FESTSKRIFT TILL

# Elisabeth Rynning

## Integritet och rättssäkerhet inom och bortom den medicinska rätten

# *Festskrift till Elisabeth Rynning*

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# Innehåll

Yana Litins'ka

# An Ounce of Prevention for a Pound of Cure? Infection Disease Testing at the Border*

## 1 Introduction

Elisabeth Rynning's doctoral thesis, devoted to consent to and refusal of medical interventions, was the first Swedish monography to address this critical issue. One of the thesis's significant contributions is the analysis of what intervention shall be considered forced, as opposed to voluntary measures. Elisabeth's findings remained relevant in her work as Chief Parliamentary Ombudsman, a challenging assignment during the Covid-19 pandemic. During her tenure, issues of forced interventions and deprivation of liberty to prevent the infection from spreading were brought to the attention. Her work emphasised the need to follow the constitutional requirements, particularly in times of crisis, and the need for legislative preparedness for epidemic challenges. This contribution will reflect upon some legislative developments after Elisabeth's tenure as Chief Parliamentary Ombudsman to celebrate her work on the issues of voluntariness and compulsion in times of crisis.

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On 5 January 2023, the Swedish Government, upon the recommendation of the Public Health Authority, announced the decision to introduce new restrictions to enter Sweden: due to the spread of the infectious disease Covid-19 in China, travellers from this direction needed to show negative Covid-test results. When there was no possibility of showing negative test results, the travellers were not allowed to enter Sweden. Governmental Ordinance 2023:2 was temporary and lasted from 7 January until 19 February 2023. The restrictions did not apply to many groups of persons, particularly those with the legal right to reside in Sweden or another EU state.

Although the Ordinance is no longer in force, the fact of its enaction raises several public law concerns. Firstly, the concerns about the rule of law and the legal nature of such testing within the Swedish legal order must be addressed. Chapter 2 Article 6 of the Instrument of Government (hereinafter – IoG) prohibits forced bodily interventions; the right can be limited only by Parliament and, if necessary, in a democratic society. Governmental Ordinance 2023:2 raises the question of whether it limits the freedom from bodily interventions in the constitutional meaning. Secondly, if it will be concluded that the decisions about testing for infectious disease are the exclusive competence of Parliament, the central questions of legislative preparedness to prevent epidemic outbreaks in Sweden via testing those who arrive from the countries where such outbreaks occur must be raised.

This contribution aims to analyse the possibilities and hindrances for introducing compulsory testing to enter Sweden, such as the one established under Ordinance 2023:2. The analysis will focus on national constitutional and administrative law norms. In the area of this article's focus, the case law of the courts is often scarce, and the preparatory works have been remarkably silent as to the meaning of certain notions, such as the definition of *forced* bodily interventions. In this contribution, the strong emphasis will be on studying the practice of the Parliamentary Ombudsmen. The contribution is limited to the analysis of the national public law. The in-depth study of the European Union or international law in the area is necessarily precluded.

The structure of this contribution is as follows. In section 2, whether the obligation to show test results or undergo testing falls within the material scope of Chapter 2 Article 6 of the IoG will be studied. In section 3, I will address what is meant by the limitations of the freedom from forced bodily interventions in the IoG. Further, in section 4, I will discuss to what degree Swedish infection control laws allow for infectious disease testing at the places of admission to the country. In section 5, the overall conclusions

about possibilities and hindrances for compulsory testing to enter Sweden will be made.

## 2 Are Infection Disease Testing Forced Bodily Interventions?

The sources of Swedish law have discussed the issue of whether non-invasive interventions constitute bodily interventions. Preparatory works to the IoG (which are considered an essential source of law interpretation in Sweden) specifically mention that provisions of the current Chapter 2 Article 6 of the IoG encompass both injurious (*skadevållande ingrepp*) and non-injurious interventions (*besiktning av kroppen*), which most of the tests are.[1] Preparatory works to the IoG explicitly considered forced medical procedures, blood tests and other similar procedures as bodily interventions.[2] In the practice of the courts and Parliamentary Ombudsman (hereinafter – JO), it was further assumed that saliva tests for DNA investigation,[3] magnetic resonance imaging to establish the age,[4] urine tests,[5] breath tests,[6] opening mouth to indicate that medication was taken,[7] and measuring temperature by contactless thermometer are bodily interventions.[8] The examples from the case practice and preparatory works suggest that examining the body, its secretion and other bi-products fall within the definition of bodily interventions in the meaning of Chapter 2 Article 6 of the IoG. These considerations lead to conclude that tests to establish whether a person has an infectious disease – in the case of Covid-19, usually via a nasal pharyngeal swab, a pharyngeal swab or a saliva test – are bodily interventions.

For Chapter 2 Article 6 of the IoG to be applicable, bodily intervention shall be forced. Several potential arguments could be considered to raise doubts that such testing is forced. Firstly, the argument can be that in scenarios similar to the one in Ordinance 2023:2, physical force is not applied to get a person tested. Secondly, it can be stated that intervention is not forced since the persons travelling from other countries (China in the case of Ordinance 2023:2) can decide not to come to Sweden, which has entry require-

[1] SOU 1975:75 pp. 356–362; prop. 1975/76:209 p. 147.
[2] SOU 1975:75 p. 199; prop. 1973:90 p. 242.
[3] NJA 2021 p. 368.
[4] NJA 2016 p. 1165.
[5] JO 2009/10 p. 39 and JO 2010/11 p. 509; JO 2020/21 p. 115; JO 2016/17 p. 500; JO 2018/19 p. 681.
[6] JO 2003/04 p. 250.
[7] JO 2017/2018 p. 144.
[8] NJA 2016 p. 1165.

ments in the form of compulsory testing. Therefore, the question does not concern bodily interventions but freedom of movement. Thirdly, the representatives of authorities do not necessarily provide testing themselves, and consequently, it can be argued that testing falls outside the article's scope. Testing can be conducted before or after entering the territory of the country. Below, I will discuss how sustainable are these potential arguments.

As to the first argument about the absence of physical force, the JO clarifies that when the actions of the representatives of authorities have the effect of causing persons to reasonably perceive that they are obliged to undergo them, they are forced.[9] The JO decisions highlight that in certain situations where a person is dependent on authority, the possibility of providing free consent, in general, can be questioned and consensual actions can still be considered forced.[10] It appears that demanding the result of Covid-19 tests for those travelling from other countries based on a Government Ordinance or other normative acts can lead to the reasonable belief that a person must undergo such an intervention. It is also evident that obtaining genuinely voluntary informed consent may be problematic when authorities are directly involved in accessing the rights and considering multiple possibilities of misunderstanding due to language issues and different cultural norms. Therefore, the legal safeguards shall be regulated in a foreseeable manner for individuals and authorities.

As to the second argument – the possibility of choosing not to travel and that issue concern freedom of movement alone – the JO practice provides essential responses. JO 2022/23 p. 523 concerns the situation where the Swedish Embassy in Teheran prohibited entering the embassy without measuring the temperature. The JO considered actions to be forced bodily intervention, mainly because persons coming to the embassy for information or due to the pending case can depend on the authority. This reasoning appears similar to other cases concerning drug testing to obtain certain medications.[11] In these cases, the general requirement for drug testing was implemented to receive access to medicines that could be incompatible with addictions and lead to severe consequences for life and health. The JO considered that routine checks, as opposed to individual-based reviews, do not provide real options for opting out. The JO, therefore, concluded that bodily interventions – the testings – were forced. Hence, when people invest resources and time to go to Sweden from other countries, such as China

[9] JO 2011/12 p. 471; JO 2019/20 p. 543; JO 2020/21 p. 115.
[10] JO 2011/12 p. 471; JO 2020/21 p. 115; JO 2022/23 p. 454.
[11] JO decision 7438-2021 from 14 November 2022; JO 2020/21 p. 115.

and visit for various private or job-related reasons, the threat of intention being not realised may result in the perception that there is no other real choice than to take a test. Such tests, especially provided routinely, can be, therefore, regarded as forced ones.

The third argument that the authority does not necessarily provide testing can also be analysed with JO practice's help. In several cases, JO examined actions of social boards demanding persons to give the results of a drug test to receive access to certain rights (social benefits, possibility to communicate with children). Similarly to the situations suggested in Ordinance 2023:2, the social board would not test the person, but another organisation within or outside the municipality would handle the tests. In these cases, JO considered that the demand of social boards signifies forced bodily intervention in the meaning of the IoG and thus requires safeguards established in Chapter 2 Articles 20–21 IoG.[12]

Based on the existing sources of law, it is possible to conclude that the demand of authorities to provide negative infection disease test results to enter the country, such as the one formulated in Ordinance 2023:2, are likely to fall within the definition of forced bodily intervention under Chapter 2 Article 6 IoG. Routine interventions, where a person has no real choice whether to refuse or consent, are likely to be considered forced in the meaning of Chapter 2 Article 6 IoG. Due to the context of the situation – a person on a border is often dependent on the authorities – even consensual testing has often been viewed as forced.

## 3 Defining Limitation of the Freedom from Forced Bodily Interventions in the IoG

The discussion in the previous section indicated that the routine requirement of showing medical test results to enter Sweden falls within the material scope of Chapter 2 Article 6 of the IoG. In accordance with Chapter 2 Article 20 of the IoG, the freedom from forced bodily interventions can be limited only by an act of Parliament; it cannot be delegated to the Government or other actors to decide on the limitation of the rights under Chapter 8 of the IoG. In scenarios similar to those described in Ordinance 2023:2, it is only non-citizens that the measure applies to, which means that similar rules in Chapter 2 Article 25 of the IoG are applicable instead of Chapter 2 Article 20. The requirement that an act of Parliament shall establish the limitation of the freedom from forced bodily interventions is formulated simi-

[12] JO 2016/17 p. 497 and JO 2019/20 p. 543.

larly for foreigners and citizens. But, the other conditions for limiting rights, particularly proportionality, are expressed differently in the IoG.[13] If limitations contradict the provisions of the IoG – the Government, rather than Parliament, limits the freedom from forced bodily interventions – authorities shall not apply provisions that go against the superior statute (Chapter 11 Article 14 and Chapter 12 Article 10 of the IoG).

Swedish constitutional scholarship has discussed a narrower and somewhat unique view of what constitutes a *limitation* of a right in constitutional meaning. Because certain rights, including freedom from forced bodily interventions, can be limited only by Parliament, preparatory works deemed necessary to define what limitations mean in a foreseeable way so that the regulators know in advance who has the authority to set them. Preparatory works tried to address the issue so that not every possible influence on the right would result in the need for a legislative act from Parliament. While evaluating various rights, it was suggested that authorities' actions are limitations if they fall within the material scope of the rights, which appears to be a traditional conclusion. The conclusion stands even today as being in line with the current trend of Europeanisation of Swedish law.[14] The inquiry further considered that the limitation of rights usually implies using physical force or criminalising actions.[15] The bill reiterated this but suggested that a rule limits a right, such as the freedom of opinion, only if the legislator explicitly or implicitly aims at restricting the rights.[16] It was also considered that not all criminalisation means limiting rights, but this discussion primarily concerns the freedom of opinion.[17] When the new rights were introduced to the IoG, the discussion in the preparatory works focused more on the measure's effect on the possibility of exercising a specific right.[18]

[13] The requirement of proportionality is directly formulated in Chapter 2 Article 21, further additional requirements for limitations of rights are also stated in Article 22 of the IoG. However, the wording of Article 25, compare to the Articles 20–22 contains only the requirement of exclusive competence of Parliament to legislate on limitation of the rights. See Andersson, 'Förvar och principerna för tvång' (2020) 2 Juridisk Tidskrift 367, 370. On the possible impliaction in judicial practice see also Bull, 'Proportionalitetsprincipen, regeringsformen och domstolarna' in Nguyen-Duy et al (eds), *Uten sammenligning; festskrift till Eivind Smith 70 år* (Fagbokforlaget 2020) 151–162; Holmberg et al., Grundlagarna (2019, version 3A, JUNO), under rubriken Vad betyder begränsning?.

[14] Prop. 1975/76: 209 p. 153.

[15] SOU 1975:75 p. 104.

[16] Prop. 1975/76:209 p. 154.

[17] SOU 1975:75 p. 188.

[18] See e.g. prop. 2009/10:80, p. 250; Åhman, '2 kap. RF, Europakonventionen och EU:s stadga om grundläggande rättigheter – en jämförelse' in Strömberg et al (eds), *SvJT 100 år* (Iustus 2016) 460–478.

These considerations in the preparatory works led to a debate about what constitutes the limitations of rights. The commentaries to the IoG often generalise the discussion, considering that to state that the limitation of any right takes place, four criteria shall be fulfilled. These four criteria are: (1) the legislator must intend to limit the right (referred to as the aim), (2) the legislator's actions affect the rights within the material scope (scope), (3) there is a serious threat of sanctions (sanctions) and (4) effect of the regulation on the possibility to exercise the rights (effect).[19] The case practice of the courts on freedom of opinion, such as in RÅ 1986 ref.108, has often been used to support the reasoning. Applying the narrower approach to cases similar to those described in Ordinance 2023:2 will result in concluding that the limitation does not occur. The regulator has not explicitly intended to limit the freedom from forced bodily interventions: in Ordinance 2023:2 the references are given to Section 30 of the Act (2006:1570) on protection against international threats to human health. This formulation shows that the Government intended to protect persons from health threats rather than limit their rights. If the criterion of sanctions is to be applied in relation to Ordinance 2023:2, it should be concluded that the limitation of the right did not occur.

Swedish legal scholars have criticised the narrower view on the limitations of rights multiple times. It was considered that legislators' possibility to pick and choose whether an act constitutes limitation leads to arbitrariness,[20] gaps and difficulties in the systematic interpretation of Chapters 2 and 8 of the IoG,[21] and is difficult to reconcile with the Europeanisation of Swedish law.[22]

However, in my opinion, the legal support for applying four criteria for limiting rights (aim, scope, sanctions and effect) to *all rights* established in Chapter 2 of the IoG is not visible even from the preparatory works. The criteria of aim and sanction in the preparatory works refer exclusively to freedom of opinion, currently regulated in Chapter 2 Article 1 of the IoG; such criteria have not been suggested for other freedoms, such as freedom

[19] Bull and Sterzel, *Regeringsformen* (4 edn, Studentliteratur AB 2019) 92–93.; Holmberg et al., Grundlagarna, under rubriken Vad betyder begränsning?, Enqvist (ed), *Religionsfrihetens rättsliga ramar* (Iustus 2013) 90 ff.

[20] Strömberg, *Grundlag och medborgarrätt* (Gleerup 1974) 51–52; Nergelius, *Konstitutionellt rättighetsskydd – svensk rätt i ett komparativt perspektiv* (Fritze 1996) 582–583.

[21] Bull, *Mötes- och demonstrationsfriheten: En statsrättslig studie av mötes- och demonstrationsfrihetens innehåll och gränser i Sverige, Tyskland och USA* (Uppsala universitet 1997) 425 ff.

[22] Cameron, 'Vad är en begränsning av en rättighet?' in Åhman (ed), *De lege 2014 Regeringsformen 40 år 1974–2014* (Iustus 2014) 165–186.

from forced bodily interventions or deprivation of liberty. Moreover, they were used as an alternative to the "application of physical force", which is not reflected in the four criteria classification. My reading of the preparatory works allows distinguishing between different examples of what constitutes a limitation of the rights rather than stating that the rights are limited when certain criteria apply. My understanding is that preparatory works consider three situations:

(a) when the limitation of the right is apparent per se, such as in the example concerning the use of physical force to hinder the effective exercise of the right;
(b) when the limitation is not immediately apparent, but actions, such as criminalisation, can affect the possibility of exercising the rights tangibly and due to them, the definitional threshold for limitation has been reached;
(c) the situations where the definitional threshold for limitation of the right has not been reached.

For specific rights, such as freedom from forced bodily interventions or deprivation of liberty, applying physical force – e.g. operating a person who clearly rejects an intervention or blocking a room door so that an individual stays only there for a prolonged period – are tangible and apparent limitations of the rights, which immediately reach the definitional threshold. The description of the material scope of the rights in Chapter 2 of the IoG leaves no doubt that the right shall be viewed as limited should authorities be empowered to act in such a way. However, when the limitation is not as apparent, such as a physical force is not applied, the question of whether actions of authority reach the threshold for the right can arise. What actions mean reaching the threshold, such as certain types of criminalisation or explicit acknowledgement of the aim to limit the right by a regulator regarding freedoms of opinion, can be exemplified in the preparatory works. The threshold for the material scope can also shift with the development of the case practice. For instance, regarding the freedom from forced bodily interventions, the practice of the JO and courts has broadened the material scope over time. As explained above, it has been acknowledged that requests to undergo an intervention, causing persons to reasonably perceive that they are obliged to do so, are forced.[23] Therefore, it can be stated that physical force and certain requests reach the material threshold for Chapter 2

[23] JO 2011/12 p. 471; JO 2019/20 p. 543; JO 2020/21 p. 115.

Article 6 IoG application. Whether the legislator aimed to limit a right or established certain sanctions is irrelevant in these cases.

Similar reasoning on limitation of the freedom from forced bodily interventions is confirmed by case practice in Chapter 2 Article 6 IoG. Cases of the JO, discussed in section 2, do not put forward the aim of limitation as a criterion. The actual existing sanction, such as criminalisation, has also not been discussed: the focus has been on the perception of whether a person really has a choice to consent to an intervention. Even in the older case law on freedom from forced bodily intervention, the question of aim has not been raised. For instance, AD 1984 nr 94 was concerned with the situation where the Swedish railway issued an internal document requiring to undergo medical examination for certain workers. In case of refusal, the employee could not continue the work. The Court considered that free consent could not be provided due to such a perception and that the Swedish railway had no power to issue the regulation requiring one to undergo a medical examination. The discussion of whether the regulator attempted to limit the right is not present in the case. This practice seems to confirm that the narrower view on the limitation of rights has focused primarily on the freedom of opinion, yet not on the freedom from forced bodily interventions.

Therefore, it is possible to conclude that whether or not the legislator has put forward the aim of limiting a right or established specific criminal law sanction is irrelevant to qualifying the requirement to undergo testing for infectious disease as a limitation of a right. The requirement to undergo testing as a condition for entering the country should be seen as a limitation of the freedom from forced bodily interventions in the IoG's meaning. These limitations shall be therefore established exclusively by Parliament.

## 4 Health Controls on the Border

In this section, I will analyse whether the currently existing legislation allows forced bodily interventions to enter the territory of Sweden.

In 2004, the possibility of health controls (*hälsokontroller*) was introduced to Swedish legislation due to SARS spread as an extraordinary infection disease control measure. Two variants of health controls have been established in domestic law. The first one concerns the situation when it is known that individuals travelling via specific transport can be infected. The second type of health control – and the focus of this section – concern the situations when persons arrive from a country where certain infections are being spread. The purpose of these interventions is to prevent the spreading of diseases that occur within some foreign countries in Sweden. The

provisions allow the Public Health Agency to decide that persons coming to Sweden from a specific geographic area undergo certain investigations to check whether they have an infectious disease. Upon the decision of the Public Health Agency, it is an exclusive competence of infection disease control officers to provide health controls.

However, to apply the provision on health controls, several limitations are prescribed by the Infection Disease Control Act (hereinafter – the IDCA).[24] Firstly, for the Public Health Agency to intervene, the disease must be classified as socially dangerous. Socially dangerous diseases are those that, when spread, can cause significant disturbance in society's function or require extraordinary infection control measures. All the catalogues of infectious disease control measures can be applied to these diseases. Generally, such diseases are established in Appendix IDCA, meaning that act of Parliament is required to legislate on the issue. However, under Chapter 9 Section 2 IDCA, the Government may determine that certain diseases shall be viewed as socially dangerous when the decision of the Government cannot be postponed. This means that to activate the health control provisions, the Government or Parliament should make a political decision that the disease is dangerous enough to be classified as socially dangerous in the meaning of the IDCA.

Secondly, even when health controls can be permissible due to the disease being spread is socially dangerous, the question of the limits of the possible interventions is relevant to address. Chapter 3 Article 8 paragraph 3 IDCA explicitly restricts possibilities of health controls: they must not encompass any forced bodily intervention or medical testing.[25] The measure was designed to allow only the observation of symptoms while persons stay on board the aircraft or ship.[26] Considering the discussion in Section 2 concerning how broadly "bodily interventions" are interpreted, health controls can allow only limited visual observation. For instance, an infectious disease control officer can observe spots or flashes on the body's visible parts and changes in skin colour, such as due to fever. However, even simple measuring of the temperature or requirement to show some parts of the body would not find explicit support in law. Thus, health controls are not designed to allow bodily interventions, making the procedure fruitless for asymptomatic infectious diseases like Covid-19. Other than visual assessment, testing for

[24] Smittskyddslag (2004:168).
[25] See also prop. 2003/04:30 pp. 2 and 130.
[26] Prop. 2003/04:30 p. 61.

a disease, such as via saliva samples or measuring fever, cannot be seen as health control.

The idea behind such a design of infection control measures was that if it is identified that a person can be at risk of infectious disease spreading, a quarantine – a prohibition to leave a building or certain area – can be introduced. If persons then exhibit signs of being infected, they can be isolated voluntarily in a hospital or otherwise. Yet, as it stands, it is questionable whether the current design of legislation is optimal both in terms of resources used for healthy controls and quarantines, as well as proportionality of limitation of liberty to move as opposed to imposing mandatory testing.

As to whether more invasive procedures can be seen as permissible in a democratic society, the World Health Organization International Health Regulations (2005) (hereinafter – the IHR) explicitly allow states to authorise non-invasive medical examinations to achieve public health objectives. The IHR define that non-invasive examinations can include "examination of the ear, nose and mouth, temperature assessment using an ear, oral or cutaneous thermometer, or thermal imaging; medical inspection; auscultation; external palpation; retinoscopy; an external collection of urine, faeces or saliva samples; external measurement of blood pressure; and electrocardiography". Therefore, testing for Covid-19 or similar respiratory diseases would be seen as a medical examination that can be permissible if states authorise it. The IHR have been implemented into the national law via the Act (2006:1570) on protection against international threats to human health. However, Article 25 does not authorise non-invasive medical interventions at the border controls as such, it only provides the borders for the limits of permissible interventions that states can establish themselves. These legislated via health controls borders of interventions are incredibly narrow in Sweden.

Thirdly, the current legislation allows only infectious disease control officers (*smittskyddsläkare*) to execute the decisions on health controls decided by the Public Health Agency. In accordance with Chapter 1 Article 9 of the IDCA, infectious disease control officers are appointed within the regions. Their number in the country is limited and corresponds to the number of regions. In addition, the infection disease control officers may give assignments that are prescribed to fulfil under the act to other doctors at an infectious diseases unit or at an infectious diseases clinic; however, they must have similar competence to the one that the infectious disease officer has.[27] This means that only doctors of very high medical competence are able to

[27] Prop. 2003/04:30 p. 213.

provide simple procedures of health controls. Even if bodily interventions, such as testing, would be permissible, these procedures are in everyday life provided by nurses, nurse assistants or occasionally, persons themselves. The formulation of the legislation provides no leeway for more provident resource usage. In addition, it puts excessive responsibility on the regions where international migration can take place, such as where the international ferries and airports are situated.

Therefore, the current analysis of the provisions on the health controls allows for identifying various hindrances to implementing health controls for identifying sources of infection and preventing infectious disease spread on the territory of Sweden.

## 5 At the Ready? The Legislative Preparedness for Testing at the Boarders

According to Murphy and Whitty, legal preparedness can be described as "having the right laws in place and then using them in the right way in a time of public health emergency".[28] The legal preparedness for future crises presupposes that procedures necessary for the protection of public health can be implemented rapidly and efficiently within the existing legal framework to protect society and individuals.

This contribution has addressed the current legal requirements embedded in the Swedish constitutional framework demanding to show or undergo infectious disease testing to enter Sweden. It has been demonstrated that such routine requirements for testing or showing a negative result shall be seen as a limitation of the freedom from forced bodily intervention in the meaning of Chapter 2 Article 6 of the IoG. Such limitations can be made in accordance with the act of Parliament, and the Government or other authorities have no competence to decide upon these issues. Therefore, Ordinance 2023:2 should have been viewed as contradicting Chapter 2 Articles 6 and 25 (or Article 20 for citizens) of the IoG, and authorities should not have applied testing requirements.

Swedish law allows for several measures to prevent the spread of infection. The measure that has been specifically designed to avoid infection spread within the country for those who enter it is health controls. Yet, the analysis shows that the legal system cannot use the measure to identify the sources of infection coming from abroad. The hindrances to this are three-

[28] Murphy and Whitty, 'Is human rights prepared? Risk, rights and public health emergencies' (2009) 17(2) Medical Law Review 219, 220.

fold. Firstly, the decision to initiate testing can be made only when Parliament or Government explicitly recognise the disease as socially dangerous. This process can be lengthy and politically challenging. Secondly, all types of testing should be viewed as bodily interventions, but any bodily interventions are expressly prohibited from being conducted as health controls. This restriction makes health controls meaningless for all asymptomatic diseases. Thirdly, health controls shall be carried out by competent staff that might be lacking, especially considering that entry points to Sweden are not evenly spread within it.

The abovementioned considerations indicate that one step to improve Swedish legal preparedness for infection spread outside of Sweden is to allow health controls to encompass non-invasive medical examinations as defined by the IHR. In addition, there is a possibility for including other non-invasive observations, such as thermal cameras, in the scope of health examination. It appears to be important that health examination can be provided by a variety of professionals, not exclusively by doctors, and that such can be introduced when the threat to health is deemed considerably serious. However, the limitation of the possibility of providing health examination to socially dangerous diseases alone appears problematic, as the example of Ordinance 2023:2 has shown. Lowering the threshold to other types of diseases established in the IDCA, such as those that are subjects of infection tracing, the list of which is set by the Public Health Agency might be a more feasible solution.