

Country Report 2018
Swedish Bar Association
European Presidents' Conference 2019
Vienna

The Swedish Bar Association (SBA) would like to provide the following information regarding its work and legal developments in Sweden.

Legal developments

New legislation on 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 an 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 Notwithstanding this harsh criticism, the Swedish Parliament enacted the new legislation, which entered into force 1 July 2018.

Terrorism and other grave criminality

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 in order to make the war on terror more efficient. Unfortunately, the proposals do not in all parts fulfil the principle of rule of law and can be criticized from a fundamental rights and freedoms perspective. Within the framework of the strategy, the Government has e.g. proposed criminalization of travels for the purpose of terror activities of different kinds. Even participation in organisations which can be connected to terrorism will be criminalized. There have also been a number of proposals in order to give the Swedish Prosecution Authority, the Swedish Security Service and the Swedish Police Authority new tools for information gathering under preliminary investigations, e.g. by way of secret data retention and data interception as well as other coercive measures. Furthermore, the Government has introduced legislation increasing the use of camera surveillance where there is a general threat and for particularly vulnerable places. The Swedish Bar has here participated in the legislative process with experts in different legislative committees and has in several legal opinions underlined the importance of upholding the principle of rule of law and effective and real procedural rights and protection for suspects in these new legislative proposals.

Data protection

As the EU Regulation on Personal Data Protection will enter into force and have direct effect in the EU Member States from 25 May 2018, a special commission appointed by Swedish Government has proposed a national legislation supplementing the Regulation; a new Act (2018:218) on Data Protection, which entered into force the same date. In addition national legislation in many different legal fields has been proposed to implement the EU Data Protection Regulation.

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

¹ See <http://www.regeringen.se/contentassets/8216d40ecc814613becb394b4b1dfa38/ett-starkare-skydd-for-den-sexuella-integriteten-sou-2016-60.pdf>.

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

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 recorded on audio or video when this is appropriate and not only documented in writing. This will most likely 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.³ However, the new legislation does not cover issues on supervision and sanctions of lawyers. A specific legislative investigation was therefore undertaken in these regards by the Government and legislative proposals were presented in May 2018. The Swedish Bar has recently given its opinion on these proposals, which in short states that the supervision of the Swedish Bar and its Disciplinary Committee will be intact but enlarged, that not only advocates but also law-firms are directly under the Bar's supervision, that persons in leading positions in law-firms can be disabled from their position if having committed any kind of economic crime, that pecuniary sanctions by the County Administrative Board of Stockholm can be imposed on an advocate who by the Disciplinary Committee has been sanctioned with a warning. It is clear that both the mandatory supervision and administrative pecuniary sanctions stipulated by the fourth directive will have a major impact on the future disciplinary regime of the Swedish Bar (as for many other European Bars and Law Societies) in cases involving the anti-money laundering regulation. The new additional legislation will enter into force 1 January 2019.

Legislative involvement of the Swedish Bar in general

As always the Swedish Bar Association the last year has been active in the legislative process and the public debate on different 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 legal opinions in 2017 and approx. 70 opinions the first half of 2018). The Bar has also participated in numerous hearings, conferences and other meetings and has been 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, anti-money laundering regulations, 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 and for 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 a guideline with recommendations in this regard. The Task Force has in 2018 presented its deliberations, views and

³ See https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_19_2017_ptl_vagledning.pdf.

proposals, which has been confirmed and enacted by the Board of the Bar.⁴ The Bar has also issued a Policy of Integrity in order to clarify how personal data is used and protected.⁵ Work has also been initiated to update the previous guidelines on lawyers' use of external IT-services (a guide to cloud computing and related issues).

Employment of 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.⁶ 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.⁷

Rule of Law Manifesto

In June 2017 actions were taken to benchmark the Swedish Bar Association's views on different rule of law issues. A special working group was appointed to analyze and propose a program or manifesto in legal matters related to the rule of law. The working group has in June 2018 presented its proposals, which now is under deliberations within the Board of the Swedish Bar Association.

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, prizing 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 either for special reasons or on discretionary grounds and is carried out either by a written procedure or by predetermined firm visits (*dawn raids* do not occur). 150 law firms have so far been scrutinized, which means that approx. 4 300 lawyers (2 800 advocates and 1 500 associate lawyers) have 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 legis-

⁴ See

https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_6_2018_vagledning_for_tillampningen_av_eus_datas_kyddsforsordning_i_advokatverksamhet.pdf.

⁵ See https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/advokatsamfundet/sveriges-advokatsamfunds-integritetspolicy.pdf.

⁶ 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.

⁷ 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

lation and code of conduct. In some cases the Swedish Bar has instigated a follow-up procedure to make sure that specific legal requirements are better met.⁸

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

At the end of June 2018, the total number of advocates was 5 969 (4 076 men and 1 893 women), the number of associate lawyers 2 404, the number of EU-lawyers registered at the Bar were 28 and the number of law firms in Sweden 1 972.

In 2018 the annual membership fee to the Bar is 5 400 SEK (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 (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. The seventh annual conference will be held 25 – 26 October 2018.

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 2018 [Stockholm Human Rights Award](#) was judge and professor Thomas Buergenthal. The Laureate has devoted his career and life to promoting human rights, including as judge at the International Court of Justice in The Hague.

The International Bar Association (IBA) awarded its 2018 Leadership Award to the Secretary-General of the Swedish Bar Association, Dr. Anne Ramberg, for “*extraordinary leadership in promoting human rights and the rule of law throughout the world*”.

In 2016 a special service for individuals in need of legal advice was introduced by the Bar. [Advokatjouren](#) (“*Lawyers call on duty*”) was developed on the webpage of the Swedish Bar. This web-based service helps those in need of legal counsel and gives easily accessible information on different legal issues free of charge. 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.

⁸ For more information, see https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/cirkular/cirkular_28_2015_ang_en_effektivare_tillsyn_av_advokater.pdf.