice from a lawyer on a specific legal issue has also been introduced. Furthermore, short articles in different legal fields are available to the public on the website.

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