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1 Introduction

The questions are dealt with in the order in which they appear in the questionnaire, using the same numbers.

2 The field of application of the legal review

2.1

There is no legal definition in the Swedish Legal Order of the concept of "administrative decisions". The concept is however well-defined in case-law.

2.2

There are no general legal provisions distinguishing between administrative decisions which can be the object of legal review by a court and other administrative decisions.

The Administrative Procedure Act, which applies when cases are handled by an administrative authority, states that an appeal against a decision may be lodged by the person whom the decision concerns, if it has gone against him and is appealable. Whether an appeal can be made against an administrative decision or not follows primarily from legislative provisions in those enactments which regulate various areas of administration. Although there are differences between areas of administration it is safe to say that, in principle, the provisions allow an appeal to be made against any decision which is likely to affect a person's personal or economic situation to a not inconsiderable extent.

According to a long tradition the Swedish citizens have had access to the possibility of having decisions by administrative authorities reexamined in old times by the King and later by the Government (the Swedish name of the Supreme Administrative Court -"Regeringsrätten" - literally means "the Government's Court"). This possibility still exists but after the introduction of the legal institution of administrative-judicial appeals to administrative courts the number of decisions subject to reexamination by the Government has been considerably reduced. Mostly the decisions still to be reexamined by the Government concern to a large degree issues of a political rather than legal nature, such as questions of priorities between different public and private interests e.g. in cases concerning planning of new roads or railroads and the municipal planning of the use of land.

2.3

The Administrative Procedure Act, which was enacted in 1971 (and replaced in 1986 by a new Act with a somewhat wider scope), is to a considerable extent based on unwritten law, developed mainly through the established practice of the Supreme Administrative Court. Still it is considered that there exists, according to unwritten law outside the provisions of The Administrative Procedure Act, a right to appeal against other administrative decisions than those explicitly designated as appealable, except when the act directly restricts the appealability.

2.4

As mentioned under 2.2 there are different provisions concerning appealability in various areas of administration. In some Acts it is laid down that decisions according to the Act can be appealed against to an administrative court. In others the appealability is restricted to certain

decisions while nothing is said about other decisions. Some Acts contain restrictions as to the right to appeal against certain decisions but does not explicitly regulate other decisions.

2.5

The extensive right to appeal against administrative decisions described above is not without limits. The main reason for the right of appeal is to enhance the legal security. For that reason it is generally accepted that only decisions which appreciably affects a person's personal or economic situation need to be appealable. Thus it is normally required that the decisions are final. Advices, recommendations and other statements by an administrative authority are not accorded appealability since they can be ignored without the addressee running the risk of some special sanction.

The need for legal security does not motivate that decisions not going against the interests of the appellant are accorded appealability; for that reason there is a provision in the Administrative Procedure Act stating that only decisions that have gone against someone can be taken to the administrative court by him.

The Swedish legal order allows appeals against norm decisions by an administrative authority.

2.6

The most frequent categories of appeals concern decisions on social security, social welfare, taxes, compulsory psychiatric care, compulsory care of young people or of abusers of drugs or alcohol, building permits etc. and driver's licences. The decisions are with very few exceptions decisions

whereby an administrative authority has finally decided a case.

Decisions that cannot be the object of legal review are mostly decisions taken during the administrative procedure and having no considerable effect, e.g. decisions whereby the authority calls for a statement or other material from an outside body. Certain other administrative decisions taken during the administrative procedure can be subject to a separate appeal, e.g. when an administrative authority decides on the use of coercive measures, such as a conditional fine, as a stage in the procedure.

2.7

The Administrative Procedure Act states that the time-limit for lodging an appeal is three weeks from the date the appellant received notification of the decision.

The time-limit for appeals against decisions concerning the assessment of income tax, value-added tax and other taxes is considerably longer: appeals against e.g. decisions by tax authorities concerning the determination of income tax shall be lodged with the administrative court within five years from the expiry of the taxation year.

The time-limit - three weeks - for appeals against certain decisions by municipal authorities shall be computed from the publication of the decision on the municipal notice-board.

2.8

For the time being the government considers a committee proposal suggesting that in principle appeals against decisions made by administrative authorities

shall always be lodged with an Administrative Court.

3 The substance of the legal review

3.1

Generally the legal review of administrative decisions covers both issues of law, matters of facts and - when the administration has got discretionary powers - questions of suitability. As an exception the review of certain decisions made by municipal authorities is limited to the legality of the decisions.

It has already been stated that in some cases appeals against decisions by administrative authorities shall be lodged with the Government. If a Government decision concerns a civil right and involves exercise of public authority against a private subject, the Supreme Administrative Court will - if asked by someone who has acted as a party before the Government - make a special court review of the Government's decision. The Court will then examine whether the application of law that forms the basis of the decision conflicts with law or not. The Supreme Administrative court will in principle not review the suitability of the decision. The procedure is available only in cases where it is not possible to have the matter examined by a court in another way.

Under the same conditions decisions made by administrative authorities below the Government can be subject to a similar review by the Administrative Courts of Appeal.

3.2

Apart from what has been stated under 3.1 concerning the special legal review, the extent of the legal review is in principle the same in different fields of law.

3.3.1

In principle administrative courts have a right not only to quash an incorrect administrative decision but also to modify it. The special court review concerning the legality of administrative authorities' and the Government's decisions cannot result in the court changing the decision; it can be either confirmed or rescinded.

3.3.2

The same rules apply in the different fields of law.

3.3.3

The special court review mentioned under 3.1 is made only by the Supreme Administrative Courts and the Administrative Courts of Appeal. In all other cases the powers of a court of first instance are the same as those of a superior court.

3.4

Apart from what has been mentioned under 2.8 there are no important amendments in progress or planned concerning the legal review.

4 Courts exercising legal review

4.1 A summary description of the court organization

4.4.1

There are three categories of courts in Sweden:

- a) general courts (civil/penal courts),
- b) general administrative courts and
- c) special courts.

There are for the time being the following special courts:

- a) The Labour Court (handling disputes relating to the application of collective labour contracts and other disputes concerning the relation between employer and employee)
- b) the Market Court (applying laws on the limitation of monopolies and the prevention of unacceptable business methods)
- c) the Rent and Tenancy Tribunals (12 Tribunals handling disputes concerning e.g. the relation between landlords and tenants)
- d) the Court of Patent Appeals.

4.1.2 and 4.1.3

There are three instances of general courts and three instances of general administrative courts.

The general courts are

96 District Courts,

6 Courts of Appeal,
the Supreme Court.

The general administrative courts are
23 County Administrative Courts,
4 Administrative Courts of Appeal,
the Supreme Administrative Court.

The Market Court is the only court in its field of jurisdiction. The court therefore handles all cases in the first instance and no appeal is allowed against the court's decisions.

The Labour Court is the only court to adjudicate disputes concerning the application of collective labour contracts. The court therefore handles such cases in the first instance and no appeal is allowed against the court's decisions. Other disputes between employer and employee are handled by the District Courts in the first instance; appeals against the court's decision are lodged with the Labour Court and no appeal is allowed against the Labour Court's decisions.

4.1.4

The only co-ordination so far between courts is that in a very few cases different courts share the same premises.

4.2 The career as a judge

4.2.1

The normal career for those who want to become judges starts with a couple

of years' practice either at a District Court or a County Administrative Court followed - after an approval procedure - by a few years as an assistant judge at a Court of Appeal or an Administrative Court of Appeal. After that the candidates normally serve as legal secretaries of the Supreme Court or the Supreme Administrative Court. They are then qualified to get an appointment as permanent judges at a District Court, a County Administrative Court, a Court of Appeal or an Administrative Court of Appeal.

The competence achieved during the time of practice is valid in different categories of courts. There is however a strong tendency among the judges to stay in the chosen category of courts and pursue a career there. The answer to the question therefore is that the careers are not in principle separate but tend strongly to be separate in practice.

4.2.2

There is no legal obstacle to appointing a judge belonging to a court of one category to a post at a court of another category but it rarely happens.

4.2.3

Judges can be recruited from other legal professions. However it very rarely happens except in the Supreme Court and the Supreme Administrative Court where Justices sometimes are recruited from other legal professions as e.g. barristers, professors and Parliamentary Ombudsmen.

4.3

Laymen take part in the adjudication process

in District Courts and Courts of Appeal when the court handles

criminal cases, except minor cases,
in County Administrative Courts,
in Administrative Courts of Appeal, when the court handles cases concerning e.g. compulsory psychiatric care, compulsory care of young people or of abusers of drugs or alcohol.

When the Courts of Appeal handle cases concerning e.g. the legality of municipal decisions two extra members, having special knowledge of municipal matters, shall take part in the process. Cases concerning real estate tax are handled by judges and two evaluation experts.

In the Supreme Court and the Supreme Administrative Court laymen or experts never take part in the process.

4.4 and 4.5

The competence of the Administrative Courts to handle cases according to a certain law is given in the law itself. Thus there are no general provisions regarding the competence of courts. The General Courts handle all civil and penal cases. The General Administrative Courts handle all cases concerning state, regional and local authorities decisions such as decisions concerning social security, social welfare, taxes, compulsory psychiatric care or compulsory care of young people or of abusers of drugs or alcohol, building permits etc., driver's licences and municipal decisions. The special court review of administrative decisions that cannot otherwise be tried by a Court is made by the Supreme Administrative Court when the Governmental has made the decision and by an Administrative Court of Appeal when administrative authority has made the decision.

4.6

The legal review of administrative decisions is carried out by administrative courts only.

4.7 and 4.8

There is a Government Bill proposing to move the handling of cases according to the environmental legislation from the administrative courts to certain general courts specialized in dealing with matters related to inter alia building in water and the protection of the environment.

A special committee has been set up to investigate the possibility to join General Courts and General Administrative Courts. However the committee has met with difficulties and may very well be dissolved.

5 The proceedings at the courts

5.1

The proceedings are initiated by someone - a natural or legal person - who is dissatisfied with a decision taken by an administrative authority. The appeal has to be made in writing stating inter alia the change demanded by the appellant. The appeal shall be submitted to the authority which issued the contested decision. The authority shall reexamine the decision, make a new decision and, if the new decision does not fully satisfy the appellant's demands, forward the appeal to the appropriate court.

5.2

The proceedings are essentially in writing but an oral hearing will be granted if the complainant asks for it and if the hearing is not considered manifestly

superfluous. If a case concerns the appellants civil rights an oral hearing will be held if so required according to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5.3

Yes, administrative courts are obliged by law to ensure that a case before the court is investigated to the extent that its character requires.

5.4

Any kind of evidence is accepted: witnesses, written documentation, statements by experts etc. The Supreme Administrative Court however will, according to law, take into consideration facts and evidence offered for the first time before the Supreme Administrative Court only if the court finds that there are special reasons for accepting the new facts or evidence.

5.5

No.

5.6

Yes. Any natural person whose annual income does not exceed a certain amount of money, has the right to have general legal aid. In certain cases a natural person can have legal aid by a public lawyer, e.g. when the case concerns compulsory psychiatric care or compulsory care of young people or of abusers of drugs or alcohol.

5.7

No.

5.8

Yes. Recently new provisions have been introduced establishing in principle a two-party process in most cases handled by the administrative courts, the parties being the complainant and the administrative authority that first decided on the case.

5.9

A taxpayer, who has incurred costs for e.g. investigations and legal representation may, under certain conditions, be granted compensation by the State for the costs.

In cases where the parties in legal proceedings are opposing individuals, e.g. when the issue in dispute is the execution of decisions on child care, right of access to children and relocation of child care, the administrative court may decide, according to what is reasonable, that one of the parties shall reimburse the other party for his costs for the legal proceedings.

In other cases compensation for litigation costs in the administrative judicial procedure is not possible.

5.10

There are two main differences between the proceedings in the General Courts and in the General Administrative Courts: the proceedings are essentially in writing in the Administrative Courts but oral in the General Courts and the Administrative Courts but not the General Courts are in principle obliged to ensure that a case before the court is investigated to the extent that its character requires.

5.11

No important amendments are in process or planned concerning the procedural rules in this section.

6 The relationship between the civil or penal courts and the administrative courts

6.1

There is no formal method available for reaching a uniform application of similar or identical provisions which are applied by both administrative courts and other courts. However the judgments of the Supreme Court and the Supreme Administrative Court are published regularly and will influence the application of common rules by the lower general and administrative courts. If and when a different application of common rules by the two supreme courts should occur - which is very seldom the case - they would seek to adjust their application and make it uniform.

6.2

There are no such provisions.

6.3

It is possible for a District Court or a Court of Appeal to "borrow" a judge from a County Administrative Court or an Administrative Court of Appeal and vice versa. It also actually occurs; e.g. a Court of Appeal which handles a complicated criminal case concerning tax fraud might feel the need to have access to a judge with a knowledge of tax legislation and thus "borrows" one from an Administrative Court of Appeal for that particular case.

6.4

6.4.1

The adjudication as to criminal offences against road traffic regulations, e.g. driving while under the influence of alcohol, lies with the General Courts. The question of revoking the driver's licence to drive on account of the offence is dealt with under the administrative-judicial procedure by the county administration, whose decisions are tried by the Administrative Courts on appeal.

6.4.2

A decision to deport an alien can be taken in context with a judgment in a criminal case. The criminal case is handled by a District Court, which also decides on the question of deportation.

Decisions on the question of deportation in other situations are taken by an administrative authority. Appeals against such decisions are lodged with the Swedish Immigrant Board.

Appeals against decisions to take aliens into custody e.g. awaiting deportation are handled by the Administrative Courts.

6.4.3

Matters concerning building permits are handled by the Administrative Courts.

6.4.4

An expropriation permit is granted by the Government and has to be followed

up by an application to a District Court for the execution of the granted expropriation. Apart from the special court review of the Government's decision by the Supreme Administrative Court the Administrative Courts do not handle cases concerning expropriation.

6.4.5

Questions concerning the assessment of taxes are dealt with by administrative authorities/administrative courts. Tax fraud, being a criminal offence, is handled by the general courts. Less serious offences are dealt with by administrative action and can lead to the taxpayer being obliged to pay a special fee - "additional tax" - ; if the tax return is not submitted by the due date a "penalty for delay" will be imposed. Decisions concerning such penalty charges are issued by the tax authorities and appeals against them can be lodged with the County Administrative Courts.

6.5

No. In certain cases however the Administrative Courts are bound by judgments passed by the general courts. If a general court has passed sentence on a driver for committing a traffic offence by a judgment which has gained legal force the judgment is binding when the Administrative Court decides on the question of revoking the driver's licence.

The general courts decides on e.g. the right of access to children. Questions of the execution of such decisions are handled by the administrative courts, which are then in principle bound by the decision taken by the the general court.

6.6

No. However, when a general court handles a criminal case concerning tax fraud it rather frequently happens that the court waits for a decision by the Administrative Court on the tax assessment before passing its judgment.

6.7

The practical problem caused by the situation described under 6.6 is that it sometimes takes a long time to adjudicate the tax case.

6.8

No.

7 Miscellaneous

There are no other problems concerning the legal review of decisions taken by the public administration.