

Sweden / Suède

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

- a) of prosecutors;
- b) of the judiciary or the justice system as a whole;
- c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

It depends on the content of the decisions of the international courts and treaty monitoring bodies. If legislative changes are necessary for Sweden to be able to act in accordance with the decision, this is handled by the legislature.

However, if it is changes in working methods or similar which is required, this is taken care of by the national authorities. For example, the Swedish Prosecution Authority follows the jurisdiction of the European Court of Justice as well as the European Court of Human Rights when it comes to the use of the European Arrest Warrant and extradition to third states.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

No particular measures have been taken for the practical independence of the prosecution services and individual prosecutors. However, information and clarifications regarding some of the decisions and the role of the prosecutor have been disseminated within the prosecution services.

3. Are these measures reflected in the law or in the prosecution policy or debate?

The independence of the prosecution services and individual prosecutors are reflected in law.

Chapter 12 Section 2 of the Instrument of Government (the Constitution of Sweden) states that no public authority (government) nor the Swedish parliament may influence or determine how an authority shall decide an individual case, nor how the rule of law is to be applied.

Thus, the prosecutors are completely independent and free to make their own decisions.

In Sweden, the role of the prosecutor has been devised so that the prosecutor has a central and independent role throughout the investigation process and legal proceedings in court. The prosecutor's independence is especially important with regard to leading criminal investigations and taking judicial decisions.

The prosecutor as opposed to the authority where they are employed takes decisions regarding whether legal proceedings are to be taken. The prosecutor participates in court proceedings. The role of the prosecutor is thereby exerted by an identifiable person with a personal responsibility.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

There have been no changes in the prosecution system as a consequence of such measures.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

No, there are no decisions of the Supreme Courts, or any other high judicial body at the national level, dealing with the question of independence of prosecutors.

6. Does the prosecution system in your country belong to the judiciary?

The prosecution authorities in Sweden are considered judicial (prosecutorial) authorities (C-625/19 PPU).

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

There are parallels between the independence of judges and independence of prosecutors. According to Chapter 12 Section 2 of the Instrument of Government (the Constitution of Sweden) no public authority (government) nor the Swedish parliament may influence or determine how an authority shall decide an individual case, nor how a rule of law is to be applied.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Prosecutors and prosecution services are independent and autonomous from the executive and legislative branches of state power in Sweden.

Chapter 12 Section 2 of the Instrument of Government (the Constitution of Sweden) states that no public authority (government) nor the Swedish parliament may influence or determine how an authority shall decide an individual case, nor how a rule of law is to be applied.

Thus, a prosecutor is completely independent and free to make their own decisions.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

Yes, prosecutors should pay particular attention to the division of roles between prosecutors and the law enforcement authorities. The prosecutors are obliged to continuously exercise an independent and objective control of the investigation.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Sweden does not have a Council of Prosecutors.

The appointment of the prosecutors is arranged as to guarantee their independence. Prosecutors are appointed by the Prosecutor General and the appointments follow a transparent procedure. A certain board make recommendations regarding positions as senior public prosecutor and chief prosecutor. The recruitment procedure is based on meritocratic principles. To ensure that principles are followed, an applicant who is denied a position has the right to appeal the Prosecutor General's decision to a State Committee which is a supervising all appointments of civil servants. The security of tenure for prosecutors, as well as other Swedish officials, is a fundament in the Swedish system.

Similar equivalent bodies which could be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate are:

The Parliamentary Ombudsmen (JO) who are appointed by the Swedish Parliament to ensure that public authorities and their staff comply with the laws and other statutes governing their actions.

The Chancellor of Justice who is appointed by the Swedish Government to act as the Government's ombudsman in the supervision of authorities and civil servants to make sure that they follow the law and other regulations and fulfil their duties among others.

The Committee of the Constitution ensure that the government and ministers follow the rules for governmental work. The members of the Parliament have the right to report the ministers in the government to the Committee of the Constitution. The Committee of the Constitution then investigates whether or not the government or the ministers have acted in a wrong way e.g. ministerial rule.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The Swedish National Disciplinary Offence Board is an independent body which takes decisions on disciplinary responsibility regarding state employees (for example prosecutors and judges) The authority where the employee is employed is obliged to report misconduct to the Swedish National Disciplinary Offence Board.

The Parliamentary Ombudsmen (JO) and The Chancellor of Justice also have the right to report to the Swedish National Disciplinary Offence Board.

10. Who has the initiative of disciplinary proceedings?

Swedish prosecutors have normal Swedish employment terms and are not obliged to fulfil successive terms.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

No, for example judges are appointed by the government and have a stronger security of tenure. Otherwise, it is similar, regarding for instance disciplinary proceedings.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

The government is not allowed to instruct the prosecution services to prosecute or not to prosecute.

Chapter 12 Section 2 of the Instrument of Government (the Constitution of Sweden) states that no public authority (government) nor the Swedish Parliament may influence or determine how an authority shall decide an individual case, nor how a rule of law is to be applied.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

A prosecutor is completely independent and free to make their own decisions during the investigative process and legal proceedings in court.

A prosecutor's head (Chief Prosecutor) is not permitted to issue directives on how a matter is to be handled or what is to be decided during the investigative process and legal proceedings in court.

In Sweden, the role of the prosecutor has been devised so that the prosecutor has a central and independent role throughout the investigation process and legal proceedings in court.

The prosecutor's independence is especially important with regard to leading criminal investigations and taking judicial decisions. It is the prosecutor, not the authority where he or she is employed, who takes decisions regarding whether legal proceedings are to be taken. It is the prosecutor who participates in court proceedings.

The role of prosecutor is thereby exerted by an identifiable person with a personal responsibility.

However, The Directors of Public Prosecution (and their deputy) may themselves take on an assignment that would otherwise be the responsibility of a subordinate prosecutor.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Training to strengthen the awareness about the de facto dimension of the prosecutorial independence is provided continuously. For instance, during the mandatory basic training and thereafter during different higher trainings and seminars.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

It is the public prosecutor at each chamber who is responsible for the allocation of cases. The allocation of cases is based on predetermined criteria, such as suitability and partiality, to ensure the independence of prosecutors.

As mentioned before each prosecutor is solely responsible for his or her decisions and these decisions cannot be changed by a prosecutor's superior.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Training to strengthen the awareness about the de facto dimension of the prosecutorial independence is provided continuously. For instance, during the mandatory basic training and thereafter during different higher trainings and seminars.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

In June 2014 a set of ethical guidelines were imposed by the Prosecutor-General regarding all prosecutors and other employees of the Swedish Prosecution Authority and the Swedish Economic Crime Authority. The ethical guidelines are constantly updated (last updated June 2019).

The ethical guidelines are printed and distributed to all employees. A presentation and discussions concerning the ethical guidelines are also included in the education and training program for prosecutors. Also, each year a set of ethical dilemmas are distributed to all workplaces in the Swedish Prosecution Authority to facilitate local and regional ethical seminars.

Among other things, the overall objectives of the ethical guidelines are to ensure that prosecutors have an approach to promote everyone's resemblance to the law as well as impartiality and objectivity.

Violations of the guidelines can lead to disciplinary actions or criticism (reprimand) from the Prosecutor-General through the Prosecutor-General's supervisory function.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The media does not cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors.

Normally, there is a high confidence in the authorities' independence in Sweden. It could be an explanation as to why there is no or low media coverage regarding the decisions of international courts and treaty bodies as regards the practical independence of prosecutors.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The prosecutor offices do not interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors.