

## SWEDEN

### **Possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to states' or international organisations' immunities**

#### **1. Delegations are invited to provide information on any domestic legislation existing on this particular issue**

There is no specific legislation in Sweden regulating the possibilities for the Swedish Ministry for Foreign Affairs to raise public international law issues in procedures pending before national tribunals in relation to States' or international organisations' immunities.

As a general rule, the head of the ministry responsible for foreign affairs (*i.e.* the Ministry for Foreign Affairs) shall be kept informed whenever a matter arises at another State authority which has significance for relations with another state or an international organisation (Chapter 10 § 13 (1974:153) the Instrument of Government (*Regeringsformen*)). The Ministry then has the possibility to orient the relevant authority regarding the foreign policy aspects of the issue.

However, no public authority, including the Swedish Parliament (*Riksdag*), may determine how a court of law shall adjudicate an individual case or otherwise apply a rule of law (Chapter 11 §3 (1974:153) the Instrument of Government). The same general rule applies in relation to administrative authorities (Chapter 12 § 2 (1974:153) the Instrument of Government).

In a number of cases involving state immunity, the Swedish courts have requested the Ministry for Foreign Affairs' views on questions of immunity. The Ministry provides its views on such issues within the limits of 11:3, the Instrument of Government, which means that the Ministry may not determine how the court should adjudicate an individual case or otherwise apply a rule of law.

- 1) Delegations are invited to inform the Committee as to whether there are any other means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international legal obligations in [this] field**
  - **Are there any information related to international legal obligations contained in the legislative preparatory works of domestic laws on immunities?**
  - **Are there any directives, guidelines or circulars that have been issued on this subject?**

In 2009, Sweden ratified the United Nations Convention on Jurisdictional Immunities of States and Their Property. In the legislative preparatory works preceding the ratification, the Swedish government expressed its views on the scope of the international legal obligations in this field (*Immunitet för stater och deras egendom: Official Reports of the Swedish Government 2008:2; Government Bill 2008/09:204*).

- 2. Delegations are invited to precise whether there are any prohibitions or stated limits in domestic law, which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs. In this regard, are there, in your domestic legal order, any relevant legislation or national practices (any reference of case-law would be appreciated)?**

See question 1.

- 3. From a broader perspective, delegations are called upon to express their views as to whether the Ministry of Foreign Affairs can communicate with the Parties engaged in procedures before national courts and, if so, as to how it can proceed, in particular to:**
- **The principle of equality of arms (e.g. does the communication with one Party imply informing the others about the content of that communication?).**
  - **The scope of the communication (e.g. communication of possible factual elements or communication restricted to a single point of law).**
  - **The principle of the Judiciary**
  - **Any other related issue**

There are no specific rules in Swedish law providing for communication between the Ministry for Foreign Affairs and the parties to court proceedings on points of law or fact.

The Swedish authorities have a general obligation to provide information, guidance, advice and similar assistance to all persons concerning matters falling within the scope of its functions, in accordance with Section 4 in the 1986 Administrative Procedure Act (*Förvaltningslagen*; SFS 1986:223). The assistance shall be given to the extent that is deemed appropriate with regard to the nature of the matter, the person's need of assistance, and the activity of the authority. If a party engaged in a procedure before a national court would contact the Ministry for Foreign Affairs for guidance, advice or similar assistance, the Ministry provides its views within the limits of 11:3, the Instrument of Government, which means that the Ministry may not – via the parties – influence how the court should adjudicate the case or otherwise apply a rule of law.