



## Permanent Mission of Sweden

Geneva

The Permanent Mission of Sweden to the United Nations Office and other International Organizations in Geneva presents its compliments to the United Nations Economic Commission for Europe (UNECE) and has the honour to herewith enclose the response by the Government of Sweden to the UNECE's communication from the Aarhus Special Rapporteur on Environmental Defenders, reference number: ACSR/C/2024/39 (Sweden) of 16 August 2024.

The Permanent Mission of Sweden avails itself of this opportunity to renew to the UNECE the assurances of its highest consideration.

Geneva, 7 October 2024



UNECE

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## Response by the Government of Sweden to the letter from the Aarhus Special Rapporteur on Environmental Defenders

### Introduction

The Government of Sweden first wishes to thank the Special Rapporteur for his letter dated 16 August 2024. The Government gives serious consideration to the Special Rapporteur's views and appreciate the opportunity to respond to his questions and concerns regarding the alleged prosecution, penalization, and harassment of Ms. Marie Holmlund.

The Government of Sweden further wishes to emphasize its commitment to the protection of human rights defenders, including environmental defenders, and the importance of ensuring that they are able to carry out their work of promoting and defending human rights freely and safely, without encountering reprisals.

The Government of Sweden is aware of the case brought forward in the letter and domestic judicial and constitutional proceedings regarding the case are still pending, as acknowledged by the Special Rapporteur. Therefore, the Government cannot comment on all aspects of the questions raised in his letter. However, the Government wishes to address some questions raised by the Special Rapporteur by giving an overview of the procedures in the Committee on the Constitution and the Chancellor of Justice, as well as the general legal framework. In doing so, the Government wishes to emphasize that we remain open for dialogue regarding the implementation of article 3, paragraph 8 of the Aarhus Convention with the Special Rapporteur.

## Overview of judicial and constitutional procedures

### Parliamentary control

One important feature of parliamentary control is the examination of ministers' performance of their official duties and the handling of government business, which is entrusted to the Committee on the Constitution. Such examination can be initiated by the Committee itself, another parliamentary committee, or a member of parliament. The underlying idea is that in the first instance, this scrutiny should be administrative rather than political in orientation. It relates largely to the activities of the Government as the supreme administrative authority but is also concerned with the way the Government exercises its power to make statutory instruments and delegate regulatory powers to subordinate administrative authorities and local authorities. The Committee on the Constitution is obliged to report to the Parliament (*Riksdag*) on the results of its scrutiny at least once a year.

### Chancellor of Justice

The Office of the Chancellor of Justice is an independent authority and the Chancellor performs his or her duties from a strictly legal point of view. The duties of the Chancellor of Justice are set forth in two legal instruments: The Act concerning the supervision exercised by the Chancellor of Justice (*lag [1975:1339] om Justitiekanslerns tillsyn*) and the Ordinance concerning the duties of the Chancellor of Justice (*förordning [1975:1345] med instruktion för Justitiekanslern*).

The main tasks of the Chancellor of Justice are to:

- Act as the Government's ombudsman in the supervision of authorities and civil servants.
- Represent the State in legal disputes, primarily actions for damages against the State.
- Ensure that the limits of the freedom of the press and other media are not transgressed and to act as sole prosecutor in cases concerning offences against the freedom of the press and the freedom of expression.

The Chancellor of Justice is free to raise issues on the supervision of authorities of his or her own motion. The majority of cases are however

initiated by private parties by means of submitting a written complaint, thus drawing the Chancellor's attention to malpractice or abuse of powers within the public administration. It falls within the competence of The Chancellor of Justice to reach out of court settlements on behalf of the State in actions for damages ("voluntary settlement of claim"). Individuals may therefore turn directly to the Chancellor of Justice with a written application for compensation. If the application is rejected by the Chancellor the right to initiate court proceedings remains.

### The rights and freedoms in Sweden

Sweden ratified the Aarhus convention in 2005. As stated in Sweden's last National Implementation Report delivered in 2021, under Sweden's Constitution, everyone is guaranteed freedom of expression, freedom of information, freedom of assembly, freedom to demonstrate and freedom of association in their relations with the public institutions (chapter 2, section 1 of the Instrument of Government (*regeringsformen*)). The European Convention of Human Rights also protects these fundamental rights.

The rights and freedoms enjoyed by persons in Sweden are primarily protected through three fundamental laws: the Instrument of Government, the Freedom of the Press Act (*tryckfrihetsförordningen*) and the Fundamental Law on Freedom of Expression (*yttrandefrihetsgrundlagen*), regulating freedom of expression in other media than the press. Civil, political, social, economic, and cultural rights are protected by the Instrument of Government.

The Instrument of Government contains an enumeration of human rights and freedoms, some of which are considered 'absolute' in the sense that they cannot be restricted other than by amending the Instrument of Government itself. The absolute rights include freedom of worship; protection against coercion to reveal one's opinion in a political, religious, cultural, or other such connection; and the right to a hearing before a court when taken into custody.

In addition to the absolute rights, the Instrument of Government also lays down several rights and freedoms which may, under certain circumstances, be restricted by law. These include freedom of expression including freedom of information; freedom of assembly; freedom to demonstrate; freedom of association and freedom of movement. Such restrictions in law, however, are themselves subject to limitations.

Restrictions may be imposed only to satisfy a purpose acceptable in a democratic society and must not exceed what is necessary having regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion. No restriction may be imposed solely on grounds of a political, religious, cultural, or other such opinion.

### **The independence of authorities**

The Government decides how the authorities shall be organised and what tasks they shall perform. However, the Instrument of Government prohibits the Government from intervening in an agency's decision in specific matters relating to the application of the law or the due exercise of its authority. In such cases the Government is prohibited from giving directions as to what decision the authority should arrive at in the particular case.

An individual minister does not have the power to intervene directly through a decision in an agency's day-to-day operations. Collective Government decision-making and the ban on instructing agencies on individual matters are expressions of the prohibition of 'ministerial rule'. The parliament is responsible for monitoring to ensure that ministerial rule does not occur. Should the Government consider that an agency has not applied a law correctly its only remedy is to seek to amend the relevant legislation.

### **Labor law and delegated employer responsibility**

The Swedish Government has delegated employment policy within the central government sector to individual agencies. Employer responsibilities have largely been delegated to the heads of agencies. The Government continuously monitors the agencies' employment policy. The Swedish Agency for Government Employers (*Arbetsgivarverket*), functioning as the central employer organization for government agencies, provides essential support and guidance on a wide range of employment-related matters.

The Swedish labour market is based on the principle that the social partners are autonomous and have the main responsibility of regulating wages and other working conditions through collective agreements. This system creates conditions that are tailored to the sector and the individual workplace. This approach is accepted by both the legislator and the social partners.

The Swedish labour legislation therefore constitutes a framework where many of the rules can be replaced by provisions in collective agreements.

Some of the main framework legislations are the Swedish employment protection Act (*lag [1982:80] om anställningsskydd [SEPA]*) and the Co-Determination in the Workplace Act (*lag [1976:580] om medbestämmande i arbetslivet*). Basic rules concerning the legal status of central government employees are laid down in law in accordance with chapter 12 section 7 of the Instrument of Government. The Public Employment Act (*lag [1994:260] om offentlig anställning*) sets out the main specific regulations applicable to central government employees.

According to section 6 under the SEPA, employment until further notice (*tillsvidareanställning*) may begin with a probationary employment (*provanställning*) of six months.

A probationary employment may be discontinued by both parties at any time before the expiry of the probationary period. Notification of discontinuing the employment shall be given to the other party no later than the expiry of the probationary period. The employer shall give the employee 14 days' notice. In practice, this means that such notice may be given at the last day of the probationary period and the employee is then entitled to 14 days of employment before the employment ceases.

It can be noted that “dismissal” and “termination” of employment are two different concepts under Swedish employment law.

- According to section 18 SEPA, dismissal (*avsked*) may take place where the employee has grossly disregarded his or her obligations to the employer. In such a case the employee is dismissed with immediate effect *i.e.*, without any notice period.
- According to section 7 SEPA, termination (*uppsägning*) by the employer of an employment until further notice shall be based on “objective grounds” (*sakliga skäl*). Objective grounds include redundancy or circumstances attributable to the employee personally (*e.g.*, work performance) and the notice period depends on how long the employee has been employed.

### Protective security

The Protective Security Act (*säkerhetskyddslagen [2018:585]*) applies to anyone who to any extent conducts activities that are of significance to

Sweden's security or are covered by an international protective security commitment that is binding on Sweden ('security-sensitive activities').

Any person who, by virtue of their employment or in some other way, is to participate in security-sensitive activities must undergo security vetting according to chapter 3 section 1 of the Protective Security Act.

Security vetting aims to establish whether a person can be assumed to be loyal to the interests protected in the act and to be otherwise reliable from a security standpoint. During the security vetting, all circumstances that may be assumed to imply security vulnerabilities must be taken into account. The assessment of the security vetting is made by the person who decides on the employment or other participation in the security-sensitive activities.

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The Government of Sweden hopes that the information in this response provides useful clarification for the Special Rapporteur. However, should the Special Rapporteur require any further information, please do not hesitate to contact the Government Offices.