

Legal environment and space of civil society organisations in supporting fundamental rights

Sweden

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1 Five most significant civic space developments in 2020

1.1 Criminalisation of certain forms of association with terrorist organisations entered into force

As of 2020, certain changes concerning the freedom of association in Sweden have been made, mainly relating to associations with terrorist organisations. In general, the fact that the freedom of association (*föreningsfrihet*) is constitutionally protected¹ complicates the introduction of bans on certain associations or the participation in certain associations. At present, there is for example no direct prohibition on establishing or participating in racist organisations. Furthermore, there is no possibility to forcibly dissolving such organisations.² However, the government has assigned an inter-parliamentary committee tasked with reviewing the possibilities to introduce a special criminal liability for certain forms of association with racist organisations, and a ban on establishing racist organisations altogether.³ This committee is supposed to present its proposals by 28 February 2021. This being said, the government has tried to ban participation in terrorist organisations since 2017 when a public inquirer was tasked with considering whether a special criminal liability should be introduced making it illegal to participate in or otherwise support a terrorist organisation. The final report was presented on 15 December 2017.⁴ The report's proposals to criminalise the participation and support of terrorist organisations were sent out on a round of consultations (*remissrunda*). Many of the important consultation bodies, e.g. some courts, universities, national authorities, representatives of news media and civil society organisations heavily criticised the report's proposals.⁵

¹ Sweden, Instrument of Government (*Regeringsform [1974:152]*), chapter 2, section 1, paragraph 5, 1 January 2011, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/kungorelse-1974152-om-beslutad-ny-regeringsform_sfs-1974-152

² Sweden, Ministry of Justice (*Justitiedepartementet*) Ban on racist organisations (*Förbud mot rasistiska organisationer*) directive to a public inquiry, 4 July 2019, <https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2019/07/dir.-201939/>

³ Sweden, Ministry of Justice (*Justitiedepartementet*) Ban on racist organisations (*Förbud mot rasistiska organisationer*), press release, 4 July 2019, <https://www.regeringen.se/pressmeddelanden/2019/07/forbud-mot-rasistiska-organisationer/>

⁴ Sweden, Ministry of Justice (*Justitiedepartementet*) A special criminal liability for participation in a terrorist organisation (*Ett särskilt straffansvar för deltagande i en terroristorganisation*), Ministry Publications Series (*Ds. 2017:42*), 15 December 2017, <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2017/12/ds-201762/>

⁵ Sweden, Ministry of Justice (*Justitiedepartementet*), Round of Consultations *Ds. 2017:62 A Special Criminal Liability for participation in a terrorist organisation*, (*Remiss Ds. 2017:62 Ett särskilt straffansvar för deltagande i en terroristorganisation*).webpage, <https://www.regeringen.se/remisser/2017/12/remiss-ds-201762-ett-sarskilt-straffansvar-for-deltagande-i-en-terroristorganisation/>

On 28 February 2019, the government presented a first draft bill (*lagrådsremiss*)⁶ for consultation to the Council on Legislation (*Lagrådet*).⁷ The Council remained critical of the proposals. The main criticism focused on the whether the proposed legislative changes could be made without changes in the Instrument of Government (*Regeringsform [1974:152]*), one of Sweden's four constitutional laws, especially in chapter 2, section 1, which stipulates several so-called freedoms of opinion (*opinionsfriheter*).⁸ One of these freedoms is the freedom of association (*föreningsfrihet*). The Council on Legislation pointed out that an overall criminalisation of the participation in certain organisations would also criminalise activities which are not unlawful, such as humanitarian activities. Accordingly, the Council on Legislation stated that any new provisions should clarify that only the participation in activities intended to maintain and strengthen terrorist organisations is criminalised and not the membership in certain organisations. The penal provisions must consider the restrictions in the Instrument of Government.⁹ After reworking the draft, the government submitted a second draft bill for consultation to the Council on Legislation on 15 August 2019.¹⁰ This draft was later transformed into a Government Bill¹¹ which was presented to the Parliament on 29 October 2019. In this bill the government argued that a criminal liability for association with a terrorist organisation only can be introduced if it is compatible with the fundamental rights of the Instrument of Government and the European Convention. However, the government stressed that the criminalisation of certain acts aimed at countering terrorism and preventing terrorist crimes indeed had the ultimate purpose to protect democracy and safeguard human rights. The government made the following assessment when it came to whether a prohibition of association with a terrorist organisation might restrict the freedom of

⁶ A proposal referred to the Council of Legislation (*lagrådsremiss*) is a draft for legislation that the Government refers to the Council of Legislation, which examines that the proposal does not go against any legislation. The Government thereafter the proposal processes and presents it as a government bill to the parliament.

⁷ Sweden, Ministry of Justice (*Justitiedepartementet*) A special criminal liability for participation in a terrorist organisation (*Ett särskilt straffansvar för deltagande i en terroristorganisation*), draft bill to the Council of Legislation, 28 February 2019, <https://www.regeringen.se/rattsliga-dokument/lagradsremiss/2019/02/ett-sarskilt-straffansvar-for-deltagande-i-en-terroristorganisation/>

⁸ Sweden, Instrument of Government (*Regeringsform [1974:152]*), chapter 2, section 1, 1 January 2011, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/kungorelse-1974152-om-beslutad-ny-regeringsform_sfs-1974-152

⁹ Sweden, Ministry of Justice (*Justitiedepartementet*) Round of Consultations Ds. 2017:62 A special criminal liability for participation in a terrorist organisation, 18 March 2018, <https://www.regeringen.se/remisser/2017/12/remiss-ds-201762-ett-sarskilt-straffansvar-for-deltagande-i-en-terroristorganisation/>

¹⁰ Sweden, Ministry of Justice (*Justitiedepartementet*) A special criminal liability for participation in a terrorist organisation (*Ett särskilt straffansvar för deltagande i en terroristorganisation*), draft bill to the Council of Legislation, 15 August 2019, <https://www.regeringen.se/rattsliga-dokument/lagradsremiss/2019/08/ett-sarskilt-straffansvar-for-samrore-med-en-terroristorganisation/>

¹¹ Sweden, Ministry of Justice (*Justitiedepartementet*) A special criminal liability for participation in a terrorist organisation (*Ett särskilt straffansvar för deltagande i en terroristorganisation*), government bill (Prop. 2019/20:36), 29 October 2019, <https://www.regeringen.se/rattsliga-dokument/proposition/2019/10/prop.-20192036/>

association.¹² According to chapter 2, section 1 of the Instrument of Government, the freedom of association is a freedom to associate with others for general or individual purposes. It does not only include the freedom to form associations, but also the freedom to work jointly within the framework of an association. Furthermore, the right to freedom of association is protected in the European Convention. According to Article 11 (1), everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions to protect their interests. According to the government, introduction of a ban on certain forms of association with terrorist organisations aimed at countering terrorism and other particularly serious crimes. The proposed penal provisions did not have the aim to limit the opportunities for individuals to conduct activities in the form of an association, neither explicitly nor implicitly. Thus, the government argued, a ban cannot be interpreted as a prohibition that directly targets any participation in the activities of associations. All in all, the government concluded that it would be possible to criminalise association with terrorist organisations without at the same time restricting the provisions on the freedom of association in the Instrument of Government and the European Convention – if the penal provisions were clearly defined and their scope was limited to acts that in any way maintain and strengthen terrorist organisations.

The government bill was discussed in parliament on 22 January 2020.¹³ After the discussion in Parliament, all members of Parliament voted for the acceptance of the government bill, except for the Left Party's MPs. The government bill proposed amendments to sections 3, 4, 5b, 6 and 8 and the introduction of sections 2a, 2b, and 7a of the Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime.¹⁴ Furthermore, the bill suggested amendments to section 3 of Act on Penalty for the Financing of Particularly Serious Crime in some cases,¹⁵ and section 12 of the chapter 19 of the Penal Code.¹⁶ All amendments entered into force on 1 March

¹² Sweden, Ministry of Justice (*Justitiedepartementet*) A special criminal liability for participation in a terrorist organisation (*Ett särskilt straffansvar för deltagande i en terroristorganisation*), government bill (Prop. 2019/20:36), p. 20–21, 29 October 2019, <https://www.regeringen.se/rattsliga-dokument/proposition/2019/10/prop.-20192036/>

¹³ Sweden, Swedish Parliament (*Sveriges Riksdag*) Discussion protocol (*Prot.* 2019/20:62), p. 34–50, 22 January 2020, <https://data.riksdagen.se/fil/D48D9517-4041-4912-938A-89A8205AB6CF>

¹⁴ Sweden, Act on criminal responsibility for public provocation, recruitment and training concerning terrorist offences and other particularly serious crimes (*Lag [2010:299] om straff för offentlig uppmaning, rekrytering och utbildning avseende terroristbrott och annan särskilt allvarlig brottslighet*), sections 3, 4, 5b, 6, 7, 8, 2a, 2b, and 7a, 1 March 2020, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2010299-om-straff-for-offentlig-uppmaning_sfs-2010-299

¹⁵ Sweden, Act on penalty for the financing of particularly serious crimes in some cases (*Lag [2002:444] om straff för finansiering av särskilt allvarlig brottslighet i vissa fall*), section 3, 1 March 2020, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002444-om-straff-for-finansiering-av_sfs-2002-444

¹⁶ Sweden, Criminal Code (*Brottsbalk [1962:700]*), 1 March 2020, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700

2020. It is the first time the Swedish government banned participation in certain acts of certain associations.

1.2 The inquiry on democracy requirement for civil society organisations

In 2018, the government appointed a special inquirer to overlook the democracy requirements (*demokrativillkor*) in the regulation on state funding of civil society organisations, and the application of these requirements.¹⁷ The purpose of the overview was to assure that public funds only go to activities that complies with society's fundamental values as they are formulated in the Instrument of government and the international conventions of human rights. In 2019, the so-called democracy requirement inquiry presented its final report.¹⁸ The report proposed that funding should not be granted to organisations if they or any of their representatives, within the frame of the organisation's activities:

- 1) exert violence, compulsion or threats or in other undue manner violate the individual's fundamental freedoms and rights;
- 2) discriminate, or in other ways break the principle on all human's equal value
- 3) justifies, promotes or calls upon such actions that are described above; or
- 4) counteracts the democratic governance.

So far, the government has not developed a government bill based on the report's proposals. However, the public inquiry report has been sent out for a round of consultations. Most of the consulted parties were positive to the proposals, but some of them underlined that the very fact that the government had initiated the inquiry was an expression of lower level of trust between the state and the civil society organisations than before.¹⁹ This was further developed in an interview with a representative of the umbrella organisation National Forum for Voluntary Organisations (*Forum – idéburna organisationer med social inriktning*).²⁰ Even if the public inquiry report itself was not published in 2020, the representative stressed the importance of the inquiry report and its proposals, which are central

¹⁷ Sweden, Ministry of Culture (*Kulturdepartementet*) Democracy requirements in state funding (*Demokrativillkoren i statlig bidragsgivning*), terms of reference Dir. 2018:19, 16 March 2018, <https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2018/03/dir.-201819/>

¹⁸ Sweden, Ministry of Culture (*Kulturdepartementet*) Democracy requirements for state funding to civil society (*Demokrativillkor för bidrag till civilsamhället*), Public inquiry SOU 2019:35, 17 June 2019, <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2019/06/sou-201935/>

¹⁹ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*) Comment letter on the Democracy Requirement Inquiry (*Remissvar gällande Demokrativillkorsutredningen SOU 2019:35*), 29 October 2019, <https://www.regeringen.se/4aed88/contentassets/b9e50218e1ad4119bc16d18d28d86019/forum---ideburna-organisationer-med-social-inriktning.pdf>

²⁰ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

to the civil society organisations, regardless of the final legislative outcomes. The proposals aim at changing the entire system of state funding for civil society organisations on all levels and are accordingly of great importance. In fact, the government's decision to initiate the public inquiry is the first time that the state intervenes in such a manner and defines what a democratic civil society organisation should be.²¹ The National Forum for Voluntary Organisations is mainly positive to the democracy requirement, since there must be possible to guarantee that antidemocratic organisations are not granted state funding. Even if some political parties have accused the government of not moving forward at a quicker pace, the representative of the Forum underlines that this process must develop slowly since the definition of a democracy requirement will have a fundamental impact for the Swedish democracy.²²

In November 2020, the government appointed a special inquirer to investigate the treatment of personal data in cases of state funding to civil society in order to move forward with the question of a democracy requirement.²³ A democracy requirement that includes requirements on the actions of the organisations' representatives means that organisations and authorities must handle sensitive personal data of said representatives. The inquirer shall also propose any necessary legislative changes.²⁴ On 18 November 2020, the government presented a complementary term of reference (*tilläggsdirektiv*) to the inquirer adding the tasks identifying the need and conditions for setting up a support function that can assist authorities in charge of granting state funding with in-depth reviews of organisations applying for funding, or of other publicly financed activities.²⁵ The entire assignment shall be presented by 31 December 2021.

²¹ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

²² Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

²³ Sweden, Ministry of Justice (*Justitiedepartementet*), Ministry of Culture (*Kulturdepartementet*) The government takes a new step towards sharpened democracy requirement in state funding to civil society (*Regeringen tar nytt steg för skärpt demokrativillkor vid statsbidrag till civilsamhället*), press release, 14 November 2020, <https://www.regeringen.se/pressmeddelanden/2020/11/regeringen-tar-nytt-steg-for-skarpt-demokrativillkor-vid-statsbidrag-till-civilsamhallet/>

²⁴ Sweden, Ministry of Culture (*Kulturdepartementet*) Treatment of personal data in matters concerning funding to the civil society (*Personuppgiftsbehandling i ärenden om stöd till det civila samhället*), terms of reference, 3 November 2020, <https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2020/11/dir.-2020113/>

²⁵ Sweden, Ministry of Culture (*Kulturdepartementet*) Complementary terms of reference to the inquiry on treatment of personal data in matters concerning funding to the civil society (*Tilläggsdirektiv till utredningen om personuppgiftsbehandling i ärenden om stöd till det civila samhället*), terms of reference, 18 November 2020, <https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2020/11/dir.-2020117/>

1.3 Restrictions in the freedom of assembly

For most of 2020, the freedom of assembly has been restricted, due to covid-19. Evidently, this has affected the space for civil society organisations to operate in a negative sense. The freedom of assembly is the only human right directly restricted by the government for all inhabitants with reference to the corona virus.²⁶ It is a constitutionally protected right as of chapter 2, section 1 of the Instrument of Government, (*Regeringsform [1974:152]*).² This right is today restricted with reference to chapter 2, section 24 of the Instrument of Government,³ which stipulates that "The freedom of assembly and freedom of demonstration may be limited for reasons of order and security at the gathering or demonstration or for reasons of traffic. Otherwise, these freedoms may only be limited for reasons of national security or the combatting of epidemics." Accordingly, the government may after legal authorisation restrict the freedom of assembly and the freedom of demonstration in order to combat epidemics. Such restrictions shall not go further than what is necessary. In other words, each restriction must be proportional. The definitions of 'public gathering' (*allmän sammankomst*) and 'public event' (*offentlig tillställning*) can be found in the Public Order Act. (*Ordningslag [1993:1617]*)²⁷ Public gatherings include, i.e., demonstrations, lectures, religious gatherings, theatre and cinema screenings and musical concerts. Public events include inter alia sports events, dance events, markets and fairs. This, of course, affects the civil society organisations. The National Forum for Voluntary Organisations comments that while the restrictions may have been proportional and necessary, the need for the support and services its member organisations provide has increased.²⁸ The social and economic vulnerability, unemployment and mental health issues have increased as a consequence of the pandemic. However, while the needs have increased, the space for civil society organisations to offer support and help has decreased, since the infringements of the freedom of assembly have made it difficult to perform many forms of activities. Additionally, several income sources for these organisations have decreased or disappeared, like second-hand sales, arrangement of events and trainings, where the profit goes to the organisations, and rental of the organisation's facilities, etc.²⁹

The first decision to restrict the freedom of assembly with reference to the ongoing pandemic was made on 11 March 2020 and entered into force on 12 March. According to section 1 of the Ordinance on prohibition on holding public gatherings and public events (*Förordning [2020:114] om förbud mot att hålla allmänna*

²⁶ The restriction of the freedom of assembly in turn affects the possibilities to exercise the freedom of demonstration and the freedom of expression but the explicit restrictions has only been imposed on the freedom of assembly.

²⁷ Sweden, Public Order Act (*Ordningslag [1993:1617]*) Chapter 2, section 1-3, 1 September 2010, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/ordningslag-19931617_sfs-1993-1617

²⁸ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

²⁹ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

sammankomster och offentliga tillställningar), general meetings and public events with more than 500 participants could not be held within Sweden until further notice.³⁰ The ban carried legal sanctions and persons who broke the ban and arranged a such gatherings or events risked fines or up to six months of imprisonment. Just over two weeks after the ordinance entered into force, on 27 March, the government decided to limit the allowed number of participants to 50.³¹ All other restrictions aimed at the general public have been introduced as recommendations from the government and/or the relevant authorities and are not legally binding in the sense that they can be imposed by any kind of force, e.g. through police interventions. Other regulations that may indirectly impose restrictions on the individuals, are for example, the Public Health Agency's regulations and general advice on preventing infection of covid-19 in restaurants and cafes, etc.³² The regulation stipulates that the owners of restaurants and cafes must guarantee that customers can keep a distance from each other and that they only eat and drink while seated at a table. Consequently, the regulation affects the general public but is directed to the establishments serving food and drink.³³ So far, there have been no court cases concerning the legality of the restriction of freedom of assembly or any other restriction.

During the autumn of 2020, the spread of infectivity increased all over the country. Against this background, the government decided to further limit the number of participants in public events and gatherings. In a memorandum, the government proposed a ban on arranging public events with more than eight participants.³⁴

³⁰ Sweden, Ordinance on the ban of arranging public gatherings and public events (*Förordning [2020:114] om förbud mot att hålla allmänna sammankomster och offentliga tillställningar*), section 1, 29 March 2020, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2020114-om-forbud-mot-att-halla_sfs-2020-114

³¹ Sweden, Ministry of Justice (*Justitiedepartementet*) Ban on public gatherings and public events with more than 50 participants (*Förbud mot allmänna sammankomster eller offentliga tillställningar med fler än 50 deltagare*), 27 March 2020, <https://www.regeringen.se/artiklar/2020/03/forbud-mot-allmanna-sammankomster-eller-offentliga-tillstallningar-med-fler-an-50-deltagare/>

³² Sweden, Public Health Agency (*Folkhälsomyndigheten*) The Public Health Agency's regulations and general advice on preventing infection of covid-19 in restaurants and cafes, etc. (*Folkhälsomyndighetens föreskrifter och allmänna råd om att förhindra smitta av covid-19 på restauranger och caféer m.m.*), HSFL-FS 2020:9, 24 March 2020, <https://www.folkhalsomyndigheten.se/contentassets/419aae6d128c4f43ac87ea785ec9d7b3/hslf-fs-2020-9.pdf>

³³ Sweden, Public Health Agency (*Folkhälsomyndigheten*) Public health regulations and general advice on preventing infection of covid-19 in restaurants and cafes, etc. (*Folkhälsomyndighetens föreskrifter och allmänna råd om att förhindra smitta av covid-19 på restauranger och caféer m.m.*), HSFL-FS 2020:9, 24 March 2020, <https://www.folkhalsomyndigheten.se/contentassets/0ac7c7d33c124428baa198728f813151/hslf-fs-2020-9-upphavd.pdf>

³⁴ Sweden, Ministry of Justice (*Justitiedepartementet*) Ban on arranging public events and public gatherings with more than eight participants (*Förbud mot att hålla allmänna sammankomster och offentliga tillställningar med fler än åtta deltagare*), memorandum, 16 November 2020, <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2020/11/forbud-mot-att-halla-allmanna-sammankomster-och-offentliga-tillstallningar-med-fler-an-atta-deltagare/>

The memorandum was sent out for a consultation round on 16 November 2020. The previous exemption for public events arranged in restaurants and cafés was also removed. The amendment to the ordinance restricting these types of events³⁵ applied from 20 November 2020. The government stressed that the restrictions should not be applied for longer than necessary and proposed is that the limitation should not be applied for longer than four weeks.³⁶ However, since the spread of infectivity continued to increase, the restrictions remained over the Christmas holidays and into the new year.

On 28 December 2020, the government referred a draft bill to the Council on Legislation for consideration concerning the introduction of a special temporary covid-19 act.³⁷ In the draft bill, the government noted that the proposals will enable the government to make decisions on very comprehensive restrictions of constitutionally protected fundamental freedoms and rights, such as the freedom of assembly, and the freedom of demonstration. However, as mentioned earlier, the Instrument of Government allows for restrictions of these rights in order to fight epidemics (*farsoter*) as long as the restrictions are made in accordance with the Swedish legislation.³⁸ The restrictions can only be made for purposes that are acceptable in a democratic society. Furthermore, the restrictions must be limited to what is absolutely the necessary in order to obtain its purpose and must never threaten the freedoms of opinion (*opinionsfriheter*). The restrictions cannot be made in ways that only restrict the freedoms of certain political, religious, cultural associations or gatherings.³⁹ The government proposed that it would be enabled to decide on regulations banning public gatherings, for example, demonstrations, and other events that are covered by the freedom of assembly. The government should also be able to restrict public gatherings on a case-to-case basis. Additionally, the government proposed that it should be able to introduce regulations on banning public gathering in the form of private parties when they

³⁵ Sweden, Ordinance on the ban of arranging public gatherings and public events (*Förordning [2020:114] om förbud mot att hålla allmänna sammankomster och offentliga tillställningar*), section 1, 29 March 2020, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2020114-om-forbud-mot-att-halla_sfs-2020-114

³⁶ Sweden, Ministry of Justice (*Justitiedepartementet*) Ban on arranging public events and public gatherings with more than eight participants (*Förbud mot att hålla allmänna sammankomster och offentliga tillställningar med fler än åtta deltagare*), memorandum, 16 November 2020, <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2020/11/forbud-mot-att-halla-allmanna-sammankomster-och-offentliga-tillstallningar-med-fler-an-atta-deltagare/>

³⁷ Sweden, Ministry of Health and Social Affairs (*Socialdepartementet*), Ministry of Enterprise and Innovation (*Näringsdepartementet*) Covid-19 Act (*Covid-19-lag*), proposal referred to the Council on Legislation for consideration, 28 December 2020, <https://www.regeringen.se/rattsliga-dokument/lagradsremiss/2020/12/covid-19-lag/>

³⁸ Sweden, Ministry of Health and Social Affairs (*Socialdepartementet*), Ministry of Enterprise and Innovation (*Näringsdepartementet*) Covid-19 Act (*Covid-19-lag*), proposal referred to the Council on Legislation for consideration, 28 December 2020, <https://www.regeringen.se/rattsliga-dokument/lagradsremiss/2020/12/covid-19-lag/>

³⁹ Sweden, Ministry of Health and Social Affairs (*Socialdepartementet*), Ministry of Enterprise and Innovation (*Näringsdepartementet*) Covid-19 Act (*Covid-19-lag*), proposal referred to the Council on Legislation for consideration, 28 December 2020, <https://www.regeringen.se/rattsliga-dokument/lagradsremiss/2020/12/covid-19-lag/>

are of a certain size and take place in public places.⁴⁰ According to the government, the Public Order Act (*Ordningslag [1993:1617]*)⁴¹ supported the proposed restrictions and the explicit purpose of the restrictions – to limit the spread of infection – is acceptable in a democratic society. In all, the government claimed that the proposals on the possibility to restrict public gatherings, and the option to introduce prohibitions against gatherings in public places were compatible with the regulations on the freedom of assembly and freedom of demonstration in the Instrument of Government. The government proposed that the new temporary act should be introduced by 8 January 2021.⁴²

On 30 December 2020, the government also circulated two ordinances proposed to be introduced with support of the forthcoming temporary covid-19 act.⁴³ The first proposed ordinance included regulations on restrictions of public gatherings and public events, gym and sports facilities, swimming pools and shopping centres and include possible measures necessary to decrease crowding. If these regulations are not followed, the County Administrative Boards (*länsstyrelserna*) should decide on injunctions such as lock-down. The government also wanted to restrict the maximum number of persons who can be in places for private gatherings like party venues, community halls and other sites that can be rented. The second ordinance concerned the possibility to lock down shopping malls and department stores, where the risk of infectivity spreading is assessed to be high. The Public Health Agency is suggested to issue regulations with more detailed instructions. In the memorandum, the government once again noted that the proposals constitute far-reaching restrictions on the freedom of assembly and the freedom of demonstration.⁴⁴

On 8 January 2021, the parliament passed the temporary pandemic act – the Act on special restrictions to prevent the spread of covid-19 disease (*Lag [2021:14] om särskilda begränsningar för att förhindra spridningen av sjukdomen covid-*

⁴⁰ Sweden, Ministry of Health and Social Affairs (*Socialdepartementet*), Ministry of Enterprise and Innovation (*Näringsdepartementet*) Covid-19 Act (*Covid-19-lag*), proposal referred to the Council on Legislation for consideration, 28 December 2020, <https://www.regeringen.se/rattsliga-dokument/lagratsremiss/2020/12/covid-19-lag/>

⁴¹ Sweden, Public Order Act (*Ordningslag [1993:1617]*), 16 December 1993, [available here](#)

⁴² Sweden, Ministry of Health and Social Affairs (*Socialdepartementet*), Ministry of Enterprise and Innovation (*Näringsdepartementet*) Covid-19 Act (*Covid-19-lag*), proposal referred to the Council on Legislation for consideration, 28 December 2020, <https://www.regeringen.se/rattsliga-dokument/lagratsremiss/2020/12/covid-19-lag/>

⁴³ Sweden, Ministry of Health and Social Affairs (*Socialdepartementet*) Proposal on restrictions and lockdowns of activities is circulated for comment (*Förslag om begränsningar och nedstängningar av verksamheter skickas på remiss*), press release, 30 December 2020, <https://www.regeringen.se/pressmeddelanden/2020/12/forslag-om-begransningar-och-nedstangningar-av-verksamheter-skickas-pa-remiss/>

⁴⁴ Sweden, Ministry of Health and Social Affairs (*Socialdepartementet*) Special restrictions to prevent spreading of the disease covid-19 (*Särskilda begränsningar för att förhindra spridning av sjukdomen covid-19*), memorandum, 30 December 2020, <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2020/12/sarskilda-begransningar-for-att-forhindra-spridning-av-sjukdomen-covid-19/>

19).⁴⁵ The act entered into force on 10 January 2021. With the support of the new act, the government immediately introduced the proposed ordinance on special restrictions for public gatherings and events, gyms and sports facilities, bathhouses, shops and malls as well as places for private gatherings.⁴⁶ The ordinance also entered into force on Sunday 10 January 2021. It also replaced the former ordinance on the ban of arranging public gatherings and public events that ceased to apply on the same date.⁴⁷

1.4 Civil society organisation obliged to recover state funding by national authority

In June 2020, it became clear that the Supreme Court would not grant the leave to appeal the Swedish Agency for Youth and Civil Society's (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) decision to recover a civil society organisation's state funding for an entire calendar year. Thus, the authority's decision became final. The decision was first made by the Agency for Youth and Civil Society in 2016, when the agency decided to reject the application for organisational funding for 2017 submitted by the organisation Sweden's young Muslims' (*Sveriges unga muslimer*). At the same time, the authority decided to recover the funding the organisation had received for 2016.⁴⁸ In 2018, the Agency for Youth and Civil Society conducted a review of the organisation, which in turn gathers around 40 smaller member organisations. This 2018 review also included these member organisations. The review found connections between elected representatives in the member organisations and violent Islamic extremist environments. Some organisations had representatives who have fought for IS in Syria or praised and spread material on violent Islamic extremism in social media. After the authority's review, Sweden's young Muslims neither reacted nor denied the findings of the review. Consequently, the Agency for Youth and Civil Society found that the organisation had not been able – or willing – to show that its activities meet the funding requirement to respect the democratic ideals.

⁴⁵ Sweden, Act on special restrictions to prevent the spread of covid-19 disease (*Lag [2021:14] om särskilda begränsningar för att förhindra spridningen av sjukdomen covid-19*), 10 January 2021, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-20214-om-sarskilda-begransningar-for-att_sfs-2021-4

⁴⁶ Sweden, Ordinance on special restrictions to prevent the spread of covid-19 disease (*Ordinance [2021:8] om särskilda begränsningar för att förhindra spridningen av sjukdomen covid-19*), 10 January 2021, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20218-om-sarskilda-begransningar_sfs-2021-8

⁴⁷ Sweden, Ordinance on the ban of arranging public gatherings and public events (*Förordning [2020:114] om förbud mot att hålla allmänna sammankomster och offentliga tillställningar*), 29 March 2020, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2020114-om-forbud-mot-att-halla_sfs-2020-114

⁴⁸ Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) Right of MUCF to recover funding from Sweden's Young Muslims: 'Important trial of the democratic ideas' (*Rätt av MUCF att återkräva bidrag från Sveriges Unga Muslimer: "Viktig prövning av demokratins idéer"*), 15 June 2020, <https://www.mucof.se/pressmeddelande/ratt-av-mucof-att-aterkrava-bidrag-fran-sveriges-unga-muslimer-viktig-provning-av>

According to the authority, the findings of the review were incompatible with the Ordinance on state funding to children's and youths' organisations.⁴⁹ Against this background, the authority decided that the organisation should pay back its funding for 2016 – a total of 1,366,741 SEK (€135,820). Sweden's young Muslims appealed the decision to Stockholm Administrative Court (*Förvaltningsrätten i Stockholm*), which obviated the decision and remitted the case back to the Agency for Youth and Civil Society. This time, the authority appealed the Administrative Court's decision, and in February 2019, the Administrative Court of Appeal (*Kammarrätten*) accepted the appeal. In October 2019, the court ruled in support of the authority's decision. According to the Court of Appeal, the Agency for Youth and Civil Society had shown how Sweden's young Muslims in their activities repeatedly had displayed a lack of respect for the democratic ideals, including gender equality and the ban on any type of discrimination.⁵⁰ The court stated that there were both prerequisites for and reasons to recall the state funding for 2016, as the Agency for Youth and Civil Society had decided to do. Sweden's Young Muslims applied the Court of Appeal's ruling to the Supreme Administrative Court (*Högsta förvaltningsdomstolen*). However, the court did not give leave to appeal. Accordingly, the authority's decision became final in June 2020.⁵¹

Without commenting the case in further detail, or defending the concerned organisation, the representative of the National Forum for Voluntary Organisations highlighted the problematic dimensions of the decision in question and how it may constitute a threat against legal certainty (*rättssäkerhet*).⁵² The Forum representative pointed out that the decision is an example of an arbitrary exercise of authority and further questioned whether the organisation was treated like the other civil society organisations, or if the decision was affected by the fact that the organisation is Muslim, and if the requirements focused on the activities that the organisation had carried out or the actions of individual members in the member organisations.⁵³

In relation to this specific case, the representative of the National Forum for Voluntary Organisations added that the forum notes a troubling development

⁴⁹Ordinance on state funding to children- and youths-organisations (*Förordning [2011:65] om statsbidrag till barn- och ungdomsorganisationer*), 20 January 2011, section 8, <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-201165-om-statsbidrag-till-barn-sfs-2011-65>

⁵⁰Sweden, Sweden's Courts (*Sveriges Domstolar*) The organisation Sweden's young Muslims shall recover state funding (*Organisationen Sveriges unga muslimer ska återbetala statsbidrag*), press release, 31 October 2019, <https://www.domstol.se/kammarratten-i-stockholm/nyheter/2019/10/Organisationen-sveriges-unga-muslimer-ska-aterbetala-statsbidrag/>

⁵¹ Sweden, Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*), MUCF was correct to recover grants from Sweden's Young Muslims: "Important test of the ideas of democracy" (*Rätt av MUCF att återkräva bidrag från Sveriges Unga Muslimer: "Viktig prövning av demokratins idéer"*), 15 June 2020.

⁵² Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

⁵³ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

concerning the place and space of Islamic civil society organisations.⁵⁴ These organisations are especially vulnerable, both when it comes to public funding and when it comes to the fact that these organisations often are subjected to hate crimes, and threats, including attacks on mosques. This vulnerability means that the organisations become very limited in their activities, and in what they can say. This can be understood as an expression of shrinking civic space in Sweden – for some civil society organisations.⁵⁵ The Forum has observed this development for at least five years.⁵⁶

1.5 Government support packages to the civil society during the covid-19 crisis

During 2020, the government decided on several special economic support measures towards civil society organisations, who were affected by the pandemic in different ways. In April 2020, the government allocated 100 million SEK (€9.9 million) to civil society organisations working with the increased social vulnerability caused by the pandemic. The funding was supposed to go to organisations that work with children in vulnerable situations, and organisations who work with women, children and LGBTI persons, who are vulnerable to violence, violence in intimate relationships and honour related violence and oppression.⁵⁷

In May 2020, the government also allocated another 100 million SEK (€9.9 million) to civil society organisations to gear up their activities during the pandemic.⁵⁸ The investment was divided into two parts, 50 million SEK was allocated for social and humanitarian activities in relation to special needs, for example measures for homeless persons, undocumented persons, or other persons in socially vulnerable

⁵⁴ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

⁵⁵ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

⁵⁶ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), data collected through a telephone interview, 5 January 2021

⁵⁷ Sweden, Ministry of Employment (*Arbetsmarknadsdepartementet*) National Board of Health and Welfare to distribute 100 million SEK to civil society organisations to meet increased vulnerability due to the corona virus (*Socialstyrelsen fördelar 100 miljoner kronor till ideella organisationer för att möta ökad utsatthet med anledning av coronaviruset*), press release, 30 April 2020, <https://www.regeringen.se/pressmeddelanden/2020/04/socialstyrelsen-fordelar-100-miljoner-kronor-till-ideella-organisationer-for-att-mota-okad-utsatthet-med-anledning-av-coronaviruset/>

⁵⁸ Sweden, Ministry of Culture (*Kulturdepartementet*) 100 million to measures for persons in special social vulnerability and against loneliness among the elderly during the corona pandemic (*100 miljoner till insatser för människor i särskild social utsatthet och mot äldres ensamhet under coronapandemin*) press release, 12 May 2020, <https://www.regeringen.se/pressmeddelanden/2020/05/100-miljoner-till-insatser-for-manniskor-i-sarskild-social-utsatthet-och-mot-aldres-ensamhet-under-coronapandemin/>

situations. The other 50 million SEK was allocated to activities preventing loneliness and isolation among elderly persons during the pandemic. This could for example be outreach programmes over the phone, help with digital meetings or purchase of groceries. While hundreds of millions may sound a lot, the National Forum for Voluntary Organisations stated in an article that the civil society organisations were overlooked by the government.⁵⁹ While the Forum highlighted and welcomed the support packages to the culture sector and the civil society organisations, it pointed out that these measures should not be called investments, since the funding is not close to cover the losses of income in the first place. Additionally, the Forum wanted to call out the government on the difference between the support packages of some hundred million to the civil society and culture sector in relation to the 335 billion SEK (€33 billion) invested in loan guarantees and other supporting measures that were mainly directed to the business sector.

In the Budget Bill for 2021, presented in September 2020, the government increased the levels of funding for the civil society, compared to 2019.⁶⁰ 102 million SEK (€10.1 million) was allocated to the civil society's community halls, 291 million SEK (€28.8 million) to national and international youth activities and 120 million (€11.9 million) to the religious organisations.

In December 2020, a similar investment was proposed for 2021. The government proposed an extra 60 million SEK (€5.9 million) to strengthen civil society organisations working with social and humanitarian activities during the spring of 2021.⁶¹ The funding is supposed to be used to strengthen the existing activities and to meet the increased need of help and supportive measures to vulnerable persons during the pandemic. In the press release, the government stated that organisations that work with social measures have testified on increased demands for support and also the inclusion of new groups affected by poor health, unemployment and homelessness as a result of the pandemic. In September 2020, the government proposed a reinforcement of the funding to children and youth organisations with 50 million SEK (€4.9 million) annually from 2020 to 2022.⁶²

⁵⁹ Sweden, National Forum for Voluntary Organisations (*Forum – Idéburna organisationer med social inriktning*), The spring amending budget miss the civil society's role in the crisis management (*Vårändringsbudgeten missar civilsamhällets roll i krishanteringen*), 15 April 2020, <https://www.socialforum.se/article/varandringsbudgeten-missar-civilsamhallets-roll-i-krishanteringen/>

⁶⁰Sweden, Ministry of Finance (*Finansdepartementet*) Budget Bill for 2021 (*Budgetpropositionen för 2021*), Government Bill, 21 September 2020, <https://www.regeringen.se/rattsliga-dokument/proposition/2020/09/prop.-2020211/>

⁶¹ Sweden, Ministry of Culture (*Kulturdepartementet*) Support for the civil society's social and humanitarian measures (*Stöd till civila samhällets sociala och humanitära insatser*), press release, 22 December 2020, <https://www.regeringen.se/presmeddelanden/2020/12/stod-till-civila-samhallets-sociala-och-humanitara-insatser/>

⁶² Sweden, Ministry of Culture (*Kulturdepartementet*) The government invests in children-and youths-organisations during the crisis (*Regeringen satsar på barn- och*

The Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*), the national authority that manages the state funding to the civil society, also decided to make changes in order to make it possible for civil society organisations to transfer funding they were granted by the authority for 2020 to 2021.⁶³ The decision was made with respect to the negative effects the pandemic have had and continue to have on the civil society organisations and their possibilities to perform activities and use their funding according to their original plans. The decision concerned children and youth organisations, LGBTQI organisations and ethnic organisations that had been granted funding for 2020, but that had not been able to use them by the end of 2020.

2 Example of promising practice

The project [Nysta](#). Nysta brings together six large umbrella organisations within civil society and one university college (*högskola*) that initiated the project together. According to the participating organisations, the pandemic became a spark in that it brought about many new societal challenges and highlighted many already existing challenges. The project aims to tackle gaps and deficiencies in society and contribute to a new social contract. The organisations are [Civil Society's organisations in Cooperation](#) (*Civilsamhällets organisationer i samverkan, Civos*), [National Forum for Voluntary Organisations](#) (*Forum – Idéburna organisationer med social inriktning*), [Ersta Sköndal Bräcke University College](#) (*Ersta Sköndal Bräcke Högskola*) [Famna – the Swedish Association for Non-Profit Health and Social Service Providers](#) (*Famna – riksorganisationen för idéburen välfärd i Sverige*), [the Swedish Fundraising Association](#) (*Giva Sverige*) and [Fremia – the Co-operative Employers' Association](#) (*Fremia – Sveriges nya arbetsgivarorganisation: Ändamål och roll i samhällsutvecklingen*). Together, the actors represent a variety of civil society organisations that are active in all from advanced healthcare and medical services to activities with youths in socio-economically vulnerable areas. Nysta will develop concrete proposals to the political parties, showing how Sweden can come out of the pandemic as a better society through a so-called new start (*nystart*),⁶⁴ and the role civil society can play in this change. The work within Nysta covers six different areas. The themes are not new or unique but have been highlighted by the corona pandemic. The Secretary-General of the Swedish Red Cross leads the project, and teams of 6–8 participants are responsible for each thematic area. The thematic areas are:

- the democratic space

ungdomsorganisationer i krisen), press release, 10 September 2020, <https://www.regeringen.se/pressmeddelanden/2020/09/regeringen-satsar-pa-barn--och-ungdomsorganisationer-i-krisen/>

⁶³ Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) Possibility to transfer organisational funding to 2021 (*Möjlighet att föra över organisationsmedel till 2021*), 27 October 2020, <https://www.mucof.se/aktuellt/mojlighet-att-fora-over-organisationsmedel-till-2021>

⁶⁴ The project's name refers to the word *nystart* and *nysta* means "winding (yarn or string) into a ball."

- the labour market
- research, education and innovation
- digitalisation and AI
- the overall conditions for civil society
- welfare in change

Nysta will elaborate concrete and viable proposals relating to all six areas that can move Sweden forward to new social contract. The aim is to present the proposals at the event *Järvaveckan*⁶⁵ in June 2021.

⁶⁵ *Järvaveckan* is an event that since 2016 takes place during a week in June the Stockholm suburb Spånga. The organiser's explicit aim is to reduce the distance between people and their elected politicians by making it possible for them to meet and listen to politicians and other speakers.

3 Any other developments

In October, the Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) published a report on how the pandemic had affected civil society organisations in Sweden.⁶⁶ The report was based on a collection of surveys and in-depth interviews with a total of 216 civil society organisations made in October 2020. In addition, the Agency for Youth and Civil Society has carried out dialogues with networks and individual actors within the civil society. The report also included aggregated statistics over how many civil society organisations that actually have benefitted from the different financial support packages.⁶⁷ According to the report, most of the organisations have had to cancel parts of their activities during the year. At the same time, many organisations have also adapted their activities mainly through different forms of digitalisation. The report also showed that many organisations have been economically affected by the pandemic. However, exactly how the organisations and their target groups have been affected differs. The focus of the activities and the forms of financing have decided how much of the activities that have been cancelled and also how much the organisations have been affected economically.⁶⁸ The report showed that disabilities, age and digital competence are affecting a person's possibilities to participate in the activities of civil society organisations during the pandemic. Almost half of the organisations that target persons with disabilities claimed that they have had difficulties to adapt their activities to the pandemic and have had to cancel their activities as a result. According to the report, the targeting persons with disabilities indicated that they had been hit harder by the economic situation than other organisations. They also suggested that their target group is likely to suffer from poorer mental health as a long-term consequence of the pandemic to a higher degree than other groups.⁶⁹

⁶⁶Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) The Corona crisis' consequences for the civil society – Overview October 2020 (*Coronakrisens konsekvenser för det civila samhället - Lägesbild oktober 2020*), 15 December 2020, <https://www.muco.se/publikationer/coronakrisens-konsekvenser-det-civila-samhallet>

⁶⁷Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) The Corona crisis' consequences for the civil society – Overview October 2020 (*Coronakrisens konsekvenser för det civila samhället - Lägesbild oktober 2020*), 15 December 2020, <https://www.muco.se/publikationer/coronakrisens-konsekvenser-det-civila-samhallet>

⁶⁸Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*), The Corona crisis' consequences for civil society – overview October 2020 (*Coronakrisens konsekvenser för det civila samhället - Lägesbild oktober 2020*), 15 December 2020, <https://www.muco.se/publikationer/coronakrisens-konsekvenser-det-civila-samhallet>

⁶⁹Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) The Corona crisis' consequences for civil society – Overview October 2020 (*Coronakrisens konsekvenser för det civila samhället - Lägesbild oktober 2020*), 15 December 2020, <https://www.muco.se/publikationer/coronakrisens-konsekvenser-det-civila-samhallet>