

Business and human rights – access to remedy

Sweden - Country report 2019

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1. Introduction

The objective of the project has been to carry out qualitative interviews with experienced lawyers and other professionals with experiences of access to justice/remedies in relation to business-related human rights abuses. The focus of the interviews has been to identify obstacles and promising practices in relation to subject area.

In Sweden, interviews have been carried out with four legal experts working in different sub-fields. Consequently, they have been able to share quite different, although overlapping expertise and experiences within the field in question. The persons interviewed are:

- an independent lawyer at a private law firm following the development in the field;
- a process manager (legal expert) working at the Swedish Consumer Agency (*Konsumentverket*);
- a professor in environmental law engaged in an ongoing case of cross border accountability, who is also a member of the Compliance Committee of the Århus Convention; and
- a researcher with legal background working in a civil society organisation, which focuses on business-related human right issues in third countries.

Three of the interviews were conducted face to face. The fourth was conducted over the phone.

It is worth noting that all interviewees started their interviews emphasising that they did not have any direct experience of business-related human rights abuses as they understood the concept. Rather, they underlined that there are generally very few such cases in Sweden. To get around this objection, the research team had to explain that human rights abuses, a term which in Sweden is commonly associated with torture, slave labour and other severe violations of human rights, should be understood in much broader sense, including the whole spectra of human rights and also environmental and consumer rights.

In the end, the interview study in Sweden rarely focused on cases concerning business-related human rights abuses, since the interviewees had only limited experience from such cases. However, the interviewees were able to assess the obstacles hindering persons or groups to access justice and/or remedy against businesses and suggest changes which would ameliorate the situation.

2. General assessment of remedies in business related human rights abuses

As mentioned above, all interviewees started their respective interviews stating that they did not have any direct experience of cases relating to what they considered to be business-related human rights abuses. They underlined that such cases are very rare in Sweden. The practicing lawyer stated that there are no formal hindrances refraining individuals from seeking justice for such crimes in Swedish courts. However, there are many obstacles making it less likely that an individual try to access justice in the first place. The obstacles mentioned by the interviewee were 1) limited knowledge of the possibilities to seek justice and how to go about it; 2) the costs involved in bringing a case to court (especially if the plaintiff loses the case); and 3) the problems involved to sue a business/company for a human rights violation in the first place.¹ The practicing lawyer argued that a company “cannot commit a crime” in public courts, since legal persons cannot be prosecuted in these courts. Administrative courts may fine companies, but real human rights abuses, which must be processed in public courts, can only focus on individuals within a company, which has violated human rights.²

Despite their differences in expertise and experiences, all interviewees stated that a major obstacle for individuals to access justice through the Swedish courts concerns the high costs involved. First of all, plaintiffs have to engage a legal counsel and experts, which is costly enough. However, if plaintiffs lose their cases, they must pay the court costs of the other party as well³ according to the interviewee representing the Swedish Consumer Agency. According to the state process manager at the Swedish Consumer Agency, the risk of paying for the other party’s court costs is also an obstacle for persons seeking justice in market related cases concerning a larger sum.⁴ The state process manager explained that most cases pursued by the Swedish Consumer Agency do not focus on seeking justice or compensation for individuals. Rather, the authority’s aim to engage in court cases is to restrict certain types of marketing and contractual terms, which, of course, will benefit other consumers in the future.⁵ Nevertheless, the Consumer Agency has the possibility to function as legal counsel in certain cases in its role as the Consumer Ombudsman (*Konsumentombudsmannen*). The state process manager added that this kind of cases is rare (approximately one case per year) and the Consumers Ombudsman does only engage in cases that will be of interest for the general consumer. Furthermore, the cases must be common in as much as many consumers have suffered from the same practice/product/etc.⁶ The case must also be of legal interest i.e. there is a lack of legislation covering the case or

¹ SE/1, lawyer at an independent law firm

² SE/1, lawyer at an independent law firm

³ SE/1, lawyer at an independent law firm; SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*); SE/3, professor of Environmental Law; SE/4, researcher at a civil society organisation

⁴ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁵ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁶ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

there are no former guiding verdicts, which may guide the outcome in a certain case.⁷

As mentioned above, the practicing lawyer⁸ explained that legal persons, such as companies, cannot be considered to commit crimes under the Swedish Penal Code (*Brottsbalk [1962:700]*)⁹. Nevertheless, an individual from a company (such as the CEO or the project manager of a certain project) may be charged for misconduct or negligence. However, it must be possible to prove that the accused is personally responsible for the human rights violation in question.¹⁰ The interviewee maintained that it is difficult to prove this kind of direct responsibility in relation to businesses. Furthermore, such cases are most often closed before they go to court.¹¹ The practicing lawyer added that there is an on-going debate in Sweden regarding the possibilities to hold businesses responsible in court. He stressed that the introduction of the possibility to sue companies would be of great symbolic value.¹² The interviewee argued that if it becomes possible to sue companies for crimes, this in turn would likely lead to an increased willingness and capacity within the Swedish Police to investigate such crimes.¹³ At present, the only remedy available is that a company may be charged with a corporate fine (*företagsbot*)¹⁴. However, the professor of Environmental Law argued that the issue rather concerns the definition of what acts that are considered to constitute crimes, than the “inability” to sue businesses for criminal offences:

I think that's a bit of a wordplay. It depends on what you mean by crimes. We have a system of corporate fines. That's commonly not called crimes, but why isn't it? Is it because it's not affecting private individuals? Somehow, it's a circular argument. I consider fines to be a form of punishment, which is a bit different [in character]. You can hold businesses accountable for corporate crimes even though you cannot convict any individual person. Penal law is not my area, but I have difficulties understanding why this would not be regarded as such. [...] It depends on how you define things. But you can do some things, which are allowed by law, but nevertheless will make you responsible [for the consequences], without it being a punishment. If I run into you with my bicycle, I may not be convicted for causing you harm. However, I may be liable for damages. Even though the action is not punishable, it can mean that you must assume responsibility.

Professor of Environmental Law¹⁵

⁷ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁸ SE/1, lawyer at an independent law firm

⁹ Sweden, Penal Code (*Brottsbalk [1962:700]*), 21 December 1962, [available here](#)

¹⁰ SE/1, lawyer at an independent law firm

¹¹ SE/1, lawyer at an independent law firm

¹² SE/1, lawyer at an independent law firm

¹³ SE/1, lawyer at an independent law firm

¹⁴ A corporate fine is no sanction in the true sense of the word, but another kind of legal effect of a crime that can be enforced when crimes occur in business activity.

¹⁵ SE/3, professor of Environmental Law

As cases of business-related human rights abuses are very rare in Sweden, the interviewees were asked to elaborate on why this is so. They were also asked what types of abuses that would probably be the most common if the access to justice and/or remedies were available. The practicing lawyer found it difficult to answer why there are so few or no cases concerning business-related human rights abuses in Sweden. He argued that the main reason may be that there is simply no tradition to investigate and prosecute companies/businesses in Sweden. Furthermore, the lawyer pointed out that the corporate fines of between 5,000 and ten million SEK [€ 478 – € 955,053]) are rather low in relation to the economy of the main businesses. Therefore, in the interviewee's opinion, such fines will not have any real impact on the behaviour of most companies.¹⁶ He pointed out that this may also be the reason why corporate fines traditionally are not common in the Swedish legal system. The interviewee pointed out that the Swedish legal system is quite special since it lacks a constitutional court.¹⁷ Swedish public authorities are of course obligated to follow Swedish constitution and Swedish law, but are nevertheless very independent in their operations.¹⁸ The interviewee stated that this situation would constitute a major problem if Sweden had widespread corruption.¹⁹ The professor of Environmental Law also mentioned the Swedes have a strong tradition of trusting their authorities.²⁰ He believed that in general this trust is quite well-founded, since Swedish authorities carry out tasks, which are important and of good quality. The professor stated that this trust is part of the explanation of why many cases, which would go to court in e.g. the United States, are processed by different monitoring authorities²¹ in Sweden.²² These authorities commonly interfere before cases end up in court. The interviewee considered this to be a positive way of dealing with such cases.²³

The researcher at a civil society organisation pointed out that the lack of transparency into businesses and their operations is a major obstacle when seeking justice, especially in countries dealing with corruption.²⁴ According to the interviewee, such countries also struggle with inadequate legislation and legal implementation. She further mentioned that it is difficult to get the information necessary to seek justice.²⁵ The researcher also stressed that human rights defenders are at great risk defending persons who seek justice for all kinds of human right abuses. She added that these issues are relevant also for businesses

¹⁶ SE/1, lawyer at an independent law firm

¹⁷ SE/1, lawyer at an independent law firm

¹⁸ SE/1, lawyer at an independent law firm

¹⁹ SE/1, lawyer at an independent law firm

²⁰ SE/3, professor of Environmental Law

²¹ Examples of such authorities are Health and Social Care Inspectorate (*Inspektion för vård och omsorg, IVO*), Swedish Schools Inspectorate (*Skolinspektionen*), Swedish Social Insurance Inspectorate (*Inspektionen för socialförsäkringen, ISF*)

²² SE/3, professor of Environmental Law

²³ SE/3, professor of Environmental Law

²⁴ SE/4, researcher at a civil society organisation

²⁵ SE/4, researcher at a civil society organisation

in Sweden, which have to strengthen their work against corruption in producing countries.²⁶

The practicing lawyer estimated that Swedish cases relating to business and human rights would first and foremost concern employment issues. He further explained that such business-related human rights concerns are dealt with under different legal acts, such as the Work Environment Act (*Arbetsmiljölagen [1977:1160]*) and the Employment Protection Act (*Lag [1982:80] om anställningsskydd*).²⁷ However, there is no overall Swedish legislation that covers all kind of human rights abuses. The interviewee suggested that it might be relevant to consider having a sort of “check box” when discussing changes in business-related legislation, to ensure that possible human rights impact would be addressed. However, the interviewee maintained that while this “check box” might be a good idea for the lawmakers, it would not be a viable option for the legal system, mainly because many within the legal profession would find such consideration unnecessary.²⁸

The state process manager at the Swedish Consumer Agency stated that the most common cases up until recently have concerned problematic telemarketing or, more specifically, problematic telemarketing targeting elderly people. At the time, companies could claim that the elder persons had entered into binding contracts orally while talking with the telemarketer on the phone.²⁹ However, the regulations has been strengthened, and today there must be a written and signed agreement before it can be considered a valid contract. The interviewee stated that the most common cases at the time of the interview concern so called “fake authorities”, usually using fraudulent webpages, designed to resemble the real webpages of existing authorities. According to the interviewee, the websites are often so similar that consumers may easily be fooled into paying for services from fake authorities that would actually be provided free of charge from the real authorities.³⁰ Another common problem relating to consumer rights concerns subscription frauds. The state process manager described how persons who believe that they are buying a certain product instead are fooled into subscribing for a service instead, which is much more costly for them.³¹ The interviewee mentioned that persons who recently have arrived in Sweden, so-called newly arrived persons, have been specifically vulnerable to such frauds. She described how a new immigrant may be introduced to a certain subscription of TV channels by a marketer, who speaks their own language. However, they are then presented with agreements/contracts written in Swedish, including conditions and costs that have not been discussed.

²⁶ SE/4, researcher at a civil society organisation

²⁷ SE/1, lawyer at an independent law firm

²⁸ SE/1, lawyer at an independent law firm

²⁹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

³⁰ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

³¹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

In the end the newly arrived persons often sign agreements, believing that they know what the contracts include.³²

3. Major obstacles for victims of related human rights abuses

All four interviewees mentioned that the potential high costs of seeking redress for human rights abuses constitute a major obstacle for victims, who do not have the financial resources. The professor of Environmental Law pointed out that the presumptive legal costs for plaintiffs, who lose their cases, are likely to be much higher when the other party is a company. According to the interviewee, companies, especially larger corporations, have unlimited resources in comparison with private individuals.³³ As an example, he described how Boliden Ltd. in a case (described in the case template), appears to have infinite resources to its disposal. For instance, the company has spent one million SEK (€ 92,870) on an air test, to be used as part of its evidence in the case. So far, the total cost for Boliden's legal defence in the case in question amounts to 45 million SEK (€ 4,179,000).³⁴ In order to overcome this economic obstacle, the professor in Environmental Law suggested that there should be some kind of system to adjust the costs, either by providing the plaintiff(s) with financial support for the actual costs of the case, or by enabling courts to decide on diminishing or removing the costs for individual plaintiffs in certain cases.³⁵

According to the practicing lawyer, the most essential obstacle for seeking justice for business-related human rights abuses is the fact that businesses/companies cannot be charged for such offences. However, he maintained that there is nothing that stops Swedish lawmakers from introducing the possibility to charge companies in Sweden.³⁶ However, the interviewee said that the Swedish legal system is very conservative when it comes to implementing new legislation, which in some way goes against the current practice.³⁷ The interviewee mentioned that there is a legal aid institution, following the Legal Aid Act (*Rättshjälpslag [1996:1619]*)³⁸ in Sweden. The purpose of this system is to facilitate access to justice for persons with low income. However, only persons with very low yearly incomes are eligible for such legal aid – a person must have a yearly income lower than 260,000 SEK (€ 24,830) before taxes. The interviewee pointed out that this requirement in fact excludes most persons from the legal aid system. However, the possible costs are still much too high also for individuals with higher yearly incomes.³⁹

³² SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

³³ SE/3, professor of Environmental Law

³⁴ SE/3, professor of Environmental Law

³⁵ SE/3, professor of Environmental Law

³⁶ SE/1, lawyer at an independent law firm

³⁷ SE/1, lawyer at an independent law firm

³⁸ Sweden, Legal Aid Act (*Rättshjälpslag [1996:1619]*), 5 Decemeber 1996, [available here](#)

³⁹ SE/1, lawyer at an independent law firm

If you accuse an individual [with a position] within a company, you stand completely alone. And then you'll have to pay for the [your own] trial costs yourself, and you are at risk of losing [the case]. And if you lose, you don't only have to pay your own costs but also the cost of your counterpart, which is the general rule. This means that, in fact, you put your entire personal economy at risk if you as a private person should bring this kind of claim [to court]. [...]. Furthermore, you don't have legal protection, which you may get through your insurance, and you have to look for opportunities for the state to give you legal aid, which it is limited since you should be a person with obvious need.[...]. In addition, if you have an annual income of 260,000 (SEK) before taxes then you have no claim to legal aid.

Practicing lawyer at an independent law firm⁴⁰

The state process manager at the Swedish Consumer Agency stated that ordinary citizens in general are unaware of their rights to access justice and/or remedies. Furthermore, they do not know where to turn for further information and support if their rights have been compromised.⁴¹ Another obstacle mentioned by this interviewee, relates to the time and energy required to engage in such lengthy processes. The interviewee mentioned that this aspect is a very important factor influencing the individual's decision whether to seek justice or not. They do not only need to have the economy to process, but also the energy and time to do so.⁴² The interviewee stated that the Consumer Agency does not have any proactive work informing costumers about available remedies. When persons contact the authority to apply for legal aid, it usually informs about other possibilities, e.g. to turn to their local consumer advisor at municipal level (*kommunal konsumentrådgivare*).⁴³ The Consumer Agency also runs an information service called "Hello Consumer" (*Hallå konsument!*). Apart from these services, the interviewee stated that the authority lacks other proactive information on access to justice and available remedies. According to the interviewee, this is a problem since most people do not have this kind of information.⁴⁴

4. Good practices

Three of the four interviewees were not able to mention any good practices and cases, when asked to do so. They all maintained that individual cases concerning remedies for business-related human rights abuses are very rare in Sweden.⁴⁵

⁴⁰ SE/1, lawyer at an independent law firm

⁴¹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁴² SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁴³ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁴⁴ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁴⁵ SE/1, lawyer at an independent law firm; SE/3, professor of Environmental Law; SE/4, researcher at a civil society organisation

However, the state process manager at the Swedish Consumer Agency mentioned a collective redress case, where the Consumer Agency acted as the legal counsel for the plaintiffs as a case that may be considered a positive example in as much as it was engaging a large number of consumers in one case (approximately 2,000 claimants).⁴⁶ According to the interviewee, the case in question concerned a breach of contract where an electricity supplier was unable to supply electricity to its customers. The claimants had to negotiate new contracts with other electricity suppliers quickly in order to keep receiving their household electricity. The company in question denied every claim in the case, which meant that each claimant had to prove that he/she had been affected, how and to which extent.⁴⁷ The interviewee explained that while it was easy to prove the breach of contract in itself, it was difficult to define and prove the damage the breach had imposed on each individual customer and claimant. She pointed out that since she had not been personally involved in the case, she could not give any more information.⁴⁸ The interviewee added that the court did not allow for evidentiary alleviation (*bevislättnad*) in the case, which meant that the Consumer Ombudsman had to prove the damage suffered by each individual claimant, which it was unable to do.⁴⁹ According to the interviewee, this was the only case of collective redress processed in general court (*allmän domstol*). The process took several years and required substantial financial resources for the Ombudsman. In the end, the claimants and the company in question settled outside of court, which means that the case did not end with a ruling, which can be used as precedent (guiding) case law (*prejudikat*).⁵⁰ The state process manager further mentioned that the establishment of the National Board for Consumer Disputes (*Allmänna reklamationsnämnden*) in 1981, increased the possibility for individual consumers to access justice in consumer cases.⁵¹ However, the decisions of the National Board for Consumer Disputes cases are not to be considered as court rulings. The interviewee explained that the National Board cannot fine a company etc. as a court can do. It can only provide recommendations to companies, which they are expected to follow.⁵² The interviewee estimated that up to 80 percent of the companies which are brought before the National Board for Consumer Disputes do follow the recommendations of the authority.⁵³

The researcher at a civil society organisation could not give any example of a good practice concerning access to remedies in business related human rights abuses. She nevertheless brought up the demands on companies to carry out environmental impact assessments, which she believed could inspire the introduction of similar demands for human rights impact assessments. The interviewee further referred to the report "The UN Guiding Principles on Business

⁴⁶ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁴⁷ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁴⁸ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁴⁹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁵⁰ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁵¹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁵² SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁵³ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

and Human Rights – Challenges in the work of the government” (*FN:s vägledande principer för företag och mänskliga rättigheter – utmaningar i statens arbete*)⁵⁴ published by the Swedish Agency for Public Management (*Statskontoret*). The researcher concluded that there was a need for a clearer legal framework regarding demands on companies.

Something I find interesting, which I’ve been thinking of for a long time and which we often see as lacking, in terms of business activities, is the lack of consultation – lack of information and consultation. I think that Sweden has a quite good model in that sense. I’m certain that there are [good models] in other countries as well. It’s [the fact] that we have environmental impact assessments. There should be a requirement that you [companies/businesses] should carry out these [assessments], and that they should be publicly available. It could be the same for human rights impact assessments. It could be a [a demand for] a baseline and checks that it would be mandatory to share.

Researcher with legal background at a civil society organisation⁵⁵

None of the interviewees were aware of any planned changes to policies or legislation in this area in Sweden.

5. Burden of proof

Since the interviewees had very limited experience of human rights related cases, they could only assume that the burden of proof would be the same as in other cases. Two of the interviewees described the Swedish system in relation to the legislation of other countries, pointing out that burden of proof in Sweden may be seen as an obstacle for accessing justice/remedy. The practicing lawyer explained that in tort law (*skadeståndsrätt*) the burden of proof falls exclusively on the plaintiff (*kärande*).⁵⁶ The researcher representing a civil society organisation was not familiar with the procedures in Sweden when it comes to burden of proof for victims of business-related abuses. However, she pointed out that Sweden is more defendant-friendly than e.g. the US which is more plaintiff-friendly, which raised the question of collective redress and compared the Swedish situation with the American system.⁵⁷ The interviewee also mentioned an on-going discussion on the need to implement the duty of care principle when talking about the burden of proof. If this principle is introduced it falls on individual companies to prove that they have taken all necessary precautions to avoid damages of any kind.⁵⁸ Such

⁵⁴ Sweden, Swedish Agency for Public Management (*Statskontoret*), report 2018:8 “The UN Guiding Principles on Business and Human Rights – Challenges in the work of the government” (*FN:s vägledande principer för företag och mänskliga rättigheter – utmaningar i statens arbete*), published 15 March 2018, [available here](#), summary in English [available here](#)

⁵⁵ SE/4, researcher at a civil society organisation

⁵⁶ SE/1, lawyer at an independent law firm

⁵⁷ SE/4, researcher at a civil society organisation

⁵⁸ SE/4, researcher at a civil society organisation

a practice would lessen the individual plaintiff's burden of proof. What remains for the plaintiff is to prove a causal connection (*kausalitet*) between the damage suffered and the actions or non-actions of a company. The interviewee suggested that if companies had to practice the duty of care and make human rights assessments, the companies would have to evaluate their human rights impact on a regular basis.⁵⁹

According to the professor of Environmental Law, the burden of proof is indeed a problem from a human rights perspective. However, he considered that the overall situation is quite reasonable in relation to environmental damages.⁶⁰ The Environmental Code (*Miljöbalk [1998:808]*)⁶¹ ensures that special legislation and rules are in place, which hold actors damaging the environment accountable in ways they would otherwise not be according to the Act of Damages (*Skadeståndslag [1972:207]*)⁶². The interviewee stated that there is also a slight evidentiary alleviation in the Environmental Code, which goes further in the environmental sphere than it does in other parts of the Swedish legislation.⁶³ The Environmental Code is founded on strict responsibility and a so-called endurance limit (*tålighetsgräns*). The latter refers to the fact that victims must endure certain levels of disturbances, depending on whether the level of disturbance is considered general or common to a given location. For example, a house-owner in a big city must accept that his/her house is more likely to become dirty from traffic-based air pollution than a house-owner living in the countryside. Therefore, a Stockholm house-owner cannot sue the city for the costs involved in keeping the house front clean.⁶⁴

The state process manager at the Consumer Agency pointed out that the burden of proof in market related cases are minimal in comparison to other legal areas.⁶⁵ For instance, if a company states any specifics in a campaign, the company in question must be able to prove the truth of said statement. Furthermore, in cases relating to consumer rights, the consumer has special rights in accordance with the Consumer Services Act (*Konsumentköpslag [1990:932]*)⁶⁶. During the first six months, consumers do not have to prove that a product has broken etc. If they are not satisfied and want to return the product, they can do so. It is the company, which must prove that the consumer broke the product by careless usage and not the other way around.⁶⁷ This right is based on EU regulations, article 5.3 of the Directive 1999/44/EC on certain aspects of the sale of consumer goods and

⁵⁹ SE/4, researcher at a civil society organisation

⁶⁰ SE/3, professor of Environmental Law

⁶¹ Sweden, Environmental Code (*Miljöbalk [1998:808]*) 1 August 2018, [available here](#)

⁶² Sweden, Act of Damage (*Skadeståndslag [1972: 207]*) 1 April 2018, [available here](#)

⁶³ SE/3, professor of Environmental Law

⁶⁴ SE/3, professor of Environmental Law

⁶⁵ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁶⁶ Sweden, Consumer Services Act (*Konsumentköpslag [1990:932]*), 6 September 1990, [available here](#)

⁶⁷ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

associated guarantees⁶⁸, and the interviewee mentioned that there are discussions on extending the period beyond the present six months.⁶⁹

6. Collective redress

Two of the four interviewees did not have any experience of collective redress cases in the area of business-related abuses or in any other area. The practicing lawyer stated that collective redress is not a tradition within the Swedish legal system, even if new legislation has introduced the possibility in recent years.⁷⁰ Collective redress is regulated in the Group Proceedings Act (*Lag om grupprättegång [2002:599]*)⁷¹. The interviewee said that lawyers do not choose to make use of the possibility to use collective redress, simply because of its relative newness. A new legal area do not have guiding cases or studies, which can guide and advise a lawyer. Consequently, taking on a collective redress case would require much more work than a more traditional case.⁷² The professor in Environmental Law also stated that Swedish legal tradition does not include collective redress as an opportunity for persons seeking justice. He argued that it would be possible to use collective redress in more cases, but there would need to be at least one guiding verdict that could influence later cases of similar nature.⁷³ Another way to use collective redress, mentioned by the interviewee, would be to gather a large number of plaintiffs together in one collective redress case against one company. Still, there are very few cases where the possibility of collective redress has been used at all. However, the interviewee pointed out that during the last 20 years, environmental civil society organisations have been granted the possibility to bring cases to court and stand as plaintiff in the place of private individuals.⁷⁴

The state process manager at the Swedish Consumer Agency had a somewhat different experience than the other interviewees, since she could draw from experiences of cases concerning market law (*marknadsrätt*)⁷⁵ The Swedish Consumer Agency has engaged in collective redress cases in a handful of cases at the National Board for Consumer Disputes (*Allmänna reklamationsnämnden*). According to the interviewee, there is only one of the collective redress cases the authority has been involved with that has been processed by a general court (*allmän domstol*).⁷⁶ This case carried on for several years and required substantial

⁶⁸ EU, Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, 25 May 1999, [available here](#)

⁶⁹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁷⁰ SE/1, lawyer at an independent law firm

⁷¹ Sweden, Group Proceedings Act (*Lag [2002:599] om grupprättegång*), 30 May 2002, [available here](#)

⁷² SE/1, lawyer at an independent law firm

⁷³ SE/3, professor of Environmental Law

⁷⁴ SE/3, professor of Environmental Law

⁷⁵ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁷⁶ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

financial resources and was settled outside of court meaning that the case did not end with any precedent verdict (*prejudikat*) or guiding case law. The interviewee stated that the difficulties involved in finding cases suitable for collective redress are substantial. Restrictions apply, which requires each individual involved in the case to have very similar complaints.⁷⁷ If they are not sufficiently similar, it will not be possible to engage all claimants in one collective redress. The case in focus of a collective redress must also be very similar. The interviewee discussed a fictive example of a cancelled concert, to which 500 persons had bought tickets.

The difficulty lies in finding cases, which are suitable to bring to court as collective redress cases – because it must in principle be the same event (which has affected all persons in the collective). Exactly the same event must have affected happen to the group in question. For instance, if they have bought tickets to the same concert. It's the same concert, but then it didn't happen (it was cancelled). However, it's not even certain that the costs (for the tickets) were the same (for all presumptive concertgoers). Because you might have bought the tickets for different sums. So, it's hard to find [suitable cases].

State process manager at the Swedish Consumer Agency⁷⁸

The example was used by the interviewee to emphasise the multitude of aspects that must be considered when deciding if a case can be brought to court as a collective redress case.⁷⁹

None of the interviewees could think of any alleged drawbacks that might follow from opening up and actually use the possibility of collective redress in Sweden.

7. Cross border liability

Two of four interviewees were not able to evaluate cross-border liability since they could not think of any such example. The practicing lawyer representing an independent law firm emphasised that there are many aspects to take into consideration when speaking of cross-border cases in general terms. Should the case be processed in Sweden at all and if so, which country's legislation should be applied. If another country's law should be applied, that legislation is used in court as proof and experts from the country in question will have to be involved, which in turn will lead to extra costs for the Swedish court.⁸⁰ The state process manager with specific knowledge of market related cases was not that unfamiliar with the concept of cross border responsibility.⁸¹ She talked about how legislation applies in cases concerning marketing and advertisement in Sweden from a company in

⁷⁷ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁷⁸ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁷⁹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁸⁰ SE/1, lawyer at an independent law firm

⁸¹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

another country, the so-called “country of reception principle” (*effektlandsprincipen*). Such cases, she stated, have the main difficulty of acquisition of penalty payment (*kräva ut vite*) as the enforcement order (*exekutionstitel*) from a Swedish court cannot be applied in the country of the marketing company. The interviewee stated that the legislation concerning marketing and contracts are the same in all EU member states, but the legislation lacks a common agreement on how to deal with the enforcement of penalties. In order to extract a penalty payment through an enforcement order, the case must be processed in the country where said enforcement can be carried out and this would simply be too expensive for actors like the Swedish Consumer Agency since the authority would have to hire legal advisors in the country in question. The only penalty in such cases that the Consumer Agency can apply is to forbid a certain company from continuing its marketing campaign in Sweden. The interviewee mentioned an EU network (referring to Consumer protection cooperation network, CPC) to which a member state can report specific incidents/concerns within the union. Incidents such as misleading marketing (*vilseledande marknadsföring*), unfair contract terms (*oskälliga avtalsvillkor*) and lack of substantial information before agreement (*utebliven väsentlig information till konsumenter innan avtal ingås*). These reports may in turn lead another EU member state to open a case in its national court.⁸²

The researcher at the civil society organisation had experience of cross-border cases where Swedish companies have been accused for its activities in a third country.⁸³ She stated that the question of jurisdiction was never an issue, the possibility to process a case in a Swedish court was never questioned. According to the interviewee, EU regulations and legislation have facilitated the possibility to try cases in the country where the company has its headquarters even though the actions has taken place in a third country.⁸⁴

8. Conclusions and ways forward

The practicing lawyer stated that EU should develop a general (and equal) directive on how to handle business related human rights abuses within the region. He added that this will of course be difficult because of the different legal traditions of the member states. Such legislation must be relevant and incorporated in a manner that makes it predictable in the context in which it is supposed to be used. In the Swedish context, the improvements should focus on making it possible to make businesses accountable for criminal offences, which would be a break from the current legislation and also the legal tradition. The interviewee said that general criminal law (*straffrätt*) should be used as an inspiration when improving access to remedies in cases of business-related human rights abuses in Sweden.

⁸² SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁸³ SE/4, researcher at a civil society organisation

⁸⁴ SE/4, researcher at a civil society organisation

Nevertheless, there are no current planned changes in policies or legislation in the area that the interviewee was aware of at the time of the interview.⁸⁵

The state process manager at the Swedish Consumer Agency considered the regulations on consumer rights rather well developed within the EU. She stated that the main concerns relate to the lack of information on the rights of the individual consumers. It is difficult for all individuals to be aware of their rights as consumers, and what to do when their rights have been compromised in any way.⁸⁶ The interviewee also stressed that the right to legal aid should be expanded to include more people (i.e. persons who earn more than 24,000 SEK per month). However, she repeated that a process may drain an individual of too much energy, also if they have legal aid, so he/she may choose to not bring charges even if their costs are paid. Concerning practices in other areas that could be drawn on to inspire improvements in the area, the interviewee mentioned a discussion within the EU concerning the possibility to use a kind of "mystery shopping"⁸⁷ for cases relating to consumer law.⁸⁸ The introduction of this possibility would enable authorities to make concealed purchases online in order to find out more about certain problems and what to do to stop illegal activities. She added that there are, of course, problems related to concealed authority activity, and it would have to be further investigated how this would work in practice.⁸⁹

The professor of Environmental Law stated that he was not aware of any current or planned changes to policies or legislation in the area. He said that he is sure that there are practices in consumer and labour law, which could inspire improvements in the area of environmental law, but he could not give any specific examples. He pointed out that maybe it was rather the other way around – that the legal practice in the area of environmental law could and should inspire other legal areas, for instance when it comes to the possibilities for civil society organisations to act as spokespersons for private individuals in legal matters in and outside of court.⁹⁰

The researcher representing a civil society organisation once again mentioned the lack of legislation holding companies responsible. At least EU can raise demands on third countries through trade agreements. Since Sweden and Swedish companies rely on either direct production in third countries or import of goods produced in third countries, the interviewee stated that trade agreements addressing human rights issues is therefore one important way to influence Swedish companies to behave responsibly. She stressed two main concerns: the need to demand actions from businesses in Sweden on their impact on human rights mainly in third countries; and the need to strengthen the work against

⁸⁵ SE/1, lawyer at an independent law firm

⁸⁶ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁸⁷ Mystery shopping refers to an anonymous employee posing as a regular customer who purchase or visit a store to check and evaluate the quality of the product or service in question.

⁸⁸ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁸⁹ SE/2, state process manager at the Swedish Consumer Agency (*Konsumentverket*)

⁹⁰ SE/3, professor of Environmental Law

corruption in producing countries.⁹¹ The interviewee further suggested that the EU may find inspiration from countries such as Germany, which recently put forward a legislative proposal on mandatory requirements on German companies to show due diligence – a certain standard of care – in their planning and operations. The Netherlands has also adopted a new law concerning due diligence and child labour, and a similar law is up for discussion in Finland as well.⁹² The interviewee emphasised that there are many countries which are taking action by introducing different laws the EU should try to be in the forefront of this development. The interviewee was not aware of any planned changes of legislation but once again referred to the report from the Swedish Agency for Public Management (*Statskontoret*),⁹³ which suggests certain improvement of the Swedish legislation.⁹⁴

To conclude, the four interviewees had some common concerns despite their differences in experiences and expertise. They all agreed that case law concerning business related human rights abuses is scarce or non-existing. A main obstacle which hinders private individuals from accessing justice in Sweden, mentioned by all interviewees, is the costs involved in bringing cases to court – especially if a plaintiff loses a case and if the other party is a larger company. The risk of ending up in heavy personal debt makes many possible plaintiffs refrain from accessing justice. Another obstacle concerns the availability of information about the rights of the individual in cases concerning business related damages. Persons who do not know if it is possible to seek redress and/or how to seek redress are likely to refrain from accessing justice. The possibility to seek collective redress is relatively unknown, not only among individuals seeking justice but also among lawyers, who are supposed to assist in such cases. The consequence is that collective redress cases remain few.

⁹¹ SE/4, researcher at a civil society organisation

⁹² SE/4, researcher at a civil society organisation

⁹³ Sweden, Swedish Agency for Public Management (*Statskontoret*), report 2018:8 “The UN Guiding Principles on Business and Human Rights – Challenges in the work of the government” (*FN:s vägledande principer för företag och mänskliga rättigheter – utmaningar i statens arbete*), published 15 March 2018, [available here](#), summary in English [available here](#)

⁹⁴ SE/4, researcher at a civil society organisation