

Theme II: Labour law and the fundamental rights of the person – Sweden

I. FUNDAMENTAL RIGHTS AND THE LEGAL SYSTEM

I. Recognition and legal effects of the fundamental rights

1. *How does your legal system define fundamental rights?*
2. *Has your legal system a catalogue of fundamental rights for the purposes of legal interpretation? If it does, how it is established? (e.g. by the constitution, or by laws, case law, international and supranational sources, or by a combination of the former).*

In the Swedish constitution – Chapter 2 of the Instrument of Government – there is a list of the fundamental rights and freedoms of every citizen (see the Annex). In many respects a foreign national within the Realm enjoys the same rights and freedoms (Article 22).

The European Convention for the Protection of Human Rights and Fundamental Freedoms has been incorporated into Swedish legislation through an Act of Parliament, which does not have constitutional status. There is, however, a provision in the Constitution (Chapter 2 Article 23 in the Instrument of Government) to the effect that no provision may be adopted which contravenes Sweden's undertakings under that convention.

II. Effectiveness of the fundamental rights

3. *If your constitution recognizes the existence of fundamental rights, can they be directly exercised by the individuals, or do they call for further implementation through legislative action? How are the fundamental rights guaranteed by the constitution vis-à-vis further legislative action? Does the definition of "fundamental rights" imply a threshold of rights that cannot be undermined by legislative regulation? If such a threshold exists, how it is understood?*
4. *If your constitution does not include a catalogue of fundamental rights (or your country does not have a written constitution), what is the position of fundamental rights in your overall legal system? On what basis are some rights defined as "fundamental" vis-à-vis other rights that do not enjoy an equal or similar recognition? Do fundamental rights enjoy of some reinforced guarantees that other rights do not enjoy? If they do, what kind of guarantees they enjoy?*

In principle, an individual can vis-à-vis the State or its bodies exercise the fundamental rights and freedoms guaranteed by the Swedish Constitution without reference to an act that further implements those rights and freedoms. Sometimes, however, it follows from the Constitution that a particular right is protected only to the extent determined by a provision of inferior rank (see for instance Chapter 2 Article 3 second paragraph in the Instrument of Government).

The Constitution states if and when provisions of inferior rank may restrict the fundamental rights and freedoms guaranteed by the Constitution. The general principle is that restrictions may be imposed only to satisfy a purpose acceptable in a democratic society. A restriction must never go beyond what is necessary with regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the fundamentals of democracy. No restraint may be imposed solely on grounds of a political, religious, cultural or other such opinion. A small number of members of parliament (10 of 349) is normally sufficient to delay the adoption of a proposal for restrictions. (See Chapter 2 Article 12 in the Instrument of Government.)

A special Council on Legislation, comprised of Supreme Court justices, has the duty of scrutinising proposals for restrictions and assessing i.a. their relation to the Constitution (Chapter 8 Article 18 in the Instrument of Government). In addition, the valid grounds for restricting a particular right or freedom are often stated rather precisely in the Constitution. Freedom of association, for example, may be restricted only in respect of organisations whose activities are of a military or quasi-military nature, or constitute persecution of a group of a particular race, colour, or ethnic origin (see Chapter 2 Article 14, second paragraph in the Instrument of Government).

As stated, it follows from the Constitution whether and to what extent the fundamental rights and freedoms guaranteed by the Constitution may be restricted. If there is no authorisation in the Constitution for restricting a particular right or freedom, then that right or freedom may not be restricted at all. That is, for example, the case when it comes to the provision on capital punishment (Chapter 2 Article 4).

III. Judicial protection of fundamental rights

5. *In your legal system, how are fundamental rights protected by the judiciary? Besides ordinary judicial control, do these rights benefit from a special judicial procedure? If they do, how is such a procedure organized? (for example, a summary procedure).*
6. *In your legal system, what judiciary organs are entrusted with the protection of fundamental rights (e.g. ordinary tribunals, or labour courts, according to the substance of the issue at stake)? Is your Constitutional Tribunal (if such an organ exists) entrusted with the responsibility of guaranteeing such protection? If it is, how is this protection organized? To what extent are fundamental rights also protected by international or supranational courts of justice, whose decisions have binding effects on national legal systems? (e.g. the ECJ in the case of European Union members, or the European Court of Human Rights in the case of countries that have ratified the European Convention of Human Rights).*

In Sweden, there is no special court for constitutional matters. Each court, and all other public bodies, must observe the entire body of legislation, including the Constitution and the act implementing the European Convention for the Protection of Human Rights and Fundamental Freedoms (*the European Convention*).

If a court or other public body in a specific case finds that a provision conflicts with a rule of the Constitution or another superior statute, the provision may not be applied. If the provision has been approved by parliament or by the Government, however, it shall be waived only if the error is manifest. (Chapter 11 Article 14 in the Instrument of Government.) In the case of conflicting rules, the protection of the rights and freedoms of individuals is thus limited. If it is at all possible, a court would, however, through interpretative operations seek to reconcile the rules in such a way that the superior rule – be it a rule in the Constitution or a rule in an international instrument, such as the European Convention, which Sweden is obliged to observe – is upheld.

Since Sweden is a member of the European Union and a signatory to the European Convention, the European Court of Justice and the European Court of Human Rights are also involved in the protection of fundamental rights.

IV. Fundamental rights and the contract of employment

7. *In your legal system, have the fundamental rights or some of them, any legal effect in the relations between private actors, and therefore on the contract of employment?*
8. *In case they have, what is the relevant legal source? (e.g. it may be the constitution, or a law, or case law, or for some countries, e.g. EU members, a supranational legal source, or a combination of them).*
9. *Has the exercise of the fundamental rights of the worker's person (v. II.1.a.) the same effectiveness in the contract of employment as it has in the relations between the citizens and the public authority, or is it subject to modalities? What modality, if any, can the parties' autonomy (i.e. the collective agreement or the individual contract of employment) impose on an such exercise? (for example, modalities derived from the principles of equity or good faith).*
10. *Do judges in your country have an active or a passive role in the protection of fundamental rights of the worker's person? What legal reasoning is followed while on the application of these fundamental rights? (for example "reasonability", "rationality" or "proportionality" tests).*
11. *What kind of legal remedies exist under your legal system, to provide for redress when the workers' fundamental rights have been violated by the employer? For example, what redress exists when an individual dismissal is held to have been made in breach of a fundamental right?*

The fundamental rights and freedoms according to the Constitution do not *per se* have a horizontal effect affecting the relationship between private entities. Those rights and freedoms have, however, a vertical effect in the relationship between the individual and the state. It is clear that the state and its bodies must also observe those rights and freedoms when official authority is exercised against a state employee; see for example the National Labour Court case AD 1984 nr 94 and compare cases AD 1991 nr 106 and AD 1995 nr 122. It is more difficult to answer the question as to whether this is true when the state exercises against a state employee not official authority but rather powers the state has as an employer by virtue of the employment relationship. What is said in i.a. the grounds for the decision in the abovementioned labour court case (AD 1984 nr 94) and opinions in the legal literature imply that at least certain rights and freedoms may be overridden by the state through the conclusion of a contract or by virtue of powers stemming from a contractual relationship.

According to the European Convention, as interpreted by the European Court of Human Rights, some of the rights guaranteed by that convention might in certain cases impose a positive obligation on the state to protect that right against infringements from private entities (so-called "Drittwirkung"). In the grounds for one decision (case AD 1998 nr 17) the Swedish National Labour Court has expressed the view that it follows from the Swedish implementation of the convention that those articles in the convention which can be of importance in the relationship between private parties also shall be applied in disputes between such parties. The court has, however, never applied this doctrine, which seems to be the most far-reaching yet expressed by any court of last instance in Sweden. It seems that the European Convention and its application in Swedish courts might afford employees in both the public and private sector a better protection against employers using their contractually based powers than the Swedish Constitution.

The concept of good labour market practices, which the Swedish National Labour Court applies, also serves as a protection for employees' fundamental rights. The employer's prerogative, derived from a contractual basis, may not, according to the Labour Court, be used in contravention of good labour market practices. The Labour Court has used

this test in cases concerning drug and alcohol testing and thereby applied a balance of interest approach (see for instance cases AD 1998 nr 97 and AD 2001 nr 3). In addition, the Labour Court does not uphold a contract, even a collective agreement, stipulating something that contravenes good labour market practices. The Labour Court has for example set aside an agreement prescribing dismissals on a discriminatory ground (language skills) (AD 1983 nr 107) and applied the test in a case concerning exit controls prescribed in a collective agreement (AD 1997 nr 29).

The issue of remedies for a breach of fundamental rights is on the whole uncharted territory. If an action is in breach of an act, a collective agreement or the employment contract the normal sanctions for such a breach will be applied. A dismissal without such valid reasons as required by the Employment Protection Act (SFS 1982:80) could for instance be declared null and void and the dismissed employee be awarded compensation for economic loss and general damages for the infringement itself. If on the other hand the action was in breach of only the Constitution, the (Swedish act implementing the) European Convention or good labour market practices, general damages for the infringement would probably not be awarded.

For many years the parties in disputes before the Labour Court seldom invoked the notion of fundamental rights. In recent years, particularly since the 1995 implementation in Sweden of the European Convention, the parties, both employers (the negative freedom of association in connection with industrial action) and the employees and the trade unions, more frequently invoke fundamental rights. There are, however, not many precedent cases from the Labour Court elaborating on the effect of fundamental rights on the employment relationship. Judges in Sweden must thus be said to have so far played only a minor role in the protection of fundamental rights.

II. FUNDAMENTAL RIGHTS OF THE INDIVIDUAL WORKER

V. Equal treatment

12. *In your legal system, is prohibition of discrimination recognized as an autonomous right, different from the principle of equal treatment?*
13. *Does your legal system enounce the grounds for discrimination? If it does, is this made by a general provision or through a list?*
14. *Does your legal system recognize the notion of indirect discrimination?*
15. *In your legal system, what are the main means of protection against discrimination? While on litigation, when a worker claims to have been victim of discrimination, does your law provide for some relief of the burden of the proof? (for example reversal of the onus probandi, or the proof by presumptions).*

According to the Constitution, no act of law or other provision may imply the unfavourable treatment of a citizen because he belongs to a minority group by reason of race, colour, or ethnic origin. Furthermore, no act of law or other provision may imply the unfavourable treatment of a citizen on grounds of sex, unless the provision forms part of efforts to promote equality between men and women or relates to compulsory military service or other corresponding compulsory national service. (Chapter 2 Articles 15 and 16 in the Instrument of Government.) In the Constitution there is also a provision obliging courts of law, administrative authorities and others performing tasks within the public administration to take cognisance in their work of the equality of all persons before the law and to observe objectivity and impartiality (Chapter 1 Article 9 in the Instrument of Government).

When it comes to discrimination on grounds of personal characteristics in working life there are separate acts on gender equality, including a ban on sex discrimination (SFS 1991:433) and against discrimination in working life on grounds of ethnic origin (SFS 1999:130), disability (SFS 1999:132) or sexual preference (SFS 1999:133). In addition, no one may be discriminated against in working life because of his or her enjoyment of the freedom of association (SFS 1976:580). To a certain extent employees are also protected according to separate acts against discrimination in working life because of their enjoyment of statutory rights to leave of absence for various reasons. This is the case concerning parental leave and leave for compelling family reasons (SFS 1995:584 and SFS 1998:209), study leave (SFS 1974:981), leave for conducting a trade or business (SFS 1997:1293), leave to provide care for next of kin (SFS 1988:1465), an immigrant's right to leave to study Swedish (SFS 1986:163), leave to fulfil tasks for organisations in connection with school activities (SFS 1979:1184) and leave for fulfilment of military or other national service (SFS 1994:1809, Chapter 9, and SFS 1994:2076). There is also a separate act against discrimination on grounds of the employee having part-time or fixed-term employment (SFS 2002:293). A special act on equal treatment of students at universities (SFS 2001:1286) should also be mentioned.

The acts on gender equality and concerning parental leave, part-time and fixed-term employment implement EC legislation. A recent committee report proposes amended and extended legislation against discrimination on various grounds based on EC directives 2000/43/EC and 2000/78/EC (SOU 2002:43). Further legislative action, i.a. an amalgamated legislation and protection against age discrimination, is currently being considered by another committee (dir. 2002:11).

The notion of indirect discrimination is explicitly recognised in the legislation concerning sex discrimination and discrimination on grounds of ethnic origin, disability, sexual preference and part-time and fixed-term employment.

All the acts mentioned above provide protection against dismissal and detrimental treatment regarding working conditions or pay and other benefits. An unfair dismissal can be declared null and void. A breach of this legislation will entitle the employee to compensation for economic loss and general damages for the infringement.

According to the legislation concerning sex discrimination and discrimination on grounds of ethnic origin, disability and sexual preference an employee is protected against reprisals from the employer for filing a complaint with the competent authority. The competent authority – an ombudsman – shall supervise the application of the legislation and through advice and other measures ensure that an offended employee can exercise his or her rights. The authority also has the power to bring a case before the National Labour Court on behalf of the offended employee. In addition, the application of labour legislation is supervised by the trade unions, which often have representatives at the work place. The trade unions, which are financially strong, can bring cases before the National Labour Court on behalf of their members. Before a case is brought before the court negotiations take place and many cases can be solved through such negotiations. When the competent authority or a trade union has brought a case before the Labour Court, the individual employee will not have to bear the litigation costs. A case concerning discrimination, where the party shows that it is probable that discrimination actually occurred (see AD 1994 nr 28), may not be referred to arbitration. This is also true when it comes discrimination on grounds of the employee having part-time or fixed-term employment.

The legislation concerning sex discrimination and discrimination on grounds of ethnic origin, disability, sexual preference and part-time and fixed-term employment is intended to implement the same relief of the burden of proof as in EC directive 97/80/EC. This means it must be proven that the employee has been subject to detrimental treatment and that it is therefore likely that discrimination has occurred. But thereafter the onus of proof is placed on the employer, who has to prove that discrimination in fact did not occur. The Labour Court concerning freedom of association applies a similar distribution of the burden of proof.

VI. Ideological and religious freedom

16. *Does your legal system limit or prevent the employer (or certain intermediaries in employment such as private employment agencies) to investigate the political opinion or religious beliefs of his/her workers?*
17. *Does your legal system accept in general that an employee may, for moral reasons, refuse to discharge duties he/she is to discharge pursuant to his/her contract of employment, or is the so-called "clause of conscience" foreseen only with respect to certain categories of workers? (for example health staff or media professionals). In case the "clause of conscience" exists in your legal system, how are its personal scope and actual contents legally organized? (persons who can claim it, and persons or entities before which it can be invoked, and contents and extent of this right).*
18. *What are the legal contents of the freedom of religious belief within the scope of an employment relationship? Is the employer only obliged to observe neutrality vis-à-vis his/her employee's religious beliefs, or must he/she additionally accommodate the organization of work to the worker's religious practices? (for example, by permitting the worker to participate in religious service, or by adapting the worktime to the worker's religious holidays).*
19. *Does your legal system recognize the so-called "tendential establishments"? If it does, how is the potential conflict, between the worker's freedoms and the protection of the organization's tendency, legally reconciled? How are the establishment and further development of ideologically or religious oriented employment relationships legally regulated? (e.g. with respect to questions such as selection of candidates, testing of the worker's aptitude to perform the work, the employer's power to direct the work and to control the employee, a possible change of the worker's or the employer's ideology, the termination of employment).*

Every citizen in Sweden, including employers, enjoys freedom of information, i.e. the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others (see Chapter 2 Article 1 in the Instrument of Government). There are no particular restraints on the employer's ability to investigate the political opinions or religious beliefs of an employee or a job applicant. The employer is thus free to ask an employee or applicant any question (but a public employer may not use coercion, see Chapter 2 Article 2 in the Instrument of Government). To use the information obtained may, however, constitute illegal discrimination or, in the public sector, contravene the constitutional principle of objectivity and impartiality (see Chapter 1 Article 9 in the Instrument of Government), or otherwise be illegal. Furthermore, the employer may of course not use illegal means, i.a. break in or tamper with confidential communications, to obtain the information. The general legislation on data protection – the 1998 Personal Data Act implementing EC directive 95/46/EC – may also restrict the employer's ability to collect information with a view to processing the information in a way that is covered by the legislation, i.e. automated processing in computers or manual processing in traditional personal data files.

The notion of a "clause of conscience" inherent in the employment relationship is not generally recognised in Sweden. An employee may, however, refuse to obey the employer's order to do something illegal, i.a. to drive a vehicle in contravention of traffic

regulations, or truly immoral. An employee who wants to wear a turban in contravention of the employer's dress code must, however, obey an order of relocation to work where the dress code does not apply (see case AD 1986 nr 11).

There is not much case law concerning if and when an employee's beliefs may constitute a valid ground for some kind of action from the employer's side. If an employee's beliefs or his or her expression of them or colleagues' or the public's reaction to them is causing or may cause serious damage to the employer's activities, the employer may probably take appropriate action (compare cases AD 1991 nr 106 and AD 2000 nr 76). If an employee has to represent an ideological organisation, i.a. a political party or a trade union, and chooses to denounce his or her membership in that organisation or is acting for a competing organisation, this may constitute valid grounds for the employer to take action against that employee (see cases AD 1982 nr 98 and AD 1989 nr 11). The notion of tendentious establishments (Tendenzbetrieb) is not, however, generally recognised in connection with discrimination in Sweden. Instead, there is a provision to the effect that the ban on direct discrimination does not apply if the treatment is justified with regard to an idealistic or other special interest which clearly is more important than the interest in preventing ethnic discrimination in working life (see for instance Section 8 second paragraph in the law SFS 1999:130 on measures against ethnic discrimination in working life).

An employer is obliged to implement such measures as are necessary, having regard to the employer's resources and other prevailing circumstances, to ensure that the working conditions are suitable for all employees irrespective of their ethnic origin or religious beliefs (Section 5 in the law SFS 1999:130 on measures against ethnic discrimination in working life). This obligation can be enforced through the penalty of a fine.

VII. Privacy

a. The right to privacy

20. How can the right to privacy be legally defined?

21. Does your legal system expressly recognize the worker's right to privacy?

Several committees have over the years concluded that it is not possible to legally define the concept of privacy, or personal integrity, and no such definition has been introduced in Swedish legislation. There is furthermore no explicit reference in the legislation to the right to privacy for employees or job applicants. A committee has, however, recently presented a draft law on protection of personal integrity in working life (SOU 2002:18).

There is, in Sweden, no sign that there are any limits to the employer's right to invoke as evidence information or material collected through an illegal intrusion upon the employee's right to personal integrity, compare for instance cases AD 1999 nr 49 (an employee's hard disc was searched for private material) and AD 2002 nr 74 (employees' private e-mail correspondence was submitted as evidence).

b. Protection of privacy and access to employment

22. Does your legal system establish restrictions on the employer's right to collect personal data of the workers he/she is to hire?

23. If it does, how is this restriction formulated?: a) in a negative sense, e.g. by way of prohibiting the employer to request information on certain personal aspects, including private life of his/her employee, or by listing the questions the employer may not formulate (for example, on previous

- convictions for offences, or family situation); or b) in a positive sense, by way of limiting the questions only to facts or other elements that are relevant for the job for which a worker is applying?*
24. *Is the use of psychological tests limited in any form? What other pre-employment tests may be limited or prohibited under your national law (e.g. pregnancy tests, VIH screening, graphological tests)?*
25. *Can an employer make enquiries on a job-applicant's sexual orientation?*
26. *Does your legal system have specific regulations that address genetic screening? Is it possible to speak about the right to "genetic privacy" in the contract of employment? How could it be defined, and what could be its contents and scope?*

The situation regarding collection of personal data has been explained under VI above. To sum up, there is no restriction on what questions an employer may ask an employee or a job applicant, or anyone else about an employee or applicant. Such restrictions are also not introduced in the draft law on protection of personal integrity in working life (SOU 2002:18). The draft law is instead restricted to processing of personal data that are documented in computers or on paper. The draft law is applicable to the employer's processing of an employee's or job applicant's personal data. The draft law is based upon the 1998 Personal Data Act, implementing EC directive 95/46/EC on data protection (see below under c).

The draft law introduces additional requirements, as well as new requirements for such forms of manual processing in a non-structured form as are not covered by the Personal Data Act.

The employer may, according to the draft law, read an employee's private electronic data, such as private e-mails and private word processor documents, only with consent or if it is necessary with regard to the employer's activities. In the latter case, particular attention shall be given to whether the security of information is in jeopardy or whether the employee on reasonable grounds may be suspected of being guilty of an offence in connection with use of the employer's equipment or of such disloyal behaviour as provides valid grounds for dismissal or cause for liability for damages.

According to the draft law, the employer may only process personal data on health or use of drugs and alcohol if it is necessary in order to ascertain whether the employee or job applicant is suitable for carrying out tasks required by the job, or to assess an employee's right to benefits which the employee has requested. Consent cannot legitimise such processing.

Medical examinations and drug tests shall, according to the draft law, only be carried out by staff within the health and medical services or under the supervision of such staff. Drug tests must be undertaken using reliable methods and be analysed by an accredited laboratory. Breathalyser test are, however, exempted from the requirements regarding health staff and laboratory analysis.

Personal data derived from a personality test may, according to the draft law, only be processed with consent. The employer shall ensure that such test are only undertaken in a satisfactory manner, using reliable test instruments and performed by persons with adequate training.

According to the draft law, personal data on criminal offences may only be processed when it is necessary to ascertain an employee's or job applicant's reliability with regard to public security or the security of the employer's activities. In addition, it follows

from the draft law that employers in the private sector may not keep such personal data in computerised files or structured, manual personal data files.

The employer shall, according to the draft law, collect personal data on health or use of drugs and alcohol or on criminal offences only from the employee or job applicant himself/herself. Only if this is not possible and with consent may the employer collect such data from other sources.

According to the draft law, an employee's private electronic data and personal data derived from personality tests or on health or use of drugs and alcohol or on criminal offences shall be kept separate from other personal data and stored in a satisfactory manner. Furthermore, such data may only be processed by a limited number of persons, and the draft law contains a provision on secrecy.

There are no particular restrictions on the use of genetic data in working life. A committee has, however, been convened to review the issue (dir. 2001:20). Such processing of genetic data as is covered by the Personal Data Act is subject to prior checking by the data protection authority.

An employee in the public sector may, according to the Constitution, be protected against forced physical violation by the public employer (see Chapter 2 Article 6 in the Instrument of Government). Job applicants are, however, not protected by the Constitution against medical examination carried out on the initiative of the public employer, since such an examination is not deemed to be "forced" but rather voluntary in order to receive a benefit from the State (employment). A limited protection is provided by Section 5 in the Regulation on Public Employment (SFS 1994:373), prescribing that an authority may require a doctor's certificate (only) if the job is such as to warrant particular demands on the employee's health condition. Section 30 in the Act on Public Employment (SFS 1994:260) on periodical health examinations of employees should also be mentioned. A public employee is obliged to undergo such examinations only if there is a collective agreement or a legal provision prescribing such an obligation.

c. Computerized processing of personal data

27. *Does your national law contain norms relating to the protection of workers' privacy vis-à-vis automatic processing of his/her personal data?*
28. *If it does: a) what is their scope?; b) what principles apply to the protection of personal data within the framework of an employment relationship?; c) what rights are guaranteed to the worker in relation to the computerized processing of his/her personal data? (for example, access to such data, right to challenge that data or to have it rectified or suppressed); d) what personal data is protected?, and e) what guarantees are afforded to the worker with respect to his/her personal data? (e.g. confidentiality, security, records kept for limited duration only, not disclosure to third parties).*

Today, there is in Sweden no specific law on automated processing of an employee's personal data. The main content of a draft law on protection of personal integrity in working life (SOU 2002:18) has been explained under VII b above. Sweden is a party to the Council of Europe Convention nr 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data.

The general 1998 Personal Data Act, implementing EC directive 95/46/EC on data protection, affords a basic protection for the informational privacy of every individual, including employees and job applicants, in connection with automated processing in computers or manual processing in traditional personal data files. The act states when it is

legal to process personal data. Apart from processing with the employee's consent and when the processing is necessary in order to fulfil legal obligations or for the performance of the employment contract, the employer's processing of personal data is legal after a balance of interests. The purpose for the processing must be stated beforehand, at the collection of the data, and subsequent processing is only allowed for purposes which are not incompatible with the initial purpose. The employer must also beforehand inform the employees about the processing and its purposes. And only data which are adequate and relevant in relation to the determined purposes may be processed. The data may not be stored for a longer period of time than is necessary for the purposes for which they are processed. The employee must also on request be given access to his or her data and has the right to have his or her data rectified.

There is in the Personal Data Act an in-principle ban on the processing of sensitive personal data, which are defined as personal data concerning health or sex life and personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs and trade-union membership. Sensitive data may, however, be processed when this is necessary for the employer to be able to comply with his or her duties or exercise his or her rights within labour law. The data processed may be disclosed to a third party only if there is within labour law an obligation for the employer to do so or the employee has explicitly consented to the disclosure.

d. Protection of privacy and sexual harassment

29. How is sexual harassment defined in your legal system? Has it been defined by the law, or by case law?

30. How are workers protected against sexual harassment at the workplace?

According to Section 6 second paragraph in the Equal Opportunities Act (SFS 1991:433) sexual harassment means such unwanted conduct based on sex or unwanted conduct of a sexual nature as violates the integrity of the employee at work. According to the first paragraph of that section, the employer must take measures to prevent and preclude an employee from being subjected to sexual harassment or harassment resulting from a complaint about sex discrimination. This obligation can be enforced through the penalty of a fine.

Certain forms of sexual harassment may constitute an offence according to the Penal Code, for example molestation. Furthermore, sexual harassment from the employer may constitute illegal sex discrimination. General rules on employment protection may also give employees a certain protection against sexual harassment and its consequences. Sexual harassment from colleagues and the employer's inactivity may, for example, constitute constructive dismissal if it has led to the employee's resignation (see for instance case AD 1993 nr 30).

In the Equal Opportunities Act (SFS 1991:433) there are several provisions particularly aimed at protecting employees from harassment. According to Section 22, an employer may not subject an employee to harassment on the grounds that the employee has rejected the employer's sexual advances or has reported the employer for practicing sex discrimination. In case of a violation of this provision, the employer shall pay general damages to the employee for the violation caused by the harassment. A person who is entitled to determine an employee's conditions of work in lieu of the employer shall, in the application of Section 22, be equated with the employer. Otherwise, sexual harassment among employees is dealt with only indirectly, since there are no obligations im-

posed on the employees according to the Equal Opportunities Act. The obligations are instead placed on the employer. An employer who becomes aware that an employee considers herself or himself to have been exposed to sexual harassment by another employee, shall investigate the circumstances surrounding the said harassment and if it has occurred implement the measures that may reasonably be required to prevent continuance of the sexual harassment (Section 22 a). If the employer does not fulfil his or her obligations according to this provision, he or she shall pay general damages to the employee for the violation caused by the omission. The Equal Opportunities Ombudsman or the employee's trade union may bring a case before the National Labour Court on behalf of the employee.

The Act on a Ban against Discrimination in Working Life because of Sexual Orientation (SFS 1999:133) contains a similar definition on harassment and an equivalent obligation on the employer to take action if he or she becomes aware of harassment among employees as in the Equal Opportunities Act. A committee has recently presented a draft law on a ban against discrimination because of sexual orientation (SOU 2002:43). Harassment which has a connection with sexual orientation is in the draft law defined as a conduct, which is aimed at, or results in, the violation of a person's dignity. The draft law includes a ban on harassment from the employer or employees or other persons working or training in the workplace. A novelty in the draft law is that employees and other persons working or training in the workplace could also be ordered to pay general damages for a violation.

e. Employer's faculties and protection of the worker's privacy

31. *Under what conditions, and subject to what requirements can the employer undertake searches on the person or the property of a worker?*
32. *What limits exist on the employer's faculty to control the worker's activity: a) by security staff (security agents or private detectives), and b) by using electronic, visual or acoustic devices?*
33. *What limits exist on the employer's faculty to verify the reality of alleged sickness or accident related absences of his/her employees?*
34. *Does your law accept exceptions to the prohibition on the employer to intrude into the worker's private life (e.g. on grounds of image or reputation of the enterprise)?*
35. *Does your law recognize the worker's right to his/her own image? Can the employer impose any control on the worker's outward appearance, and how he/she dresses?*
36. *How does your law guarantee the privacy of communications in the employment relationship? Can the employer monitor telephone calls that his/her employee may make during employment?*
37. *Is it lawful for the employer to monitor or to intercept e-mail messages made or received by his/her employee during employment?*

Apart from general provisions in the Penal Code and the general legislation on data protection, there are not many rules in Swedish legislation concerning the employer's ability to control employees.

Many control measures may require prior consultation and negotiation with the trade union according to the act on co-determination in the workplace (SFS 1976:580). This is only a procedural requirement, but it contributes to making the measures known to the employees.

There is a general Act on Video Surveillance (SFS 1998:150). The act requires the provision of information about the surveillance, which must be conducted with due respect to the personal integrity of individuals. The surveillance of areas to which the public has access is subject to prior permit or, in certain cases, prior notification to an author-

ity. The act does not provide other material or procedural rules for surveillance of other areas.

There is a provision, based on EC law, to the effect that quantitative or qualitative control of an employee's performance may not be conducted through a computerised system without prior information to the employee.

Most of the relevant provisions in the Penal Code on intrusion into communications and private computer files or physical spaces prohibit only actions that are "unlawful". An employer's intrusion into a space at the workplace, which the employee has sealed with his or her own lock (with or without permission from the employer), will probably be unlawful although the space in some sense belongs to the employer as the owner of the workplace. In other cases, one must probably resort to general principles in labour law to determine what action from the employer against his or her contractual counterpart in the employment relationship is lawful.

There is not much case law on what control measures an employer may undertake against his or her employees. The employer's prerogative to decide which employee is to do what work when and in which manner, and the corresponding duty for the employees to obey the employer's order (and the possibility to conclude with legal effect an individual contract or a collective agreement on those issues), is, according to case law, limited to what is not in contravention of good labour market practices. It seems that the employer's prerogative, and its limitation to what is not in contravention of good labour market practices, in case law has been extended to encompass also the right to undertake control measures at the workplace vis-à-vis employees, at least when the measures involve some kind of activity from the employee. As early as 1934 the Labour Court concluded that the employer's prerogative encompasses a right to collect to a reasonable extent data from the employees (pieceworkers in the textile industry) about the amount of work accomplished (case AD 1934 nr 38). There are also other restrictions to the employer's prerogative than the good labour market practices-test, such as the requirement for the work order to concern work that has a natural connection with the employer's operations. This natural connection-test is probably applicable also when it comes to control measures involving some kind of activity from the employee (compare for instance case AD 1998 nr 97).

When determining if and to what extent a control measure is in contravention of good labour market practices and therefore illegal, the Labour Court utilises a balance of interests. There have been cases on drug and alcohol testing (see cases AD 1991 nr 45, AD 1998 nr 97, AD 2001 nr 3 and AD 2002 nr 51) and exit controls involving a search through an employee's personal belongings such as bags (AD 1943 nr 77 and AD 1997 nr 29). Only in one case – AD 1998 nr 97 – has the Labour Court found that the employee was not obliged to subject herself to the control measure, an alcohol test which was considered insecure in that it gave too many false positive results (indicating alcohol use where there in fact had been no such use). That employee – a cleaner in a nuclear power plant – was, however, according to the Labour Court obliged to undergo drug testing. The ruling has been submitted to the European Court of Human Rights.

Public employers may have more limited ability to undertake control measures according to the Constitution (see especially Chapter 2 Article 6 in the Instrument of Government) or the (Swedish act implementing the) European Convention. According to the Parliamentary Ombudsmen (Justitieombudsmannen – JO), a public employee is, how-

ever, not protected by the Constitution against a search which is not founded on an explicit legal provision, through his or her office, including locked desk drawers (see decision 2002-03-05 in case no 2390-2001). In fact, it may be that a public employee is not protected by at least some constitutional provisions against measures undertaken by the public employer by virtue of, not official authority but the civil law-based employment relationship. It is not clear whether this would be compatible with Article 8 in the European Convention, especially the requirement for privacy intrusions to be in accordance with “law”.

There are no clear legal provisions or case law precedents regarding a right for the employee to his or her own image or appearance. An employee who wants to wear a turban in contravention of the employer’s dress code must, for instance, obey an order of relocation to work where the dress code does not apply (see case AD 1986 nr 11). And an employer is probably not required to accept an employee’s substandard personal hygiene (compare case AD 1999 nr 79).

According to a special act (SFS 1978:800), a person’s name or picture may not without his or her consent be used for advertising or other marketing purposes.

VIII. Freedom of speech and of information

38. *How are freedom of speech and information legally defined in your legal system, and how is their protection organized?*
39. *To what extent, do the fundamental rights of freedom of expression and information have a bearing on the contract of employment? Have these been developed by national legislation?*
40. *What are the juridical regularity standards for the freedom of speech in labor relationships? (for instance, the company’s right to honor). And what are those of the freedom of information? (for instance, the truth of facts).*
41. *Is there a differential treatment in legislation or in jurisprudential interpretation as to the exercise of these freedoms by workers holding representative positions?*

According to Chapter 2 Article 1 in the Instrument of Government, every citizen has, in his or her relations with public institutions, the right to freedom of expression, i.e. the freedom to communicate information and express ideas, opinions and sentiments, whether orally, pictorially, in writing, or in any other way. In two other fundamental laws of constitutional character – the Freedom of the Press Act and the Fundamental Law on Freedom of Expression (in the following jointly called the Freedom of Expression Law) – there are specific provisions concerning the freedom of the press and the corresponding freedom of expression on sound radio, television and certain similar transmissions and films, videograms, sound recordings and other technical recordings. These laws, as well, in principle provide protection against interventions only from public institutions. Public employees are protected under these laws from interventions from their public employer. The protection for public employees can be summarised in the following way.

A public employee, like every other citizen, has *freedom of expression* and can publish statements or have them broadcasted. A public employee also has *freedom to communicate information to media representatives* for the purpose of publication. Restrictions to these freedoms must have a basis in the Freedom of Expression Law. The Freedom of Expression Law institutes a system with designated responsible editors, who will have the sole responsibility for what is published or broadcasted, excluding responsibility for all other contributors to the publication. The Freedom of Expression Law contains a complete list of what offences conducted through publication or broadcasting may con-

stitute criminal or civil liability and provisions on a special court procedure, involving jurors, which is not otherwise used in the Swedish court system.

There are, however, some limitations to the freedoms, where “regular” provisions will apply. A public employee may not i) commit very grave offences, such as espionage or treason, ii) intentionally release official documents which are subject to secrecy, or iii) intentionally set aside a qualified secrecy obligation, enumerated in a special act, by giving out the information orally or otherwise. It is also generally accepted that a public employee can only be subject to secrecy obligations through legislation and not through contract with his or her public employer. This means that a public employee may for the purpose of publication divulge orally to media representatives information that is subject to secrecy according to legislation as long as the secrecy obligation is not qualified (only some 20–30 of the in total some 160 provisions on secrecy in the Secrecy Act, SFS 1980:100, are regarded as qualified). The public employee may, however, not reveal the same information to, for instance, his or her spouse.

The public employer may not take any action which is detrimental to the public employee, such as relocation, disciplinary action or dismissal, on account of the employee’s use of his or her freedoms. The Freedom of Expression Law also contains some additional protective provisions. There is a right to anonymity for persons contributing to a publication (except, of course, the designated responsible editor), and media representatives are as a general rule forbidden to reveal information about the identity of such persons, for instance the employee who has alerted the media and given out information. More importantly, the public employer is forbidden to try to reveal who has contributed to a publication.

A public employee thus has a strong protection for the freedom of expression, which is only restricted through legislation and not through contract. In the private sector, the freedom of expression for employees in their relation to the employer is instead mainly restricted through principles derived from the contractual relationship. It is in principle permissible for a private employer to conclude an express agreement on secrecy or confidentiality with his or her employees. Moreover, even if no such express agreement is concluded, it follows, according to case law, from the employment relationship itself that the employees have a duty of loyalty against their employer, which encompasses a duty of confidentiality. This duty of confidentiality relates to information which it is in the employer’s interest not to reveal and which is likely to harm the employer if revealed. There are only a couple of cases from the National Labour Court on the provision of information for publication (AD 1994 nr 79 and AD 1997 nr 57, compare AD 1961 nr 27) and in those cases the dismissals of the employees concerned were considered unjustified.

The fact that an employee has or does not have a position of trust can have an impact when considering the sanctions for a breach of the duty of loyalty, for instance dismissal, and, possibly, when considering if certain statements are likely to harm the employer. In case AD 1982 nr 9, for instance, an employee had made derogatory statements about his employer to prospective job applicants but this did not constitute valid grounds for dismissal since the employee did not have a position of trust. In contrast, the dismissal of an employee who held a position of trust in the management and had put forward sharp internal criticism was upheld in case AD 1982 nr 110. In the latter case the Labour Court stated that the starting point must be that an employee has a wide-reaching right to criticise the employer’s actions and question them. The court

also noted that there are limits to this in-principle right to criticise and that the higher position the employee holds, the more justified are the employer's demands for loyalty.

The Labour Court has also stated that the employment contract does not constitute a conclusive obstacle for the employee to report to authorities an unsatisfactory state of things in the employer's operations (see for instance AD 1994 nr 79 and AD 1986 nr 95). Such reporting may, however, in certain cases be in contravention of the employee's duty of loyalty. If the report is made with malicious intent in order to harm the employer and contains statements without a factual basis, the employee's action may constitute valid grounds for dismissal (see for instance case AD 1986 nr 95). The court also considers whether the employee beforehand has tried to remedy the unsatisfactory situation by internally alerting the employer. It is not clear how this case law relates to ILO Convention no 158 on termination of employment, which includes a provision to the effect that the filing of a complaint against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities shall not constitute valid grounds for dismissal.

In the private sector, the freedom of contract thus in principle prevails over the freedom of expression. The Act on the Protection of Trade Secrets (1990:490) is, however intended to limit the freedom of contract by making it legal to make public information about serious crimes or an in other respects gravely unsatisfactory state of things in the employer's operations. There have also been attempts at more generally strengthening the freedom of expression in private employment relationships through legislation (SOU 1990:12 and Ds 2001:9). These attempts have so far been unsuccessful.

It should also be mentioned that there are in various acts provisions on secrecy which are applicable to private sector employees, for instance in the health sector. A breach of such secrecy provisions normally constitutes a criminal offence and can justify an immediate dismissal (see case AD 1999 nr 107).

ANNEX

THE INSTRUMENT OF GOVERNMENT

Chapter 2. Fundamental rights and freedoms

Art. 1. Every citizen shall be guaranteed the following rights and freedoms in his relations with the public institutions:

1. freedom of expression: that is, the freedom to communicate information and express ideas, opinions and sentiments, whether orally, pictorially, in writing, or in any other way;
2. freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others;
3. freedom of assembly: that is, the freedom to organise or attend a meeting for the purposes of information or for the expression of opinion or for any other similar purpose, or for the purpose of presenting artistic work;
4. freedom to demonstrate: that is, the freedom to organise or take part in a demonstration in a public place;
5. freedom of association: that is, the freedom to associate with others for public or private purposes;
6. freedom of worship: that is, the freedom to practise one's religion either alone or in the company of others.

The provisions of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression shall apply concerning the freedom of the press and the corresponding freedom of expression on sound radio, television and certain like transmissions and films, videograms, sound recordings and other technical recordings.

The Freedom of the Press Act also contains provisions concerning the right of access to official documents.

Art. 2. Every citizen shall be protected in his relations with the public institutions against any coercion to divulge an opinion in any political, religious, cultural or other such connection. He shall further be protected in his relations with the public institutions against any coercion to participate in a meeting for the formation of opinion or a demonstration or other manifestation of opinion, or belong to a political association, religious community or other association for the manifestation of opinion referred to in sentence one.

Art. 3. No record in a public register concerning a citizen shall be based, without his consent, solely on his political opinions.

Every citizen shall be protected to the extent determined more precisely in law against any violation of personal integrity resulting from the registration of personal information by means of automatic data processing.

Art. 4. There shall be no capital punishment.

Art. 5. Every citizen shall be protected against corporal punishment. He shall likewise be protected against any torture or medical influence aimed at extorting or suppressing statements.

Art. 6. Every citizen shall be protected in his relations with the public institutions against any physical violation also in cases other than cases under Articles 4 and 5. He shall likewise be protected against body searches, house searches and other such intrusions, against examination of mail and other confidential correspondence, and against eavesdropping and the recording of telephone conversations or other confidential communications.

Art. 7. No citizen may be deported from or refused entry into the Realm.

No citizen who is domiciled in the Realm or who has previously been domiciled in the Realm may be deprived of his citizenship unless he becomes at the same time a citizen of another state, either with his own express consent or because he has taken up employment in the public service. It may however be provided that children under the age of eighteen shall have the same nationality as their parents or as one parent. It may further be provided that, in pursuance of an agreement with another state, a person who has been a citizen also of the other state from birth, and who has his permanent domicile there, shall forfeit his Swedish nationality at or after the age of eighteen.

Art. 8. Every citizen shall be protected in his relations with the public institutions against deprivation of liberty. He shall also in other respects be guaranteed freedom of movement within the Realm and freedom to depart the Realm.

Art. 9. If a public authority other than a court of law has deprived a citizen of his liberty on account of a criminal act or because he is suspected of having committed such an act, he shall be entitled to have the matter examined before a court of law without undue delay. This shall not, however, apply where the issue concerns the transfer to the Realm of responsibility for executing a penal sanction which involves deprivation of liberty and which has been imposed in another state.

If, for reasons other than those specified in paragraph one, a citizen has been taken compulsorily into custody, he shall likewise be entitled to have the matter examined before a court of law without undue delay. In such a case, examination before a tribunal shall be equated with examination before a court of law, provided the composition

of the tribunal is governed by law and it is stipulated that the chairman of the tribunal shall be currently, or shall have been previously, a permanent salaried judge.

If examination under paragraph one or two has not been referred to an authority which is competent under the provisions laid down therein, the examination shall be carried out before a court of general jurisdiction.

Art. 10. No penalty or penal sanction may be imposed in respect of an act which was not subject to a penal sanction at the time it was committed. Nor may any penal sanction be imposed which is more severe than that which was in force when the act was committed. The provisions thus laid down with respect to penal sanctions apply in like manner to forfeiture and other special legal effects attaching to a criminal act.

No taxes or charges due the State may be exacted except inasmuch as this follows from provisions which were in force when the circumstance arose which occasioned the liability for the tax or charge. Should the Riksdag find that special reasons so warrant, it may however provide under an act of law that taxes or charges due the State shall be exacted even although no such act had entered into force when the aforementioned circumstance arose, provided the Government, or a committee of the Riksdag, had submitted a proposal to this effect to the Riksdag at the time concerned. A written communication from the Government to the Riksdag announcing the forthcoming introduction of such a proposal shall be equated with a formal proposal. The Riksdag may furthermore prescribe that exceptions shall be made to the provisions of sentence one if it considers this is warranted on special grounds connected with war, the danger of war, or grave economic crisis.

Art. 11. No court of law shall be established on account of an act already committed, or for a particular dispute or otherwise for a particular case.

Proceedings in courts of law shall be open to the public.

Art. 12. The rights and freedoms referred to in Article 1, points 1 to 5, in Articles 6 and 8, and in Article 11, paragraph two, may be restricted in an act of law to the extent provided for in Articles 13 to 16. With authority in law, they may be restricted by statutory instrument in cases under Chapter 8, Article 7, paragraph one, point 7, and Article 10. Freedom of assembly and freedom to demonstrate may be similarly restricted also in cases under Article 14, paragraph one, sentence two.

The restraints referred to in paragraph one may be imposed only to satisfy a purpose acceptable in a democratic society. The restraint must never go beyond what is necessary having regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the fundamentals of democracy. No restraint may be imposed solely on grounds of a political, religious, cultural or other such opinion.

Proposed legislation under paragraph one, or a proposal for the amendment or abrogation of such legislation, shall be held in suspense, unless rejected by the Riksdag, for a period of at least twelve months from the date on which the first Riksdag committee report on the proposal was submitted to the Chamber, if at least ten members so request. This provision notwithstanding, the Riksdag may adopt the proposal provided it has the support of at least five sixths of those voting.

Paragraph three shall not apply to any proposal prolonging the life of a law for a period not exceeding two years. Nor shall it apply to any proposal concerned only with

1. prohibition of the disclosure of matters which have come to a person's knowledge in the public service, or in the performance of official duties, where secrecy is called for having regard to interests under Chapter 2, Article 2 of the Freedom of the Press Act;
2. house searches and similar intrusions; or
3. deprivation of liberty as a penal sanction for a specific act.

The Committee on the Constitution shall determine on behalf of the Riksdag whether paragraph three shall apply in respect of a particular draft law.

Art. 13. Freedom of expression and freedom of information may be restricted having regard to the security of the Realm, the national supply of goods, public order and public safety, the integrity of the individual, the sanctity of private life, and the prevention and prosecution of crime. Freedom of expression may also be restricted in commercial activities. Freedom of expression and freedom of information may otherwise be restricted only where particularly important grounds so warrant.

In judging what restrictions may be introduced by virtue of paragraph one, particular regard shall be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and cultural matters.

The adoption of provisions which regulate more precisely a particular manner of disseminating or receiving information without regard to its content shall not be deemed a restraint of freedom of expression or freedom of information.

Art. 14. Freedom of assembly and freedom to demonstrate may be restricted in the interests of preserving public order and public safety at a meeting or demonstration, or having regard to the circulation of traffic. These freedoms may otherwise be restricted only having regard to the security of the Realm or in order to combat an epidemic.

Freedom of association may be restricted only in respect of organisations whose activities are of a military or quasi-military nature, or constitute persecution of a population group of a particular race, colour, or ethnic origin.

Art. 15. No act of law or other provision may imply the unfavourable treatment of a citizen because he belongs to a minority group by reason of race, colour, or ethnic origin.

Art. 16. No act of law or other provision may imply the unfavourable treatment of a citizen on grounds of sex, unless the provision forms part of efforts to promote equality between men and women or relates to compulsory military service or other corresponding compulsory national service.

Art. 17. A trade union or an employer or employers' association shall be entitled to take industrial action unless otherwise provided in an act of law or under an agreement.

Art. 18. The property of every citizen shall be so guaranteed that none may be compelled by expropriation or other such disposition to surrender property to the public institutions or to a private subject, or tolerate restriction by the public institutions of the use of land or buildings, other than where necessary to satisfy pressing public interests.

A person who is compelled to surrender property by expropriation or other such disposition shall be guaranteed compensation for his loss. Such compensation shall also be guaranteed to a person whose use of land or buildings is restricted by the public institutions in such a manner that ongoing land use in the affected part of the property is substantially impaired or injury results which is significant in relation to the value of that part of the property. Compensation shall be determined according to principles laid down in law.

All persons shall have access to nature in accordance with the right of public access, notwithstanding the above provisions.

Art. 19. Authors, artists and photographers shall own the rights to their works in accordance with rules laid down in law.

Art. 20. Restrictions affecting the right to trade or practise a profession may be introduced only in order to protect pressing public interests and never solely in order to further the economic interests of a particular person or enterprise.

The right of the Sami population to practise reindeer husbandry is regulated in law.

Art. 21. All children covered by compulsory schooling shall be entitled to a free basic education in a public school. The public institutions shall be responsible also for the provision of higher education.

Art. 22. A foreign national within the Realm shall be equated with a Swedish citizen in respect of

1. protection against any coercion to participate in a meeting for the formation of opinion or a demonstration or other manifestation of opinion, or to belong to a religious community or other association (Article 2, sentence two);
2. protection of personal integrity in connection with automatic data processing (Article 3, paragraph two);
3. protection against capital punishment, corporal punishment and torture, and against medical influence aimed at extorting or suppressing statements (Articles 4 and 5);
4. the right to have a deprivation of liberty on account of a criminal act or on suspicion of having committed such an act examined before a court of law (Article 9, paragraphs one and three);
5. protection against retroactive penal sanctions and other retroactive legal effects of criminal acts, and against retroactive taxes or charges due the State (Article 10);
6. protection against the establishment of a court for a particular case (Article 11, paragraph one);
7. protection against unfavourable treatment on grounds of race, colour, ethnic origin, or sex (Articles 15 and 16);
8. the right to take industrial action (Article 17);
9. protection against expropriation or other such disposition and against restriction of the use of land or buildings (Article 18);
10. the right to an education (Article 21).

Unless it follows otherwise from special provisions of law, a foreign national within the Realm shall be equated with a Swedish citizen also in respect of

1. freedom of expression, freedom of information, freedom of assembly, freedom to demonstrate, freedom of association, and freedom of worship (Article 1);
2. protection against coercion to divulge an opinion (Article 2, sentence one);

3. protection against physical violations also in cases other than cases under Articles 4 and 5, against body searches, house searches and other such intrusions, and against violations of confidential communications (Article 6);
4. protection against deprivation of liberty (Article 8, sentence one);
5. the right to have a deprivation of liberty other than a deprivation of liberty on account of a criminal act or on suspicion of having committed such an act examined before a court of law (Article 9, paragraphs two and three);
6. public court proceedings (Article 11, paragraph two);
7. protection against interventions on grounds of opinion (Article 12, paragraph two, sentence three);
8. authors', artists' and photographers' rights to their works (Article 19);
9. the right to trade or practise a profession (Article 20).

The provisions of Article 12, paragraph three; paragraph four, sentence one; and paragraph five shall apply with respect to the special provisions of law referred to in paragraph two.

Art. 23. No act of law or other provision may be adopted which contravenes Sweden's undertakings under the European Convention for the Protection of Human Rights and Fundamental Freedoms.