

LIBERTIES RULE OF LAW REPORT 2022

SWEDEN



Foreword

This country report is part of the Liberties Rule of Law Report 2022, which is the third annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and to gather public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2022 Report was drafted by Liberties and its member and partner organisations and covers the situation in 2021. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2022 Report includes 17 country reports that follow a common structure mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-two member and partner organisations across the EU contributed to the compilation of these country reports.

Building on the country findings, the 2022 Report offers an overview of general trends on the rule of law in the EU and compiles a series of recommendations to national and EU policy makers, which suggest concrete actions the EU institutions and national governments need to take to address identified shortcomings.

[Download the full Liberties Rule of Law Report 2022 here](#)

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Sweden

About the authors



Civil Rights Defenders (CRD) is a politically and religiously independent international human rights organisation. Our mission is to defend civil and political rights together with local human rights defenders in order to increase their security, capacity and access to justice. We work as part of a global movement of human rights defenders, and we partner with those at risk. Through legal means and public advocacy, we hold states, individuals, and non-state actors accountable for human rights violations. We advocate for the norms and values of the International Covenant on Civil and Political Rights and other relevant human rights standards, and we encourage people to use these rights to promote democratic societies.



Svenska Avdelningen av Internationella Juristkommissionen
Swedish Section of the International Commission of Jurists

The Swedish Section of the International Commission of Jurists (ICJ-Sweden), whose members are lawyers, works to promote human rights and the rule of law in Sweden and internationally. At the national level, ICJ-Sweden monitors Sweden's international and regional constitutional obligations in the field

of human rights and ensures that the rights of individuals are observed. It also keeps checks on whether judiciary is independent, accountable and working to strengthen its compliance with fundamental rights. ICJ-Sweden works towards equality before the law and non-discrimination. It declares the right to a fair trial a right in itself and promotes active resistance when violations of rights occur. ICJ-Sweden is designing a program for justice in Sweden, organising debates and seminars on current issues and collaborating with other rights organisations when individual and structural violations in society have been identified. At the international level, ICJ-Sweden monitors trials in order to promote human rights and the rule of law.

Key concerns

The Swedish constitution stipulates the country's basic regulations within the justice system for protecting human rights and democratic values, which are also enshrined in international human rights law. However, with the current legal framework, these values, which are the foundation of a democratic and open society, are far too easy to undermine. The growth of far-right populist movements around Europe and in Sweden is of utmost concern, in particular because these groups threaten to take advantage of the current regulations and they also threaten our democracy.

Sweden continues to be one of the least corrupt countries in the world, but recent revelations about high-level corruption point to the need to be more alert to the risk of corruption and the ability of authorities to prevent and tackle corrupt practices.

In 2021, Sweden witnessed a regression in regulations concerning its media environment. A proposal to include the protection of public service media in the constitution has been denied by several political parties in Parliament. To add to this, no progress has been made on successfully prosecuting online threats and hate crimes.

Sweden's civil society organisations, in particular those supporting LGBTQI+ groups, ethnic minorities and people with disabilities, continue to face verbal abuse, threats and harassment. And authorities are still unsure how to adequately identify and prosecute hate crimes.

The Swedish government has intensified its opposition to undocumented migration, thus neglecting its obligations under international human rights instruments and conventions. Asylum seekers are regularly confronted with structural rule of law challenges. Indigenous rights are also under threat due to land exploitation and the continued extraction of natural resources. Lastly, existing inequalities in Swedish society have intensified during the COVID-19 pandemic.

State of play

- Justice system
- Anti-corruption framework
- ↓ Media environment and freedom of expression and of information
- ↑ Checks and balances
- Enabling framework for civil society
- ↑ Systemic human rights issues

Legend (versus 2020)

Regression: ↓

No progress: —

Progress: ↑

Justice system —

Key recommendations

- We recommend stronger constitutional protection against the passage of laws contradicting democratic values and human rights. This should be backed by at least a qualified majority in Parliament.
- We recommend increased independence for the courts.
- We recommend increased attentiveness to individual human rights and a better legal aid system for those who need it.

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

Judges in Sweden are appointed by the government following proposals from a panel, whose purpose is to minimise political influence in government judicial appointments. The judging panel, however, is regulated by ordinary law, so it can be changed by a 51% majority in the Parliament, and the government tends to appoint its own as members. Real protection against political influence presupposes that the independence and representative composition of such panels are regulated and secured in the constitution, that the appointment of judges by the government only takes place following a binding proposal from the panel, and that merit forms the only basis for assessing suitability. A representative composition of the judging panel would mean that the Parliament, the bar association, the judiciary and the highest courts are represented in, and constitute the majority of the judging panel.

Another way to protect the independence of the supreme court is to regulate of the number of members. Under ordinary law, the current regulation sets a minimum number of members on the supreme court. It is worth considering introducing rules in the constitution establishing a minimum and maximum number of members, proposed in 11 Cape. 1 § RF. One way for an authoritarian regime to seize control of the justice system could be to appoint extra loyalist judges to form a majority in the supreme court.

Irremovability and disciplinary regime of judges

The Swedish Chancellor of Justice is tasked with monitoring and taking actions against judges in the courts when needed. The Chancellor of Justice is appointed by and reports to the government. In effect, it is the government's duty to monitor the courts and its judges and lawyers, meaning that the independence of the judiciary would be uncertain if a populist and authoritarian government were to come to power. This power should be transferred to an independent panel within the judiciary, formed by judges and regulated in the constitution.

Independence and powers of the body tasked with safeguarding the independence of the judiciary

An important part of the independence of the courts is, of course, how the National Courts Administration's governance and activities are designed. The Swedish National Courts Administration should be led by one Council for the Judiciary, in which the majority of members are judges. The board should also be given a mandate to appoint the head of the authority, which could improve its independence.

Quality of justice

Accessibility of courts

Many people in Sweden do not have access to justice through the courts because court fees are far too high. Their rights on paper cannot, for the most part, be put into court practice,

even though the European Convention, which is enshrined in Swedish law, includes the right to a fair trial regarding suspected violations of civil rights.

The rules on Swedish court costs are based on the assumption that the two parties involved are on an equal footing financially, while disputes over freedoms, civil rights and other human rights are often waged between individuals and the state or other parties with completely different economic conditions. In particular, discrimination cases are subject to civil procedure rules, even if the defendant is a state agency or an entity with strong financial resources. These rules need to be changed to achieve balance. In practice this means that the lower limit on the income individuals must have to qualify for legal aid needs to be raised, something that has not been done in 20 years. As there is legal aid in criminal cases, which is often about human rights, it is logical to meet the need for legal aid in the same way in cases of freedom and civil rights. In freedom and civil rights cases, plaintiffs should also be guaranteed a representative or assistant paid for by the state, and only in exceptional cases should they have to cover their legal costs. The low remuneration paid to public defenders means that it is also difficult to get good lawyers who want to address these goals. All in all, this means that many people do not have access to general legal aid and thus have no means of having their cases tried before national authorities and courts. This may mean that Sweden violates the rules of the European Convention on the right to a fair trial under Article 6 and the right to an effective remedy under Article 13.

In administrative cases, the general rule is that each party bears its own costs. Administrative cases often contain human rights aspects as they are disputes between the state and the individual. Consequently, even if an individual manages to demonstrate that the state's actions were unlawful, he or she cannot be compensated for the costs of proving this in court. We thus recommend an adequate and affordable legal aid system which enables individuals' effective rights and ensures their ability to claim those rights in administrative courts.

Training of justice professionals (including judges, prosecutors, lawyers and court staff)

Among judges and judicial representatives, in particular judges of administrative courts, there is an identifiable, widespread ignorance and lack of will to adopt the new international and European influence in the Swedish legal environment (the European Convention on Human Rights and the UN Convention on the Rights of the Child are enshrined in Swedish law). To remedy this judges and judicial representatives should receive regular, recurrent training on the constitution, the European Convention, the EU Charter of Fundamental Rights and the UN Basic Conventions, and on conformity to these conventions.

Digitalization

Although the courts never actually stopped handling cases at any time during the pandemic, it brought changes to the format of legal proceedings, including the preliminary investigation stage. In particular, these

changes concerned extended use of electronic communication tools at interrogations and oral hearings. For example, in 2020, the courts conducted 127,553 video conferences, compared to 70,004 in 2019.¹ The preliminary numbers for 2021 indicate that the demand for electronic communication tools continues to rise. This is especially concerning when the legal proceedings concern the rights of vulnerable groups, for example forced psychiatric care cases.

The Swedish Bar Association conducted a survey in June 2020 regarding the COVID-19 pandemic. Some of the questions concerned the effects of COVID-19 in terms of access to justice. Twenty-four percent of Bar Association respondents considered the pandemic to have had a negative impact on fair trial standards and access to justice for their clients. On the question of in what way their clients had been negatively impacted, 78% of respondents answered that it was because of cancelled proceedings, 64% that it was because of the use of remote technology and 58% that the lengthy proceedings had negatively impacted their clients' rights.²

There is currently no comprehensive data on how electronic means of communication impact the quality of proceedings or procedural rights. However, digital tools certainly are a risk factor when it comes to guaranteeing

procedural rights, especially for vulnerable groups. We recommend that the use of electronic means of communication remains an exception in legal proceedings and that the authorities give the matter special consideration when the proceedings concern the rights of vulnerable groups.

Fairness and efficiency of the justice system

Respect for fair trial standards including in the context of pre-trial detention

No further measures have been taken to ensure procedural rights in practice when it comes to persons with disabilities. A related area of concern is that the Discrimination Act does not explicitly cover discrimination when it comes to court proceedings or other criminal proceedings. This makes it difficult to investigate discriminatory practices, including the lack of reasonable accommodation, which was officially recognised as a form of discrimination in 2015, or to provide redress for victims. The shortcomings due to procedural safeguards were highlighted by the Committee Against Torture and its concluding observation about Sweden in December 2021.³ The Committee also explicitly recommends that the state ensure that the new Human Rights Institute can carry out its mandate independently and effectively when it comes to the implementation

1 Official court statistics of number of video conferences at oral hearings (in Swedish), Statistik Salar_Antal_Veckovis_2018-2021.xlsx (domstol.se).

2 Advokatsamfundet COVID-19 studie.

3 CAT/C/SWE/CO/8/47274/E, item 11 and 12.

of the six EU Directives governing procedural rights, and that “the Equality Ombudsman has been given a broader mandate to combat discrimination and work for equal rights and opportunities” (see item 6).

The Council of Europe and the UN have also criticised Sweden for long detention periods. This is especially true in cases in which the suspect has been subject to restrictions and isolated from the outside world, which can be stressful both mentally and physically. In 2013, a working group commissioned by the public prosecutor submitted a report that proposes, among other things, home arrest and house arrest as an alternative to detention, a maximum limit on detention time, and a special youth home for detainees under 18. However, no further time limits for detention have been introduced.

In recent years, the discourse in the area of criminal policy has hardened and both the ruling party and the opposition have presented a number of legislative amendments leading to harsher punishments, new coercive measures considerably restricting privacy rights, and changes to the principles of the Swedish criminal procedure. The human rights perspective is often lacking in such legislative proposals, and the speed with which proposals become legislative bills raises concerns as to whether a proper impact assessment of the measures has been conducted. The area of criminal policy should therefore be monitored further to review whether the proposed measures are proportional to the limitations of procedural rights and whether they are adequate in relation to the desired results.

As a part of the EU-funded research project “Defence Rights in Evidentiary Proceedings” (DREP), Civil Rights Defenders has studied regulations on the admissibility and rejection of evidence in Sweden. The aim was to examine the extent to which suspects and accused persons are able to participate in and influence procedures related to the gathering of evidence, and how easily they can gain access to such evidence and challenge evidence that was unlawfully obtained. In the third instance, the investigation shows that the current system does not meet the requirement for an effective remedy, in the sense that an individual’s circumstances are restored to what they were prior to the violation. This is partly because the most effective evidentiary remedies (such as rejection) are only rarely applied, and partly because the use of remedies can be unpredictable, as actors in the judicial system have a wide margin for discretion in this matter. It is also noted that the investigating authorities have little incentive to avoid violating the rules, as even improper evidence may serve as grounds for a conviction. Other tools, such as filing a complaint with the Parliamentary Ombudsman (JO) or the Chancellor of Justice (JK), or reporting misconduct by the police, are intended to prevent systematic violations, but are not effective in restoring the individual’s circumstances to what they were before the violation. It is also uncertain whether these remedies actually lead to a change in the application of the law.

Anti-corruption framework 🟡

Sweden continues to be one of the least corrupt countries in the world. This is shown by the latest result of Transparency International's corruption index for 2021, which ranks the country fourth. Sweden was ranked third in the 2020 index and fourth in 2019.

Corruption is not only a matter of public servants demanding or taking money or favours in exchange for services. Corruption can also include conflict of interests, nepotism and politicians misusing public money or granting public jobs or contracts to their sponsors, friends and families. Despite Sweden's high ranking in the corruption index, many corruption cases show that Sweden is far from a corruption free utopia.

Recent revelations on corruption include high level actors such as the telecom provider Telia Company AB. Corruption at such a high level tends to entail transnational elements, meaning it affects the corruption level in other countries. So when assessing whether or not Sweden has made progress in combatting corruption, our relationships with, and activities in other countries must be considered and included in the assessment.

It is crucial that we do not become blinded by international index rankings, as corruption can take many shapes and forms, and thrives wherever possible.

Media environment and freedom of expression and of information 🔴

Key recommendations

We recommend a constitutional protection for public service broadcasting, which would limit the possibility of decisions to shut it down, to stop funding it, to attack its independence or to install political steering. This protection should be based on a decision with at least be a qualified majority in Parliament.

Public service media

Independence of public service media from governmental interference

Public service media, which includes radio and TV services, is run by Swedish Radio (SR), Swedish Television (SVT) and Swedish Educational Radio (UR), all three of which are owned by the Administrative Foundation. The media companies' broadcasting services are regulated by the Radio and Television Act (2010: 696, amended no later than 2019: 654).

The public service media has a democratic mission and should benefit everyone in Sweden. This mission requires independence from both political and commercial interests. According to Chapter 5 of the Radio and Television Act. Section 1 (2010: 696), "program activities as a whole shall be characterised by the basic ideas

of the democratic state and the principle of the equal value of all human beings and the freedom and dignity of the individual.” To what extent this is complied with and how these principles, the pursuit of independence and the democracy clause relate to each other is currently under discussion. It has been emphasised that impartiality cannot imply neutrality in relation to values regarding human dignity. The risk of misrepresentative balance and the dissemination of anti-democratic and false messages is imminent unless the democracy clause is applied properly.

From an international perspective, the importance of the ongoing work to strengthen the independence of public service media in our country should be emphasised, not only in light of developments taking place in countries with authoritarian regimes, which have sought control over public service broadcasters, but also because of developments closer to home. Current experiences from Denmark, where, among other things, sharp budget cuts have been made, also show with frightening clarity what can happen when the independence of public services media is not guaranteed. The danger to the independence and finances of SR, SVT and UR may also have increased. The tendencies towards authoritarian and populist right wing support and the lack of will to protect public service media in the constitution through a majority in parliament have put the public service media in a dangerous position.

Online media

There is a need for a new set of human rights rules to protect people using social media.

We consider the following fundamental rights, in addition to the Universal Declaration of Human Rights, the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and the constitutions of its Member States, to be self-evident:

1. Digital self-determination - Everyone has the right to digital self-determination. Harvesting people’s personal data or manipulating people through ad content, algorithms or any other method should be forbidden.
2. Artificial intelligence - Everyone has the right to trust that the algorithms imposed on them are transparent, verifiable, and fair. Key decisions must be made by a human beings.
3. Truth - Everyone has the right to trust that statements made by the holders of public office are true.

Safety and protection of journalists and other media activists

Hate crimes and cyberbullying such as slander, unlawful threats, harassment, unlawful persecution, and unlawful invasion of privacy threaten democracy. In particular, it is important that journalists are protected. A

prerequisite for a functioning democracy is that journalists, researchers, and civilians can all participate in and use their freedom of expression.

Everyone, including journalists, and not just elected representatives, must be offered satisfactory protection. At present, the exposure to verbal and physical attacks is very high, as a report on the situation of independent opinion leaders by Civil Rights Defenders from May 2019 shows.⁴

Hate crimes are rarely prosecuted and compensation tends to be very low. The police's failure to investigate hate crimes has led to demands for the appointment of a special crime commission, but the problems not only lie with the police authority but exist throughout the legal chain. The same applies to a large extent to other network violations. The fact that the police all too often fail to investigate these crimes is supported by report findings.

The police authority's work with democracy and hate crimes has faced major obstacles, especially when up against uncertainty about whether crimes on Facebook, Twitter and similar platforms can even be prosecuted in Sweden. The way that police, prosecutors and the courts in different regions deal with crime varies wildly, which makes it doubtful as to whether the principle of equality before the law is applicable to today's context.

With a lack of prioritisation, resource allocation and ignorance of basic procedures, civil society has had to bear a heavy burden, not least when it comes to registering hate crimes.

For example, for the past couple of years, several employees of a small organisation have filed over 1,200 police reports, which so far has led to over 200 convictions for incitement against ethnic groups on social media. Although the number of blackouts is still very high, this has made an impression online. The reports have included evidence in the form of screenshots and likes as well as information about the identity of the suspected perpetrators. We would see a significant improvement if the police were to prioritise the issue and employ at least five to ten people to actively scout the internet. It is not reasonable that the important task of detecting and reporting crimes that threaten democracy lies with civil society. Rather it should be the responsibility of the state.

With regard to incitement against ethnic groups, the system should adjust the scope of sentences. Currently, a person who has spread hundreds of inflammatory messages via various channels on the Internet will only be punished to about the same extent as someone who has only written one or two provocative comments. Unsettling and illegal online harassment should be tried more often. The question remains at what point systematic cyberbullying leads to unlawful persecution. The application of the relatively new penal provision for

4 <https://crd.org/sv/2019/05/13/ny-rapport-nar-samhallet-tystnar/>.

unlawful persecution has so far been characterised by excessive caution. Something similar applies to the crime of incitement, which, for reasons that remain unclear, is not considered by the legal community to be as serious when it takes place online as it is in traditional media. Online incitement should be tried in court more often than it currently is. Also worrying is the police's lack of work during criminal investigations to develop situation reports. In cases in which individuals with roots in violent extremist environments (for example IS and NMR) are responsible for hate crimes and cyberbullying, the investigation work should be more systematised. Scouting and producing an investigation position report must be an integral part of the work. Furthermore, links to violent extremism regarding cyberbullying should lead to public prosecutions. A greater responsibility should be placed on the major platform owners so that they have more incentive to remove obvious criminal content. They should also be more motivated to cooperate with law enforcement authorities. The Digital Internal Market Copyright Directive (especially Article 17), adopted on 15 April 2019, provides guidance in this area.

Inspiration can also be drawn from countries such as France and Germany, which have passed new legislation in this area. The EU directive for audio-visual services has been strengthened, but there is room for greater EU collaboration in this area, for example, in that translations of criminal laws are published on the authorities' websites to make the content available to more stakeholders. The problem is cross-border. The Act (1998: 112) on electronic bulletin boards, which can be considered a

legal instrument at the intersection of general criminal law and freedom of the press, has so far been used very sparingly. Perhaps this indicates the beginning of a practice being developed, but the law should be modernised and developed to include more types of crime, such as gross slander.

The provision on incitement against ethnic groups should also be designed so that the legislation complies with the UN Convention on Racial Discrimination's ban on spreading racist propaganda. There is also a need to investigate whether the provision should include legal protection for people with disabilities. Finally, it has also been discussed whether the notion of crimes against democracy should serve as grounds for severe punishment and what the delimitation would look like in such cases. It is important here to avoid pitting different groups against each other as democracy presupposes broad participation.

Freedom of expression and of information

Censorship and self-censorship, including online

It has become an increasing problem that people are silenced on social media by being exposed to threats and systematic, campaign-driven and propaganda-like claims that constitute defamation. At present, it is not only people with limited resources who are more or less considered lawless in this context, but in practice every citizen is, due to the lack of effective legal instruments in the administration of justice. There is a lack of knowledge,

prioritization and personal resources within the police and the courts, on top of the lack of financial resources in terms of legal aid.

Checks and balances

Key recommendations

Amend relevant regulations (kommittéförordningen) to ensure that impact assessments are systematically carried out for all new legislative proposals.

Even though Sweden has a well-established democratic process in terms of legislation, governmental inquiries are often initiated without adequate consideration being given to Sweden's international agreements on human rights. ICJ-Sweden and Civil Rights Defenders believe that relevant regulations (kommittéförordningen) need to be amended and impact assessments need to be carried out to ensure that international human rights

in ratified conventions are naturalized and included in all new legislative proposals.

To enable the Government to take more restrictive actions regarding the COVID-19 pandemic, new legislative measures entered into force on 10 January 2021.⁵ For particularly restrictive measures, such ordinances must be submitted to Parliament within one week of their adoption for ratification, and these short timeframes have been criticized.⁶ This legislation was originally scheduled to expire in late September 2021, but it has since been prolonged until the end of January 2022 (EU-kommissionens rapport 2021, s. 13 f.).⁷

It has been discussed whether the Swedish constitution would allow the government to issue compulsory measures to limit the spread of COVID-19.⁸ According to Mark Klamberg, professor in international law at Stockholm University, the Swedish government has extraordinary powers in an emergency. Klamberg argues that the temporary changes in relation to the Act on Communicable Disease Control,⁹ which

5 Act (2021: 4) on special restrictions to prevent the spread of the disease covid-19 (lagen [2021:4] om särskilda begränsningar för att förhindra spridning av sjukdomen COVID-19).

6 En tillfällig covid-19-lag, Konstitutionsutskottets yttrande 2020/21:KU6y.

7 Fortsatt giltighet av covid-19-lagen och lagen om tillfälliga smittskyddsåtgärder på serveringsställen, Socialutskottets Betänkande 2021/22:SoU3.

8 Dahlström, C. & J. Lindvall, "Sverige og covid-19-krisen", pp. 505–534, in *Håndteringen af covid-19 i foråret 2020 Rapport afgivet af den af Folketingets Udvalg for Forretningsordenen nedsatte udredningsgruppe vedr. håndteringen af covid-19*, Folketinget, 2021, p. 516 f.

9 Lag om ändring i smittskyddslagen, SFS 2020:241.

granted the government broader “lock-down powers”, were similar to measures taken in a state of emergency.¹⁰ Furthermore, Parliament could impose restrictions on, for example, freedom of movement if there was a majority vote for the measure (OSCE rapporten s. 148 f.).¹¹

Enabling framework for civil society –

Key recommendations

- The Swedish government must ensure that the judicial authorities have the right competence and enough resources to identify, prevent and obviate crimes and threats against civil society actors.
- The national safety net for civil society must be strengthened and must include support for self-employed actors.

Attacks and harassment

Verbal and physical attacks

A report by Civil Rights Defenders, “När samhället tystnar,” revealed that people who work in independent opinion-building (for example online-activists or freelance journalists) have reported incidents of hate and threats directed at them. These incidents include hateful comments on Facebook or Flashback and people sending threatening letters to their home addresses. The shift towards an anti-democratic and racist political climate is mentioned as a contributing factor to this trend. According to the report, “[w]hen trustees use hateful language, it encourages others to follow.”¹²

In a report from 2020, the National Council for Sweden’s Youth Organisations (LSU) writes that hate and threats against members and activists in youth organisations have intensified. Those who are the most exposed to hate are women and people that belong to minority groups, including the LGBTI+ community, ethnic minorities and people with disabilities.¹³ The consequences of this are severe, with the organisations withdrawing from their public activities.

10 Klamberg, M. (2021). “Challenges to rule of law, democracy and human rights after the outbreak of COVID-19 from a Swedish perspective”, in Democracy for the future, 2021.

11 *Experts: Sweden could bring in lockdown if Parliament wanted to*, Sveriges Radio, 18 November 2020.

12 *När samhället tystnar*, Civil Rights Defenders, p. 12.

13 *Vi sluter oss inåt – En kartläggning av hat och hot mot Sveriges ungdomsrörelse*, www.lsu.se, 2020.

Law enforcement capacity to ensure the safety of civil society actors and to investigate attacks and harassment

There is a lack of understanding as to what constitutes hate against civil society actors and what countermeasures could be taken to ensure their safety. The police must be trained to develop skills concerning both issues of equality and discrimination, and to identify incidents of hate and threats against, for example, racialised minorities and national politicians.¹⁴

Public prosecutors should handle cases of gross defamation, and the Swedish police should, to a larger extent, investigate allegations of hate against journalists and other public figures. People exposed to this kind of harassment have suggested that the police should deepen their knowledge on these issues. They have also proposed that the police should have an expertise-hotline, which people who have been exposed to hate or threats can call.¹⁵ The special “democracy and hate-crime units” within the Swedish police work with so-called crimes against democracy. There is actually no crime with this name in the Swedish Criminal Code, but the police use this term to underline the severity of crimes against politicians, journalists or other public figures that are attacked in their professions. These units only exist in Swedish conurbations and

should be established in the rest of the country to strengthen the work they are doing.¹⁶

The growing far-right populist movements in Europe, and in Sweden, threaten our democracy and core human rights. These extreme right-wing movements negatively impact the rights to freedom of speech and assembly and threaten people who choose to organise themselves peacefully for human rights by misusing what they claim is their right to exercise their freedom of speech, assembly, and manifestation. The Swedish government has acted to mitigate this impact by putting together a parliamentary committee to look into the possibility of prohibiting certain racist and militant organisations as being unconstitutional.¹⁷ The committee suggests that a prohibition of racist organisations should be implemented through changes to the Swedish Criminal Code in July 2022. Civil society organisations, including Amnesty and Civil Rights Defenders, have criticised the committee report and are against the proposal for a new legislation. The work against racist organisations is a human rights issue. There is a broader need for prioritisation by the Swedish police and other relevant authorities to work with these issues, and new legislation is not enough. Furthermore, there is great capacity to develop cooperation between the authorities and civil society in the fight against racist organisations.

14 *När samhället tystnar*, Civil Rights Defenders, s. 24.

15 *När samhället tystnar*, Civil Rights Defenders, s. 21.

16 *När samhället tystnar*, Civil Rights Defenders, p. 15.

17 Kommittén för förbud mot rasistiska organisationer, Ju 2019:02.

Disregard of human rights obligations and other systemic issues affecting the rule of law framework

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

The Swedish government advocates a more active stance on their migration policy and have ordered the police to intensify their work on executing deportation decisions. Furthermore, the government has ordered The Swedish International Development Cooperation Agency (SIDA) to chart the national deportation and “tenable” reintegration process.¹⁸ The Swedish government has proclaimed that development assistance money will be used to prompt countries to repatriate their citizens from Sweden. This governmental spin has been criticised by the leaders of several Swedish NGOs, who argue that global needs are increasing and that using development assistance money to lever other countries goes against the fundamental purpose of that kind of funding. Today we have the highest number of people in need of humanitarian support and protection since the Second World War. This is due to circumstances such as the COVID-19

pandemic, climate change and the rising number of armed conflicts.¹⁹

A non-citizen in Sweden can be deprived of their residence permit for national security reasons. The legal proceedings in such cases do not live up to the requirements of the European Convention of Human Rights. The main challenge is that individuals considered a security threat cannot access the evidence on which the Security Police bases its accusations. Moreover, the court hierarchy in these cases consists of the Migration Agency and the Swedish government, while the Migration Court of Appeal issues a non-binding opinion. So in some instances there is no judicial authority assessing the case. Instead, the decision lies solely in the hands of the executive. Swedish legislation also contains a discriminatory element, since EU-citizens are able to apply for review at the Supreme Administrative Court, whereas non-EU-citizens who had a residence permit before the start of the proceedings do not have this possibility. The European Court has awarded compensation for rights violations due to limited access to evidence in at least one case against Sweden (X. against Sweden). At the same time, a state inquiry (SOU 2020:16) is proposing further restrictions on non-citizens’ rights in security cases. It is recommended that the procedure in migration cases with a security aspect is re-evaluated so that the basic rights of undocumented immigrants are protected.

18 *Flera initiativ för att personer med ett återvändande lämnar Sverige*, Justitiedepartementet, 29 December 2021.

19 Matilda Ernkrans, *är detta utspel regeringens nya biståndspolitik?*, www.omvarlden.se, 31 December 2021.

The long-term cultural survival of the indigenous Sámi People in Sweden is threatened by cumulative effects of natural resource extraction, growing infrastructure, large-scale tourism, climate change, insufficient access to language education, racism, hate crime and more. Discrimination, and violations of Sámi indigenous rights occur both in relation to the inadequate protection offered by national legislation and the implementation of existing legislation by the authorities and courts. In 2021, a government inquiry was initiated to analyse the scope of Sámi land rights as part of proposed legislation.²⁰ The government directives for a Sámi truth commission²¹ was another positive step. Furthermore, a government bill to strengthen the Sámi right to influence through the establishment of a general consultation procedure was presented.²² However, the bill has been criticised for not guaranteeing real influence for the Sámi People in practice. Also, the directives for government

inquiries on legislation that concern Sweden's supply of metals and minerals²³ have been criticised for largely overlooking Sámi rights, even though mining and other projects centred on land exploitation are an urgent human rights challenge for the Sámi People. In connection with this, the UN CERD recently criticised Sweden after it received an individual complaint on mining concessions and considered Sweden's legislation too weak.²⁴

Impunity and/or lack of accountability for human rights violations

The Swedish Discrimination Act,²⁵ which was enacted in 2008, prohibits discrimination in the labour market and in the provision of goods, services and housing within the private sector, as well as discrimination and discriminatory harassment within several public service institutions. However, the protection against discrimination by public sector employees

20 Government of Sweden, Dir. 2021:35. The inquiry will be presented in November 2022 and in May 2025.

<https://www.regeringen.se/49b171/contentassets/871d8cb88bdc4509a90f5ef01219a6f6/en-ny-renskotsellagstiftning--det-samiska-folkets-ratt-till-renskotsel-jakt-och-fiske-dir.-202135.pdf>

21 Government of Sweden, Dir. 2021:103. <https://www.regeringen.se/4aab29/contentassets/4712a7127d6a4a30954004aa010c1af7/kartlaggning-och-granskning-av-den-politik-som-forts-gentemot-samerna-och-dess-konsekvenser-for-det-samiska-folket-dir.-2021103.pdf>

<https://www.regeringen.se/4a81d4/contentassets/cdf-f655ac2ed4b5885a00ae8fa82154c/en-konsultationsordning-i-fragor-som-ror-det-samiska-folket-prop.-20212219.pdf>

22 Government of Sweden, proposition 2021/2022:19. <https://www.regeringen.se/4a81d4/contentassets/cdf-f655ac2ed4b5885a00ae8fa82154c/en-konsultationsordning-i-fragor-som-ror-det-samiska-folket-prop.-20212219.pdf>

23 Dir. 2021:16. The inquiry will be presented in October 2022. <https://www.regeringen.se/494806/contentassets/9aab1c77410c4230aec3585a8690296b/provningsprocesser-och-regelverk-for-en-hallbar-forsorjning-av-innovationskritiska-metaller-och-mineral-dir.-202116.pdf>

24 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2F-C%2F102%2FD%2F54%2F2013&Lang=en

25 Diskrimineringslag (2008:567), Accessible [here](#) (10.01.2022).

within most institutions is limited to discriminatory *treatment* rather than discriminatory *measures*.²⁶ As such, discriminatory measures taken by actors in the criminal justice system are not prohibited under the Discrimination Act. Coupled with the high threshold needed to investigate and punish acts of misconduct by police officers, this constitutes a serious accountability gap, with limited possibilities for individuals who have been subjected to discriminatory human rights violations committed by police officers to receive redress.²⁷ In 2020, the government appointed a senior judge to conduct an inquiry into whether the scope of prohibition should be widened.²⁸ The inquiry was finished in December 2021 and includes a legislative proposal which widens the scope of prohibition in the Discrimination Act to include measures taken by all public service employees, with the exception of measures taken by the Swedish Security Service (SÄPO).²⁹ If adopted, the proposal will constitute clear progress in holding public sector employees, including police officers, to account for discriminatory practices.

Other systemic human rights issues

There are various structural rule of law challenges in connection to the asylum process in Sweden. These regularly result in violations of the principle of non-refoulement regarding asylum seekers. One example concerns arbitrary substantial assessments of asylum applications, such as non-objective credibility assessments of verbal accounts and the disregard for the principle of the benefit of the doubt.³⁰ A second example concerns insufficient identification of torture or trauma victims and inadequate adaption of interviews and other procedural aspects, which are necessary for the individual asylum seeker to access justice.³¹ A third example regards the arbitrary process of handling asylum applications from countries that are on the Swedish Migration Agency's (SMA) list of safe countries of origin. The list of safe countries of origin creates a presumption that asylum seekers can be protected by their country of origin.³²

In 2021, there were two significant developments that affected those who sought asylum

26 See section 17, chapter 2 in the Swedish Discrimination Act (Diskrimineringslag, SFS 2008:567), Accessible [here](#) (10.01.2022).

27 See section 1, chapter 20, Swedish Criminal Code (Brottsbalk, SFS 1962:700), Accessible [here](#) (10.01.2022).

28 Government of Sweden, Dir. 2020:102, Accessible [here](#) (10.01.22).

29 Government of Sweden, SOU 2021:94, Accessible [here](#) (10.01.22).

30 See recommendations by the UN Committee Against Torture, Concluding observations on the eighth periodic report of Sweden, CAT/C/SWE/CO/8, 2021. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/SWE/CO/8&Lang=En; For instance, see a [report](#) (2019) by Refugee Law Center.

31 CAT/C/SWE/CO/8.

32 CAT/C/SWE/CO/8. See a [report](#) (2021) by Refugee Law Center.

without their families in 2015 and 2016. The majority of these people were young Afghan nationals, and those who, due to various challenges to the rule of law, lost access to international protection and have experienced serious hardships in Sweden.³³ Firstly, there is a new humanitarian ground in the Aliens Act for adults that legally reside in Sweden and have developed a special connection to Swedish society, and would experience particularly distressing circumstances in their home countries upon return.³⁴ Secondly, after the recent political change in Afghanistan, the Swedish Migration Agency (SMA) has published a new legal position on the assessment of asylum applications from Afghanistan. Effectively, the SMA is expected to reconsider the asylum applications of Afghan nationals whose requests have previously been denied.³⁵ The practical consequences of these two developments for the human rights situation remain to be seen.

The impact of COVID-19 pandemic and the measures taken to address

The extent to which emergency measures have or have not been phased out

In comparison to most other countries, Sweden has handled the COVID-19 pandemic through a series of non-binding recommendations instead of implementing repressive measures. These recommendations have, to a significant extent, relied on advice from expert authorities like the Public Health Agency (Folkhälsomyndigheten). Until early autumn 2021, the Public Health Agency recommended that people stay at home if they had any symptoms of COVID-19. It also recommended hand washing, social distancing and avoiding crowded settings, working from home as often as possible and ensuring that people travel in a way that minimises the risk of infection.

The medium and long-term implications of COVID-19 related measures on rule of law and human rights protection

Recommendations from the Swedish Public Health Agency on social distancing cannot be

33 Today persons in this group have different legal conditions, many of them living, or are expected to soon live, in Sweden undocumented.

34 Section 6 Chapter 5 Aliens Act (2005:716). See also the Government bill, proposition 2020/21:191.

35 Swedish Migration Agency, Rättsligt ställningstagande. Prövning av skyddsbehov för medborgare från Afghanistan - RS/089/2021. <https://lifos.migrationsverket.se/dokument?documentSummaryId=45964>.

followed by everyone, which means that some groups have been unable to protect themselves from contagion.³⁶ The Public Health Agency has collected data from March 2020 to February 2021 in the report “Foreign-born people and COVID-19”. The report explains that foreign-born people in Sweden have been hit harder by the pandemic than Swedish-born people. This has been explained by the Agency as a consequence of sociodemographic and socioeconomic factors, including the fact that people who have migrated to Sweden are less likely to be able to work from home and are more likely to live in crowded housing conditions.³⁷

The Swedish Agency for Equality (Jämställdhetsmyndigheten) has noted several consequences of the self-isolation recommendations issued by the Public Health Agency, such as an increase in domestic violence against women. Women also showed higher rates of depression and anxiety due to the restrictions.³⁸ The agency also reported that the pandemic has affected the economic equality between men and women.³⁹

A report by the Swedish children’s ombudsman (Barnombudsmannen) explains the consequences of the pandemic on children in vulnerable situations. For many children the home environment has worsened during the pandemic. One explanation for this is that, because schools were closed, children were deprived of a place to escape to and lost contact with other adults, such as teachers.⁴⁰ The Public Health Agency of Sweden has also examined the special needs of children with disabilities during the pandemic. These include the need to adapt information about the pandemic for children with intellectual disabilities.⁴¹

The Swedish National Association for People with Intellectual Disabilities (FUB) has reported that adults with mental disabilities have been especially affected by the social distancing recommendations during the pandemic. At special accommodation (LSS-boenden), daily activities, access to social areas and visitations have been curbed due to restrictive measures. The lack of social contact and physical activities has led to increased

36 *Coronapandemin och socioekonomiska skillnader*, Centrum för epidemiologi och samhällsmedicin, Stockholm April 2020.

37 *Utrikesfödda och covid-19 – Konstaterade fall, IVA-vård och avlidna bland utrikesfödda i Sverige, 13 mars 2020 – 15 februari 2021*, Folkhälsomyndigheten, p. 11, 13 and 29.

38 *Kvinnor rapporterar negativa effekter i högre utsträckning än män*, www.jamstalldetsmyndigheten.se, 19 November 2021.

39 *Hur har covid-19-pandemin påverkat den ekonomiska jämställdheten?*, www.jamstalldetsmyndigheten.se, 20 December 2021, see also *Vi som inte jobbade hemma under pandemin*, www.lo.se, 9 March 2021.

40 *Covid-19-pandemins konsekvenser för barn – slutredovisning av regeringsuppdrag*, Barnombudsmannen, Dnr 2020-0218, 30 June 2021.

41 *Upplevelser av covid-19-pandemin bland barn med funktionsnedsättning*, www.folkhalsomyndigheten.se, 2021.

physical and mental illness among this already vulnerable group of people.⁴²

During the pandemic, the Swedish government took several measures to strengthen the social safety net, including universal health care and universal basic sick leave. The unemployment benefit was raised twice and, Parliament adopted a government proposal that the condition of being a member of the unemployment fund (A-kassa) would be fulfilled more quickly. Another improvement was made to the sick pay system. Normally, sick pay is calculated as 80 percent of the salary, but only from the second day of absence from work. Employees are not covered for the first day of their absences. The Municipal Workers Trade Union Kommunal has raised this as a factor that potentially contributes to people going to work despite having symptoms of infection. Essentially they feel they cannot afford to stay at home.⁴³ The first-day sickness leave deduction was cancelled by the government for the second time on 8 December 2021 and is planned to remain until 31 March 2022. Other measures taken by the government include the temporary suspension of the need for a doctor's certificate during the first 14 days of sick leave. This has managed both to reduce

the burden on the health care system and to limit the spread of infection.⁴⁴

The Swedish government has consistently argued that it would not adopt a formal strategy to deal with the spread of COVID-19. This argument was made, for instance, when several government ministers were questioned by the Committee on the Constitution of the Swedish Parliament in April 2021 (*Konstitutionsutskottet*).⁴⁵ Instead, the government argued that it has responded to a series of events, one by one, according to needs as they arise, and in conformity with its obligations and responsibilities.

The Swedish government has advocated more active work by the police in finding undocumented people living in Sweden.⁴⁶ The fear of being caught by the authorities means undocumented people are less likely to contact health care facilities and vaccination centres. There are regional health care-initiatives in Sweden cooperating with various NGOs to reach out to people with information about vaccine and disease controlling measures.⁴⁷

42 *Efter pandemin vill jag leva som vanligt*, Riksförbundet FUB:s enkät om pandemins effekter för personer med intellektuell funktionsnedsättning, October.

43 *On the Corona Frontline – The experiences of care-workers in Sweden*, Mari Huupponen, Friedrich-Ebert-Stiftung, Arena Idé, Kommunal, 2021.

44 Åtgärder på socialförsäkringsområdet med anledning av Coronaviruset, www.regeringen.se, 10 January 2022.

45 Hallengren: Regeringen har gjort vad som krävs, www.dn.se, 9 April 2021.

46 *V: Sätt dit oseriösa arbetsgivare – inte papperslösa*, Sveriges Radio, 29 December 2021.

47 *Så försöker VGR nå alla i samhället om vaccination mot covid-19*, www.vgrfokus.se, 4 May 2021.

Fostering a rule of law culture

The contribution of civil society and other non-governmental actors

Throughout 2021, Civil Rights Defenders organised and took part in several seminars and events focusing on the rule of law and human rights. For example, in November 2021, CRD organised a one-day conference, the Nordic Rule of Law Forum, focusing on access to justice for victims of human rights violations.⁴⁸ The forum included participants from the judiciary, lawyers, national human rights institutions, parliamentarians and government representatives, academia and civil society. CRD also carried out two major public awareness campaigns. One of these focused on the topic of universal jurisdiction and the other focused on democratic backslide.

In the spring of 2021, CRD filed a complaint with the Swedish police, together with Syrian and international NGOs, against representatives of the Syrian government regarding the use of chemical weapons in al-Ghouta in 2013 and Khan Sheikhoun in 2017. At the same time, we launched a public petition targeting Sweden's Minister of Foreign Affairs Ann Linde, urging her to step up Sweden's role in the international community and call for a dedicated session in the UN General Assembly. The campaign received widespread media attention and the petition gathered more than 13,000 signatures before

it was handed over to the Ministry of Foreign Affairs.

In November, CRD launched a major public awareness campaign centred around a board game called Dictator of Sweden created by CRD. The game illustrates how Swedish democracy could be dismantled, one right step at a time, by drawing inspiration from the various countries we work in internationally and applying those policies in a Swedish context. The game is a social deduction game played in two teams; Anti-Democrats (whose goal is to adopt enough authoritarian policies to abolish democracy and have the dictator win) and Democrats (whose goal is to adopt democratic policies to stop the dictator before it's too late). During the launch, we arranged for a gaming session in the Parliament in which representatives from five parties participated. Thankfully, the Democratic team managed to find out who the dictator was in time. The campaign received a lot of media attention and generated widespread discussion on what makes a democracy democratic. Over 3,500 games have been sold so far, and the response from the general public has been overwhelmingly positive. Considering that at least five players are needed to play the game, and based on the assumption that every buyer plays the game once, at least 17,500 people will sit down and discuss the importance of protecting basic human rights and the rule of law in Sweden. The game will continue to be a key instrument in our intensified work regarding human rights in Sweden during the upcoming election cycle, with more activities planned to keep the topic high on the agenda.

48 <https://crd.org/2021/09/29/nordic-rule-of-law-forum-2021/>.

Contacts

Civil Rights Defenders

Civil Rights Defenders is a non-profit expert human rights organization working worldwide to defend people's civil and political rights. Civil Rights Defenders also takes on the role of a multi-focus national watchdog organization in Sweden, promoting and protecting human rights in the Swedish context.

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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