

Speech by Minister for Justice Beatrice Ask at the Colloquy of 9 June 2008

Mr Secretary General,
Mr President of the Court,
Ladies and gentlemen,

It is a great pleasure for me to welcome you all to Stockholm. I consider it an important task for us all to discuss how the Convention for the Protection of Human Rights and Fundamental Freedoms can have a clearer impact at national level and thus promote important efforts to strengthen respect for human rights and fundamental freedoms all over Europe.

But this is also an opportunity for more light-hearted elements. Stockholm is often called the ‘Venice of the North’, and not without good reason. Throughout history, proximity to water has made its mark on Sweden’s capital city in many different ways. You will have the chance to become better acquainted with one example of this later on this evening. The Vasa Museum – one of Sweden’s biggest tourist attractions – houses the warship Vasa, with which Sweden hoped to achieve domination over the Baltic Sea. However, the ship sank on its short maiden voyage in 1628. After 333 years submerged under water, the Vasa was salvaged in spectacular fashion. The ship is a unique and well-preserved treasure trove, containing almost a thousand dramatic sculptures and ornaments. I would like to welcome you all to this evening’s dinner, set against the backdrop of the exciting history that the Vasa represents.

Ladies and gentlemen,

Sweden has always been a keen supporter of the Council of Europe and the European Convention for the Protection of Human Rights and Fundamental Freedoms. We were one of ten countries that signed the Treaty in London in 1949 establishing the Council of Europe; and we had already ratified the Convention when it entered into force in 1953.

It has to be said that it took some time for the Convention to have a proper impact in Sweden. This was, of course, partly due to the dynamic interpretation of the rights and freedoms contained in the Convention by the bodies responsible for the Convention; but it must also be acknowledged that, to begin with, we didn't have an entirely realistic view of how our legal system stood in relation to the Convention's requirements. This has perhaps been especially clear concerning the right to access to a court of law when examinations of civil rights and obligations are conducted, as laid down in Article 6. For in Sweden, it had long been the case that the Government was often the last instance for such examinations. The fact that this wasn't compatible with the Convention's requirements was established for the first time in the case of *Sporrong and Lönnroth v. Sweden*, in which a judgment was delivered on 23 September 1982. This judgment was later followed by several others with the same result. These judgments had an immediate impact on Swedish legislation.

Sweden has chosen two different paths to resolve the problem that the judgments adopted by the European Court of Human Rights highlighted. Firstly, in a large number of cases, appeals have been transferred to courts of law. Secondly, 1988 saw the introduction of a special act on judicial review in a court of law of decisions that would not otherwise be the subject of a court examination following a normal appeal. The act was replaced in 2006 by an updated act on the same subject.

Examples in other areas in which the Convention has had a direct impact on the Swedish legal order include the shortening of the length of time a person may be detained before having their detention examined by a court of law;¹ the introduction of stricter rules for children being taken into care by the public authorities;² highlighting the right to oral hearings in courts of law;³ and paying increased attention to the right to a court examination within a reasonable length of time. Not least in respect of the latter, focus has been directed towards the right – laid down in Article 13 of the Convention – to an effective national legal

¹ See the case of *McGoff v. Sweden*, judgment of 26 October 1984.

² See, for example, the case of *Olsson no.1*, judgment of 24 March 1988.

³ See, for example, the case of *Ekbatani*, judgment of 26 May 1988.

remedy to claim that one's rights and freedoms, as stated in the Convention, have been violated. Later on today, Justice Anna Skarhed from the Swedish Supreme Court will speak a bit more about Sweden's experience in this area.

So the European Convention for the Protection of Human Rights and Fundamental Freedoms has helped to develop the Swedish legal order in such a way that human rights and fundamental freedoms have continued to gain greater prominence.

Sweden is a dualist state. Any international convention must therefore be transformed or incorporated in order to become a part of Sweden's internal legal order. When Sweden adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, it was deemed unnecessary to incorporate it into Swedish law. This view was maintained until 1995, when the Convention was incorporated into Swedish law by means of special legislation. At the same time, an addition was made to the Instrument of Government to the effect that acts or other regulations may not be introduced in contravention of Sweden's commitments because of the Convention. It can also be mentioned here that the Administrative Procedure Act was adjusted in 2006; it is now clear that the Act's provisions on appeals to an administrative court always apply, regardless of what is prescribed by other acts or ordinances, if this is necessary in order to satisfy the right to examination by a court of law as laid down in Article 6 of the Convention. Thanks to these measures, the importance of the Convention for the Swedish legal order has been emphasised further.

In view of its broad area of application, it is important that the Convention is discussed in the whole of society, and that citizens are informed of their rights under the Convention, as well as how they should go about exercising these rights. As far as Sweden is concerned, I can mention the Government's website on human rights,⁴ which contains questions and answers about the Convention, as well as other information. Public officials are also required to have sufficient knowledge of the requirements placed on them by the Convention. It can also be mentioned in this respect that the Swedish National Courts Administration publishes regular summaries of the judgments and decisions adopted by the

⁴ www.manskligarattigheter.se

European Court of Human Rights, not just those involving Sweden but also the most interesting of those involving other countries. These summaries are available to everyone on the Internet.⁵ I would also like to make a point of mentioning the courses in human rights issues that are offered by universities and higher education institutions, and that are often a part of compulsory education as well.

Ladies and gentlemen,

The European Court of Human Rights is currently facing major challenges. The number of States Parties is now at 47 – compared with the original ten. There is a large stream of complaints flowing into Strasbourg. If the Court is to continue to be able to perform its important task of interpreting the Convention – thus helping to strengthen human rights in Europe – it's important for the Court to be able to work with efficient methods that are adapted to the demands currently placed on it. These demands are completely different to those that applied just over 50 years ago. Perhaps I need say no more than to simply remind you that the Convention now protects more than 800 million inhabitants throughout Europe, and that more complaints to the Court were registered in 2007 than in the entire period from 1955–1997.

Protocol 14 amending the Convention is an important step in streamlining the work of the Court. It's therefore highly regrettable that after four years the Protocol has still not been ratified by all of the Member States of the Council of Europe, and thus has not been able to enter into force.

I hope that our discussions at this Colloquy here in Stockholm will highlight the future potential there is in the Convention system. But we must look after this system. This is why it is important that the principle of subsidiarity be observed. The States Parties must, as far as is possible, provide mechanisms to deal at a national level with claims that the Convention has been violated. The objective must be that citizens in the Member States of the Council of Europe who feel that their rights and freedoms, as laid down in the Convention, have been neglected should not have to turn unnecessarily to Strasbourg to obtain redress for any wrongs done to them. And in the cases where this is not possible, the procedure at

⁵ www.dom.se

the Court must be so efficient and at the same time legally secure that an individual citizen can have a decision on his or her complaint from the Court within a reasonable period of time. Unfortunately, this is not the case today.

Ladies and gentlemen,

With these words, I would once again like to wish you a very warm welcome to Stockholm. I am certain that the next two days of discussions will be fruitful for our joint efforts to safeguard and develop the unique system to protect the rights and freedoms that the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights and the Committee of Ministers represent.

Thank you.

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