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and Global English for Legal Studies
A Law-Linguistic Journey

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HENRIK WENANDER

THE LEGAL POSITION
OF LOCAL GOVERNMENT IN SWEDEN

SUMMARY: 1. Introduction. – 2. Local Self-government in the Swedish Constitution. – 3. The Legal Role and Activities of Local Government. – 4. Legal Supervision of Local Government. – 5. Swedish Local Government and the EU.

1. *Introduction*

The legal position of local government – municipalities and regions – in Sweden is characterized by a tension between the local level and the central state, i.e. the Riksdag (Parliament) and the Government. Although it is clear that the central state powers are the dominant force in the Swedish constitutional system, there is also a constitutional principle of local self-government. This contribution gives an overview the legal situation of today in the Swedish constitution, especially considering the role of EU law.

Sweden has a longstanding tradition of being a centralised state. This tradition goes back to the consolidation of the Realm under King Gustav Vasa in the 16th Century and especially the administrative reforms under Chancellor of the Realm Axel Oxenstierna in the 17th Century¹. At the same time, the local level has always been important. The parishes of the Church as well as the (few) towns had an important role in the governance of the Realm².

Further developments of interest to this article include the Municipalities Reform introducing local self-government in 1862 (basing on the role of the parishes), the introduction of general suffrage in 1921 and the

¹ H.-H. VOGEL, *Sweden - Swedish Public Law*, in *European Public Law*, n. 4/1995, pp. 527 f.

² V. PERSSON, *Sweden. Local Government in Sweden: Flexibility and Independence in a Unitary State*, in C. PANARA, M. VARNEY (eds.), *Local Government in Europe. The 'fourth level' in the EU Multilayered System of Governance*, Abingdon, Routledge, 2013, pp. 305-329, 309.

development of the welfare state of the 20th Century, which to a great extent was to be administered by local government. The accession to the European Union in 1995 meant changes in Swedish law, which also affected local government³.

Swedish legal thinking since at least the 20th century has tended to see law as a social phenomenon, with legislation as a tool for social change. This may be seen as a heritage from the Scandinavian Legal Realism movement, which was critical to metaphysical ideas about law and justice that obscured the real-life relations between law and power in society. Such views also coincided with the programme of the Social Democratic Party, the leading political force in Sweden during much of the last 100 years⁴.

Since the introduction of general and equal suffrage in the elections to the Riksdag, the notion of democracy has been strong in Swedish legal culture, as well as in its neighbouring Nordic States. This democratic legitimacy is linked to a generally high level of confidence in the elected politicians among the public. Courts and legal scholarship generally puts great weight on the legitimacy of the elected Riksdag, and there is no separate Constitutional Court⁵. All courts, and also other public organs, including the municipalities, have the right and duty to assess the constitutionality of legislation. This power, however, is used with caution and a certain degree of deference to the political level⁶. There is a general trust that the political machinery – including requirements of thorough legislative drafting, the hearing of affected groups, and scrutiny by the Council on Legislation (Lagrådet, consisting of justices from the Supreme Court and the Supreme Administrative Court) – will create sensible legislative solutions to societal problems⁷.

Relating to this trust in the legislator, the written legislation together with the objectives laid down in the preparatory works is the central form of legal argumentation, whereas courts and academia traditionally

³ S. STRÖMHOLM, J. HIRSCHFELDT, *General Features of Swedish Law*, in M. BOGDAN, C. WONG (eds.), *Swedish Legal System*, 2nd ed., Stockholm, Norstedts Juridik, 2022, pp. 1-17.

⁴ M. ZAMBONI, *The Legislative Drafting in Sweden: Its Informal and Non-Linear Nature*, in *Förvaltningsrättslig tidskrift*, n. 1/2023, p. 95; cf. S. STRÖMHOLM, J. HIRSCHFELDT, *General Features of Swedish Law*, quot., p. 14.

⁵ H. KRUNKE, B. THORARENSEN, *Introduction*, in H. KRUNKE, B. THORARENSEN (eds.), *The Nordic Constitutions. A Comparative and Contextual Study*, Oxford, Hart Publishing, 2018, p. 7 f.

⁶ J. NERGELIUS, *Constitutional Law*, in M. BOGDAN, C. WONG (eds.), *Swedish Legal System*, 2nd ed., Stockholm, 2022, Norstedts Juridik, pp. 38-61, 51 ff.

⁷ M. ZAMBONI, *The Legislative Drafting in Sweden*, quot., pp. 81 ff.

have taken a deferential attitude to the political level. As an effect of Europeanisation (adaptation to EU Law as well as the ECHR), there has been a clearly expanding role for the judiciary including a reinforced role for judicial review, protection for individuals against the state, and proportionality assessments by courts⁸. However, the central role for the national parliament and the Government, basing on support in the Riksdag, is still a central feature⁹.

2. *Local Self-government in the Swedish Constitution*

The Swedish written Constitution consists of four fundamental laws. For the present article, only the 1974 Instrument of Government (Regeringsform) will be of interest. This fundamental law lays down the central provisions on the functioning of the Swedish democracy and rule of law¹⁰. The status of a fundamental law means that it is more difficult to amend than ordinary legislation. Still, the Swedish Constitution is relatively easy to amend in international comparison. In short, changes require two parliamentary decisions with simple majority, with an election to the Riksdag taking place between the two decisions¹¹.

The guiding idea behind the Instrument of Government is the Principle of Popular Sovereignty, which – in line with the Swedish legal tradition – focuses on the role of the democratically elected representatives. The introductory Chapter of this fundamental law provides that ‘All public power in Sweden proceeds from the people’ and that ‘The Riksdag is the foremost representative of the people¹². Even though in theory there is therefore no principle of separation of powers, there are such el-

⁸ H. WENANDER, *Europeanisation of the Proportionality Principle in Denmark, Finland and Sweden*, in *Review of European Administrative Law*, n. 2/2020, pp. 133, 135.

⁹ T. BULL, *Institutions and Divisions of Power*, in H. KRUNKE, B. THORARENSEN (eds.), *The Nordic Constitutions. A Comparative and Contextual Study*, Oxford, Hart Publishing, 2018, p. 65.

¹⁰ The 1949 Freedom of the Press Act (Tryckfrihetsförordning) and the 1991 Fundamental Law on Freedom of Expression (Yttrandefrihetsgrundlag) regulate the protection of freedom of expression in various forms of mass media, whereas the 1810 Act of Succession (Successionsordning) contains provisions on succession to the throne in the Swedish monarchy.

¹¹ Instrument of Government 1974, ch. 8, art. 14. In 2023, a Commission of Inquiry proposed changes in the Instrument of Government to strengthen the constitutional amendment procedure, SOU 2023:12 *Förstärkt skydd för demokratin och domstolarnas oberoende*, pp. 43 ff. (summary in English).

¹² Instrument of Government 1974, ch. 1, art. 1, para. 1 and art. 4; J. NERGELIUS, *Constitutional Law*, quot., pp. 39 ff.

ements in Swedish law, which sometimes are labelled ‘distribution of functions’ under the principle of popular sovereignty¹³. First, there is a horizontal dimension of this, between the roles of the Riksdag, the Government, and, increasingly, the independent Courts (see above on Europeanisation). Second, and more important to the present article, there is a vertical separation of powers between the central State (the Riksdag and the Government) and the regional or local level¹⁴.

As mentioned above, the Instrument of Government establishes the principle of popular sovereignty on the national level by linking the people to its representatives in the Riksdag. However, directly after this, the fundamental law also establishes that ‘Swedish democracy (...) is realised through a representative and parliamentary form of government and through local self-government’¹⁵.

The local self-government established in the Instrument of Government is carried out by bodies at the local and regional level in the form of municipalities (*kommuner*) and regions (*regioner*). These are organised as public bodies established through legislation, distinct from the State¹⁶. In parallel, there are regional divisions on the State level in counties (*Län*), with County administrative boards (*Länsstyrelser*) constituting state administrative authorities on the regional level¹⁷. All territory of Sweden is divided into municipalities. The division into regions follows the division into counties, unless there are specific provisions stating otherwise¹⁸. The Government may change the division of territory between the municipalities and the regions according to special legislative provisions¹⁹.

According to the Instrument of Government, the decision-making power in the local self-government bodies is exercised by directly elected

¹³ J. NERGELIUS, *Constitutional Law*, quot., p. 40; O. NYMAN, *The New Swedish Constitution*, in *Scandinavian Studies in Law*, vol. 26, 1982, pp. 170-199, 176.

¹⁴ T. BULL, *Självständighet och pluralism - om vertikal maktindelning i Sverige*, in L. MARCUSON (ed.), *Festskrift till Fredrik Sterzel*, Uppsala, Iustus förlag, 1999, pp. 107-133, 108.

¹⁵ Instrument of Government 1974, ch. 1, art. 1 par. 2.

¹⁶ Local Government Act 2017, ch. 1, art. 1. Until 2020, the regional level of self-government was called *Landsting* (translated as ‘county council’).

¹⁷ H. WENANDER, *Administrative Law*, in M. BOGDAN, C. WONG (eds.), *Swedish Legal System*, 2nd ed., Stockholm, Norstedts Juridik, 2022, pp. 62-84.

¹⁸ Local Government Act 2017, Kommunallag (2017:725) ch. 1, art. 1; see the Notice on the Division of the Counties into Municipalities, Tillkännagivande (2007:229) om länen in delning i kommuner.

¹⁹ The Act on Changes in the Division of Sweden into Municipalities and Regions 1979, Lag (1979:411) om ändringar i Sveriges in delning i kommuner och regioner.

assemblies. The municipalities and regions are responsible for local matters 'of public interest on the principle of local self-government', as well as other matters, as provided for in more specific legislation. They may also levy tax, within the framework established in legislation²⁰.

As opposed to the situation in many other European legal systems, Swedish law does not make a distinction between different types of local self-government bodies such as towns, boroughs, etc. Since a range of reforms that were concluded in the 1970s, the municipality is the only unit on the lowest local level, although some municipalities use the word 'stad' (city or town) in their official communication, alluding to their previous legal status. Constitutionally speaking, these however still constitute municipalities. This 'one model fits all' approach means that there are great differences between municipalities, both in terms of size, population, and character²¹.

The Riksdag – or the Government, after delegation from the Riksdag – may adopt legal provisions on the organisation, competences, and duties of local government. There is no fixed constitutional distribution of powers between the State and the regional or local level. The relation between the levels bases on the idea that the central state, the municipalities, and the regions shall cooperate for common goals²². The division of competences shall be laid down in ordinary legislation, which may change over time according to the changing needs. This indicates that the Riksdag, as the representatives of the people on the national level, is the central constitutional actor.

After a constitutional reform of 2010, the fundamental law states that restrictions in local self-government should be proportionate to the purpose of the restriction. This proportionality requirement is to be observed in the legislative process in the Government and Riksdag, including the assessment by the Council on Legislation. According to the legislative materials, the phrasing of the constitutional text indicates that it is not for the courts to carry out constitutional review of legislation in relation to this provision²³.

²⁰ Instrument of Government 1974, ch. 1, art. 7 and ch. 14, arts 1, 2, and 4.

²¹ See, on a special arrangement for the island of Gotland, where the municipality does not belong to any region, but where the municipal assembly still may use the term regional assembly, the Act on Responsibility for Regional Development 2010, Lag (2010:630) om regionalt utvecklingsansvar, art. 4.

²² Government Bill Prop. 1973:90 *med förslag till ny regeringsform och ny riksdagsordning m. m.*, p. 190.

²³ H. WENANDER, *Europeanisation of the Proportionality Principle*, quot., p. 149.

3. *The Legal Role and Activities of Local Government*

The rules and principles on the legal role of local government laid down in the Instrument of Government are concretised through ordinary legislation, most notably the 2017 Local Government Act, which applies to both municipalities and regions.

The Act specifies the organisation of the municipalities and the regions, including the municipal or regional assemblies (*fullmäktige*), which decide on matters involving questions of principle or otherwise of major importance²⁴. The assemblies are directly elected by the residents, registered in the population registry, who are over 18 years old²⁵. The municipal and regional assembly elections are fixed on a four-year cycle and coincide with the Riksdag elections²⁶. This brings administrative advantages, but may lead to the local and regional matters being overshadowed by national politics in the election campaigns. When this system was introduced, there was a political idea of an electoral link between the local and state level²⁷.

There are furthermore boards (*nämnder*) appointed by the assemblies according to the political majorities. Under the principle of local self-government, the assemblies are in principle free to organise their structure according to the needs of the municipality or region²⁸. The boards are responsible for matters within the municipal competence (see below) such as social welfare, construction and building schools, environment, and waste management. They function as local administrative authorities, among other thing deciding in individual matters, eg., relating to benefits, permits, and compulsory measures. The assemblies and the boards consist of politicians, of which a small group are full-time employed by the municipality or region. The Boards may delegate decision-making in individual matters to civil servants acting on behalf of the Board. According to a legislative amendment from 2022, decision-making power may also be delegated to a system for automated decision-making, albeit with certain limitations²⁹.

Under the Act, a municipality or region has a general competence to take initiatives in matters that are of general interest, related to its terri-

²⁴ Local Government Act 2017, ch. 5, art. 1.

²⁵ Local Government Act 2017, ch. 1, arts 7 and 8.

²⁶ Elections Act 2005, Vallag (2005:837), ch. 1, art. 3.

²⁷ O. NYMAN, *The New Swedish Constitution*, quot., p. 180.

²⁸ Local Government Act 2017, ch. 3, art. 4; V. PERSSON, *Sweden. Local Government in Sweden*, quot., p. 310.

²⁹ Local Government Act 2017, ch. 6, art. 37.

tory and inhabitants. The matter must not be reserved by legislation to some other body, which has meant that activities relating to foreign policy is outside of the competence of local and regional bodies³⁰. There are furthermore certain limits to business engagement, financial support to companies, as well as specific limits in other fields³¹. The provisions of the Local Government Act are complemented by other legislation, extending the competences in certain fields³². Furthermore, specific legislation in many fields creates obligations for the municipalities and regions. The competence of the Riksdag and the Government to assign duties to local government has often resulted in municipalities and regions having a similar role as the state administrative agencies when it comes to implementing policy³³.

Municipalities and regions may enter agreements on cooperation in public or private form. The Local Government Act regulates the establishment of a local federation (*kommunalförbund*) or cross-municipality common board (*gemensam nämnd*) for example for fire-brigades or for welfare services³⁴. The local government bodies may also establish private associations for the management of local government concerns³⁵.

A special form of cooperation takes places in The Swedish Association of Local Authorities and Regions, SALAR³⁶. Formally, this is an entirely private organisation established by its members, i.e all municipalities and regions, without involvement of the Riksdag or the Government. The SALAR is not regulated in any piece of legislation. It serves as an employers' organisations for the local government bodies in the labour market structures. Furthermore it promotes the interests of municipalities and regions in relation to the state as a kind of lobbying and expert organisation³⁷. During the COVID-19 pandemic, the Government en-

³⁰ Supreme Administrative Court case RÅ 1990 ref 9.

³¹ Local Government Act 2017, ch. 2, arts 1 and 2; V. PERSSON *Sweden. Local Government in Sweden*, quot., pp. 314 f.

³² Act on Certain Competences for Local Government 2009, Lag (2009:47) om vissa kommunala befogenheter.

³³ V. PERSSON *Sweden. Local Government in Sweden*, quot., p. 316.

³⁴ Local Government Act 2017, ch. 3, arts 8 and 9.

³⁵ Local Government Act 2017, ch. 3, arts 10 and ch. 10, arts 1-6.

³⁶ The association uses this abbreviation in its international communication, such as on its English website, <https://skr.se/skr/englishpages.411.html>. The Swedish name is Sveriges Kommuner och Regioner, abbreviated SKR.

³⁷ A. LIDSTRÖM, *Swedish Local and Regional Government in a European Context*, in J. PIERRE (ed.), *The Oxford Handbook of Swedish Politics*, Oxford, Oxford University Press, 2015, pp. 414-428, 419 f.; L. MARCUSSON, *Staten och SKR - styrning och samarbete. En rättslig analys*, in *Förvaltningsrättslig Tidskrift*, n. 4/2021, p. 687.

tered agreements with the SALAR to coordinate the distribution of vaccines and other health care issues. This practice was later criticised, since the democratic legitimacy of SALAR is unclear³⁸.

4. *Legal Supervision of Local Government*

There are two alternative forms of judicial review of municipal and regional decisions in the administrative courts. Which form applies is decided by the legislation in the relevant field. First, a limited legality review under the Local Government Act applies to some decisions, typically concerning political decisions of general interest, predominantly by the assemblies. Second, the administrative-judicial appeal, including also scrutiny of the use of discretion, may be available under specific legislation, for the most part concerning individual decisions made by boards³⁹.

Furthermore, the municipalities and the regions are under the general supervision by the Parliamentary Ombudsman and the governmental Chancellor of Justice. Both these bodies shall consider the principle of local self-government⁴⁰. There are also specific supervisory agencies in various fields relevant to municipalities, such as the Health and Social Care Inspectorate (*Inspektionen för vård och omsorg*), which supervises public and private healthcare, on the local and regional level⁴¹.

There are no special mechanisms for solving conflicts between the local or regional level and the state in court. Municipalities and regions may appeal decisions by state authorities (or vice versa) in the general administrative courts, which then have to apply the generally applicable rules on standing and other aspects of the procedure. The local government bodies may also claim damages by the state in the general courts.

³⁸ L. MARCUSSON, *Staten och SKR*, quot.; SOU (2021:89) *Sverige under pandemin. Volym 2. Sjukvård och folkhälsa*, p. 749.

³⁹ H. WENANDER, *Full Judicial Review or Administrative Discretion? A Swedish Perspective on Deference to the Administration*, in G. ZHU (ed.), *Deference to the Administration in Judicial Review*, Cham, Springer, 2019, pp. 411 f.

⁴⁰ Act with Instructions for the Parliamentary Ombudsmen 1986, Lag (1986:765) med instruktion för Riksdagens ombudsman, art. 2, para. 3; Act concerning the supervision exercised by the Chancellor of Justice 1975, Lag (1975:1339) om justitiekanslerns tillsyn, art. 3, par. 2.

⁴¹ H. WENANDER, *Administrative Law*, quot., p. 72.

5. *Swedish Local Government and the EU*

In the multi-level system of the European Union, Swedish Local Government may also have a role on the EU level. The scope for formal legal action from the local level is limited, since the Member States, represented by the central Governments, are the main actors in the Council of the EU.

One possible arena for local government influence on EU policy is the Committee of the Regions, CoR. The Committee is however only an advisory body, and the influence of the Swedish municipalities may be very limited⁴².

Swedish local government bodies may also have direct representation through local offices in Brussels. The Supreme Administrative Court has held that it is within the general competence of local government to establish such offices⁴³.

The subordinate role of local government in the EU is clear also when it comes to liability for breaches of EU law by local government bodies. In short, the Member state will always be the party answering to an infringement procedure in the ECJ⁴⁴. However, unresolved questions may arise, as whether the state could claim compensation from a municipality breaching EU law or whether individuals could raise claims for damages directly towards the failing municipality⁴⁵. Here, the traditional Swedish view that local government and the State shall cooperate in the interest of common interests, without any formal means of resolving conflicts, is in contrast to the EU legal tradition, focusing on justiciable rights.

⁴² H. WENANDER, *De svenska kommunerna i EU:s konstitutionella system*, Swedish Institute for European Policy Studies, SIEPS, Stockholm, 2019, p. 48 (summary in English).

⁴³ RÅ 1994 ref. 2; H. WENANDER, *De svenska kommunerna i EU:s konstitutionella system*, quot., p. 48.

⁴⁴ C-95/97 *Région Wallonne v Commission*, EU:C:1997:184, par. 7.

⁴⁵ Cf. C-302/97 *Konle*, ECLI:EU:C:1999:271, par. 62; U. BERNITZ, A. KJELLGREN, *Europarättens grunder*, 7th ed., Stockholm, 2022, p. 135.