



LUND
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Constitutional Law

INTRODUCTION TO SWEDISH LAW

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Constitutional law in general

- Basic principles of a State;
- Organisation of the State;
- Separation of powers;
- Form of government;
- Relationships between the State's bodies;
- Human / Fundamental rights;
- Judicial review;



Constitutional law in general

- Constitutions are to inform citizens;
- Symbolic value of Constitutions;
- Values of a community.



Forms of governments

- How to identify and classify the different forms of governments:
 - 1) Choice of the subject having the sovereign power;
 - 2) Modalities of formation of sovereign bodies' will;
 - 3) Guarantees of the order for ensuring respect of competences and forms.
- Expressed in the Constitution (or constitutional framework);
- Constitutions as stabilising elements of social and political order.



Constitutional Law in general

- Forms of government:
 - i. Direct forms: not mediated choice (e.g. monarchy, direct democracy);
 - ii. Representative forms: choice mediated by a distinct subject (e.g. parliamentary democracies)
- Representative forms:
 - i. «Pure»: political orientation only by representatives;
 - ii. «Composite»: participation of the represented (e.g. presence of political parties).



Forms of governments

- Modalities of formation of sovereign bodies' will:
 - i. Government of individual(s): psychological will (e.g. absolute monarchy, diarchy);
 - ii. Government of collectivities: legal will → aristocratic collectivities / democratic collectivities.
- Number of sovereign bodies:
 - i. «pure» forms: single sovereign body;
 - ii. «mixed» forms: plurality of sovereign bodies.



Forms of governments

- Limits and guarantees:
 - i. Internal limits and guarantees (e.g. separation of power);
 - ii. External limits and guarantees (e.g. Constitutional court).
- Ensuring the division of functions and competences;
- Protecting the citizens from the authority of the State;
- Separation of powers as basis for the protection of the citizens from the State.



Basic features of Swedish constitutionalism

- Parliamentary democracy
- Supremacy of parliament;
- Consensual democracy;
- Separation of functions rather than separation of powers;
- Strong political elements;
- Late emergence of a fundamental rights discourse;
- No constitutional court;
- Weak system of judicial review;
- Decentralised judicial review;
- Limited legislative review.



The Swedish Constitution

- Constitutional acts (*Grundlagar*):
 - i. The Instruments of Government (1974);
 - ii. The Act of Succession (1810);
 - iii. The Freedom of the Press Act (1949);
 - iv. The Freedom of Speech Act (1991).



- Other Acts:
 - i. The Riksdag Act;
 - ii. Acts related to State-Church relations.



Some historical events

- Parliamentary system introduced in 1917 → slow shift of power to the Parliament;
- The 1974 Instruments of Government replacing the 1809 Instrument of Government;
- Advocated by political parties opposing Social-democratic hegemony;
- Commission on Constitution in 1954;
- Commission on Fundamental laws in 1966;
- Issue of monarchy;
- Struggle on emphasis of civil and political rights vs social rights;
- 1995 EU membership and transfer of power;
- State – Church separation in 2000 (late 90s).



The Instruments of Government (1974)

- Chapter 1 – The basic principles and the form of government;
- Chapter 2 – Fundamental rights and freedoms;
- Chapter 3 – The Parliament;
- Chapter 4 – The work of the Parliament;
- Chapter 5 – The Head of State;
- Chapter 6 – The Government;
- Chapter 7 – The work of the Government;
- Chapter 8 – Acts of law and other provisions;
- Chapter 9 – Financial power;
- Chapter 10 – International relations;
- Chapter 11 – The Administration of Justice;
- Chapter 12 – General administration;
- Chapter 13 – Parliamentary control;
- Chapter 14 – Local authorities;
- Chapter 15 – War and threat of war.



Basic principles (Ch. 1)

- People sovereignty → «All public power proceeds from the people» (Ch. 1 Art. 1);
- Personal, economic and cultural welfare of individuals as aim of public activity (Ch. 1 Art. 2)
- Riksdag is the «foremost representative of the people» (Ch. 1 Art. 4);
- Queen or King is Head of State (Ch. 1 Art. 5);
- The Government governs the Realm, accountable to the Riksdag (Ch. 1 Art. 6);
- Local self-government (Ch. 1 Art. 7);
- Courts of law and administrative authorities (Ch. 1 Art. 8);
- Principle of equality before public authorities (Ch. 1 Art. 9);
- EU Membership and international cooperation (Ch. 1 Art. 10)

→ Not legally binding but role of general orientation of State's ambition



Fundamental rights and freedoms

- Relation with the ECHR:
 - Joined in 1950 and ratified in 1952;
 - Adopted as ordinary legislation in 1995 (SFS 1994:1219) due to the upcoming EU membership → avoiding twofold fundamental rights review on applicable law;
 - Differences in contents and scopes of certain rights (e.g. right to fair trial, family life, judicial review vs freedom of association, right to strike);
 - Ch. 2 Art. 19: *"No act of law or other provision may be adopted which contravenes Sweden's undertakings under the European Convention for the Protection of Human Rights and Fundamental Freedoms"*;
 - Non-constitutional status to ECHR → only manifestly conflicting provisions shall be disapplied.



Fundamental Rights and Freedoms (Ch. 2)

- Art. 1 – Freedoms in relations with public institutions:
 - Freedom of expression → to communicate information and express thoughts, opinions and sentiments;
 - Freedom of information → to procure and receive information;
 - Freedom of assembly → to organise and attend meetings, express opinions, and present artistic work;
 - Freedom to demonstrate → to organise and take part to demonstration in public place;
 - Freedom of association → to associate with others for public and private purposes;
 - **Freedom of worship** → to practice one's religion alone or in company (only absolute right in this list!)



Fundamental Rights and Freedoms (Ch. 2)

- Negative rights and freedoms in relations with public authority:
 - No coercion to divulge opinions or to participate in meeting for the formation of opinion, or demonstration, or to belong to a political association, religious community or other (Art. 2);
 - No record in public register without consent on basis of political opinion (Art. 3);
 - No capital punishment / Corporal punishment, torture, medical influence (Arts. 4 – 5);
 - No physical violation, body searches, house searches, invasion of privacy (Art. 6) - (*non-absolute right!*)
 - No citizens may be deported or refused entry (Art. 7);
 - Protection against privation of personal liberty (Art. 8) - (*non-absolute right!*);
 - Deprivation of liberty for criminal act before examination by a court / retroactive penal sanctions or taxes or other charges (Arts. 9 – 10);



Fundamental Rights and Freedoms (Ch. 2)

- Protection against discrimination (Arts. 12 - 13):
 - No unfavourable treatment of citizens because of belonging to minority group by reason of race, colour, ethnic origin, sexual orientation;
 - No unfavourable treatment on ground of gender unless for promoting equality (or related to military service).
- Collective labour rights:
 - Right to industrial action for trade union and employer or employers' association (Art. 14) → unless otherwise provided in an act of law or under an agreement.



Fundamental Rights and Freedoms (Ch. 2)

- Right to property (Art. 15) → no compulsion to surrender property to public institutions or private subject;
 - Right to intellectual property (Art. 16) → authors, artists and photographers;
 - Right to trade or practice a profession (Art. 17) → restrictions only to protect public interests and never solely to further particular economic interests;
 - Right to public education for children covered by compulsory schooling / Freedom of research (Art. 18).
- Rights applicable in private relationships!



Fundamental Rights and Freedoms (Ch. 2)

- Conditions for limiting rights and freedoms (Arts. 20 – 21)
 - Only to satisfy a purpose acceptable in democratic society and proportional to the aim;
 - No threat to free formation of opinion as fundament of democracy;
 - No restrictions on grounds of political, religious, cultural or other opinions solely;
- Restrictions can be avoided through a qualified procedure providing for 10 MP to delay it for 12 months unless approved by 5/6 (qualified procedure).



Fundamental Rights and Freedoms (Ch. 2)

- Restrictions on freedom of expression / information / demonstrate (Arts. 23 – 24):
 - Security of the Realm;
 - National supply of goods;
 - Public order and public safety;
 - Prevention and prosecution of crime.
- Restrictions on freedom of association:
 - Military or quasimilitary activities;
 - Persecution of a population group of a particular race, colour, or ethnic origin.



Fundamental Rights and Freedoms (Ch. 2)

- Rights for non-Swedish nationals (Art. 25):
 - Coercion from participation to meeting or demonstration for the formation of opinions or to belong to associations / community;
 - Personal integrity / capital punishment / corporal punishment and torture / medical influence;
 - Deprivation of liberty for criminal act before examination by a court / retroactive penal sanctions or taxes or other charges;
 - Unfavourable treatment on grounds of race, colour, ethnic origin, gender;
 - Industrial action;
 - Property and expropriation;
 - Freedom of expression / information, assembly, demonstration / worship;
 - Intellectual property.



Fundamental rights and freedoms

- Negative freedom of trade union association:
 - Historically not protected in the Swedish system;
 - Gustafsson case before Strasbourg Court;
 - Art. 11 ECHR;
 - Claimed rejected but negative freedom of TU association recognised;
 - Changes in the evolution of Swedish system;
 - Right upheld by Swedish labour court.



The Parliament (*Riksdag*)

- Chapters 3 and 4;
- Ultimate source of political power (Ch. 1 Art. 4);
- Appointed by free, secret and direct election / vote by party / every four years;
- Every citizens attained 18yo;
- Proportional electoral system in the Constitution / 4% election threshold / but access in case of 12% in a single constituency;



The Parliament (*Riksdag*)

- Elections every 4 years / Extraordinary elections;
- Work of Riksdag constitutionally set:
 - » election of Speaker and deputies;
 - » appointment of committees for legislative work
 - » Committee on Constitution and on Finance;
- Parliamentary immunity subject to internal vote.



The Head of State (*Statschefen*)

- No political power;
- Relation with the Prime Minister / kept informed about political developments;
- Representative role;
- Chairman of Foreign Affairs Advisory Council;
- Act of Succession 1809 (1979);
- Immunity → The Head of State cannot be prosecuted on the basis of criminal code.



The Government (*Regeringen*)

- Chapters 6 and 7;
- Primary role of Prime Minister → appointing ministers;
- No need for a positive vote of the Parliament but just of non-negative one;
- Extraordinary elections after four negative votes;
- Role of the Riksdag Speaker;
- Swedish citizens with no private or public employment / nor conflict of interests for ministers.



Acts of law and other provisions (Ch. 8)

- Division of competences between Parliament and Government
→ what shall be regulated by law is upon Parl's competence (Arts. 1 – 6);
- Gov's competences shall be attributed by law in certain areas (Arts. 7 ss.);
- Executive power of the Gov;
- Amendments of Constitutional laws (Art. 15)→ two decisions on identical wording with an election before the second one within at least nine months / no adoption of conflicting law in the suspension period;



Acts of law and other provisions (Ch. 8)

- Possibility for a referendum during the suspension period (1/10 MPs);
 - Council on Legislation (*Lågradet*) opinion on acts:
 - » Fundamental rights and legal system;
 - » Internal coherence of the act
 - » Rule of law requirements
 - » suitable for the objective
 - » problems of application;
- **Non-binding!**



Financial policy and International Relations

- Chapters 9 and 10 → substantial changes as result of EU membership;
- Financial powers:
 - Budgetary competences on Parl;
 - Currency policies on Gov;
 - Monetary policies on Central Bank.
- Foreign policy and International Relations:
 - Gov negotiates agreements subject to Parl's approval;
 - Art. 5: Parl can vote for the transfer of power to EU safeguarding fundamental rights;
 - Flexible procedure for transfer of power.



Administration of Justice (Ch. 11)

- Organisation of courts system and appointment of judges;
- Independence of courts → *”Neither the Riksdag, nor a public authority, may determine how a court of law shall adjudicate an individual case or otherwise apply a rule of law in a particular case”* (Art. 3);
- Judicial Review and primacy of Parliament → *«If a court finds that a provision conflicts with a rule of fundamental law or other superior statute, the provision shall not be applied. The same applies if a procedure laid down in law has been disregarded in any important respect when the provision was made. In the case of review of an act of law under paragraph one, particular attention shall be paid to the fact that the Riksdag is the foremost representative of the people and that fundamental law takes precedence over other law»* (Art. 14)



Parliamentary control (Ch. 13)

- Parliamentary Committee on Constitution (*Konstitutionsutskottet*) examines the performances of ministers:
- It decides on legal prosecution of ministers;
- Riksdag can raise motions of non-confidence for ministers;
- Parliamentary Ombudsman supervising the application of laws and regulations.



Local authorities (Ch. 14)

- Historically centralised nation-state / Federalism and regionalisation is a recent phenomenon;
- Constitutional recognition of de-centralised decision-making powers;
- Strengthened in 2011 with a constitutional amendment;
- De-centralised democracy → local decision-making power exercised by elected bodies;
- Municipalities and county councils as constitutionally recognised bodies and actors;
- Autonomy in taxation;
- Protection of self-government against State (proportional action).



Freedom of Expression

- The Freedom of the Press Act (TF, 1949) + The Freedom of Speech Act (YGL, 1991);
- Following the evolution of media technologies;
- Basic principles:
 - Right to edit and publish any written material;
 - Transparency of public administration and access to public documents;
 - Spreading and selling that materials and disclosure to press;
 - No censorship (only for flims videos);
 - Right to anonymity and anonymous sources;
 - Procedural and criminal rules;
 - YGL broader as protecting the broadcaster and the people expressing views;



Freedom of expression

- The case of the freedom of expression and employment protection:
 - Duty of loyalty as principle of employment relationship;
 - Potential clash with freedom of expression as critique to the employer or as whistle-blowing;
 - Constitutional protection for public sector employees;
 - 1976 individual right to anonymity for public employees whistle-blowing to constitutionally protected media;
 - Contractual obligation and private law (labour law) protection for private sector employees.



Indigenous rights and autonomy

- Sámi population divided between Sweden, Finland and Norway;
- The only indigenous group recognised in Europe;
- About 65k to 100k: 15k – 20k in Sweden;
- 1989 ILO Convention n. 169 on Indigenous and Tribal People (not ratified by Sweden).
- Features of indigeneity:
 - » minority, non-dominant status in homeland,
 - » close connection between culture, land, and environment,
 - » preservation of traditional institutions,
 - » history of colonization and disposses;



Indigenous rights and autonomy

- Discrimination, repression of culture, and assimilation;
- Recognised as indigenous people in 1977;
- No explicit constitutional recognition until 2011 →

The opportunities of the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted” (Ch. 1 Art. 2);

- Recognition of Sámi law as customary law in Swedish system;
- Land registration and property rights;
- Reindeer husbandry and herding rights (Ch. 2 Art. 17 IG);
- Fishing and hunting rights;



Indigenous rights and autonomy

- Reindeer Husbandry Act (SFS 1971:437) → Reindeer herding right held by Sámi people and based on immemorial prescription:

“It is immemorial prescription where someone has possessed, used and utilised real property or a right for such a long time undisputed and unhindered, that no one remembers or on good authority knows how his ancestors or acquirers came to be” (1734 Real Property Code).

- 1981 Taxed Mountain Case → Sámi villages claiming ownership rights against the State;
- Supreme Court rejected the claim but accepted that Sámi could claim ownership rights through reindeer herding, fishing, hunting through immemorial prescription;



Indigenous rights and autonomy

- 2011 Nordmaling case → Sámi villages sued by municipality claiming no right of winter-pasture;
 - » Supreme Court recognised a right of winter-pasture to Sámi villages on the basis of customary law;
- 2016 Girjas case → Sámi village suing the State on entitlement to hunting and fishing rights;
 - » Court of Appeal upheld the hunting and fishing rights of the Sámi village on the basis of customary law.



Indigenous rights and autonomy

- Establishment of Sámi Parliament (*Sametinget*) in Sweden in 1993 – SFS 1992:1433 (Norway 1989 / Finland 1996);
- Comparable to local authority but no power to levy taxes, nor to enact legislations;
- Vehicle for Sámi participation rather than autonomous governance → putting Sámi issues on the political agenda;
- Competences: allocation of State's subsidies for Sámi culture / promoting Sámi culture and education / protecting interest in the access to natural resources;
- Cross-border elections for the three Parliaments for Sámi origins people → in Sweden need for registration (open to foreign national Sámi);
- Sámi parties distinct from Swedish parties (history of non-cooperation);
- Trans-border bodies: Sámi Parliamentary Council / Sámi Council;
- Nordic Sámi Convention as intergovernmental document.



Comparative overview

Which are the basic features of your
country's Constitution or
Constitutional framework / system?



Thanks for your attention!

QUESTIONS? COMMENTS? REMARKS?

