

THE LEGAL PROFESSION IN SWEDEN

by Jennifer Schmidt

November 2008

1. Introduction

In Sweden there is no monopoly of legal services. Any person may practice law, offering his or her services to the public, without the need for official authorisation. Anyone may appear before any court, on any level of the court system, representing himself/herself or another person.

Notwithstanding this liberal attitude to the free choice of counsel, there is a professional Bar of lawyers in Sweden and Bar members are retained in the vast majority of court cases. In criminal cases it is very rare that other representatives than members of the Bar are appointed as Defence Counsel, or as Counsel to persons injured by tortuous acts in connection with crimes.

The Swedish Bar Association, “*Sveriges Advokatsamfund*”, was founded in 1887 as the result of an individual initiative and gained official status when the new Code of Judicial Procedure entered into force in 1948.¹

The Bar Association is governed by provisions in the Code of Judicial Procedure and by its own Charter, which has been affirmed by the government. It is an association under private law. The professional title “*Advokat*” (Lawyer) is protected by law and can only be carried by persons admitted to the Swedish Bar Association (SBA).² Any person using the title “*Advokat*” without being so authorised commits a criminal offence.

Members of the Bar have the duty to perform their tasks professionally, with due care and observe the Code of Conduct.³ The Code of Conduct was issued by the Board of Swedish Bar Association in 1984. For all cross-border activities of lawyers in the European Union and the European Economic Area, the Code of Conduct for European Lawyers, issued by the Council of Bars and Law Societies of Europe (CCBE) in 1988, is also applicable.⁴

A particular feature characterising the Swedish Bar is that no in-house lawyers are permitted to become members of the Bar. Moreover, only a member of the Bar may be a shareholder or partner of a legal practice conducted in the form of Limited Liability Company or partnership.⁵ This provision was included to ensure professional independence; a lawyer should not be subjected to undue influence from persons outside the profession. Another corner stone of the SBA is that Bar members have a duty to keep money and other assets belonging to clients separate from their own property.⁶

¹ Code of Judicial Procedure (1942:740).

² Sweden does not distinguish between lawyers, solicitors and barristers. Henceforth the words Lawyer or Advocate will be used in reference to legal professionals admitted to the Bar.

³ Chapter 8, Section 4, para. 1 of the Code of Judicial Procedure (1942:740).

⁴ The Codes of Conduct are annexed to this paper.

⁵ Chapter 8, Section 4, para. 2 of the Code of Judicial Procedure.

⁶ Chapter 8, Section 4, para. 3 of the Code of Judicial Procedure.

The SBA today has over 4.500 members, which is a dramatic increase since 1980 when the organisation only had around 2.000 members. Sweden is a country of almost 9,2 million inhabitants, which gives a rate of 2.041 persons per lawyer.⁷ This being said, it should be noted that there are more than 1.300 non-member Assistant Lawyers, “*Biträdande Jurister*”, employed in the offices of members of the SBA,⁸ and many more practicing law outside the law firms, for example in government agencies, private companies, non-governmental organisations etc.

Approximately 21 % of the members of the SBA are women. However, only 14 % are partners in law firms. In comparison, among the Assistant Lawyers, almost 54 % are women. In 2006, for the first time, the number of female Assistant Lawyers exceeded the number of male Assistant Lawyers and the number of female members of the Bar Association has continued to increase since then.⁹

The goal of the SBA is to maintain high ethical and professional standards in the legal profession, to monitor legal developments and endeavour to ensure that they benefit from the Bar Association’s experience, to safeguard the general professional interests of its members and to further unity and consensus between members.¹⁰

Despite being an association under private law, the SBA bears some characteristics of a public law body. It performs some public administrative functions and exercises public authority. In the latter category falls the requirement for Bar membership, supervision of the professional activities of Advocates and taking disciplinary measures against members of the Bar in relation to the ethical standards of their conduct. Moreover, virtually all new draft legislation is submitted to the SBA for consultation. Annually, the Bar submits comments on some 100 legislative proposals.

2. Organisational Structure

The Swedish Bar Association is divided into seven geographical *Departments*, six for members practising in Sweden and one for those members who practise abroad. Each Department has a local board. Every Advocate belongs to the Department in the area where he or she has his/her main practice. The right of members to participate in the administration of each Department’s business is exercised at Department meetings.

The *Departments* perform duties in connection with admission to the Bar (see below). The Departments also elect the delegates for the Council.¹¹ Each Department appoints one person for every fiftieth member but no less than six members from the “Swedish Departments” and two from the “Foreign Department”.¹²

⁷ In 2007, Sweden had exactly 9 182 927 inhabitants according to Statistiska Centralbyrån.

⁸ The Swedish Bar Association – A presentation.

⁹ Statistics from the SBA.

¹⁰ Charter of the Swedish Bar Association (henceforth the Charter), Section 1.

¹¹ The term Council used in the English translation of the Charter refers to a constituting assembly.

¹² The Departments are regulated in Sections 26-29 of the Charter.

The *Council* holds its ordinary session in May or June every year. Extraordinary sessions can be called by the Board of the SBA, or by at least ten delegates, stating their reasons in writing. The Council elects the Board of the SBA and the Bar Association Disciplinary Committee. Decisions by the Council are in most cases taken by simple majority.¹³

The *Board* of the Bar Association consists of a Chairperson, a Vice Chairperson and nine other members, plus nine deputies. These are elected by the Council at its ordinary session for a period of two years. Members or deputies of the Board can serve for a maximum of six consecutive years and are not allowed to serve on the Disciplinary Committee at the same time.

The duty of the Board is to represent the Bar Association, monitor its interests and manage its affairs, and also to decide on behalf of the Bar in all matters unless the Charter provides otherwise. Mandated tasks include executing decisions of the Council, issuing statements of opinion on legislative issues or other matters of importance for the development of the law or the legal profession, and appointing the Secretary-General of the Bar Association.

The Board meets when the Chairperson considers it necessary or when at least four Board members so require. Members and deputies of the Board are not entitled to any remuneration for their work, other than reimbursement for their travelling expenses. The Board forms a quorum with seven members. Decisions are taken by simple majority. In the event of a tie, the Chairperson has a casting vote.¹⁴

Members of the Bar Association are subject to supervision by the Board and the Disciplinary Committee, whose task it is to ensure that members fulfil their duties when conducting cases before courts of law and in other aspects of their practice.¹⁵

The *Disciplinary Committee* is composed of eleven members. The Council elects at its ordinary session the Chairperson, the Vice Chairperson, and six of the members. The Government appoints the remaining three members as representatives of the public. The maximum tenure for the members appointed by the Bar is eight years.

The Disciplinary Committee deals with matters of disciplinary action against members. The Chancellor of Justice¹⁶ may lodge a complaint with the Disciplinary Committee to take action against Bar members who fail in their duties.¹⁷

¹³ The Council is regulated by Sections 19-24 of the Charter.

¹⁴ The Board is regulated by Section 5-11 of the Charter.

¹⁵ Chapter 8, Section 6, para.1, the Code of Judicial Procedure, and Section 8, para.1 of the Charter.

¹⁶ The Chancellor of Justice is a non-political civil servant appointed by the Government. The period of time for which he or she is appointed is not limited wherefore it is possible for him or her to carry out his/her duties in a completely independent way. The duties of the Chancellor of Justice include to be the State's representative in trials and other legal disputes; to receive complaints and claims for damages directed to the State and decide on financial compensation for such damages; to be the Government's counsellor in legal matters; to act as the Government's ombudsman in the supervision of the authorities and the civil servants, and to take action in cases of abuse; to ensure that the limits of the freedom of the

The sanctions at the Committee's disposal are disbarment, warning, reprimand, fine or issuing of a statement. Any member who commits a wrongful act or omission in his practice or otherwise behaves dishonestly, shall be disbarred from the Association. A member who otherwise fails in his or her duties as an "*advokat*" may receive a warning or a reprimand. A member receiving a warning may also be ordered to pay a fine of between 1.000-50.000 SEK¹⁸ to the Association. If it is considered to suffice, the Disciplinary Committee may instead of a reprimand, issue a statement that the member's action is wrong or inappropriate.¹⁹

Six members of the Disciplinary Committee need to be present to form a quorum. A decision to disbar requires the assent of at least six members.²⁰ The decision can be ordered to be executed immediately.²¹

A person who has been disbarred from the Bar Association may appeal the decision to the Supreme Court. The Chancellor of Justice may appeal any disciplinary decision taken by the Disciplinary Committee to the Supreme Court.²² If a member of the Bar has violated the confidentiality of his or her client, prosecution may be brought by the Chancellor of Justice if it is in the public interest to do so.²³

Any person who has been involved in consideration of a supervisory matter at the Bar Association may not, without authorisation, disclose any information thereby gained about any person's personal or financial affairs.²⁴

3. Admission to the Swedish Bar Association

The requirements for becoming a member of the Bar Association are laid down in the Code of Judicial Procedure and in the Charter of the Bar Association. A person who has been declared bankrupt or for whom a trustee has been appointed may not be admitted as a member to the SBA. Judges or other officials at a Court of Law, public prosecutors, senior enforcement officers and persons employed in the service of the state or a municipality are excluded from admission to the Bar Association. Moreover and as earlier mentioned, a person employed by a private person other than a member of the

press and other media are not transgressed and to act as the only public prosecutor in cases regarding offences against the freedom of the press and other media; and to act as the guardian for the protection of privacy in different fields. For further information see the Act (1975:1339) concerning the supervision exercised by the Chancellor of Justice and the Ordinance (1975:1345) concerning the duties of the Chancellor of Justice.

¹⁷ Chapter 8, Section 6, para. 3 of the Code of Judicial Procedure.

¹⁸ Approximately 100- 5000 Euros.

¹⁹ Chapter 8, Section 7, para. 1-4 of the Code of Judicial Procedure.

²⁰ The Disciplinary Committee is regulated by Section 12- 16 of the Charter. See in particular Section 14 and 16.

²¹ Chapter 8, Section 7 para 6 of the Code of Judicial Procedure.

²² Section 8 of the Code of Judicial Procedure.

²³ Chapter 8, Section 7, para. 7 of the Code of Judicial Procedure.

²⁴ Chapter 8, Section 6, para. 4 of the Code of Judicial Procedure.

Bar Association, may not be admitted as a member, unless the Board grants exemption.²⁵

A person may be admitted as a member of the Bar only if he or she

1. is domiciled in Sweden or another state within the European Union or the European Economic Area or Switzerland;
2. has passed all proficiency exams prescribed for competency to a judge's office;
3. has practised law in a satisfactory way for at least five years after passing the above-mentioned proficiency examinations, during which time he or she has for at least three years devoted himself or herself to professionally assisting the general public in legal matters, either as an employee of a member of the Swedish Bar Association or as a self-employed person;
4. at the time the application is considered, professionally assists the public in the manner set forth in item 3;
5. has attained a pass grade in the examination following the special training course arranged by the Bar Association;
6. has become known for his or her integrity; and
7. is otherwise considered suitable to carry on the profession of *Advokat*.²⁶

In special circumstances, exemption may be granted from item 1, 3, 4 and 5 by the Board of the SBA. The same applies to item 2 concerning a person who is a licensed lawyer in another state in accordance with regulations there in effect. However, exemption from the three-year requirement under item 3 may not be granted for more than one year.

A qualified lawyer in another state of the European Union, the European Economic Area or Switzerland has to undergo a test in Sweden showing that he or she has sufficient knowledge of the Swedish legal system. Persons licensed as lawyers in Denmark, Finland, Iceland and Norway who has practiced in Swedish law firms as Assistant Lawyers for at least three years are deemed to fulfil the requirements in 2-7.²⁷

The proficiency exams referred to in item 2 and 3 are approximately five years of law studies at the University, resulting in the degree "*Juris kandidatexamen*", often compared to a Master of Laws because of its comprehensiveness. Thereafter the applicant has to have practiced law for at least five years, of which three years should

²⁵ Charter, Section 3, para. 5-7.

²⁶ Chapter 8, Section 2 of the Code of Judicial Procedure and Section 3 of the Charter.

²⁷ Charter, Section 3, para. 2-4.

have been devoted to a law firm as an Assistant Lawyer (*Biträdande jurist*)²⁸, or to his/her own practice.²⁹ Normally, the first two years after the law degree are spent as court clerk. Court clerkship is a prerequisite for becoming a judge or a prosecutor but is also considered a prerequisite for recruitment by many law firms in Sweden.

In 2001, the Council of the SBA decided that a Bar Exam was a necessary requirement for becoming a member of the Association. The decision was confirmed by the government and entered into force in 2004. The Bar Exam is preceded by a training course comprising of three two-day courses, spread over three semesters with an oral examination that takes place in the fourth semester. The cost for each of the three training courses is 9.500 SEK for Assistant Lawyers, and 10.000 SEK for others³⁰ and the cost of the examination is 5.000 SEK.³¹

The Board of the SBA appoints an Education Board, responsible for stipulating the guidelines for training and examination. The Education Board decides on the curriculum, appoints censors to oversee the examination and tries appeals from unsuccessful candidates. Four out of the seven members of the Education Board, including the President, must be members of the SBA. Five members form a quorum. The members are appointed for a period of three years.³²

The training and the examination is conducted by the Bar Association itself. Teachers and examiners are appointed by the Board of the SBA, or after delegation, by the Secretary-General.³³ Before the Bar examination, censors and examiners are challenged on grounds of employment association, affinity, independence etc. The examinee also has a duty to report any relationship with or other objection to the examiner and/or the censor.³⁴

The training course includes lawyers' ethics, case presentation, negotiation and interrogation techniques, the running of a law firm, Counsel responsibility and European law. The 30 minute examination focuses on a practical problem which the candidate is

²⁸ If the applicant has worked as an Assistant Lawyer in a Law firm, the applicant should ask the employer for a certificate detailing the time of employment, the type of cases worked on by the assistant, a declaration that the activities were carried out under appropriate supervision, a statement on the suitability of the applicant, including knowledge of lawyer's ethics and professional conduct. (Instructions for Application for Admission to the Swedish Bar Association).

²⁹ If the applicant has been self-employed it is assessed whether his or her business has been devoted to assist the general public and if the activities have been carried on full time. The primary basis for assessing the scope of the activities is the turnover of the business. In order for the practice to be regarded as having been run professionally on a full-time basis, the applicant must be able to show that his or her turnover per calendar year is equivalent to at least 1.000 hours multiplied by the stated hourly normative rate in effect for legal aid excluding VAT. For 2008, the turnover requirement is 1.081.000 SEK, approximately 108.000 Euros. (Instructions for Application for Admission to the Swedish Bar Association).

³⁰ The training costs include material and full-board accommodation in single rooms.

³¹ Approximately 950 Euros for Assistant Lawyers, 1.000 Euros for others and 500 Euros for the examination. In total 3.350 for Assistant Lawyers and 3.500 Euros for others (information from the SBA).

³² Rules for Obligatory Bar Examination for Admission to the Swedish Bar Association, Article 2.

³³ Rules for Obligatory Bar Examination for Admission to the Swedish Bar Association, Article 3.

³⁴ Rules regarding the challenge of censors and examiners. The Board of the SBA, 3 October 2002.

invited to reason on from an ethical point of view. No material legal knowledge is required. If the applicant does not pass the examination after three attempts, he or she will have to undergo the training again.³⁵ During 2007, 21 persons failed the Bar Exam and 228 passed.³⁶

After the Bar Exam, a Bar application may be submitted to the SBA. Applicants should count three months before the Board of the Bar Association can reach its decision. The diploma from the Bar Exam, references from *all* lawyers (Swedish and foreign), courts and other authorities the applicant has had contact with in his or her professional activities, a number of certificates³⁷ and information concerning declared income for the three years preceding the year of application should be enclosed.

The application documents are submitted for comment to the local Department of the Bar Association where the applicant practises. The Department will solicit the views of lawyers, courts and other professional contacts the applicant has referred to. Enquiries are always made to the Courts of Appeal and District Courts in the area where the applicant practises, as well as to the Legal Aid Authority (for more information on Legal Aid see below).

If the applicant is self-employed, the Department Secretary or a member of the Department Board will normally visit his or her office and write a report on the visit. If any reservations are expressed, the applicant will be given the opportunity to respond before the Department Board finally processes the application.

Once the Department Board has processed the application, the application documents and minutes will be sent to the central office of the Bar Association. If the Department Board has recommended that the application be rejected and/or the investigation has revealed significant reservations about the suitability of the applicant, the local Department has a duty to inform the applicant of this and he or she will be given the opportunity to submit a statement before the decision of the main Board.³⁸

Apart from the costs for training and Bar examination, there is no application fee for admission to the SBA. During 2007, 209 new members were admitted to the Bar Association and so far in 2008³⁹, there have been 214 new admissions.⁴⁰

Being admitted to the Bar Association does not entail any significant changes in practice. The Assistant Lawyer usually continues working for the law firm he or she had previously worked for. A raise to a higher pay grade could however be expected. The general practitioner still exists but most Bar members specialise in some way. The website of the Bar Association contains a directory of the law firms and the members and their respective specialisation.⁴¹ Business law has become increasingly important. 61% of the members of the SBA have business law as their main field of work. 35% of

³⁵ The Bar Exam, Guidelines for Training and Examination, the Education Board, 4 March 2005.

³⁶ For 2005, 250 persons passed and 20 failed (Statistics from the SBA).

³⁷ E.g. on domicile, non-bankruptcy and law degree.

³⁸ Instructions for Application for Admission to the Swedish Bar Association.

³⁹ 14 October 2008.

⁴⁰ Statistics from the SBA.

⁴¹ www.advokatsamfundet.se, English version, under "Find a lawyer".

the members have criminal law as their main field of work.⁴² Bar members specialising in family law and administrative law are becoming increasingly sparse in number.⁴³

Swedish law firms tend to expand both by number and service providers and by geographical localisation. The two largest firms in Sweden today employ more than 400 lawyers each.⁴⁴ Networking with foreign law firms and the creation of transnational firms is quite common but there are also many lawyers still practicing alone in their own name. Of the total number of 1586 law firms, there are 1038 one-person law firms in Sweden today.⁴⁵ 23 % of the 4545 registered lawyers in Sweden work alone, whereas 38% work in law firms with more than 70 employees.⁴⁶

4. Legal Aid and Costs of Legal Services

In Sweden it is a fundamental right to have your case heard by a legal representative, either in or outside court. Legal aid is a form of statutory social protection legislation that aims to help an individual who cannot get legal support in any other way. The right to legal aid is governed by the Legal Aid Act.⁴⁷

In practice, legal aid is financial support provided by the State to those who are unable to pay for a legal representative. The legal aid covers part of the costs for the legal representative, but also costs relating to evidence, investigation and other expenditure.⁴⁸

Being granted legal aid does not automatically mean that the State pays all the costs for the legal representative. The basic idea is that the applicant should contribute to the cost to the extent he or she can afford.⁴⁹ Legal aid can be received for the whole or part of the cost of legal representation up to 100 hours.⁵⁰ In special cases the court can extend the legal aid.⁵¹

Not everyone is entitled to legal aid. Legal aid applies first and foremost to private individuals, i.e. not to associations, companies or similar institutions. In exceptional

⁴² Poll by Temo in 2006.

⁴³ Swedish lawyers rarely engage in mass debt collection. Sweden entertains no mandatory requirement to engage a lawyer in real estate transactions. Some members are *Notaires Publics* but certifying documents is not a common task for Swedish lawyers. This is a result of the fact that Swedish contracts rarely require notarisation or any other form of public involvement to become valid. (The Swedish Bar Association, Some Salient Features of the Legal Profession in Sweden.)

⁴⁴ Mannheimer Swartling and Vinge.

⁴⁵ 471 law firms employ 2-10 lawyers, 49 law firms employ 11-30 persons, 15 firms employ 31- 50 persons, two firms employ 51-70 persons and 11 firms employ over 70 persons.

⁴⁶ Statistics from the SBA.

⁴⁷ The Legal Aid Act (1996:1619).

⁴⁸ Article 16-17 of the Legal Aid Act.

⁴⁹ A fee based the gross disposable income of the applicant is calculated. For example, the applicant shall pay 40 % of the costs if his or her gross disposable income is more than 200.000 SEK (20.000 Euro). See Article 23 of the Legal Aid Act.

⁵⁰ This rule does not apply in criminal or administrative matters. Article 15 of the Legal Aid Act.

⁵¹ Legal Aid in Sweden, the Legal Aid Authority.

cases a business proprietor can be granted legal aid. The estate of a deceased person can also in some cases be granted legal aid.⁵²

If an applicant has a disposable gross income of more than 260,000 SEK⁵³ per year he or she is not entitled to legal aid from the State. The disposable gross income is the total of assets and wealth minus liabilities and support commitments.⁵⁴ There should be a need for legal assistance and it should be reasonable that the State pays the costs of the dispute.⁵⁵

If there is legal protection cover in the insurance of the applicant, he or she cannot be granted legal aid, or if the applicant, in light of his or her financial circumstances, should have had an insurance, legal aid will only be granted if there are special reasons for it.⁵⁶ Legal protection is normally included in the home insurance in Sweden. The terms vary but some insurance companies compensate up to 200.000 SEK.⁵⁷

There are other exceptions to the right to legal aid. A person is not entitled to legal aid if the value of the dispute is less than half a 'base amount'.⁵⁸ Legal aid is not granted for matters of registration-like nature, such as an application for property deeds or a mortgage on a property or for the drafting of documents such as a tax return, a will, a prenuptial agreement, an estate inventory or a deed of gift.⁵⁹

If a dispute is to be heard in a court of law or by a public authority in another country, legal aid is only paid if the applicant is a resident in Sweden.⁶⁰ In some cases special reasons are required if the applicant is to be granted legal aid, for example in divorce cases.⁶¹

The assessment of eligibility for legal aid is made by the Court in those cases where the dispute has already reached court, and in other cases by the Legal Aid Authority. The Legal Aid Authority is a national authority that processes applications on legal aid and functions as an enforcement authority in matters related to claims for repayment of the State's legal aid costs and costs in criminal cases. The Legal Aid Authority is composed of a President, who should be a trained judge, two Lawyers and two other members and all members must be Swedish citizens.⁶²

⁵² Article 6 and 13 of the Legal Aid Act.

⁵³ Approximately 26.000 Euros.

⁵⁴ Article 6 and 38 of the Legal Aid Act.

⁵⁵ Article 8 of the Legal Aid Act.

⁵⁶ Article 9 of the Legal Aid Act.

⁵⁷ Approximately 20.000 Euros. The insurance normally covers 80 % of the other party's trial costs, whereas in legal aid cases, the court may order that the defeated party pays for the other party's trial costs. (Web page of the Legal Aid Authority).

⁵⁸ The so-called "Base Amount" is 41.000 SEK (4.100 Euro) for 2008.

⁵⁹ Article 10 of the Legal Aid Act.

⁶⁰ Article 12 *in fine* of the Legal Aid Act.

⁶¹ Article 11 and 13 of the Legal Aid Act.

⁶² Article 48 of the Legal Aid Act.

Persons receiving help from a Public Defence Counsel or a Public Counsel are not entitled to legal aid under the Legal Aid Act.⁶³ Public Counsels are appointed in accordance with Law on Public Counsel, for example in administrative cases.⁶⁴ A Public Counsel is also appointed to victims of an alleged sexual crime, physical assault, manslaughter, murder, kidnapping, unlawful threat or deprivation of liberty, trafficking, robbery etc.⁶⁵ in accordance with the Law on Plaintiff Counsel.⁶⁶ The Plaintiff Counsel should assist the plaintiff in the civil lawsuit resulting from the crime. The Public Counsel and the Plaintiff Counsel are appointed by the Court or Legal Authority responsible for the case.

In criminal cases, the suspect has the right to Defence Counsel.⁶⁷ If the suspect is apprehended or detained, a Public Defence Counsel should be appointed by the Court, if requested by the suspect. Public Defence Counsels shall be appointed in all cases where the defendant is suspected of crimes punishable by prison for at least six months, or if otherwise the circumstances so require.⁶⁸ If the applicant has not suggested a Public Defence Counsel, the legal representative is appointed by the Court. The Court shall appoint a suitable person who has experience in court hearings.⁶⁹ The Defence Counsel has the duty to safeguard the interests and rights of the suspect.⁷⁰ If the defendant is found guilty of the crime, he or she has a duty to reimburse the State for the costs incurred by the defence.⁷¹

If the *legi speciali* do not state otherwise, a lawyer, an assistant lawyer of a law firm or another suitable person for the assignment may be appointed as legal representative in legal aid cases.⁷² If the applicant suggests a specific person, this person should normally be appointed. The exchange or discharge of the legal representative may be granted if there are special reasons for it.⁷³

⁶³ Article 7 of the Legal Aid Act.

⁶⁴ Law on Public Counsel (1996:1620)

⁶⁵ See crimes under Chapter 6, crimes punishable by prison under Chapter 3 and 4 and crimes under Chapter 8, Article 5 and 6 of the Criminal Code (1962:700), including attempt, preparation and instigation of such crimes if with regard to the victim's personal relationship to the suspect and other circumstances it can be presumed that the victim is in need of such counsel.

⁶⁶ Law on Plaintiff Counsel (1988:609)

⁶⁷ The Defence Counsel should be domiciled in Sweden and cannot be a judge, prosecutor or a bailiff according to Chapter 12, Article 3 of the Code of Judicial Procedure.

⁶⁸ Article 3 and 3a of the Code of Judicial Procedure.

⁶⁹ See Chapter 21, Article 5 of the Code of Judicial Procedure.

⁷⁰ Chapter 12, Article 4-5 and 7-8 of the Code of Judicial Procedure.

⁷¹ Since the repayment is dependent on the defendant's gross disposable income, in most cases, the costs of the Public Defence Counsel rests with the State.

⁷² Only lawyers may be appointed as Public Defence Counsel, except in special circumstances where persons who have passed the proficiency exams for competency to a judge's office may be appointed. When applying the Law on Public Counsel, assistant lawyers are specified as persons who have passed the proficiency exams prescribed for competency for a judge's office and who have been registered with the SBA as employed Assistant Lawyers at a law firm. (Regulation on Public Counsel 1997:405, Article 2)

⁷³ Article 26 of the Legal Aid Act.

The appointed legal representative has the right to compensation for his work, expenses and time loss in relation to the case. The compensation should be reasonable in relation to the nature and scope of the case.⁷⁴ A normative compensation fee per hour has been stipulated by the Government. For 2008, this fee is 1081 SEK plus VAT.⁷⁵

The accounts are sent to the Court or Legal Authority responsible for processing the case, or to the Legal Aid Authority. The compensation to the legal representative is pronounced at the same time as the decision or the judgment in the case. The Legal Aid Authority is responsible for assuring that the legal representative is reimbursed as soon as possible. If a Court has decided in a compensation matter, the Court is responsible for informing the Legal Aid Authority of such a decision within a week.⁷⁶

In cases where by law one of the parties have to bear the other party's trial costs, the costs for the adversary's legal aid representative also have to be born.⁷⁷

Decisions regarding compensation can be appealed by the legal representative to an Appeals Court. The Appeals Courts' decisions may not be appealed.⁷⁸ Decisions regarding the right to legal aid may be appealed by the applicant and by the Chancellor of Justice.⁷⁹

Except for legal aid, the costs of legal services are not regulated in Sweden. The market governs the prices. A one hour consultation with a lawyer today range from 1.000 to 4.500 SEK.⁸⁰ In 2006, the average price for consulting a Partner in a law firm, specialised in business law was 2.000 SEK, whereas the average price for consulting a human dimension lawyer was 1.200 SEK.⁸¹ The complexity of the case will determine how many hours that are needed. A basic cost estimate, including prospects of a court hearing, is presented to the client. In large or protracted lawsuits, a framework agreement with costs per lawyer, an average cost for all lawyer involved in the case or a maximum amount for the entire case is negotiated with the client.

5. Reform Agenda

An overview of the Bar Association, including disciplinary matters, was last done in 1999. In an official inquiry, the Lawyers' Committee recommended that the Chancellor of Justice be relieved from his oversight role and that all disciplinary measures may be appealed to the Appeals Court in accordance with requirements of the European Convention on Human Rights.⁸² To date, there have been no amendments in the legislation to this effect.

⁷⁴ Article 27 of the Legal Aid Act.

⁷⁵ Of the 1.081 SEK, only 424 SEK is salary for the Lawyer. The webpage of the Swedish Court Authority www.dom.se, 1.081 SEK is 112 Euro and the VAT in Sweden for this type of services is 25 %.

⁷⁶ Article 28 of the Legal Aid Act and Article 23 and 30 of the Legal Aid Resolution (1997:404).

⁷⁷ Article 30 of the Legal Aid Act.

⁷⁸ Article 43 of the Legal Aid Act.

⁷⁹ Article 45 of the Legal Aid Act.

⁸⁰ Approximately 100- 450 Euros.

⁸¹ Poll by Temo in 2006. 2.000 SEK is approximately 200 Euros and 1.200 SEK is approximately 120 Euros.

⁸² Oversight of Lawyers, Official Inquiry by the Lawyers Committee, SOU 1999:31.

The Legal Aid Act is currently under review by the Swedish Court Authority on assignment by the Government. The review should include an analysis of the legal protection cover in insurances, if the 100 hours-rule for legal aid representation or consultation is sufficient and if the rights of small businesses and persons involved in divorce or a family law matters to be granted legal aid should be expanded. The review should also include an overview of the possibilities of being granted legal aid abroad, the compatibility between Swedish legislation and international conventions, and legal aid legislation abroad. In conducting its analysis, the Court Authority is obliged to consult with the Chancellor of Justice, the Legal Aid Authority, the Swedish Bar Association and others. The review should be finalised by 2 March 2009 where after the Government will decide if amendments to the Legal Aid Act should be proposed to the Assembly.⁸³

6. Conclusions

Legal aid is an important right in Sweden but for persons seeking legal aid, the system is complicated and difficult to penetrate. There are a number of exceptions to the right to legal aid, the most significant that legal protection cover should be sought first and foremost in the home insurance. If the applicant does not have a home insurance, he or she can still be excluded from legal aid if, in light of the person's financial circumstances, he or she should have had insurance. T

The Legal Aid Act provides for a maximum of 100 hours consultation and the insurances companies cover legal protection to a maximum of 200.000 SEK. Given these limitations, there is a risk that many important- from a jurisprudential perspective- civil law suits are never heard. Applicants hesitate to seek justice if there is a risk of running out of funds for pursuing the case.

The legal aid system is also complicated from a judicial point of view. There are different laws applying to Public Counsel, Public Defence Counsel, Plaintiff Counsel and the general Legal Aid Act applicable in all other cases. If a person's case is pending in a criminal or administrative court, the court will process the application for legal aid. If the application concerns a civil case that has not yet or will not be heard by a court, the application is processed by the Legal Aid Authority. Since this system might be perceived as confusing to the client, the legal representative normally ensures that the application for legal aid is submitted to the right instance.

The Court appointment of Legal Counsel in legal aid cases has been criticised. The requirement of the Court to find "suitable" representation opens up for arbitrariness. Lawyers have complained about favouritism. It can however be argued that the flexibility in the court appointment system ensures that lawyers with the right experience are matched with the right cases. Courts also have a tendency, to many legal aid representatives' dissatisfaction, to cut the fees for legal representation with the

⁸³ Assignment to the Court Authority to review the Legal Aid Act, Government Decision Ju/5942/DOM, 20 June 2007.

motivation that the number of hours spent on a case was not reasonable in relation to its nature and its scope. The normative compensation fee is already perceived as insufficient and further cuts in the lawyers' budget have severe consequences.

The Swedish Bar Association protects the interest of its members and has for many years tried to influence the compensation for legal aid. The discord in remuneration to legal aid representatives and business lawyers makes civil rights protection unattractive to members of the Bar.

The Bar Association works as a guarantor to the Swedish population that lawyers, just as doctors or accounts, meet a certain qualitative standard. Safeguards and control mechanisms are built into the system to ensure democratic governance. The SBA is built on a decentralised system where regional Departments are responsible for processing the applications from new members, thus ensuring closeness to the procedure. The Association thereby manages to uphold the interest of the community in providing qualified lawyers and disciplining, in an objective and fair way, those who do not meet the requirements.

Some features of the SBA however need attention. The right to appeal decisions from the Disciplinary Committee is limited to persons who have been refused membership or who have been disbarred. Only the Chancellor of Justice can appeal other disciplinary decisions to the Supreme Court.⁸⁴

The fact that lawyers can only employ lawyers and that in-house lawyers and others practising law outside law firms are not eligible for membership, can be seen as antiquated and counterproductive to the Association's own interest to uphold certain ethical and professional standards. The requirement for self-employed persons to have a turnover of more than one million SEK to be eligible for admission to the Bar,⁸⁵ excludes human rights firms and other non-profit practitioners. The public interest would be better served and further credibility could be lent to these practitioners if they could use the title "*Advokat*".⁸⁶

This being said, the SBA, under its current Secretary-General, Anne Ramberg, has been very active in promoting human rights and upholding the Rule of Law. The Swedish Bar Association today oversees the work of the government and the legislative assembly and has as such become a new watchdog in society.

⁸⁴ Chapter 8, Section 8 of the Code of Judicial Procedure.

⁸⁵ See footnote 29 above.

⁸⁶ For example, except in special circumstances, only lawyers could represent clients in criminal cases.

7. References

Legislation

Code of Judicial Procedure (1942:740)

Criminal Code (1962:700)

Law on Plaintiff Counsel (1988:609)

Law on Public Counsel (1996:1620)

Legal Aid Act (1996:1619)

Regulation on Legal Aid (1997:404)

Regulation on Public Counsel (1997:405)

Charter, instructions, guidelines

Assignment to the Court Authority to review the Legal Aid Act, Government Decision Ju/5942/DOM, 20 June 2007.

The Charter of the Swedish Bar Association.

The Bar Exam, Guidelines for Training and Examination, Education Board, 4 March 2005.

Instructions for Application for Admission to the Swedish Bar Association.

Oversight of Lawyers, Official Inquiry by the Lawyers Committee, SOU 1999:31.

Rules for Obligatory Bar Examination for Admission to the Swedish Bar Association.

Rules regarding the Challenge of Censors and Examiners, the Board of the Swedish Bar Association, 3 October 2002.

Articles and information papers

Legal Aid in Sweden, the Legal Aid Authority.

The Swedish Bar Association – A presentation.

The Swedish Bar Association; Some Salient Features of the Legal Profession in Sweden.

Interviews

Natasha Lindstedt, Linklaters.

Erika Nysäter, the Swedish Bar Association.

Johan Sangborn, the Swedish Bar Association.

Gunnar Strömmer, the Centre for Justice.

Erik Tiberg, Ministry of Justice.

Jens Wieslander, Ministry of Justice.

Christian Åhlund, International Legal Assistance Consortium (ILAC).

Web pages

The Swedish Bar Association; www.advokatsamfundet.se

The Swedish Court Authority; www.dom.se

The Legal Aid Authority; http://www.domstol.se/default_3370.aspx