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# Business and human rights

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Sweden

Sweden



## 1. What kind of judicial protection do I have in your country as a victim of business- related human rights violations? Does this protection include compensation?

In Sweden, no distinction is made between business-related human rights violations and other types of human rights violations. There are no special regulations in the area of business and human rights. The legal remedies in the Swedish legal system are in line with the international conventions on human rights to which Sweden is a signatory.

Judicial protection against human rights violations is enshrined in the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the Swedish Constitution.

If you believe that your human rights have been violated, there are various authorities you can turn to, depending on what has occurred.

You may request court proceedings or review by a Swedish review body, or appeal to the national contact point.

### Court proceedings

In most cases, you can have your case heard in court, in one way or another. Criminal offences can be taken to court by a prosecutor. If the prosecutor chooses not to prosecute, in some cases you have the option of doing this yourself. Ultimately, you can file a compensation claim against the State.

There are three types of court in Sweden:

- the general courts, which comprise district courts (*tingsrätt*), courts of appeal (*hovrätt*) and the Supreme Court (*Högsta domstolen*);
- the general administrative courts, i.e. administrative courts (*förvaltningsrätt*), administrative courts of appeal (*kammarrätt*) and the Supreme Administrative Court (*Högsta förvaltningsdomstolen*);
- the special courts that rule on disputes within various special areas, such as the Labour Court (*Arbetsdomstolen*).

### Request a review by a Swedish review body

The various ombudsmen review compliance with human rights.

Anyone who believes they or somebody else has been wrongly or unfairly treated by an authority or official in an authority within the State or municipal sector may appeal to the Parliamentary Ombudsman (*Justitieombudsmannen*). The Parliamentary Ombudsman supervises the application of laws and other regulations in public activities.

According to their mandate, the Parliamentary Ombudsman's supervision also covers 'other individuals whose employment or assignment involves the exercise of public authority, in so far as this aspect of their activities is concerned' and 'officials and those employed by public enterprises, while carrying out, on behalf of such an



headquarters in another EU country or Iceland, Norway or Switzerland, the possibilities for bringing a case against the subsidiary before a court in Sweden are limited to exceptional scenarios.

## General conditions for Swedish jurisdiction

Swedish courts must examine on their own initiative whether there is Swedish jurisdiction. For a claim to fall under Swedish jurisdiction means that a Swedish court has jurisdiction to deal with and pass judgment on the substance of the case.

In cases where the infringing company (defendant) is domiciled in an EU Member State, the Brussels I Regulation applies. However, the Regulation also contains a number of rules of jurisdiction whose application does not depend on where the defendant is domiciled. If the defendant is domiciled in Iceland, Norway or Switzerland, the Lugano Convention determines the question of jurisdiction. If the defendant is not domiciled within the EU or in a country that is a signatory to the Lugano Convention, the question of jurisdiction is determined through application by analogy of the rules of conflict of jurisdiction set out in Chapter 10 of Sweden's Code of Judicial Procedure, taking into account the basic requirement for there to be a Swedish interest in the administration of justice for a Swedish court to be available.

The domicile of the individual whose rights have been violated is generally not significant for the application of the Brussels I Regulation. However, in some cases, it is required that the plaintiff is domiciled in a Member State or that the circumstance that forms the basis of the jurisdiction is attributable to a Member State.

The determining factor will be that the circumstances that form the basis for jurisdiction must obtain at the time the case is brought before the court.

## Governing law

Which country's law is to apply to a claim resulting from a rights violation heard in a Swedish court is determined by the Swedish court applying Swedish international private law. In general, this means that the law in the country where the damage has occurred must apply. If a violation of human rights has taken place outside Sweden, the victim's claim will therefore rarely be subject to Swedish law. This applies regardless of whether the individual has chosen to formulate their claim on contractual (an employment contract) or non-contractual grounds (in the absence of an employment contract). The main reason for this is that the link to Sweden is not sufficiently strong.

Unlike the content of Swedish law, the content of foreign law is a question of fact in Swedish courts. An individual who bases their claim on foreign law must therefore produce evidence to corroborate this, e.g. in the form of an expert statement. This can incur certain costs.

Even where a claim is subject to foreign law, there may be some scope for Swedish courts to apply Swedish law to the extent that there is a question of internationally binding rules or where foreign law conflicts with Swedish public order. However, such emergency procedures are applied very rarely. Pending the establishment of case-law from, e.g. the European Court of Justice and the Swedish courts, it has also not been clarified to what extent a compensation claim concerning a violation of human rights gives rise to the application of these exemption rules, e.g. as a result of deficiencies in the protection of rights in the country where the damage arose.

## Practical possibilities of an individual bringing a case before a Swedish court

Provided that there is Swedish jurisdiction and that there is a protected claim that can be enforced (e.g. based on applicable foreign law), accessibility to the Swedish courts is relatively good. Furthermore, the legal possibilities for a foreign individual to act as a party in a Swedish dispute are in principle comparable with what applies to Swedish citizens.

If a foreign individual encounters financial or other practical obstacles to travelling to the relevant court in Sweden, it may be assumed that the court will work to solve this through, e.g. allowing appearance by telephone or video link.

Some foreign citizens who are not domiciled in Sweden and who bring a case against a Swedish legal person in a Swedish court must, on application by the defendant, provide security for the defendant's future legal costs. Which foreign citizens and legal persons are exempt from the obligation to provide security is set out in

the *Notice regarding exemptions for foreign plaintiffs in certain cases from providing security for legal costs* of 15 May 2014.

The possibilities for a foreign individual to secure public funding for court and ombudsman fees are limited, at least if the individual is a citizen of a non-EU country. The greatest opportunity for public funding is where a compensation claim is presented as an individual claim in connection with a criminal case. The possibilities of establishing a private funding solution are otherwise largely dependent on the personal financial and social circumstances of the foreign individual.

#### More information

*Memorandum to the Ministry of Foreign Affairs concerning the possibility for an individual to bring a case against a Swedish company in a Swedish court as a result of human rights violations committed outside Sweden.*

Mannheimer Swartling (2015)

<https://docplayer.se/7222881-Promemoria-till-utrikesdepartementet.html>

Further information on guidance for bringing a case before the courts is available at <https://www.domstol.se/en/>

4. Can ombudsman institutions, equality bodies or national human rights institutions support victims of business-related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen or I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?

See question 1.

The Swedish Institute for Human Rights does not process individual complaints relating to human rights violations.

5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations also apply to violations that occur outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of the system?

#### A company's own mechanisms for redress

Companies have a responsibility to ensure that their activities do not violate anybody's human rights and, if a company has caused or contributed to or been linked to doing so, to try to find a way to remedy the situation for the affected person. Such redress may involve apologising, providing financial or non-financial compensation or something else agreed on by the affected person and the company. The situation is more complicated if a company has not contributed to any negative impact, but the impact is directly linked to its activity. In such cases, and if the company has sufficient influence to be able to manage the negative impact, the company should use its influence.

There is no standard model for how a company should best organise its own mechanisms for complaints and redress. Each company must decide for itself what is appropriate based on its specific conditions.

Some benchmarks:

- Openness – facilitate a dialogue with those affected by the company’s conduct
- Negotiations and discussions with employee representatives – often constitute a good basis for effective measures in cases concerning employees
- Guidelines for how people within a company can raise the alarm internally on misconduct, how the alarm is to be followed up and how persons that raise the alarm are to be protected
- System for handling complaints where people outside the company who feel that they, or others, have been affected or will be affected negatively by the company can make the company aware of the problem in a safe and anonymous way

The government has introduced new legislation on sustainability reporting for large companies, which are more ambitious than the EU’s directives, clearer criteria for sustainability in the Public Procurement Act, and stronger legal protection for whistle-blowers.

In December 2016, new legislation on sustainability reporting entered into force. The legislation means that all large companies with more than 250 employees are now obliged to conduct sustainability reporting. As well as information on environmental impact, social conditions, equality and prevention of corruption, the reports, where this is necessary to understand the company’s development, position and results, must also contain information about measures for ensuring respect for human rights, including employee rights.

In January 2017, the Riksdag also adopted strict legislation to protect employees who raise the alarm about serious misconduct in their employer’s activities (‘whistle-blowing’). Under this special protection, employees who are subjected to reprisals by their employer will be entitled to damages.

## Public reports

Business and human rights: Tangible flaws and gaps in Swedish law. Report to the Swedish Agency for Public Management. Enact Sustainable Strategies (Enact), a consultancy firm specialised in sustainable business development and responsible entrepreneurship.

[Business and human rights: Tangible flaws and gaps in Swedish law. Enact \(statskontoret.se\)](#)

**6. Do I have specific rights if I am a vulnerable victim seeking a remedy for business-related human rights violations? Can I have access to legal aid, and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?**

Victims of business-related human rights violations do not have any specific rights (please see question 1).

There is the possibility of obtaining legal aid in accordance with the Legal Aid Act (1996:1619). It is always the court or the Legal Aid Authority (*Rättshjälpsmyndigheten*) that determines whether or not you are entitled to legal aid.

Legal aid generally applies to private persons, i.e. not associations, companies or similar. Exceptionally, a trader or an estate can also obtain legal aid.

Your financial means are based on your calculated annual income before tax. Deduct SEK 15 000 for each child for whom you contribute maintenance, up to a maximum of SEK 75 000. The sum must also be adjusted if you have assets or debts that affect your ability to pay. To receive legal aid, your financial means must not exceed SEK 260 000/year. When you are notified that you are to receive legal aid, you must pay some of the costs yourself. Legal aid is never completely free for adults and the part that you pay yourself is called a legal aid charge. Your legal aid charge can never be higher than the costs of the legal aid.

Legal expenses cover is a form of insurance that in most cases is included in home and contents cover, home and residential cover and leisure home insurance cover. Legal expenses cover means that your insurance can pay part of your costs for a legal practitioner or lawyer. The terms and conditions for legal expenses cover may vary between insurance companies, so it is important that you check the terms and conditions of your insurance

cover.

Section 35 of the Legal Aid Ordinance (1997:404) sets out which foreign citizens are to be treated in the same way as Swedish citizens in matters of entitlement to legal aid in accordance with the Legal Aid Act.

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■ Last update: 12/08/2025

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