

Study group IV, answers from Sweden

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)?

Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede och negatively impact judicial independence.

The independence of the Swedish courts is established in chapter 11 of the Swedish constitution (*Regeringsformen*). According to 3§ of that chapter no agency of any kind, not even Parliament, can interfere in the decisions of a court in a specific case or how a court interprets a legal rule. It is also stated that no other authority has the right to decide how to allocate cases between individual judges.

In Sweden, judges are appointed by the Government. It is, however, the Judges Proposals Board (*Domarnämnden*) which administers all matters regarding appointment of permanent judges and submits proposals of judges to the Government. The board normally proposes three candidates for every vacant position. The candidates are ranked, and the Government normally appoints the highest ranked candidate to the position. In principle, the Government could deviate from the proposal or the ranking, but this hardly ever happens. This means that the nomination board in practice has a lot of influence on who gets an appointment.

The Judges Proposals Board consist of nine members. Each member has a personal deputy. Five of the members must be, or must have been, permanent judges. Two members must be lawyers operating outside the judiciary and one of them must be an “advokat” (a professional title only members of the Swedish Bar Association may use). Furthermore, two members must represent the public. These two members, and their personal deputies, are elected by the Riksdag (the Swedish Parliament). The other members, and their personal deputies, are appointed by the Government. All members and deputies are appointed for a term of no longer than four years.

According to the constitution, judges who have been appointed by the Government can not be removed from office unless they commit a criminal offence or a court has ruled that they, due to severe breaches of their duty as judges, have proven to be unsuitable for the position.

The Swedish National Courts Administration (SNCA) is responsible for the central administration of the Swedish Courts. Since each court is an independent agency, the SNCA can not decide over the courts. Instead, it is the role of the SNCA to provide service to the courts and to support developments of the courts and the tools used by them. It is also the SNCA that allocates the funds granted by the Government between the different courts. This can of course be a powerful tool for the SNCA to steer the courts administration in a certain direction. The SNCA monitors the performance of the courts but has no authority regarding the decision making of the judges.

Many courts in Sweden have a strained budget. A challenge for the courts is that the funds are allocated on a short-term basis (year by year), which makes it harder to commit to long-term expenses.

A weakness in the Swedish system is the role of the Government. They appoint most of the members of the Judges Proposals Board as well as all the judges. The Government also appoints the Director General of the SNCA, who personally governs that agency. There is some concern that the Government – at least on paper – quite easily could influence the judicial system. Right now, a committee is looking onto ways of strengthening the independence of the courts in Sweden. One proposal that is being looked into is to change the government of the SNCA and set up a Judicial Council with the power to appoint and dismiss the Director General.