



The Constitution of Sweden



REGERINGSKANSLIET

Introduction

In most cases a state's constitution is contained in a single document. Sweden, however, has four:

- the 1974 Instrument of Government (which contains the central provisions and corresponds most closely to the constitution of other countries);
- the 1810 Act of Succession (which regulates the order in which descendants of the present King shall succeed to the throne);
- the 1949 Freedom of the Press Act (which contains the principle of the public nature of official documents and rules about the right to produce and disseminate printed matter);
- the 1991 Fundamental Law on Freedom of Expression (which is a fundamental law for media other than print media).

There is also a law called the Riksdag Act, which contains provisions for the work of the Riksdag (Parliament). The Riksdag Act is not a fundamental law, though special rules govern its amendment.

This presentation will concentrate on the central aspects of the Instrument of Government.

The basic principles of the form of government

Chapter 1 of the Instrument of Government begins with a gateway article, which will be the point of departure for this presentation. It reads as follows:

All public power in Sweden proceeds from the people.

Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. It is realised through a representative and parliamentary form of government and through local self-government.

Public power is exercised under the law.

A democracy that puts the citizen in the centre

Swedish democracy is founded on a universal and equal right to vote and the free formation of opinion. The Instrument of Government is not based on the idea of a separation of powers into legislative, executive and judiciary branches. Instead it is monistic, with a single power centre: the citizens of the country. The citizens elect the Riksdag, the Riksdag – indirectly – elects the Government, the Government governs the country with the help of the administrative authorities, and the courts administer justice in accordance with the directives laid down by the Riksdag in fundamental and other laws.

A representative form of government

The citizens do not normally participate directly in decision-making, but do so indirectly through their elected representatives. Political activities are primarily conducted through the political parties, which are free associations of individuals.

One exception exists, however, to the representative form of government: the referendum. Although the device has never been employed, since 1979 it has been possible to submit constitutional measures to a binding referendum. Since 1922 it has also been possible to hold a consultative referendum. The result of such a referendum is not legally binding, but can probably be regarded as such in practice.

Parliamentary government

Sweden has a parliamentary government. This means that the Head of State has no political power and that the Government must have the confidence of parliament or at least be tolerated by parliament. A parliamentary majority must always be able to force a government out of office. The real power of the Government varies according to the support it enjoys in parliament and the current party constellations. If it has a majority, power is concentrated in the Government's hands.

It is symbolically significant that the Instrument of Government deals first with the Riksdag and only thereafter with the Head of State and the Government.

The Monarchy

The Instrument of Government retains the monarchical form of government – it stipulates that the King, or Queen Regnant, shall be Head of State. But in keeping with the parliamentary principle, the Head of State has no real power.

Local self-government

According to the gateway article of the Instrument of Government, Swedish democracy is to be realised not only through a representative and parliamentary form of government but also through local self-government. This is considered so essential that it is embedded in the country's fundamental law.

The Instrument of Government also states that Sweden has local authorities at local and regional level. The local authorities – municipalities and county councils – account for a very large proportion of the public sector.

Democratic principles also apply in the local government sector, with decision-making powers in the municipalities and county councils being exercised by elected assemblies. These bodies are responsible for local and regional matters of public interest on the principle of local self-government.

Local self-government may be defined as a principle whereby the local authorities themselves control their own affairs. Other than matters that are the exclusive responsibility of the state, another municipality, another county council or some other body, it is the local authorities that are responsible for matters of public interest relating to the municipal or county council district and its inhabitants.

Local self-government presupposes that the municipalities and county councils have economic resources of their own. The right of the local authorities to levy taxes has therefore been considered sufficiently important to be laid down in the Instrument of Government.

Rule of law

The Instrument of Government lays down that public power is exercised under the law. This applies not just to the courts and the administrative authorities but also to the Government and the Riksdag. It applies equally to local and central government. The same purpose underlies the stipulation that courts of law, administrative authorities and others performing public administration functions shall bear in mind in their work the equality of all persons before the law and observe objectivity and impartiality.

Principal aims of public activity

The Instrument of Government establishes certain principal aims of policy. It states that public power is to be exercised with respect for the equal worth of all and the liberty and dignity of the individual. The personal, economic and cultural welfare of the individual are to be fundamental aims of public activity. In particular, it is the duty of the public institutions to secure the right to health, employment, housing and education, and to promote social care, social security, and favourable conditions for good health. It is further stated that the public institutions are to promote the ideals of democracy as guidelines in all sectors of society and protect the private and family lives of individuals. The public institutions are to promote the opportunity for all to attain participation and equality in society. The public institutions are also to combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation,

disability, sexual orientation, age or any other circumstance affecting the individual. Finally it is stated that opportunities shall be promoted for the Sami people and for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own.

Fundamental rights and freedoms

The Instrument of Government gives a central role to those rights and freedoms that are of particular significance for the form of government, i.e. the 'political' freedoms. In broad terms, the aim is to guarantee the free formation of opinion in political, religious and cultural matters. The rules are also intended to protect the individual against inhuman punishment and other physical or mental violations.

Certain of the rights and freedoms dealt with in the Instrument of Government are absolute in the sense that they cannot be restricted other than by the amendment of fundamental law. Others may be restricted by other kinds of statute, mainly acts of law.

Among the absolute rights and freedoms, the following may be mentioned:

- prohibition of capital punishment, corporal punishment and torture;
- freedom of worship;
- protection from retroactive punishment;
- protection against coercion to reveal one's opinion in a political, religious, cultural or other such connection;
- protection against registration of a person's political opinions;
- the right to a hearing before a court when taken into custody.

The following are rights and freedoms that can be restricted in an ordinary act of law, on certain conditions:

- freedom of expression and of information;
- freedom of assembly and to demonstrate;
- freedom of movement;
- freedom of association;
- protection against physical violation, invasion of privacy and examination of confidential communications;
- the right to a public trial.

The Instrument of Government sets out in general terms certain requirements that must be taken into account when restricting rights and freedoms. A restriction may be imposed only to satisfy a purpose which is “acceptable in a democratic society”. The restriction may not go beyond what is “necessary with regard to the purpose which occasioned it” and may not be carried “so far as to constitute a threat to the free shaping of opinion as one of the fundamentals of democracy”. The Instrument of Government furthermore stipulates that no restriction may be imposed “solely on grounds of a political, religious, cultural or other such opinion”.

Sweden has ratified a number of international conventions in the field of fundamental rights and freedoms, the most important being the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. Sweden has incorporated the Convention and most of its additional protocols into Swedish law. The law on the Convention came into force in 1995.

The Riksdag

The Riksdag, which consists of a single chamber, is made up of 349 members. These are elected in a free, secret and direct election.

The voting age, like the age of eligibility for election, is 18. Voting is for parties, with an opportunity to express a preference for a particular candidate.

The electoral system is proportional and includes a threshold. A party is entitled to participate in the distribution of seats only if it obtains at least four per cent of the national vote. Four per cent of the vote corresponds to an allocation of fourteen seats in the Riksdag. Additionally, however, a party receiving fewer votes may participate in the distribution of fixed seats in a certain constituency in which it receives at least twelve per cent of the votes cast.

Ordinary elections are held every four years on the second Sunday in September. Under certain conditions, the Government can call an extraordinary election.

The Head of State

Sweden is a monarchy and therefore has a King or Queen Regnant as Head of State. The succession to the throne is regulated under the 1810 Act of Succession. The qualifying age for a Head of State was lowered in 1994 from 25 to 18. The Head of State has no political power. The duties of the Head of State instead lie on the representational and ceremonial level. It is therefore important for the Head of State to be well informed, and for this reason special informational councils

may be held by the Government. The Head of State presides over these informational councils, and also over the special Council at which a new Government is formed after the approval by the Riksdag of a new Prime Minister. The Head of State opens parliament and presides at meetings of the Foreign Affairs Advisory Council. No decisions of a political nature are taken on these occasions.

The Government

The Government consists of the Prime Minister and other ministers. There is a lower limit for the number of ministers. At least five ministers must be present at a government meeting to make a decision on a matter of government business. There is no upper limit. To be appointed a minister, a person must be a Swedish citizen. A minister may not have any other paid employment. Nor may a minister hold any other appointment or engage in any activity that might damage public confidence in the minister.

The formation of a government

The Speaker of the Riksdag proposes the name of a new Prime Minister to the Riksdag. Before doing so, the Speaker must consult representatives of the various party groups and confer with the Deputy Speakers. If more than half the members of the Riksdag vote against the proposal, it is rejected. Otherwise, it is approved. If the proposal is rejected, the Speaker must return to the Riksdag and make a new proposal. If his or her proposals are rejected four times, new elections to the Riksdag must be held.

The strong position occupied by the Prime Minister under the Instrument of Government is striking. It is the Prime Minister alone who appoints the other ministers and allocates ministries and responsibilities to them. The Prime Minister can dismiss another minister, if he or she wishes to. And when the Prime Minister goes, the Government falls.

If the Riksdag declares that the Prime Minister or any other minister no longer enjoys the confidence of the Riksdag, the Speaker is to remove the minister concerned.

If the Prime Minister does not choose to resign after an election, the newly assembled Riksdag takes a mandatory vote on support for the Prime Minister. If more than half the members of the Riksdag oppose the sitting Prime Minister, the Prime Minister will be discharged by the Speaker and the process of approving a new Prime Minister will commence.

The work of the Government

The Government's task is to govern the country. This governing function includes all matters that are not legislative matters, adoption of the national budget, administration of justice, or administrative matters below government level. The Government governs by making decisions on matters of government business. There are two main types of government business: matters relating to the governing function, often of a political nature, for example bills for presentation to parliament, treaties and statutory instruments; and administrative matters, such as matters relating to appointments and appeals against decisions.

The Instrument of Government lays down that government offices shall exist for the preparation of government business. These offices comprise a single authority, which includes ministries for different areas of activity. At present (2013) there are eleven ministries. Besides the ministries, the Government Offices include the Prime Minister's Office and the Office for Administrative Affairs. Government meetings are held to make decisions on matters of government business. The Government makes decisions collectively. There is no precise regulation of decision-making at government meetings.

The independence of courts and authorities

The Instrument of Government's regulation of the administration of justice and general administration is aimed primarily at protecting the independence of judicial and administrative bodies. Thus, judges are in principle irremovable. Also of importance are the provisions that limit the powers of the Riksdag and the Government to intervene in judicial rulings. According to these provisions, no public authority, including the Riksdag, may determine how a court of law is to adjudicate an individual case or otherwise apply a rule of law in a particular case. Nor may any public authority decide how judicial responsibilities are to be distributed amongst the judges of a court of law. Similarly, no public authority may determine how an administrative authority is to decide in a particular case involving the exercise of public authority vis-à-vis a private subject or a local authority, or the application of law.

Judicial review

According to the Instrument of Government, not only a court of law, but also any public authority or other public body applying a rule of law or other statute in a particular case is to act as a guardian of the Swedish basic laws when adjudicating the case. Thus, any court or public body that finds that a provision conflicts with a rule of fundamental law or any other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was adopted, shall not apply that provision.

Parliamentary control

Under the Instrument of Government, the Government is accountable to the Riksdag.

The core of parliamentary control consists of the rules concerning the Government's obligation to resign. Thus, the Riksdag can declare that a minister no longer enjoys the confidence of parliament. A minister who is the subject of a declaration of no confidence must be discharged. If the declaration of no confidence is directed against the Prime Minister, the entire Government must be discharged.

Another important feature of parliamentary control is the examination of ministers' performance of their official duties and the handling of government business, which is entrusted to the Committee on the Constitution. The underlying idea is that in the first instance, this scrutiny should be administrative rather than political in orientation. It relates largely to the activities of the Government as the supreme administrative authority but is also concerned

with the manner in which the Government exercises its power to make statutory instruments and delegate regulatory powers to subordinate administrative authorities and local authorities. The Committee on the Constitution is obliged to report to the Riksdag on the results of its scrutiny at least once a year.

The parliamentary questions system, which includes written and oral questions, is another feature of the parliamentary control system. A written or oral question must be addressed to a minister and relate to the performance of the minister's official duties.

The Parliamentary Ombudsmen – there are four Ombudsmen at present – commonly referred to as the Ombudsmen for Justice, supervise “the application of laws and other regulations in public activities”. The Ombudsmen can criticise the handling of a matter by a court of law or an administrative authority. The office of the Parliamentary Ombudsmen has served as a model for similar institutions in a number of other countries.

The National Audit Office is an authority under the Riksdag whose function is to examine the activities of the State. The National Audit Office is under the direction of three Auditors General, who decide independently what activities shall be audited. They determine separately and independently how their audit shall be carried out and formulate their own conclusions on the basis of their audit. The National Audit Office is the only body that can audit the entire state finances.

Relations with other states

In earlier times, foreign policy was to a large extent the personal preserve of the monarch. As parliamentary government gradually gained ground, the influence of the Riksdag grew. The Advisory Council on Foreign Affairs in the Riksdag – which the Government is obliged to inform of “matters relating to foreign relations which may be of significance for the Realm” – was set up shortly after the First World War. At the same time the Riksdag was guaranteed influence over Swedish treaties with other states. All treaties that required a Riksdag decision (an act of law or a grant of funds, for example) had to have Riksdag approval. These principles are still valid.

In Sweden, regulations may be made and other public law functions performed only by bodies whose competence has direct support in fundamental law or is authorised by virtue of fundamental law. Thus, delegation of decision-making competence to a foreign or international body requires the express support of fundamental law.

One consequence of this is that as far as Sweden is concerned, the provisions of international agreements are limited in validity to Sweden as a state. If Sweden makes an undertaking under such an agreement, it is not binding on Swedish citizens until it has been incorporated into Swedish law. This can be done in various ways, for example by rewriting the agreement as a Swedish statute, or by promulgating the text of the agreement in Swedish translation (or, more rarely, in the original) as a Swedish statute.

Sweden and the European Union

Sweden has been a member of the European Union since 1995. The application for membership was initially filed in July 1991 and after protracted negotiations, and approval by the Riksdag, an accession agreement was signed in June 1994. It was also decided that the question of accession should be put to a referendum, which was held in November 1994. Once the result was known, the constitutional amendments necessary for accession were finally approved in time for them to come into force on 1 December 1994.

It was clear from the very outset of talks on accession that the Instrument of Government did not permit the far-reaching delegation of regulatory authority that accession required. When it finally came to formulating a rule on the transfer of authority in the Instrument of Government, Sweden chose an amendment – a new article – aimed at accession to the European Communities. One important condition for transferring decision-making powers to the EC bodies was that the Communities had safeguards for rights and freedoms corresponding to those enshrined in the Instrument of Government and the European Convention for the Protection of Human Rights and Fundamental Freedoms. A majority voting rule was also adopted, stating that the decision on the transfer of powers was conditional on at least three quarters of the members of the Riksdag voting in favour of such a decision.

On 1 January 2003, the beneficiary of the transfer of powers was changed from the EC to “within the framework of European Union cooperation”. The change was necessary due to the development of EU cooperation and Sweden’s eagerness to continue to be an active member. At the same time another condition for transferring powers was inserted into the Instrument of Government, to the effect that the transfer may not relate to competence affecting “the principles of the form of government”. In 2008 the Riksdag applied the provision in this wording when it approved the Lisbon Treaty.

On 1 January 2011 a new article was included in Chapter 1 of the Instrument of Government stating that “Sweden is a member of the European Union”. At the same time a new quorum rule was inserted in the provision on the transfer of decision-making powers, stating that the Riksdag may decide to transfer decision-making powers if at least three quarters of the members voting “and more than half of the members of the Riksdag” support the decision.

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Sweden has four fundamental laws which together make up the Constitution: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. This presentation concentrates on the central aspects of the Instrument of Government.

Additional copies of the brochure can be ordered via the Government website www.government.se



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