

The (Un)Political Lay Judge System in Sweden

- An Interview Study of Lay Judges' Views on Their Roles
and The Lay Judge System, from a Perspective of
Politicization



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Abstract

Lay judges are used in the Swedish courts to attain a democratic representation of judges, but the system has received criticism for giving weight to political affiliation in a role that ought to be unpolitical. The aim of this study is to investigate politicization of the laymen system through lay judges' own perspectives of their roles, and their views of the structure of the lay judge system. Hence, this study will examine whether, and then in what ways, party-political views, and ideologies of lay judges in court have been noticed. Semi-structured interviews with open-ended questions were conducted with lay judges in Malmö. To analyze the empirical data, the concept of politicization is used, with which categorizations of the interview data were made. The analysis shows that all interviewees, except one, view their roles as unpolitical. However, politicization exists in the lay judge system, since most of the lay judges have experienced party-political affiliations shown in court through statements by other lay judges. The fact that it exists is problematic since it might lead to unfair and biased trials depending on which party representatives that appear in court.

Key words: Lay judges, lay judge system, politicization, politicized courts, interview study

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1 Introduction

This chapter presents the research problem and aim of the thesis, to enable a greater understanding of the empirical research and its importance in the context.

1.1 Research problem

The lay judge system has been criticized due to political affiliations. One of the most important reasons of having laymen as judges in the courts is the democratic justification of transparency and representation. To ensure trust in the lay judge system, a requirement for the elected laymen is to be suitable and emit credibility (Söderholm et al, 2013, p. 723). The system has been under scrutiny and debate for a long time. The trust of the system needs to be enhanced, especially regarding politicization in court. The lay judge mission risks being interpreted as a political mission, none the least because of the recruitment system. If the division between the lay judge mission and the political affiliation is not more clearly portrayed, it risks damaging the court system. It is of importance to only recruit appropriate lay judges for the mission and that they are knowledgeable regarding issues concerning the role of the court in society and the demands on them as representatives of the public (ibid, p. 723–724).

A problematic historical case is the so called *Timråfallet* 1974, in which all lay judges were appointed by the Social Democrats, instead of dividing the positions amongst the different political parties proportionally (Dahlgren, 2011, p. 17). The politicization of the positions was in this case obvious, especially concerning the statement made by a member of parliament regarding a Social Democrat to be more suitable as a lay judge than a bourgeois was. Consequently, this event led to a law ensuring proportional selection of laymen (ibid). Although earlier efforts have been made to secure the system, issues still seem to remain regarding politicization, as several studies suggest. Some issues with the jury system in courts of Sweden have been based on party-politically influenced decisions and judgments, or generally

unfair judgments, based on individual opinions or preconceived notions. Thus, scholars argue the issue of having lay judges in the same judicial position in a legal system which requires many years of legal training to ensure a legally secure and impartial judicial system. In recent years, individual lay judges have shown unsuitability, leading to media debates and criticism towards the system of laymen participation (Albinsson, 2018). Various actors even argue that the lay judge system should decrease, and eventually abolish (Akavia, 2020, p. 12). Furthermore, the political affiliations of the laymen are shown to have a determined significance for the outcome of different trials (ibid), however, others claim it is rare (Statskontoret, 2015, p. 102). Therefore, it is an interesting and important issue to study from the perspectives of lay judges, to discover their views of the lay judge system regarding politicization.

1.2 Aim and research question

The aim of the study is to explore the politicization of the laymen system through lay judges' own perspectives of their roles, and their views of the structure of the lay judge system. This will be done by investigating their views of this, and by studying whether, and then in what ways, they have noticed party-political views and ideologies of lay judges in court. This will be researched to provide a deeper insight in whether, and how, the lay judge system is politicized, from experiences of the first-hand sources. The interpretation of lay judges' views is in focus. Hence, the research questions are as follows:

RQ1: How can lay judges' views of their roles be understood from a perspective of politicization?

RQ2: How can lay judges' views of the structure of the lay judge system be understood from a perspective of politicization?

The answers to these research questions will be presented and discussed in the chapters of *Findings and Analysis*. Chapter 4 analyzes RQ1, and chapter 5 analyzes RQ2. In chapter 6, *Conclusion*, the findings, and the analysis of RQ1 and RQ2 will be concluded, and thus, the research questions will be answered.

1.3 Delimitations

The focus of this thesis is on the lay judges' views on their roles as lay judges, and the lay judge system, in Malmö, Sweden. The laymen system has been deeply questioned due to the immense risk of politicization, which is why it would be interesting to get deeper insights in the views of the laymen themselves regarding the role, and the risk of politicization of the courts. To obtain deeper knowledge of the issue, the study consists of qualitative research through semi-structured interviews.

Initially, quite open questions were formulated about the role not only regarding political affiliations and associations, but also more general questions about the role and the lay judge system. With the answers compiled, the empirical findings were noticeably excessive, thus a further delimitation of the material was made with a focus on politicization of the role. Hence, various questions and answers of the interviews were removed from the thesis. With the focus on politicization, the definition used for this study is the described definition by Oxford's English dictionary, which is as follows:

"The action of causing an activity or event to become political in character."
(Lexico, 2020).

1.4 Disposition

After the introduction of this thesis, the background and former research is presented, in which overview and purpose of having lay judges is offered to obtain an insight of the overall lay judge system. Following, method of the study is presented and discussed regarding validity and reliability, and material is explained in which sampling and ethical considerations are presented. Operationalization and the used definition of politicization for this thesis is explained to concretize the concept and the object of study, to enable a greater understanding for the analysis

further on. Empirical findings of the interviews are dispositioned into two themes: The Role of a Lay Judge and Structure of the Lay Judge system, both with analyses relating to politicization, to answer each of the research questions. Under each theme, subcategories are made in which various responds related to politicization are interpreted and presented. Finally, a last discussion and conclusion of the study is presented.

2 Background and former research

This chapter offers a background of the lay judge system, consisting of an overview and purpose of the system, and previous research, to contextualize this study and what it will provide within the research area.

2.1 Background

Söderström (2015) believes a reason for the reluctance of reforming the lay judge system is the politicians fear of losing their privilege with the exclusive right of appointing, and performing as, lay judges (p. 7). Additionally, he argues there is an excessive faith in democratic functions, believed to be an effect of the lay judge system, thus the unwillingness to limit laymen's influence and participation. Furthermore, replacing the lay judges with professional judges would imply greater expenses. Söderström (2015) argues the greatest reason for maintaining the system is probably that the laymen do not currently imply any larger harm to the administration of justice, since their influence is limited by the professional judge holding a leading role, which the laymen rarely defy (ibid, p. 7-8).

Many experts regard the recruitment process as problematic, particularly regarding the fact that laymen are politically assigned, which could entail court rulings based on party-political interests represented by the lay judges (Statskontoret, 2015, p. 102). There is a risk of laymen interpreting their role in courts as representatives of their political parties (Söderström, 2015, p. 41). The political affiliation and ideology risk influencing their judgements, hence, the objectiveness of the court decreases. If they are regarded as party-political representatives, rather than impartial representatives of the community, the legitimacy of the system is lost. This in turn might lead to a system without legal security. The democratic reasons of the lay judge system consequently lose its legitimacy without a public trust for those to exercise the democratic influence (ibid, p. 41–42). According to the State Office's report (2015), there is a possibility

that the issue of the current selection procedure lies within the lack of opportunity for non-party-political people to be nominated (*ibid*). With the current system, the recruitment occurs within the party-political sphere, in which scarcely four percent of the Swedish electorate are members of (Söderholm et al, 2013, p. 726).

Nevertheless, which party a layperson belongs to is out of importance according to Dahlgren (2011, p. 13). On the contrary, one popular example of discussion is regarding the political party the Sweden Democrats, known to have xenophobic views. With its growing political support comes an increasing number of laymen in the Swedish courts appointed by the party (Wester, 2017, p. 32). Due to xenophobia, it is considered highly inappropriate for the party's lay judges to participate in court rulings such as migration trials or criminal cases where expulsion is at risk Wester (2017) argues (p. 32). In this case objectivity is unlikely according to him (*ibid*). However, the court have the option to dismiss inappropriate lay judges, a practice proclaimed to have been strengthened (Statskontoret, 2015, p. 102). Moreover, the judgement can always be appealed. According to several heads of courts it is rare that lay judges' political opinions are expressed at courts and if it would, it could be handled (*ibid*).

Persson (2015) also questions whether it is legitimate to have laymen in courts with strong political opinions, especially questioning the politics of the Sweden Democrats (p. 53). She argues a layperson from the party in relation to foreign people could cause doubts of partiality. This issue is notably relevant regarding judgements in the migration court where asylum cases are handled. This is only one example of when the political opinions' effect on the objectivity may be questioned. Other political stances can also lead to suspicions of impartiality (*ibid*).

Anwar et al (2015) assert that not only party-political affiliations to the far-right impact convictions but lay judges from the far-left as well (p. 40). Apart from immigrant defendants being affected, also cases with female victims are. The researchers conclude the lay judges are not insignificant, even in deliberation with professional judges. Further, they indicate proposals to reduce lay judges' roles, or in some cases elimination of the role, would impact verdicts (*ibid*).

Holm (2018) confirms the composition of judges and political views to determine the outcome of the court. He also states that lay judges from the far left or right of the political parties especially argue more persistently and impinge on the more moderate judges (*ibid*).

2.2 Overview and purpose of the Swedish lay judge system

This section describes the overview of the laymen system, entailing how lay judges are chosen for their roles and main purposes for having lay judges in court.

According to the Swedish courts, everyone in Sweden has the foundational right to have their case tested in an impartial court (Sveriges domstolar, 2020; SOU, 2008:125, p. 313-314). The courts are the foundation of the judiciary and the foundation of a democratic community (Sveriges domstolar, 2020). The independence of the courts is expressed in the constitution and legal security is a foundational ground of a democracy. Neither the government, the parliament nor other authorities can decide how a court should judge in individual cases (ibid). The aim of the legal security is to protect everyone in Sweden from abuse by other citizens or government officials, meaning there is no judgement without legal support. All citizens are to be judged in equal ways, no matter attributes such as social status or ethnicity (ibid). It is of great importance that the public trust the independence of the courts and that there is no risk of political influence (SOU, 2008:125, p. 313-314).

The task of the lay judge is to exercise judicial power towards individuals (SOU, 2002, p. 53). The lay judge has the same responsibilities for the court's outcome as the judicial judges and must adhere to the law in rulings (Domstolsverket, 2020). Neither laymen nor judicial judges can choose what case to judge since these are randomly drawn (ibid). Before duty, the lay judges must take a judicial oath to secure obedience to the law (Domstolsverket, 2020). If a layman act in a manor considered damaging the trust of the public, suspension is possible. Dismissal is also an option if a lay judge commits a crime or behave in other inappropriate manors (ibid).

The political parties in the municipal assembly nominate lay judges according to the principle of proportional selection (Prop. 2013/14:169, p. 12), who are then chosen in the municipal assembly or in the regional assembly (Sveriges domstolar,

2020). The mission, however, is not political since it is important to be objective in the court (Domstolsverket, 2018). However, political parties mostly nominate party members, thus, the notion of the mission as political is a normal misconception (SOU, 2002, p. 91). Multiple political parties demand that the candidate must be a party member (ibid). Party-political views shall not influence the courts however, since this commission of trust is not tied to political duties or responsibilities according to the Committee on Justice (ibid). Still, others ascertain that the current system have serious issues because of its party-political connections (Upsala Nya Tidning, 2013). Even though lay judges are not allowed to judge with political intentions, the suspicion of a politicized court system itself is problematic (ibid). The investigation “Judge Investigation”, launched 1993, suggested methods to hinder misconceptions about the character of the laymen mission, such as a broader recruitment and to separate the mandate period of the lay judges from the electoral assembly (SOU, 2002, p. 91). If the recruitment will open to the public, others than politicians will likely be part of the laymen group (ibid p. 91-93). Hence, expanding the recruitment of laymen is regarded as the most important suggestion of the investigation (Upsala Nya Tidning, 2013). It is suggested that anyone can apply or nominate others and at least half of the laymen should be elected outside of the political sphere (ibid). – a so called free quota (Söderholm et al, 2013, p. 720). In June 2012, the government appointed an investigation with the mission of implementing a review of the laymen system and to consider measures to create a modern system which will contribute to maintain the society’s trust in courts even in the future, resulting in the States Official Investigation: SOU 2013:49 “Nämndemannauppdraget — breddad rekrytering och kvalificerad medverkan” (Söderholm et al, 2013, p. 720). One part of the investigation was regarding a reformation of the recruitment of lay judges, as presented above. A conclusion is that laymen will be recruited through municipality- and regional assembly gatherings, likewise, in the future. This is because the local popularly elected constituencies have a clear democratic anchoring and works the same way throughout the country. The citizens have influence over the constituencies’ composition, and thereby the representation of the public can be ensured by laymen in courts (ibid). The suspicion of a politicized court to harm the trust maintains; thus, investigators reckon the recruitment shall be completely free in the future.

According to the investigators' proposal, the municipalities and regional assemblies' tasks are to receive and assess all candidates to choose lay judges based on competence and suitability (ibid). The idea is that the suitability evaluation will be like recruiting an employee, including a written application, using references, and interviews. The proposal also includes courts to do a background check and dismiss those who fail suitability due to previous criminality, or other inappropriate factors. The investigators suggested easier ways to exclude inappropriate nominations to guarantee only suitable laymen in the courts. Regarding fears of nominees from interest groups will apply to promote certain interests, the investigators stated the impossibility to exclude people with certain interests no matter the controls (ibid). Since the courts have responsibility for the suitability and law obedience of the lay judges, they should thus be able to demand their criminal record and to dismiss those not suitable. They also suggest the timing of the selection should be held independently of the election of municipality- and regional assembly to further clarify the non-political character of the mission (Prop. 2013/14:169). The parliament approved the government's proposition in 2014 (Sveriges Riksdag, 2014).

Conventional arguments for having laymen in the courts, a system older than 800 years of tradition (Söderholm et al, 2013, p. 720), is to have democratic transparency, broadened life experience, and interaction between the jurisdiction and the general legal consciousness (von Koch, 1998, p. 913). Throughout times, the lay judge system has been regarded as an important democratic function by representing the society by using observation and influence over court rulings (Söderholm et al, 2013, p. 720-721). By exercising transparency for the institution and having influence over court rulings, the lay judges contribute to maintain trust in the judiciary and to create legitimacy for the court rulings (ibid). However, if the public consider the laymen system as politicized, it is problematic, even if most lay judges handle their mission appropriately (Upsala Nya Tidning, 2013).

Additionally, as the representatives of the people, the lay judges have a democratic function of observing that the courts are objective and independent from unwarranted influence of the government, organizations, and others (Söderholm et al, 2013, p. 721). Söderholm et al (2013) claim that popularly elected judges in the

Swedish courts, is a control and guarantee of the judicial power to stand independent from external pressure (p. 722).

The court normally hold deliberations behind closed doors, and since the discussions are of secrecy, none of the participators can reveal what has been said (Söderholm et al, 2013, p. 721-722). The need of transparency should not be excessively stressed since the court is obliged to motivate the decisions. There is still of some significance that the peoples' representatives are part of the negotiations since they acquire general knowledge of the judiciary and how it works. They can then retell about the procedures of our courts and their views on routines, thoroughness, and requirements of legal certainty, which is believed to enhance the trust in courts (ibid). To achieve transparency, the mission needs to be combined with responsibility for the ruling since there is a difference of being audience and being responsible for a court ruling. This way a dialog is occurring between the professional judges and the laymen, which enhances the quality of the transparency. Hence, it is important that lay judges have influence over verdicts since it allows the public, through their representatives, to generally be included in the administration of justice and thus legitimize the courts and its verdicts.

Having lay judges is a guarantee to ensure the function of the courts to adhere to common societal values (SOU, 2002, p. 11). Despite the criticism towards the political process of electing laymen to the courts, one strength is, according to Dahlgren (2011), the assurance of the political parties knowing the nominees, hence a quality assurance of the appropriateness of them (p. 20).

2.3 Former research

Former research is presented below, to show research conducted within the issue area, and to illustrate the need for more qualitative research on the lay judge system from a view of politicization.

There are numerous studies of lay judges in Sweden, however, there is a lack of scientific research relating to politicization of the lay judge system, and of qualitative methods to enable a deeper knowledge of the issue. Mainly, the previous

studies with political elements have been statistical, based on examination of verdicts, and surveys.

Dahlgren (2011) conducted a comparative survey study, in which she compared her survey results of 75 lay judges with an earlier survey study from 1995 based on answers from 72 laymen. This research is discussing the issue of lay judges from a political aspect, where the opinions of whether the duty is regarded political or unpolitical. The study also investigates if there have been a change the last 15 years of their opinions of whether their possibilities and wishes to let political values reflect their roles as judges. The author concludes the essay by asking the question whether it would be naïve to think that lay judges as former politicians could ignore their political values. Since this study is survey-based and the author points out the limitations of it, interview research on the subject, such as this study, could contribute with inputs of more detailed answers, in which Dahlgren's study lacks. Her survey was based on, and compared to, the survey of Rundkvist's (1994) study, which was based on a questionnaire sent to 100 lay judges, containing questions about whether they consider political affiliation will, and should, be expressed in court. A minority of the judges believed that their mission in court was permeated by their party's ideology, but a majority still want political views represented in court, and a weak majority exclaims to want an opportunity to express political views in court. However, no clear image of the reasoning of the respondents is provided, and the responses seem to vary depending on how the questions are formulated. Hence, a qualitative interview study could provide more reasoning of the lay judges responds, to enable more depth and understanding of their responses.

Martén (2015) reveals in her study, that the party-political affiliation of the lay judges affects the outcome in the asylum courts when ruling in asylum appeals. The study shows that asylum appeals are more likely to be approved when laymen from the Green Party, the Left Party and the Christian Democrats participate, whereas appeals are more likely rejected when the lay judges partake from the Sweden Democrats. The study suggests that the trials of the asylum seekers is not objective and the risk of laymen to compromise the legal security of courts in general. This study is also built on quantitative research, thus a qualitative interview study as this one can contribute with deeper knowledge within the issue area.

Andersson (2008) uses a legal dogmatic method for her research, in which she looks at laws and preparatory work regarding lay judges in her study "Att dömas av

likar - en studie av nämndemännen i svensk domstol". She describes her study as interdisciplinary since she also uses writings of political science and European law to examine politicization in court. She concludes that the system of lay judges should be kept, but to reform the way in which they are elected. Her material on lay judges' view on their own roll was, however, inadequate, and only based on one previous study, which in turn, has half of its interviews based on group interviews – which might affect the views of the other interviewees in sensitive questions. This study was Jokkala's (2006) interview study on lay judges with the aim of investigating how lay judges describe their mission, and what underlying purposes the descriptions show. Only one of five research questions in this interview study related to political affiliations, which is why my interview study could contribute to deeper insights regarding politicization in the lay judge system according to views of lay judges.

3 Method and material

In this section, method and material of the thesis is presented, motivated, and analyzed regarding validity, reliability, and ethics. Briefly, the method consists of a qualitative study where empirical material is collected by semi-structured interviews.

3.1 Method

To study how laymen view their roles, the most suitable method to understand their own views and to get utmost thorough information is to conduct qualitative in-depth semi-structured interviews. This would preferably been done exclusively face-to-face but concerning the circumstances of the increased spread of Covid-19 in Malmö, six of the eleven interviews were made through videocalls on Zoom.

3.1.1 Semi-structured interviews

The main method of data gathering in this study is through semi-structured interviews. In semi-structured interviews the description and visualization of a phenomenon is in focus (Essaiasson et al., 2007, p. 284). Hence, it is not the possible recurrence of politicization of the lay judge system that will be studied, but how the role is interpreted by lay judges through a qualitative method. The ambition is to understand the world through the interviewee's perception of it, according to Essaiasson et al. (2007, p. 286). Since many studies on the subject has already focused on a quantitative approach, a deeper insight of the subject could be used to complement existing research, by generating new ideas within the research as Essaiasson et al (2007) describes (p. 289), which this qualitative study method could contribute with regarding the laymen system and politicization. At least two previous studies have used survey-based methods, in which Dahlgren (2011) explains, the comments of some of the answers enabled the interpretation and

understanding for some diffuse answers, and lack of answers, in some questions (p. 8). There are limitations with the use of surveys regarding both questions and answers, which cannot be as easily explained as in in-depth interviews where there is additional room for more explanatory questions, and longer and more thorough answers. This enables the qualitative interviews to complement existing research.

By letting the interviewees speak freely, semi-structured interviews can contribute with the persons' views of their realities (Hedin, 1996, p. 6). Using semi-structured interviews should enable trust between interviewer and interviewee in the interview situation (Eriksson & Wiedersheim-Paul, 2011, p. 99). More complex questions can be used since the researcher is there if difficulties occur and explanations of interview questions are needed. Another advantage is the possibility of follow-ups if needed. By presence of the interviewer, body language and how it matches with given answers of the interviewee could be noticeable (ibid). However, the downsides of using interviews are the risk of the interviewer effect (in which the interviewer and interviewee might affect one another), difficulty in asking more sensitive questions, and the difficulty of scheduling interviews. Another challenge, or possible opportunity, is the vagueness of questions and knowledge in preparation of the interview (Eriksson & Wiedersheim-Paul, 2011, p. 100). If the questions are more open, the situation of the interview will be less structured. This could either be intentional by a professional interviewer with the intention of digging deeper into an issue, or a mistake due to bad use of available information and bad preparations (ibid). In this study, it was noticed as both a strength since important perceptions and details of events were described, and a limitation since some stories came off topic. Limitations of the study may also relate to bias issues and limits of generalization, especially since it is a qualitative study built on interpretations of the reality of a few. The interpretivist aim is to gain a deeper knowledge and understanding of a phenomenon regarding the context rather than generalizing data to other people and contexts, henceforth risk leaving a gap regarding validation of research outcomes and the usefulness of it (Pham, 2018, p. 4). Since the methodological approach is qualitative, using a small sample of interviewees limits the generalizability, which is of awareness since generalizations are not intended in this study, but rather made in previous studies. Another risk is regarding social desirability bias, in which the interviewee might choose responses believed to be

socially desirable or more acceptable, instead of responding truthfully with their own thoughts (Grimm, 2010). Additionally, another risk is mistakes in translation of the interviews from Swedish to English, hence the quotes are translated as well.

To tackle the challenges of asking sensitive questions in the interviews, the questions were conducted by asking more general questions about the role at the start, building up towards more direct questions about political affiliations and experiences of politicization in court. However, questions of the interviews were more general and vaguer about the role also since the exact orientation was not determined at the start of the research process. Thus, this might have had both positive and negative effects, since all interviewees seemed open and honest, however the vague questions made the operationalization and analysis of the gathered material more complicated to narrow down and become focused on politicization. Using Zoom for interviews showed to be more efficient than imagined though, enabling a more time efficient method for interviews, except for times of inadequate internet connection, and provided clearer audio records than physical interviews (at noisy cafes). Social desirability bias risks being an issue of the interview answers which I am aware of, but all interviews seemed to have provided truthful views and they seemed to be reliable and comfortable speaking about everything coming to their mind. Some of them might even have experienced the interview therapeutic as they were able to speak freely about anything they could think of regarding the subject of the open questions.

3.1.2 Validity and reliability

The definition of validity is the ability of a measuring instrument to measure what it is set out to do (Eriksson & Wiedersheim-Paul, 2011, p. 60). It can be appropriate to make a distinction between internal validity and external validity since the focus of each one differs. Internal validity considers the congruence between a concept and the measurable definitions of it to enable finding empirical criteria which match the notion of what the concept means. External validity, however, considers the congruity between the measured value obtained by using an operationalized definition and the reality. It is independent from the internal validity and not assessable without knowing how the empirical material has been collected and looks like (ibid, p. 80-61). Since it is the perspectives and views of laymen that is

to be studied and interpreted in this thesis, both the internal and external validity should be of a high degree, if lay judges and their perspectives and views are accessed. Using a semi-structured interview method enables the interviewees, the laymen in this case, to speak freely about their views and perspectives and thus facilitates the study to reach validity. The aim is to ask useful questions to gain valid and reliable descriptions, and to acquire truthful responses from the interviewees to impartial questions from an unbiased interviewer (Roulston, 2013a, p. 18), in this study regarding the issue of politicization.

Reliability is a requirement for the measuring instrument to give reliable and solid findings (Eriksson and Wiedersheim-Paul, 2011, p. 61). To enable high reliability, the method should be independent of the researcher or the examined entities, such as organizations or people, (ibid). The reliability in the method is more complicated to determine since it consists of semi-structured interviews. The method aims at asking open questions and interpret answers, in which answers might have been differently interpreted by various investigators or questions interpreted differently by various interviewees. Although, the questionnaire is used as an instrument to obtain answers to gather information regarding lay judges' own perspectives, as the intentions of the study. Considering the use of interviews as method, it could be difficult to reach high reliability. There is always the risk of "interview effect" as well as getting different results depending on researcher and the interviewee, which is important to keep in mind while dealing with the results of this study. Since questions are open and follow-up questions might differ, and answers probably differs, they are not likely to provide same results at different occasions.

3.2 Material

Material used for the thesis is mainly empirical findings from conducted semi-structured interviews. The interviews were performed in Swedish to get better and more in-depth reasoning and responses. However, the data presentation will be in English since it is the language used for this thesis. Additionally, a mix of method books for the writing process, peer reviewed articles explaining previous research

within the field, and articles explaining the laymen system of Sweden were used as material for the thesis.

3.2.1 Interviews: Selection and sampling

In qualitative research, the most used type of non-probability sampling is purposive sampling, which procedures consist of using our judgement to choose cases to best answer the research question and fulfilling the aim (Saunders, 2012, p. 6). Usually, these types are used to choose quite few participants, such as those of an especially informative kind. Homogenous purposive sampling follows these criteria and concentrate on a selection of a certain sub-group, as a specific occupation, or a certain hierarchical level in an organization. Participants with similar characteristics allows for a greater depth of investigation and small differences to be more noticeable (ibid, p. 6-7).

Since the focus of the study is how lay judges view their role, non-probability sampling was used to gather and structure the right sample for this thesis. E-mails were sent out to an organization for the lay judges and to the district court and the administrative court of Malmö, and one message was sent out through LinkedIn due to impatience at the start of the interview process. Interest of participation was greater than expected, hence a mindful selection was possible which enabled samplings from each political party of the municipal assembly in Malmö. One interviewee each of the political parties were chosen (The Green Party (Interviewee 1), the Sweden Democrats (Interviewee 2), The Left Party (Interviewee 3), The Liberals (Interviewee 5), The Centre Party (Interviewee 8), The Christian Democrats (Interviewee 10), and except for two from the larger parties, The Moderate Party (Interviewee 4 and 6), and The Social Democrats (Interviewee 7 and 11). One of the interviewees are independent of political affiliation but were nominated by The Green Party (Interviewee 9). The total number of interviewees are 11 lay judges. Apart from party affiliation, the interviewees consisted of 6 males and 5 females, of which a selection was made to obtain a mix of ages, ranging from 30 to 80 years old. These selections were made to attain a variety of perspectives for the empirical findings.

3.2.2 Ethical considerations

Due to promised anonymity of the interviewees, no deeper information regarding how I got into contact with the lay judges, the names of them, the name of the institution, employers or location of the interviews will be revealed due to their anonymity, since that information may reveal their identities. Considering ethical parts of interview as a method, a list of information was recited to the interviewees before the interviews started. The list includes points from Lund's University's website (2019), presenting research ethics regarding consent. The points of the information used included as follows:

- Information about me
- The aim of the study
- Confidentiality of the results
- Voluntary participation of the interviewee and permission for interruption
- Option to contact me for additional questions
- Publicity of the results
- Option to receive results when published
- Whether I can contact the interviewee for further questions regarding the interviews
- Whether there is permission to record the interview

3.2.3 Thematic analysis

This approach involves data reduction, to define conceptual categorizations of the data by classifying it into thematic categories, and then reorganize it into themes representing the findings through interpretations and statements (Roulston, 2013b, p. 3). Evidence of the data supports the themes through interview excerpts, linking the researcher's claims to interview answers by the interviewees (ibid), as shown below under findings.

Data categorization of the interviews into themes is done by thematic representation in this study. According to Roulston (2013b), findings suitable for this model may include participants' perspectives concerning a phenomenon of study (p. 6-7), which relates to the research of this study. In qualitative data analysis, three

dimensions is described to be evident in a report: description, analysis, and interpretation (ibid, p. 7), as are evident in the findings section below where description, analysis and interpretation of the interviews are produced.

3.2.4 Operationalization

To strengthen the validity of the operationalization of this thesis, the definition and interpretation of the concept politicization used for this study was presented in the introduction, and again below this section, to make the interpretation of the definition, used for this thesis, clear. It is clarified to support the analysis of the interview data from the perspective of politicization. Hence, the selection of the questions and answers from the interviews conducted in this study focuses on associations to politicization, to enable an analysis related to the aim and research questions of this thesis, thus, to enable research regarding politicization of the lay judge role and system. Two themes were organized from the findings of the lay judges' statements, which are *The Role of a Lay Judge* and *Structure of the Lay Judge System*. These themes are presented in chapter 4 and 5 and contain the findings and analysis of this study. Subcategories were categorized to reduce data, define conceptual categories of how politicization were interpreted from the interview data through the views and experiences of lay judges, and to present the findings into a clearer structure. These subcategories are found in chapter 4 and 5 and are presented as sections of the chapters.

3.2.5 Politicization

The definition of politicization used for this thesis, as described in the introduction, is by Oxford's English dictionary, and involves as follows:

“The action of causing an activity or event to become political in character.”
(Lexico, 2020).

This is the used definition of politicization in this study, to clarify the usage of politicization, which in this research is regarding whether the lay judge system can be interpreted as entailing activities, or events, which are political in character, from the experiences and views of the interviewed lay judges. As Zürn (2019) describes

it in general terms, politicization means the demand for, or the act of, moving an institution or issue into to the political sphere, to turn previously unpolitical issues political. An example of how these activities and events may occur is as behaviors of lay judges in court, for example regarding a statement made, which can be interpreted as stemming from party politics. It can also be interpreted as the court process itself if the system enables room for political opinions. Whether, and how, political actions or statements appears in the lay judge system, depends on the perspectives of the lay judges, since the focus of the study is through the lay judges' experiences and opinions of themselves and other lay judges in court.

4 Findings and analysis: The Role of a Lay Judge

Different views of the interviewed lay judges' own role from a politicization perspective emerged among the interviewees. These are presented below, within the theme of *The Role of a Lay Judge*, categorized into 3 subcategories from which their responses are analyzed. The categories are *representation*, *ideological views*, and *party-political affiliations*.

4.1 Representation

This subcategory indicates the views of the interviewed lay judges regarding who they believe to represent in their roles.

Only one interviewee (interviewee 11) interprets the role as political, in which he represents members of the political party Social Democrats. Interviewee 5 also expressed the role as representing the political party the Liberals in one way but expressed the importance of not pursuing politics in the role. The rest of the interviewees interpret the role as unpolitical in which the most common representations were of civil society, which seven lay judges responded. Three interviewees responded they represent their personal views, and two said to represent the judiciary (Interviewee 2, 4). Interviewee 3 indicates that it is possible to separate the political role from the non-political role as a lay judge:

“I can think one thing as a politician or in my political views ... I see what happens in the court, but those are two completely different things, and I must cope with that. Uhm... and the judicial part weighs heavier.” (Interviewee 3).

Further, she explains she is as much of a leftist in her profession, as a lay judge, a mother and so on, but she would never write the same way for a newspaper as she

does in the party member magazine. She clarifies those are two separate ways of working, which she has no issues separating, and argues how we have no difficulties to call teachers objective, but that they can also be politicians in different ways.

Interviewee 9 argued the party-political members are not necessarily the best representation of society.

” ... a lay judge can never represent anyone but oneself... if anyone would represent their political party, then I believe it is dangerous.” (Interviewee 9).

The difference between interviewee 11 and the others, is that he believes he represents those in society with the same political values as Social Democrats, whereas the others did not specify who in the civil society they represent, which could be interpreted as anyone in society no matter political beliefs since they all considered the role as unpolitical – as it sets out to be. However, it would depend on how well they succeed in separating the unpolitical role from their political affiliations in practice. Also, one would believe a reason for having representatives from political parties would be to represent the part of the society with similar values as the political party. As Söderström (2015) points out, with a party-political election of lay judges, there is a risk of laymen interpreting their role in courts as representatives for their political parties. This does not seem to occur to most of the interviewed lay judges of this study, yet, at least one interviewee, interviewee 11, does perceive it as to represent the political party. Still, the role is set out to be unpolitical which, together with representatives from political parties, complicates the interpretation of the role.

Interviewee 9's claim of the impossibility to represent the society is an interesting aspect since most of the interviewees would disagree. From the perspective as a non-party member however, she could be viewed as a representative of non-political party members, which is most of the society today.

4.2 Ideological views

Ideological views of the interviewed lay judges, and whether it is shown in court, are discussed under this subcategory.

Seven interviewees (1, 6, 8, 7, 3, 5 and 11) stated to have ideological preferences expressed in court, which might have affected court decisions. For instance, interviewee 8 explained:

” ...the law is interpretable; thus, one will interpret it from personal ideologies, personal thoughts” (Interviewee 8)

Nonetheless, he does not think it has affected any court decisions since he thinks the decisions are based on the laws.

Interviewee 7 mentioned her ideologies, as presented above, are those of her political party’s views on equality of all people before the law and the importance of being empathetic. Interviewee 9 stated the uncertainty of whether being a humanist is ideological, nonetheless she believes it affects their view of penalties no matter if the lay judge is party political or not. Interviewee 10 tries to contribute to an increased understanding for elderly perspectives within the limits of the law, which have affected at least one court ruling, although it could be categorized as a factual issue, rather than ideological.

Interviewee 3 neither confirmed, nor denied having ideological preferences shown in court, however her remarks from the interviews leads to the interpretation of her ideological beliefs affecting the court. One example is the statement she made when explaining how she can influence the court:

“... yes, but one affects other lay judges in deliberations too because deliberation is a discussion.” (Interviewee 3).

Interviewee 6 stated it is obvious they have ideological preferences and indicated the possibility of it showing in court. Interviewee 5 said that as a human one has a basic outlook and personality, which influence the choice of a political party, which she believes might also affect the role as a lay judge. However, in the end it does not go through in court. Interviewee 11’s perspective is highly ideological, since he considers the role as a lay judge as a platform to change the society, in which one can contribute to a noticeable change. Laws are time consuming, and during that time there are other laws to act according to, and how one applies those are very hands on for people affected by them. Further, he argues the efficiency of changing the society through both the parliament and the courts.

No matter which way the society changes, it needs to change forward, since that is how he interprets democracy and politics.

Contrarily, interviewee 2 and 4 stated that they do not have any ideological preferences in court, one is to abide by the statute book and needs to be free from political and ideological ideas in court. However, interviewee 2 gave an example of her, together with another lay judge, convincing the other two judges in court of their opinions in a case. The court ruling succeeded in her favor, and when it was brought up in court of appeal the same court ruling was made. It could be discussed as an ideological view determining her action in this case. This is, however, only a speculation.

What interviewee 3 and 2 (nominated by the Left Party, and the Sweden Democrats) stated regarding affecting the other judges in a case, is interesting since this also relates to the study showing that parties from far right and left are affecting other judges to a higher rate than lay judges from other political parties. Holm (2018) who stated that lay judges from the far left or right of the political parties especially argue more persistently and impinge on the more moderate judges, could be relatable to what the interviewees from those parties described in this study. Maybe it should not be very surprising, since they both come from each wing of the party-political spectrum of Swedish politics, known for representing more radical opinions compared to the parties in the center of the political spectrum. However, the qualitative method of this study and its difficulty of generalizing is important to have in mind, nonetheless it could be a confirmatory factor towards Holm (2018)'s research.

Regarding the argument of judging according to the laws, might not be completely justifiable considering the judgement is based on a penalty scale and the laws are to be interpreted, which is why lay judge's individual, or party-political beliefs and opinions may still affect the outcome of the penalty. However, the laws still give boundaries for the punishments, and luckily, there are higher instances which could give reassurance if a judgement is considered not justifiable or deeply politically or "inappropriately" influenced.

Furthermore, it might not matter if their judgments are based on political or individual beliefs, since people are part of political parties for a reason – their individual beliefs and ideologies normally correlates with the party's. If then, it

would be determined that their ideological beliefs correlates with party-political ideologies, which are then acted upon in court, the conclusion of this would be that the lay judges are politicized regarding their ideological views in court. However, it would depend on their stance in court comparing to a hypothetical stance of the political party. Whether the lay judges apply their political party's ideas in court will be discussed below, in the next subcategory.

Additionally, two of the lay judges' central driving forces for the mission was to have influence on the system. It was one of Interviewee 3's driving forces, and interviewee 11 viewed the role as an effective way of bringing the society in the direction he thinks it should go. Interviewee 11 asserts the difficulty in the role as a lay judge with the discrepancy between the ideological compass and the law:

".. for me it's like 'ok, if this is the law, then there is no purpose for us to get engaged and be opinionated... or should I follow what I believe in, the society I want to reach?" (Interviewee 11).

He explains the complication which arises in assessment, since he is a judge who should abide by, or interpret, the law. He recounts occasions in which the lay judges have voted down the judicial judge. In the moment he had felt contented, he expresses, but afterwards questioning the decency. Simultaneously, he explains, with this current system these outputs might be considered when using lay judges. Nevertheless, he claims there is a dilemma in the context since the judicial judged is impartial and expertized, while interviewee 11 wants to change the society, and sometimes it clashes. Those occasions, he has retained instead of agreeing with the others in the case.

Interviewee 6 believes the opposite to interviewee 11, arguing if one tries affecting the court rulings through some advocacy campaign, one should not have the mission. According to the guidelines of the lay judge mission, interviewee 6 is right, and interviewee 11's view of the role as affecting the society through the courts is problematic, especially regarding fairness of trials and impartiality.

4.3 Party-political affiliation

This subcategory presents the connection between the interviewed lay judges and their political parties. Firstly, the political activity of the interviewees is presented, secondly, application of the political party's ideas in court by the lay judges is analyzed, and lastly follows a discussion whether there is a division between the lay judges and their political parties.

All interviewees except for interviewee 9, elected by the Green Party but who has never been a member of any political party, and interviewee 8 who used to be politically active but is now focusing on this lay judge mission and work, are politically active outside the lay judge role. They have numerous political missions such as joining member meetings, being part of party committees, and editing party membership magazines.

How this affect their roles as lay judges seems to be individual. Three interviewees (3, 7, and 11) have openly expressed to represent the parties' ideologies in court. This leads to a difficult and complexed discussion regarding the dividing line between party politics and individual opinions and ideologies. Where is the line drawn for politicization?

Interviewee 3 applies her political parties' ideas in court when they are in line with her own thoughts – which they usually are. Interviewee 11 argues:

“... I am a part of my party to change towards the direction I want to, and with that said, I believe I am doing that since I am a part of that party” (Interviewee 11).

He argues that since he gets renewed confidence to do so, he must be doing it right. Interviewee 7 also applies her party's main ideas in court regarding all peoples' equal value and all peoples' equality before the law. Interviewee 6 said he agreed with some ideas of his political party, such as managing gang criminality, however, he claims to leave these ideas behind when entering the court. Interviewee 8, interpreting the correlation of political-party views and the role as a lay judge differently, believes his role as a lay judge is in line with his party's views on decentralization and public transparency, which the system is in line with. Nevertheless, as interviewee 6, interviewee 8 also interprets the role itself as unpolitical in which he complies with laws and separates his own opinions from his role as a lay judge. Hence, seven interviewees, together with the other interviewees (1, 2, 4, 5 and 10) proclaim to not apply the ideas of their political parties in court.

For instance, interviewee 5 asserts to have not heard from the party since she entered the role and devotes no thoughts to her party when in court. Interviewee 4 states as follows:

“...how we shall judge in the society is something we have all agreed upon... that should not change because of political ideology.” (Interviewee 4)

Interviewee 10 also emphasizes the unpolitical role as a lay judge:

“... when I'm a lay judge I don't represent any party or any political part, but my role is to judge according to the knowledge and insights I get about the case and not to involve political perceptions in that judicial role I have.” (Interviewee 10).

As presented in the background, the mission is not political since it is important to be objective in court, hence it is not allowed to be affected by political views according to the Swedish National Courts Administration (Domstolsverket). Still, three of the interviewed lay judges said to apply their political party' ideas in court, thus it could be interpreted as violating the directives of their roles.

Nevertheless, none of the interviewed laymen have felt obligations towards their political parties to maintain their ideologies. Most of interviewees agree to put all party-political affiliations to the side in their roles as lay judges. As one interviewee formulates:

“As I said, I don't think one should have their party's ideology when in court. The party's ideology should not affect our rules and laws...” (Interviewee 4).

Interviewee 11 exclaims he has been asked how it goes and what they do, but never any indication on how he should do or resonate, but rather he has been given confidence to do as he considered suitable.

“It is very much according to my personal view on both my party's societal view and my own view on society.” (Interviewee 11).

Interviewee 1 have felt division between himself and his political party primarily regarding his contrasted views on penalties in comparison to his political party, in which he adheres to his own views. The other interviewees who are

stemming from political parties, did not feel a division. Although, interviewee 3 stated how she sometimes differ in opinions from her political party and always represent her own ideas in court, which could be interpreted as a division. The others, except for interviewee 11, argue the role is unpolitical and therefore no thoughts are spent on the political party. Interviewee 2, 4, and 8 emphasized following the statute book rather than individual or political views.

” I have no political role as a judge, I am uhm... it’s hard to imagine that one can merge politics and their judgments in court in any way...” (Interviewee 4).

The quote from interviewee 4 is interesting in comparison to interviewee 11 who interprets the role as one in which he can affect politically in court.

Interviewee 8 contends he has opinions about certain legislations, but in court he judges according to the law and for him it is easy to compartmentalize it. Interviewee 10 also asserts he separates the political affiliation from his lay judging role and concentrates on presented circumstances in court.

Interviewee 3’s remark on sometimes differing in opinions to her political party does not add up to her previous remark on representing the party’s ideologies in court. Perhaps she meant on a general level, and in those cases when she does not agree with her party it might be regarding minor issues and not the overall ideological ideas.

Furthermore, it is possible that the interviewees interpreted division differently, regarding division between their political party and their role as lay judge in court. Differing interpretations might be an explanation of why some interviewees did not feel a division between themselves and their party, while still differ in opinions in court as with interviewee 3.

5 Findings and analysis: Structure of the Lay Judge System

This theme, *Structure of the Lay Judge System*, consists of accounts relating to the interviewees' views on the structures of the lay judge system, in which politicization might take place, such as views on other lay judges and the construction of the system. Within this theme, 4 subcategories have been distinguished from the interview responses; *Ideologies and political affiliation in court*, *Political composition of lay judges*, *Room for political opinions*, and *Recruitment of lay judges*, as presented below.

5.1 Ideologies and political affiliation in court

This subcategory presents and analyzes the interviewees' views on, and experiences of, other lay judges in court regarding politicization.

Some interviewees thought there are many different interpretations of the role, but most of them agreed that in general lay judges appear suitable for the mission. Nevertheless, Interviewee 1 believes some lay judges have the role for political purposes, which he does not believe it is the right forum for. Interviewee 3 believes there are probably lay judges with those purposes as well. Interviewee 6 states not all lay judges understand the role as unpolitical, which is of concern.

All interviewees except one stated that they had experienced other lay judges' party affiliation being shown in court. Interviewee 1 has experienced defendants being judged differently based on their appearances from lay judges belonging to right-wing political parties. He has noticed discrimination and racism towards defendants as soon as they appear through the door, acknowledging prejudice from especially right-wing parties which also have taken part in discussions in the lay judges' room at the courts. Interviewee 3, 6 and 9 have noticed similar matters, but

rarely. Interviewee 3 had thought she would be able to pin-point down some Sweden Democrats, but it only shines through sometimes.

” ... sometimes I have noticed that...the view of people and people’s background has influenced ... what other lay judges have brought with them that have suggested judgements and those things, and sometimes it has been pretty rough.” (Interviewee 3).

Further, she argues it is immediately noticeable when there is a lay judge who cannot separate the party-political affiliations from the lay judge role, which interviewee 6 also claimed. He also argues it is especially those emanating from the Sweden Democrats.

“...and those parties that cannot separate it, it is one party that has been under fire because their representatives have deviated there... It is of course SD it has been about, some of them have been separated from the mission.” (Interviewee 6).

Further he argues about the importance of all people, no matter the appearance or background, to be judged on equal basis for the legal system to function. Interviewee 7 have also suspected party affiliations of lay judges in court, even though the mission should be unpolitical. She is frightened that values of lay judges from the Sweden Democrats will influence their view on equality and on foreign people before the court, which interviewee 9 also have noticed. Neither interviewee 6, 7, nor 9 have experienced it affecting the court ruling due to a minority of those opinions. Interviewee 9 added it was not within the limits of the laws either. Other party belongings could also be guessed through statements and discussions during deliberations. Interviewee 9 argues one understands the party affiliations from statements made by lay judges after some time in the mission. Interviewee 10 has also suspected views opposing the laws in a migration case, which was stopped by the judicial judge before it could even reach any verdict. Interviewee 11 explains it is obvious some lay judges abuse their position from ideological beliefs. The judicial judge normally notices and handles it quickly. Most of all, it has been clear in migration cases, in which some lay judges decided upon expulsion before negotiations:

“... sure, we have gotten documents but the idea with a gathering and with a meeting is to complete documents to get more information, and thus it feels strange that one has already decided what the outcome is.” (Interviewee 11).

Similarly, interviewee 8 experienced a lay judge in the Administrative Court of Appeal who stated he would refuse judging someone wearing a burqa in court, to which the judicial judge replied he would commit a misconduct and a crime. Apparently, a few other lay judges agreed with the lay judge, stating it is not reasonable judging someone who's face cannot be seen. Interviewee 8 has not only experienced inappropriate statements regarding ethnicity, but also relating to sexual orientations. In this case he was not certain whether the lay judge adjudicated according to what was said in court, or according to his ideas of certain people.

*” ... one lay judge in court... turned to me and said, ‘oh he was such a fu**ing faggot’”* (Interviewee 8).

Fortunately, it did not affect the court ruling in this case either, but is nonetheless an example of what interviewee 8 suspects as ideas stemming from party-political or ideological views shown in court.

Interviewee 5 suspects political beliefs being shown from how some lay judges express themselves. Further, she believes there has been a change in society since the migration crisis, noticing the more positive stance in migration cases in the beginning, which later turned to more skepticism and suspicion towards immigrants in court. She expresses how she believes it has to do with the societal climate rather than political influence. She believes this tiredness is also prominent from the judicial judges. Interviewee 9 has been in arguments with multiple lay judges regarding politicization of the mission, defending the unpolitical character of the mission to lay judges stating the opposite. For instance, one lay judge believed it was part of the mission to report back to the party about the judiciary and which types of criminals that were being judge in courts. Interviewee 9 indicated it was nothing unique, and it did not only apply to new lay judges:

“... at least one of those who claimed this has been lay judge for any number of years” (Interviewee 9).

Interviewee 2 has instead noticed individual beliefs, rather than party-political, shown in court. However, as the other interviewees, interviewee 2 can also suspect party affiliations through statements and actions of other lay judges. Interviewee 4 has not noticed it in court, and argues:

“... despite the different reasoning of the lay judges and, like, their personal opinions... it has never affected a fair judgment in the end, because the judgements are still based on laws...” (Interviewee 4).

It is interesting that interviewee 11 can interpret political affiliations in court as abusing the role as a lay judge, while interpreting the role as a political one, in which he wants to efficiently change society, himself. If some party-political opinions would be allowed, rather than others, it would be problematic. Who would decide which politicized opinions that are acceptable, and which are not?

Interviewee 5's remarks regarding a changed view of migration in society is a matter of interpretation of politicization, whether societal and individual beliefs are equal to party-political opinions, like the discussion above, under the first theme. However, regarding previous studies presenting judgments made by lay judges from the Sweden Democrats tend to be harder on migration cases as Martén (2015) argues, this also relates to what interviewee 5 notices with the common hardline by the people, also since there are more lay judges from the Sweden Democrats today. Moreover, multiple parties have turned towards a stricter migration stance since the migration crisis 2015, reflecting the views of people in society. Although, Martén's (2015) study shows that asylum appeals are more likely rejected when the lay judges partake from the Sweden Democrats, as presented under previous research. This has also been the view of all interviewees, except interviewee 2 and 4.

The limit between personal views and political views is interesting and tends to complicate the discussion of politicization. It might not matter if their judgments are based on political or individual beliefs, since people are part of political parties for a reason – their individual beliefs and ideologies normally correlates with the party's. However, it could depend on if they view their lay judge role as political or not, and if they apply their party's ideas in court, or rather abide by the laws. Nevertheless, since the laws are interpretable and provides space for opinions in

deliberation, this might enable room for political opinions which will be discussed below.

Furthermore, it is interesting that interviewee 4 has not noticed a politicization regarding racial discrimination, when he personally has a foreign background. Either the lay judges have different opinions of how racism displays, or perhaps because he has only been a lay judge for a year and therefore had not seen enough political tendencies being shown yet in court, or maybe prejudiced lay judges control their comments more around lay judges with foreign backgrounds. The reasons can be speculated, but nonetheless it is slightly reassuring that at least one lay judge have not noticed any politicization in court.

As presented in the background, according to the Swedish courts, the independence, expressed in the constitution, and legal security is a foundational ground of a democracy. Neither the government, the parliament, nor other authorities can decide how a court should judge in individual cases. The aim of the legal security is to protect everyone in Sweden from abuse, hence there shall be no judgements without legal support, and all citizens should be judged equally. To what extent this is followed in practice, however, is hard to tell, and one qualitative study as this one is not enough to reject or confirm this principle. However, emanating from this important principle, the study's findings can be analyzed regarding politicization and how it risks affecting the independence, legal security, and equality of the courts. The witnessing of racism and discrimination within the court is alarming, especially since at least nine lay judges out of eleven, only in this study, have experienced it. No matter the generalizability of these witnesses, and no matter the frequency of the events, it is nine too many. It should not exist. It contradicts the principle of independence, legal security, and equality within the court, which risks leading to unfair trials. Although, the factors of laws and judicial judges' effects on the outcome is somewhat reassuring from a bigger picture. Nevertheless, all defects, no matter reoccurrence of events, should be nonexistent. A vision zero should be applied to court, perhaps a whistleblowing function could be possible for laymen experiencing discriminations at court to raise awareness of the issues?

Regarding disagreement in court due to different political affiliations, it has been experienced by four interviewees (Interviewee 1, 6, 9, and 11). Interviewee 1 has

noticed it regarding the penalty scale, rather than of the suspect being innocent or not. According to interviewee 6 it is rare, but when it has happened it is always the same people who stand out, lay judges from the Sweden Democrats. Interviewee 9 argues the dissidence in court is normally because of political affiliation, especially since lay judges are nominated by the political parties, hence they are there because of their political opinion.

” ... if the court is dissident, it’s usually due to, at least in principle, different political opinions” (Interviewee 9).

Interviewee 11 argues the dissidences in court is due to political affiliation as well, and especially in migration cases, which is why it is rarer today since there are less of those cases in court.

Five interviewees (Interviewee 4, 5, 7, 8, and 10) have not experienced the judges being dissident due to political traits. Nevertheless, the judges have been dissident according to interviewee 5, even though it is not often since they almost always agree.

” ... it has happened sometimes that all three lay judges have gone against the judge. And it happens every now and then, but not particularly often...” (Interviewee 5).

Interviewee 8 argues it is due to lay judges’ life experiences, rather than political affiliations.

To conclude, dissidence due to political affiliations is not experienced often, but the views that it exists is problematic, since it might lead to unfair and biased trials depending on which party representatives who appear in court, which contradicts foundational rights presented by the Swedish courts.

Interviewee 6 pointed out another issue of political affiliation, regarding that lay judges from The Social Democrats pay 15 percent of their emolument to their party funds. He believes it puts the impartiality at stake, since only loyal party members would pay the fee, affecting the laymen’s neutrality and impartiality. Interviewee 8 agrees, arguing it might bring the lay judge closer to its party-political ties. Both interviewees from The Social Democrats verified the claim of the fee, however they

did not see any issue with it. Interviewee 11 argued he is of the ideology of collectivism:

“We already do that in my municipality with all political missions, so it’s nothing I consider strange or such” (Interviewee 11).

A problematic factor of his statement though, is that he regards the lay judge mission as another of the political missions, which is problematic since it is supposed to be an unpolitical role according to the Swedish Courts. A risk of paying a percentage of the emolument is regarding the political affiliation, since it is more likely that loyal party members would agree paying the fee rather than non-party political lay judges. Hence, this could be viewed as a way for the Social Democrats to guarantee only nominating loyal party members as lay judges.

To conclude this subcategory, based on views from the interviewees, there are clear indications of politicization within the lay judge system. However, multiple interviewees stated it was not often reoccurring events, nevertheless, almost all interviewees have experienced politicization, through party-political ideas expressed in court. Hence, it is evidently reoccurring according to multiple witnesses, which is problematic regarding the legal certainty, impartiality, and fair judgements in the courts. Political affiliations seem most apparent in migration cases, which is of an issue regarding everyone’s rights to a fair trial. Luckily, a common view was that the party-political opinions shown in court, did not normally lead to verdicts. Thus, the consequences of politicization will depend on the composition of lay judges in court, which will be further discussed in the next section below.

5.2 Political composition of lay judges

This subcategory presents the interviewees’ views of the composition of lay judges in court, regarding the political party affiliation of the composition, and whether it

is considered important or not to have a composition with representatives from different political parties.

Interviewee 1 both believes the lay judges' affiliation to a political party, and that different political representation in the composition of judges, matters in today's system:

"...yes, I feel that it can have... an effect, at the same time it is important to remember that ... even if we have a free quota, people still have basic values. We cannot completely get away from it might playing a part..." (Interviewee 1).

Interviewee 7 also believes it is important to have lay judges representing different political opinions:

"...one is not supposed to be political, but many times it does affect" (Interviewee 7).

She believes it affects the view on sentences, and harder penalties have been discussed by the Christian Democrats, the Moderates and the Sweden Democrats, which she believes especially affects people with foreign backgrounds. Further, she thinks it matters what party the lay judges come from because of her view of SD as a less democratic party with different basic values, of which she sees a risk of the democracy being disassembled, and a threat against society, which might then also take part in the judiciary. Apart from this view, it does not matter to her what party the other lay judges belong to, since a democracy entails a free will.

Interviewee 3 laughingly said it matters if the others have other opinions than hers, nonetheless, life experiences are more important. Still, she stated that she believes a mix of lay judges with different perspectives is what can create objectivity. Interviewee 11 thinks party affiliation of other lay judges is of meaning for the cases in court, and because of some lay judges abusing their power, in which cases he believes they are not appropriate for the mission. Six interviewees (2, 4, 6, 8, 9 and 10) do not believe the political affiliation matters. Interviewee 8 contends they are not there to represent their parties; hence the party affiliation should not be lifted, since it is not supposed to influence decisions:

"I should not refuse agreeing with someone just because I believe they belong to a foully party..." (Interviewee 8).

Nonetheless, five interviewees (4, 6, 8 9 and 11) think it is important to have a composition of lay judges representing different parties. Otherwise, according to interviewee 4, there can be different political colors affecting the ideas and the process, thus he thinks there should be a mix of lay judges from different political spheres.

” ...how you think politically, like, so, it has to do with how you are as a person... you cannot abandon that when you are in court, how you are as a person ... you cannot take the party’s ideology and create a judgement as fair as possible, that reflects what the society thinks...” (Interviewee 4).

Additionally, interviewee 4 does not think it matters much which political party lay judges affiliates with, since he does not think it affects anyone in their judgements. He adds that at least it does not affect himself.

Interviewee 8 and 11 contends the composition of lay judges should reflect opinions of the population, and everyone does not agree on everything in society, hence, it is important to have lay judges representing different political parties in the court composition. However, Interviewee 8 asserts that life experiences matter more than party affiliation, and gives an example of a case where all three lay judges in court were appointed by The Centre Party, although they were not unanimous.

Similarly, interviewee 5 does not think the political affiliation matters either but, like interviewee 8, emphasizes the importance of personality traits and background. However, she says:

” It could be an unfortunate combination of us, but at the same time you are supposed to pick us out randomly.” (Interviewee 5).

Interviewee 9 contends it is not often lay judges’ opinions differ from the judicial judge, but simultaneously believes it is important to have input from people who derives from other parts of society.

Interviewee 10 assumes the other lay judges are objective enough to not let the party-political affiliations influence. He respects the different party associations of other lay judges and does not think it matters which party the others belong to. Further, he asserted to have a composition of lay judges from different political

parties matters, however, he thinks they are unattached to their parties' values in the role, and act objective in court.

Having randomized compositions of lay judges in each trial enables the risk of all three coming from the same party. This relates to Holm's (2018) evidence of the composition of judges and political views determining the outcome of the court. It could be extra harmful, for instance, if the party unites in discrimination issues, such as opinions from the political far right in migration cases, or criminal cases with an immigrant victim or prosecuted. Especially if this lay judge composition would consist of those lay judges who are politicized, and perhaps belong to the same party. Additionally, if the politicization of those lay judges is of discriminatory nature, it might lead to legal uncertainty, and an unfair trial.

However, regarding most of the interviewees' opinion, it is not the party-political affiliation of the lay judge that might affect the outcome of court rulings, but rather the personal background and experiences. One of the interviewees gave an example of being part of a composition of all lay judges in court with affiliations to the Center Party, but all with different opinions. Thus, personal opinions might not always correlate with the party-political ideas.

5.3 Room for political opinions

This subcategory analyzes the views of the lay judges regarding if there is room for political opinions in the judiciary.

Regarding whether the interviewed laymen believe there is room for political opinions, six interviewees (1, 5, 8, 9, 10 and 11) think there is. However, three of them (interviewee 5, 8 and 9) do not believe it would go far through the court system, because of laws and the judicial judge. Nevertheless, they do not believe it should be more room for political opinions since the role is unpolitical. Interviewee 5 argues it is not an arena for politics, but to reassess decisions in a correct manner. Even though everything somehow can be politics, this is not where to pursue politics according to her, which interviewee 6 and 9 also contended. Interviewee 8 comparably argues it is not a place for political and ideological opinions. The

judiciary ought to strive for objectivity. The discussions of sentences provide some room for political and ideological reflections within the limits of the law, which should not expand according to him. He believes it is crucial that the courts should not be legislative bodies.

“...you can see what is happening in countries like the USA where it is being politicized, which I believe is dangerous.” (Interviewee 8).

Interviewee 10 believes there is room for political opinions in the deliberation, but have never experienced it. Though, he does not believe there should be room for political opinions in court, arguing the political should not replace the judicial establishment.

Five interviewees (2, 3, 4, 6 and 7) believe there are no room for political opinions. However, interviewee 3 referred to party-politics, meaning the judiciary would need some political visions, but whether it should be within the laymen system she leaves unsaid. With political visions she means common values, morality, and such which one brings as an individual from the civil society.

Interviewee 6 argues in opposite to interviewee 3, that there should not be any room for political opinions, and if he would think there are needs and wishes for it, he would resign from the mission since it would be awful. Interviewee 7 argues similarly, referring to the risk of political opinions concerning views of people as being unequal.

Interviewee 11 argues the efficiency of influencing the society would increase, by allowing more room for political opinions in court. However, the established laws comprise political opinions from the parliament, and its time-consuming aspect might be positive. He argues that while excessively impulsive politicians might be positive for individuals or political parties, it could be negative for the society.

The remarks made by interviewee 5, 8 and 9 concerning that political opinions would not go very far through the courts, relates to the Government Offices' report (Statskontoret, 2015, p. 102), which also brought up that it is rare that lay judges' political opinions are expressed at courts and if it would, it could be handled,

according to several heads of courts. Hence, their opinions regarding it not normally going far in courts is strengthened by this report.

Interviewee 11 had an interesting view, comparing to the others who believes the laws should be followed, some arguing the laws are based on common decision-making by society, he primarily believes lay judges are arriving from the political parties to enable a more effective way of changing society through the courts. This could be interpreted as a very politicized view on the laymen role in courts, especially regarding the fact that the role is to be unpolitical, in contrast to the views of interviewee 11. However, he still argues that despite needing to act according to the will of those he represents, he still needs to act within the laws' limits, and simultaneously he concludes by stating that he does not believe there should be more room for political opinions, since there is a risk of having an excessively efficient change of society through the courts. This conclusion is different from the views he has shown in the other subcategories; hence he might have realized the risks of having politicized lay judges in court.

5.4 Recruitment of lay judges

The interviewees views on the current recruitment system, and a more open recruitment system outside of the political parties, are analyzed in this section.

Seven lay judges, (interviewee 1, 3, 5, 6, 7, 8, 9) believe a more open recruitment system outside the political parties could be beneficial. Interviewee 1 argues he would prefer it, enabling lay judges independent from political parties. However, he states it is not a popular opinion but rather controversial:

“If you say that in the jury's room, you will be executed. Not really, but it is very sensitive.” (Interviewee 1).

Interviewee 3 argues nomination through the political parties is a strange system considering the role, which is unpolitical. Interviewee 5 explains that the lay judges reflects the regional election outcome to which all political parties are represented in proportion. Further, she claims it reflects what people in the society wants, even

though there are many differences within the parties, people with different backgrounds and experiences as well. However, whether the recruitment through political parties is optimal can be discussed. Further, she states:

”... I recognize quite a few old municipal commissioners¹ and such from different municipalities which have had top political assignments and been committee presidents² and I think I have seen quite many who have had different positions in the society, that is professional positions... I don't know if there have been unfair recruitments, I don't dare saying that.” (Interviewee 5).

Interviewee 5 did not literally utter her stance to be for a more open recruitment system, but she did express some disadvantages with the current system, since there are appropriate people not relevant for the post as they are not part of any political party. Nonetheless, she believes her party, the Liberals, handles the process very well and thoroughly in the nomination process. Interviewee 5 and 7 think an open recruitment process is interesting but do not know how it would function concretely. Interviewee 7 further argues the importance of a lay judge to be engaged in society. Interviewee 6 is not sure the candidates nominated by the political parties offer the greatest selection of people, but rather a free quota could increase the quality of lay judges.

Interviewee 8 questions the political parties' representativeness of society, since only a minority of the population are party members. He describes the position can both be a reward for being an active party member or, as in bigger parties, it can be a place to put party members that could otherwise be a risk of embarrassing the party in a political position, though it is not to an extensive degree.

“... I got to be a lay judge because I was vice president... it was not a substantial examination process...” (Interviewee 8).

The Centre party have tried to improve the recruitment with nomination committees assessing the motivations of the nominees, according to interviewee 8, but he does not know how the other parties operate. It is not a requirement to be a member of

¹ Municipal commissioners: Kommunalråd

² Committee president: Nämndordförande

the party to become a lay judge, although he has never heard of a recruitment of a non-member.

Interviewee 9 has similar views regarding recruitment of party members, stating it can be as a compensation for them, that the roles are kind of a wasteyard for long-term party members. She has similar opinions as interviewee 8 regarding a minority of the population are being represented by lay judges from the political parties, since less than 5 percent of the population are party members. When interviewee 9 tried to become a lay judge, she emailed all political parties from the municipal assembly and asked how to proceed. Everyone responded except for The Sweden Democrats, and The Social Democrats told her they got many party members this way. Since she was not a member of any party, and did not plan to become one, the only way for her was to be nominated by the Green Party, which includes the ambition to nominate half of their lay judges from non-party members in their party program. Interviewee 9 exclaims that political parties nominating lay judges ought to have election committees, which exclude people with extreme opinions who would use the court for individual purposes. She hopes it is considered in the recruitment processes, all she knows is that The Green Party nominating her was serious, and that they have been on the front-line regarding recruitment outside of political party membership. Interviewee 9 argues like other interviewees about the issue of the nomination process since no alternative to the political parties have been emphasized. However, she argues that there is nothing that determines the recruitment process to go through the political parties. Further, she claims the issue of other lay judges interpreting the role as political because of the nomination processes.

Interviewee 10 has no idea what an alternative to the current system would be, but is interested in taking part of an alternative, if presented. Further, he states:

” ...as I see it now, we have a democratic rule in Sweden, where there is a possibility through the different parties.” (Interviewee 10).

He thinks there are possibilities to become a lay judge for non-party members as well through the current system.

Contrarily to most interviewees, interviewee 2, 4 and 11 support the current system through the political parties. Interviewee 2 argues the political parties' role

in the process constitutes control, and enables accountability for the nominations. It is important to have a well knowledge of people, and no better alternative has been presented. Interviewee 4 argues similarly, stating that lay judges need to be aware and interested in societal issues. Interviewee 11 believes the lay judges should resemble the parliament, by mirroring the representatives of the society, hence he is positive to the current system. He believes a more open system would hinder a more efficient way of changing the society through the courts, by having lay judges from political parties, rather than randomly chosen people with different opinions, as other countries' jury duty, which he argues contributes to stagnation. He adds:

“I Would have wished for a clearer way for the public how to announce interest, with that said it does not mean that one would be elected since it is still the parties who will choose who they consider will represent their view of the society.”
(Interviewee 11).

The idea of choosing lay judges based on competence and suitability, by evaluation as if recruiting an employee, as presented in the background, does not seem to be the case since only the Green party is recruiting outside of their own members according to the interviewees. The argument of the political parties' assurance of knowing the nominees when nominating party members are argued by interviewee 2 and 4. However, it is obviously no justifiable argument since there are still inappropriate judges nominated by political parties as experienced by most of the interviewees. Another argument for the current system is the political parties as means for accountability for nominations as interviewee 2 argues. However, since there still are inappropriate lay judges from these nominations, perhaps the courts, or other actors could be held accountable likewise if others would nominate laymen. Since the court can dismiss unfit judges, it is not a convincing argument either for keeping the current recruitment system through political parties.

Concerning some interviewees' view that several parties regard the lay judge mission as a dumping ground for unsuitable politicians, further contradicts the argument for ensuring fit lay judges by nominating party members. Additionally, it is problematic that the recruitment process and the examination process seem to differ among the various political parties. For instance, interviewee 5 from The

Liberals stated how impressed she was regarding their thorough application process, whereas interviewee 8 from The Centre Party indicated the lack of scrutiny, hence he was elected due to his former role as vice president of the party.

Interviewee 11 describes a politicized view, that the system can change the society more efficiently when consisting of politically elected lay judges. In another context, as presented above, he rather argues this could be harming for the society. The stagnation of development, as he describes as negative in this subcategory, should rather be considered positive for the court, since it would mean consistency, and enhance the chances of fair trials. As other interviewees have argued, the courts should not be a platform for party-political changes of society.

Another questionable factor of the current recruitment structure is regarding representation of society through the political parties, since most of society are not party members. A more open system would enable a broader representation of citizens, thus not only politicians. However, a categorization of different parties as the current system provides might ensure different opinions to be represented. If the system would be completely open for nominations, there might be a risk of most lay judges having the same ideologies or values, with no systematic structure for a division between different opinions, as political parties provide. Through the current system, representatives from the political parties are more likely to ensure a distribution of differing opinions. Concurrently, there is no certainty lay judges from the same party have similar opinions in a factual issue, as interviewee 8 asserted. Nevertheless, considering most of the interviewed laymen believed the recruitment system ought to be more open for non-political party members as well, it is a supporting factor for the view of party-political nominations to not be the best system for assuring suitable lay judges.

Söderholm et al's (2013) claim that popularly elected judges are a control for the judicial power to stand independent from unwarranted influence of the government, organizations, and others, which could be discussed since they are nominated by political parties, which are the government and/or organizations. Hence, the independence risks decreasing, and rather being politically dependent if the courts are politicized. The nomination system of lay judges is probably one of the biggest factors for the degree of politicization shown in court today.

Regarding the argument of lay judges constituting of politicians as a resemblance to election outcome, hence representing the will of society, might

apply in theory as a collected group of lay judges. However, considering the randomized selection of lay judges in each court setting and case, it does not resemble the election outcome and majority of the will in society as those representing the will of the majority might not be part of that court case. Other interviewees also emphasize the majority of society; non-political party members who are not represented by lay judges from political parties.

6 Conclusion

RQ1 is answered in chapter 4: *Findings and analysis: The Role of a Lay Judge*. This chapter analyzes the first theme, lay judges' views of the role, in which all interviewed lay judges, except one, interprets the role as unpolitical. Nevertheless, seven of the interviewees believe their ideological views are shown in court, and might have an impact on verdicts. If their ideological beliefs correlates with party-political ideologies, the conclusion would be that the interviewed lay judges are politicized through their ideological views in court. However, if they manage to separate their party affiliations from the lay judge mission, as most of them argued, their ideological beliefs might differ from party politics. Thus, it is not certain that there is a high degree of politicization within this category, since only one interviewee viewed the role as political. Most of them seem to have a distance between themselves and their political parties in their roles in court. Considering this, in combination with them being aware of their unpolitical roles as lay judges, the chances of them to separate the role from their political parties when in court increases. However, three of them claimed that they apply their party's political ideas. Yet, it seemed like almost all interviewees see the danger in politicized courts, hence they are aware of the unpolitical character of the role and to abide by the laws, rather than party-political ideologies in court.

RQ2 is answered in chapter 5: *Findings and analysis: Structure of the Lay Judge System*. In this second theme, the Structure of the Lay Judge System, the experiences are more problematic from the view of politicization, since almost all interviewees have noticed at least one factor of politicization in court. Even the only one who had never experienced it, believed the colors of the lay judges' political party might still influence the court if the composition of lay judges in court would not be mixed, which is a risk with the system today, since the composition is randomized. The most common party-political affiliation experienced in court was of the far right, regarding migration cases, and other cases, which had been influenced by discriminatory opinions of lay judges, mostly stemming from the Sweden Democrats. However, these opinions in those cases have been stopped by

the judicial judge, laws, and opinions of the other lay judges. Nevertheless, this could be an issue if the composition would consist of politicized lay judges from the far-right, hence it would lead to a majority of those opinions in court. Additionally, about half of the interviewees believe there is room for political opinions in the judiciary, which is problematic both because the lay judge system should be unpolitical, and because the court system altogether should be impartial to ensure fair trials. At least, all interviewees but one believed there should not be more room for political opinions, which even interviewee 11, who had a politicized view of the role, agreed upon. Most of the interviewees, seven of them, believed there should be a more open recruitment system of lay judges, to enable non-political members to join the mission. It is argued from issues of representation, quality of lay judges, and politicization.

In conclusion, there are issues with the vagueness of the missions' purpose regarding politicization and political affiliation, and its connection to the role as unpolitical, especially regarding the current recruitment system, which further increases the confusion of the role. Although most interviewed lay judges view their roles as unpolitical, there are elements of politicization in the lay judge system as interpreted from their views, especially regarding the structure of the system. There are lay judges in court who act politicized, and although it is not often recurring according to the lay judges, it is still problematic regarding the legal security, and impartiality of the courts.

6.1 Further Research

Further studies may be based on lay judges' roles in relation to the judicial judges, since many lay judges experience that they do not get enough room for their opinions, which can differ between different courts. Objectivity in court could also be studied, since it is part of the guidelines of the courts but interpreted differently and is a difficult but important concept to act by to enable fair trials. The education for lay judges might also need scrutiny in further studies since it was raised as an issue by some of the lay judges, whereas others thought it should not be more

education, since people should bring their unaffected views as representatives of the society.

7 References

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7.2 Interviews:

- Interviewee 1, 05-11-2020, Malmö, 63 minutes
- Interviewee 2, 10-11-2020, Malmö, 65 minutes
- Interviewee 3, 11-11-2020, Malmö, 71 minutes
- Interviewee 4, 12-11-2020, Malmö, 58 minutes
- Interviewee 5, 13-11-2020, Malmö/Zoom, 81 minutes
- Interviewee 6, 16-11-2020, Malmö, 123 minutes
- Interviewee 7, 17-11-2020, Malmö/Zoom, 76 minutes
- Interviewee 8, 18-11-2020, Malmö/Zoom, 63 minutes
- Interviewee 9, 20-11-2020, Malmö/Zoom, 108 minutes
- Interviewee 10, 24-11-2020, Malmö/Zoom, 63 minutes
- Interviewee 11, 26-11-2020, Malmö/Zoom, 78 minutes