INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Privacy & the media. Traditional and emerging protection in an online world.

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National Report of Sweden

Cecilia Rehn
Advokatfirman Lindahl
Studentgatan 6
211 38 Malmö, Sweden
+46 (0)40 664 66 50
cecilia.rehn@lindahl.se

Erik Ullberg
Wistrand Advokatbyrå
Lilla Bommen 1,
Box 11920 Göteborg, Sweden
+ 46 (0)31 771 21 00
erik.ullberg@wistrand.se

General Reporters:

Jerome Debras, Woog & Associés, Paris, France
jdebras@woogassocies.com

Cristina Hernandez-Marti Perez, Hernandez Marti Abogados, Barcelona, Spain
cristina@hernandez-marti.com

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1. Privacy Rights

1.1 Are privacy rights statutory rights or are these case-law based?

Regulation on Swedish privacy rights can be found in the Swedish constitution (the Instrument of Government, Chapter 2), the Personal Data Act ("**PDA**")[1] and the Act on Names and Pictures in Advertising.[2] Also, the privacy rights following from the European Convention for the Protection of Human Rights and Fundamental Freedoms ("**ECHR"**) are directly applicable as Swedish law. Thus, privacy rights in Sweden are statutory-law based.

1.2 What type of information (including pictures, sounds, etc) would be covered by the concept of "privacy rights" in the legal system of Sweden?

The concept of "privacy rights" is not clear in Swedish law. In fact, the meaning of "privacy rights" is not defined in national law. For example, the ECHR merely states that "everyone has the right of respect for his or her private life. Nevertheless, as will be illustrated below, a wide range of information is likely to be covered by the above-mentioned statutes.

a. The Swedish constitution prohibits non-consensual recordings in public registers which are solely due to an individual's political views.[3] Furthermore, the constitution deals with the protection of "significant" intrusions in the personal privacy in relation to public authorities, if such intrusions occur without the consent of the concerned individual and involves surveillance of the individual's personal circumstances.[4]

b. The PDA aims to protect people from having their privacy infringed by the processing of personal data.[5] The definition of personal data, i.e. "*all kinds of information that directly or indirectly may be attributable to a natural person who is alive*" includes information such as pictures, personal identity numbers, IP addresses and information in running texts.

There is also case law regarding this issue. For instance, in case NJA 2008 s.946, the Swedish Supreme Court stated that Swedish law did not have effective legal remedies regarding non-consensual filming of individuals, or showing films of individuals without their consent to third parties. The court held that such actions typically are deeply intrusive and considered the action to be an infringement of the victim's private life.

[1] The Personal Data Act is based on the EU Data Protection Directive (95/46/EC).

[2] The last-mentioned act prohibits traders from using names and pictures of individuals in their advertising, without consent from the individual concerned.

[3] The Instrument of Government, Chapter 2, Art. 3.

[4] The Instrument of Government, Chapter 2, Art. 6.

[5] The Personal Data Act, Art. 1.

In conclusion, Swedish statutory law defines the types of information covered by privacy rights on a case-by-case basis.[6]

1.2.1 Would the information included in that concept, or the extent of the privacy rights, depend upon the celebrity of the person, or upon other elements? Please describe briefly.

The applicable Swedish laws do not differentiate the privacy rights depending on the character of an individual. However, Swedish media must respond to a number of ethical rules on publicity, wherein journalists and other publicists are allowed to examine and report about well-known persons in a more extensive way than other people.[7]

1.2.2 Would privacy rights also apply in relation to legal persons (vs. physical persons)?

The Swedish law concerning privacy rights only applies to natural persons. Hence, legal persons are not protected by such rules.[8]

1.2.3 Would privacy rights encompass private information made available only to some chosen persons (authorized recipients). So, for instance, can disclosure to third parties, by one of the authorized recipients of the private information, be part of the privacy rights (e.g. disclosure of private correspondence, private phone calls, information shared on social media, etc.)

Unless the recipient is bound by duty or an agreement not to disclose the private information, Swedish law does generally not encompass disclosure of private information to third parties made by authorized recipients. Nevertheless, in certain situations, the private information can be subject to indirect protection, e.g. if the disclosure is considered to be slander or libel.[9]

1.3 Is there a specific status for fictional use of information related to an individual? And are disclaimers sufficient to allow such use?

No, there is not a specific status for fictional use of personal information under Swedish law.

2. Freedom of Speech

2.1 Is there on the one hand a statutory/treaty based freedom or constitutional recognition of "Freedom of speech" or on the other hand is that freedom based on case law?

In Sweden, freedom of speech is a statutory based freedom, established by no less than three so called fundamental laws, which all form part of the Swedish constitution.

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[7] These rules complement the Swedish constitution, see http://www.po.se/regler.

[8] However, the commercial integrity of legal persons are protected by the Act on the Protection of Trade Secrets, which prohibits unauthorized disclosure of trade secrets.

[9] For further information regarding slander and libel, see section 4.8 below.

a. In the Instrument of Government, which lays down the fundamental principles of the Swedish form of government, freedom of expression is one of the fundamental rights and freedoms which everyone is guaranteed in his or her relations with public institutions. The Instrument of Government sets forth general rules regarding freedom of expression, as further described in Section 2.3.

b. The right of every Swedish citizen[10] to publish written matter, and to communicate information to the press anonymously, is set forth in the Freedom of the Press Act ("**FPA**").

c. The Fundamental Law on Freedom of Expression ("**FFE**") builds on, and has many similarities with, the FPA, and guarantees Swedish citizens[11] the right to express themselves freely in media that are not covered by the FPA, such as the radio, TV and – to a certain extent - the Internet.

In addition hereto, international legislative acts which recognize freedom of speech form part of the Swedish legislation: the ECHR has been implemented in Swedish law, and the Treaty of Lisbon, and thereby also the Charter of Fundamental Rights of the European Union (the "**Charter**"), apply as Swedish law.

2.2 If it is a statutory/treaty/constitution based freedom, is it based on domestic or supranational law?

As explained in Sec. 2.1, the three laws referred to therein are all part of the Swedish constitution and, consequently, the freedom of speech is based on domestic law. The ECHR is not a fundamental law, but nevertheless holds a special position under Swedish domestic law since the Instrument of Government expressly stipulates that no law or other provision may be adopted which contravenes Sweden's undertakings under ECHR.[12] The Charter has through the Lisbon Treaty attained status as supranational law.

2.3 Describe the main characteristics of the "freedom of speech" as recognized in your jurisdiction

One of the main purposes of the freedom of speech, or freedom of expression which is the more commonly used term in Sweden, is to secure the free exchange of opinion, free and comprehensive information and freedom of artistic creation. In order to achieve this, a fundamental principle has been established, implying that constitutionally protected material may be produced and spread, and that no public authority or other public body may, in advance, establish obstacles to the manufacturing and distribution of such material. In other words, censorship is prohibited.

[10] Foreign nationals are equated with Swedish citizens unless the law expressly stipulates otherwise (cf. the Instrument of Government, Chapter 14, Art. 5).

[11] See above.

[12] The Instrument of Government, Chapter 2, Art. 19.

As described in Section 2.1 above, there are various fundamental laws in Sweden that contain regulations regarding freedom of speech. Together, these laws guarantee a right for each individual to:

a. publicly express his or her thoughts, opinions and sentiments, and in general communicate information to the public on any subject whatsoever; and

b. publish written matter and to procure and communicate information and intelligence on any subject matter whatsoever, for the purpose of publication in print.[13]

Naturally, these rights are not absolute and can be limited in law. Several limitations have also been imposed, for example in the form of rules regarding professional secrecy[14] and in criminal law provisions regarding slander and agitation against a national or ethnic group.

2.3.1 The Instrument of Government

The rules regarding freedom of expression as set forth in the Instrument of Government primarily aims at directing the legislator, but can also be invoked in the application of the law, in such cases where a legal provision is deemed to be contrary to the rules set forth in the Instrument of Government.

According to the Instrument of Government, everyone is guaranteed freedom of expression – i.e. the freedom to communicate information and express thoughts, opinions and sentiments, whether orally , pictorially, in writing or in any other way – in his or her relation with public institutions.[15] Furthermore, the portal article clearly expresses the close correlation between the democratic form of government and freedom of expression: "*All public power in Sweden proceeds from the people. Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage*".[16]

Limitations on the general freedom of expression can be introduced in ordinary law (i.e. the law does not need to be in the form of a fundamental law), but the possibility to pass such laws is limited. A law limiting the freedom of expression may only be made to satisfy a purpose acceptable in a democratic society and may not go beyond what is necessary with regard to the purpose for which it was intended. Nor may it extend so far as to constitute a threat to the free shaping of opinion. No limitation may be imposed solely on grounds of a political, religious, cultural or other such opinion.[17]

The freedom of expression may be limited for certain specific purposes: the security of the Realm, the national supply of goods, public order and public safety, the good

[13] One important part of this, is the right for every Swedish citizen to have free access to public records, a right which is expressly stated to have the purpose of encouraging the free exchange of opinion and the availability of comprehensive information. See for example the FPA, Chapter 2.

[14] See for example the Swedish Public Access to Information and Secrecy Act.

[15] The Instrument of Government, Chapter 2, Art. 1.

[16] The Instrument of Government, Chapter 1, Art. 1.

[17] The Instrument of Government, Chapter 2, Art. 21.

repute of an individual, the sanctity of private life, the prevention and prosecution of crime, and in business activities.[18] Outside of the scope of these purposes, freedom of expression may only be limited where particularly important grounds so warrant, while paying particular attention to the importance of the widest possible freedom of expression in political, religious, professional, scientific and cultural matters.[19]

2.3.2 The Freedom of the Press Act and the Fundamental Law on Freedom of Expression

Opinions expressed through a medium covered by the FPA and the FFE enjoy a greater constitutional protection than other modes of expression. Media covered by these laws are, for example, printed matter intended for publication, radio, TV, and technical recordings. The only constitutional protection for modes of expression which do not fall within the scope of the FPA or the FFE, such as theater, demonstrations, public meetings etc., are the general protection granted in the Instrument of Government.

The FPA and the FFE both guarantee the right, vis-à-vis public institutions, to publicly express thoughts, opinions and sentiments, and to communicate information on any subject whatsoever on the respective covered media.

There are six underlying principles, upon which the protection for opinions expressed through the protected media is built:

a. Prohibition against censorship and other obstacles to exercising the freedom of expression (other than as expressly permitted by law).[20]

b. Protection of sources and a legal right to anonymity, including, among other things, a ban on inquiring into the identity of a source who has communicated information to media. Each individual has the right to communicate information on any subject whatsoever to authors and other originators, as well as to editors, news agencies etc. for publication, and to procure information for such communication or publication.[21]

c. Freedom of establishment, i.e. the right for everyone to produce printed matter by means of a printing press, transmit radio programs by landline and to produce and disseminate technical recordings.[22]

d. Special provisions regarding liability for offences against the freedom of the press and the freedom of expression. Only one person can be held liable under penal law for such offences (with certain exceptions for direct broadcasts of radio programs). Who the liable person is, is decided on formal grounds in accordance with the provision of the applicable law. For

[18] The Instrument of Government, Chapter 2, Art. 20 and 21.

[19] The Instrument of Government Chapter 2, Art. 23.

[20] See for example the FPA Chapter 1, Art. 2, and the FFE Chapter 1, Art. 3.

[21] See for example the FPA Chapter 1, Art. 1, and the FFE Chapter 1, Art. 2.

[22] See for example the FPA, Chapter 4, Art. 1, and the FFE, Chapter 3, Art. 1 and Art. 8.

example, the criminal liability for offences committed by means of a periodical or a radio program, primarily lies with the responsible editor.[23]

e. Only crimes stipulated in a separate and exhaustive catalogue of offences can give rise to criminal liability.[24] For penal liability to arise, the offence must be stipulated both in the FPA/FFE and the Swedish Penal Code (double criminalization). Consequently, it is necessary to amend a fundamental law to restrict the freedom of expression, while it only takes a "normal" law reform to repeal existing restrictions by amending the penal code to decriminalize an action. Offences against the freedom of the press and the freedom of expression can be divided into four categories: (i) crimes involving matters of preparedness (a threat to the security of the realm), such as high treason; (ii) crimes involving secret information, such as espionage; (iii) crimes against public interest, such as inciting rebellion and agitation against a national or ethnic group; and (iv) crimes against individuals, such as slander.

f. Special procedural rules for offences against the freedom of the press and the freedom of expression offence, with the Chancellor of Justice as prosecutor and with a trial by jury.[25]

It has been said that an underlying reason as to why not all modes of expression is protected by the constitution can be found in the special liability rules used in the FPA and the FFE. The system requires that there is one, predetermined, individual who assumes responsibility for the published material. For theaters, demonstrations and other public meetings, for example, this would not be possible. The liable person would not be able to predict the contents of the performance or meeting. It could also be problematic to establish, in a subsequent legal assessment, what was actually expressed.

3. Hierarchy between Freedom of Speech on one side and privacy rights on the other side

3.1 Under the law applicable in your jurisdiction, is there a clear hierarchy between freedom of speech on the one hand and privacy rights on the other?

In comparison with the freedom of expression, which for centuries has played a central and important role in Sweden and forms part of the Swedish constitution, the protection for privacy rights has traditionally been less cherished and the protection is more dispersed throughout the Swedish legal system (cf. Section 1).

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[23] The FPA, Chapter 8, Art. 1, and the FFE, Chapter 6, Art. 1.

[24] In the FPA, Chapter 1, Art. 3, it is stated that no person may be prosecuted, held liable under penal law, or held liable for damages, on account of an abuse of the freedom of the press or complicity therein, nor may the publication be confiscated or impounded other than as prescribed and in the cases specified in the FPA. It is further stated, in Chapter 1, Art. 4, that a person entrusted with passing judgment on abuses of the freedom of the press should bear constantly in mind in this connection that the freedom of the press is fundamental to a free society and direct the attention more to the illegality of subject matter and thought than to illegality of expression, to the aim rather than the presentation. Similar provisions are set forth in the FFE.

[25] The FPA, Chapter 9, and the FFE, Chapter 7.

Having said that, privacy rights are not entirely exempted from the constitution. The Instrument of Government does recognize privacy rights. As an example, it is stated that public power must be exercised with respect for the equal worth of all and the liberty and dignity of the individual.[26] Further, there is a constitutional protection in relation to certain specific rights, normally linked to personal integrity. For example, there is a prohibition against registration of political opinion, and everyone is protected in their relations with public institutions against certain invasions of their personal privacy (cf. Section 1.2 (b)). However, it can be said that privacy rights are not safeguarded in the constitution for its own objectives, but rather in order to protect against measures which can also be perceived as limiting or threatening the freedom of opinion. To find legislation which protects privacy rights for their own objectives, it is necessary to turn to ordinary law, where the legislator has chosen to regulate specific aspects relating to the protection of privacy rights, such as the criminal liability for defamation and slander, the PDA, through which Sweden has implemented the EU Directive 95/46/EC on data protection (the "**Data Protection Directive**"), and not least the ECHR.

Given the fact that the fundamental laws, as *lex superior*, prevails in case of conflict with ordinary laws, it would be possible to argue, at least in theory, that there is a clear hierarchy between the freedom of expression and the protection of privacy rights in Swedish national law. However, ordinary laws protecting privacy rights, can limit the freedom of expression as described in Section 2.3. In addition, Sweden must of course, as a member of the EU, comply with the EU-legislation protecting privacy rights and the interpretations thereof made by the Court of Justice of the European Union (the "**Court of Justice**"). As supranational law, the Charter will prevail over Swedish national legislation in case there is a conflict between the two. Consequently, we would argue that there is not, in practice, a clear hierarchy between freedom of speech on the one hand and privacy rights on the other.

When the Swedish courts have been faced with a situation where there is a conflict between freedom of expression on the one hand, and privacy rights on the other hand, they have not resorted to solving the problem through a strict analysis of the hierarchy of laws, but rather by carefully weighing these important interests against each other in order to find a fair balance between the two. This procedure is in line with case law from the Court of Justice, in which the Court of Justice has referred to the principle of proportionality, and the need for the national courts to take account of all the circumstances of the relevant case, when balancing the fundamental rights protected by the Community.[27]

[26] The Instrument of Government, Chapter 1, Art. 2.

[27] See for example case C-101/01.

3.2 What would be the most significant criteria allowing freedom of speech or privacy rights to prevail over the other (e.g. public interest argument)?

As described above under Section 3.1, when a situation arises where the freedom of expression and privacy rights are in conflict with each other, a fair balance must be struck between the rights and interests involved.

The most significant criteria, which can be used as an argument for letting the freedom of expression prevail over privacy rights when undertaking such a balancing act, is the promotion of the public interest. Is the subject a public person? Is the discussion or issues raised of public interest or otherwise important for the free shaping of opinion? What is the consequences of the publication? On the other hand, a significant criteria allowing privacy rights to prevail over the freedom of expression is the protection of the good repute of an individual, and in certain situations the protection of sensitive personal information, such as information concerning health.

According to our view, if the information is considered to be of a significant public interest, the freedom of expression will generally prevail over privacy rights, even if the information is sensitive or may damage the repute of the individual concerned.

4. Remedies available in Sweden to protect individuals against disclosure of information belonging to their privacy

4.1 Are there pre-emptive remedies to avoid disclosure of such information before disclosure occurs? Describe briefly the main remedies available.

Pre-emptive remedies in Swedish law can be found in the Penal Code as well as in the PDA. According to the Penal Code (Chapter 4, Art. 9b), a person who employs technical means, with the intention of committing a breach of telecommunication secrecy or eavesdropping, shall be sentenced for preparation of such a crime. In the PDA, the rules concerning pre-emptive remedies focus on a duty for certain persons to notify the relevant supervisory authority before processing the personal data.[28] If the personal data is characterized as "particularly sensitive", the notification must be made at least three weeks prior to processing.[29]

4.2 Are "gagging orders" or "super injunctions" as known in the UK known under the legal system of Sweden? Describe briefly their main characteristics.

These types of decisions fall within each state's margin of appreciation. In Sweden, no such order or injunction has yet been implemented in national law.

[28] Such persons are the ones who are responsible for the purpose of the usage of personal data, see Article 36. Exceptions from this rule are stated in Article 37, and in the Personal Data Regulation Article 3-7. The relevant supervisory authority concerning data protection cases is the Data Inspection Authority.

[29] The PDA, Article 41.

4.3 Are there other post-disclosure remedies, such as for example damage claims, rectification claims, right of answer. Describe shortly.

In Swedish law, economic compensation and criminal penalty are the most common remedies against violation of privacy rights. Such remedies are stipulated in a various of laws:

a. Economic compensation and criminal penalty according to PDA.

b. Criminal penalty according to the Penal Code.

c. Economic compensation and criminal penalty according to the Swedish constitution.[30]

d. Economic compensation according to the Tort Liability Act.

e. Economic compensation for breach of the ECHR.[31]

f. Economic compensation and criminal penalty according to the Act on Names and Pictures in Advertising. Under this act, the mean which has been used in order to advertise the name or picture can, in some cases, be replaced or destructed.

4.4 In the case of damages, how are they calculated?

For damages emerging from privacy rights cases, the calculation is often based on a fairness opinion. Due to the fact that violation of personal integrity in general does not lead to pure economic damages, the calculation is discretionary and made on a case-by-case basis. Nevertheless, in situations where violations of privacy rights have caused economic damages, for instance loss of income, the victim shall be fully compensated.[32]

4.5 In case of disclosure of private information, who can be held liable for damages, especially online?

The person who discloses private information in private capacity and therefore violates a person's privacy rights, is the one held liable for damages. If the person acts as an employee, the employer is liable according to the principle of vicarious liability.[33] However, different rules apply for offences against the freedom of the press and the freedom of expression (as further described in Section 2.3.2 above) where the responsible editor primarily is held liable – not the writer.

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[30] In this respect, the Swedish constitution means the FPA and the FFE. Regarding the Instrument of Government, one other important fundamental law of the Swedish constitution, it is unclear whether compensation can be imposed for violation of privacy rights.

[31] See the Swedish Supreme Court case, NJA 2005 s. 462 ("Lundgren Case"), where the court held that violations of the ECHR may result in damages for the state against the individual, even without explicit legal support. Compensation for breach of the ECHR can only be imposed if the victim has not been compensated according to another law.

[32] According to the Tort Liability Act (Chapter 2, Art. 2), the violation must be regarded as a criminal offence in order to incur compensable economic damages.

[33] In Swedish, this is called "principalansvar". The liability is stated in the Tort Liability Act, Chapter 3. The employee is only legally responsible for damages in "exceptional" circumstances, Chapter 4, Article 1.

Individuals, companies, organizations and authorities can apply for a special publication authorization for their databases or websites, which gives them the same constitutional protection for freedom of expression as the media normally protected by the FPA and FFE have.[34] This means that people, who write insulting texts on such websites, cannot be disclosed and punished. Instead, it is the publisher who is responsible for what is published.[35]

4.6 Are there special defences to a cause of action for information disclosed by the press/media?

Yes, publication of personal data for journalistic purposes is exempted from the prohibitions in the PDA.[36] This exclusion applies even if the publication can be perceived as offensive to a number of individuals. The exception for journalistic purposes does not only cover press/media, but also individuals who want to inform, criticize and discuss.[37]

With regard to media, a comprehensive protection regarding freedom of expression has also been given in the FPA and FFE, as further described in Section 2.3.2 above.

However, the exceptions set forth herein do not protect certain acts, such as slander as set forth in the Swedish Penal Code (Chapter 5, Art. 1) and the FPA/FFE (Chapter 7, Art. 4, para 14/Chapter 5).

4.6.1 As part of your answer please explain what range of news/information is covered by the definitions in press/media?

A wide range of information is covered by the exception mentioned above. For example, in the preparatory works of the PDA, the legislator exemplifies what is meant by the notion of journalistic purposes. For instance, the composing of a play for public performance is seen as having such a purpose. The same is said about online journalistic opinions which cannot be read outside the Internet. In a precedent from the Swedish Supreme Court, NJA 2001 s. 409 (the "Ramsbro Case"), the Court held that the intention of using the term "journalistic purposes" is to emphasize the importance of a free dissemination of information on issues having importance to the public. Moreover, the court stated that a journalistic purpose aims to inform, criticize and debate on social issues important to the public. If there is such an intention with an activity, it can thus constitute a journalistic activity and enjoy the special protection given to such activities.

[34] See section 4.6 below.

[35] In order to get a publication authorization, the database cannot be modified by anyone else than the editorial staff. Websites containing unmoderated discussion forums, article forums and guest books are not covered by the constitutional protection since they can be modified by other than the editorial staff.

[36] However, the rules regarding responsibility to take appropriate technical and organizational measures to protect processed personal data are applicable on journalists.

[37] See Article 7 of the PDA.

4.6.2 Is there a specific protection offered to informants/sources?

As briefly mentioned in Section 2.3.2 above, there is indeed specific protection for informants/sources in both the FPA and the FFE. Anyone who anonymously wants to disclose certain information to the media, has the right to obtain source protection.[38] This also applies to employees in the public sector. Authorities must not initiate investigations regarding the source that provided the information. There are, however, several exceptions to this protection. For instance, protection is not given to sources who have agreed to disclosure of their identity or if a crime relating to espionage, rebellion or threat of national security has been committed.

4.7 Are the principles described in your answers above also applicable to the online world? Is there any specific case-law in Sweden relating to social media, and if so, please summarize this?

In principle, the legislator does not make any difference between online violations and other violations. Therefore, the principles above are generally applicable also to the online world.

A recent case that illustrates how violation of privacy rights on social media has been dealt with in Sweden is the so called "Instagram Case", in which two teenage girls were sentenced for gross slander after having published grossly offensive information about numerous people combined with pictures on the social network Instagram.[39]

4.8 Are there specific remedies against disclosure of information that (could) damage an individual's reputation (such as slander or libel)? Describe these remedies briefly

In Sweden, specific remedies against slander and libel are stipulated in Chapter 5 of the Swedish Penal Code, which regulates crimes related to defamations. According to Article 1, a person who "*points out someone as being a criminal or as having a reprehensible way of living or otherwise furnishes information intended to cause exposure to the disrespect of others*", shall be sentenced for slander. However, an action may not be sanctioned if the accused person was duty-bound to express the information or if the furnishing of information otherwise was justifiable.[40] An action can be regarded as gross slander depending on the scope of dissemination or if it otherwise was intended to cause serious damage.[41]

Regarding the remedy against libel, it is stated in Article 3 in the same chapter of the Penal Code, that a person "*who vilifies another by an insulting epithet or accusation or by other*

[38] The FPA, Chapter 3, Art. 3, and the FFE, Chapter 2, Art. 3.

[39] The District Court of Gothenburg, case B 705-13.

[40] An action can be seen as defensible if the potential offender shows that the information was true or if he or she has reasonable grounds for it.

[41] This was the case in the Supreme Court case NJA 1992 s. 594, where a sexual intercourse was filmed and subsequently shown several times to different people. Similar violations took place in the so called "Instagram Case", see Section 4.7 above.

infamous conduct towards him", shall be sentenced for libel. This is seen as a less serious offence than slander. Notably, the Swedish Penal Code also comprises a remedy against disclosure of information that damages a deceased person's reputation. [42]

4.9 Forum and applicable law

4.9.1 Describe shortly what rules exist in Sweden for the determination of the forum and applicable law

The rules on forum are to be found in the Swedish Code of Judicial Procedure. Pursuant to Chapter 19, Art. 1, thereof, the competent court concerning criminal proceedings is the court for the place where the offence was committed.[43] In Chapter 22, it is further stipulated that criminal proceedings can be combined with civil claims for damages, for instance damages as stated by the Swedish Tort Liability Act.

The rules on applicable law concerning criminal offences are stated in the Swedish Penal Code, Chapter 2. Crimes committed in Sweden shall be determined in accordance with Swedish law and by a Swedish court. The same principle applies when it is uncertain where the crime was committed but grounds exist for assuming that it was committed within the Swedish jurisdiction. Moreover, crimes committed outside the state shall be adjudged according to Swedish law and by a Swedish court if the crime has been committed by a Swedish citizen or by an alien not domiciled in Sweden who, after committing the crime, became a Swedish citizen. The same principle is applicable when the alien has acquired domicile in Sweden or is a Danish, Finnish, Icelandic or Norwegian citizen and is present in Sweden. Lastly, other aliens, who are present in Sweden, shall be subject to Swedish law and be judged by a Swedish court if the particular crime can result in imprisonment for more than six months under Swedish law.

Regarding civil cases, it is stipulated in Chapter 10 of the Swedish Code of Judicial Procedure that the competent court in such cases is, generally, the one located in the defendant's domicile. If the residence is unknown, the defendant may be sued where he is sojourning. In situations where the defendant is a Swedish citizen and he is sojourning outside the country or at an unknown place, he may be sued at the place within the country where he had his last domicile or sojourn. Additionally, special fora such as forum delicti Chapter 10, Art.8 of the Swedish Code of Judicial Procedure may also apply in some situations.

Swedish law will as a general rule apply if an act occurs within Sweden or has effects there.

4.9.2 Are there specific rules for breaches caused online (when the information is accessible from different jurisdictions)?

No, there are no specific rules for such breaches. Hence, online-violations are not treated in a different way than other violations.

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[42] See the Swedish Penal Code, Chapter 5, Art. 4. The action must be offensive to the survivors or be regarded as disturbing the peace, to which the deceased should be entitled.

[43] The criminal offence is considered to have been committed at the place where the criminal act was done.

4.10 From your experience, what reforms should be made to the legal system of your country to better protect individual privacy?

In our view, Swedish law provides a relatively comprehensive protection against violation of individual privacy.[44] However, there are always improvements that can be made. For example, the legislator could clarify if compensation can be awarded for breach of privacy rights under the Instrument of Government.[45]

Furthermore, there are remedies in other jurisdictions that could be considered. Gag orders and super injunctions are examples of such remedies. The special feature of privacy rights is that these rights tend to weaken as the internet and online world constantly develop. Today's technology has made it possible to disseminate offensive information, such as images and video clips, to a much greater extent than before. It is it crucial for national and international legislation to meet this challenge, in order to prevent the internet from being a platform where privacy rights can be violated both frequently and easily.

The Swedish government has quite recently appointed a committee which will identify and analyze risks for intrusions in privacy in connection with information technology. The outcome of this examination remains to be seen, as the committee's report is not scheduled to become public until December 2016.

5. Interplay between data protection rules and privacy rights

5.1 Summarize how data protection law in your jurisdiction does protect privacy or other personal data being used in online media

As mentioned in Section 1 above, the Swedish rules on data protection are set forth in the PDA. The act aims to protect people from having their privacy violated by the processing of personal data. Personal data is defined as "*all kinds of information that directly or indirectly may be attributable to a natural person who is alive*". The PDA applies to the processing of personal data that, wholly or partly, is automated.[46] The PDA is technology neutral and therefore applies to online media as well as other media.

Personal data may only be processed if it is legal under the PDA and the processor adhere to the processing rules therein.

The relevant rules for personal data depend on how the data is structured. If it is structured in a database or in another type of register, the data is considered to be structured. If the data, on the other hand, is provided in a running text or an email, it is considered unstructured. For structured processing of personal data, there are more rigorous rules than for unstructured data.

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[44] The protection has become stronger due to amendments in the Penal Code during the past years. For example, stalking and abusive photographing are now seen as criminal offences under Swedish law.

[45] The issue has been raised in footnote 32.

[46] The definition of "processing" is wide and includes collection, recording, storing, processing and distribution of information.

Article 13 in the PDA prohibits the usage of so called "sensitive personal data".[47] The definition of sensitive personal data is information that discloses race, ethnicity, religion, political views, trade-union membership, philosophical beliefs, sexuality or health. A couple of exceptions are listed in Articles 15 through 19, which accept the usage of sensitive personal data in particular cases. For instance, usage of such data is permitted if the affected person gives his or her consent to the usage. In case of violation of Article 13, liability for damages and criminal penalties might be imposed, according to Article 48 and 49 of the PDA.

Moreover, if a website includes cookies the user must be informed about and accept use (opt-in) of cookies. For the time being, it is unclear if it is sufficient with so called informed consent, here meaning that the user is informed of the cookies and continues to use the website without taking the steps to stop storage of cookies.

5.2 Is there an effective right of opposition of collection of data?

As already mentioned in Section 5.1 above, personal data may only be processed if it is legal under the PDA and the processor adhere to the processing rules therein.

As a general rule, all processing of personal data requires consent from the registered person. Consequently, an opt-in solution apply. However, even without consent processing may be allowed according to specific legislative provisions in the PDA, e.g. if the collection of personal data is necessary to fulfil an agreement or a request of a registered person as well as for purposes that concern a legitimate interest of the processor and the interest of processing is of greater weight than the interest of the registered person in protection against violation of personal integrity.

All in all it may be concluded that an effective right of opposition of collection of data exists.

Nonetheless, in the case of suspected violation of the PDA, one may bring a complaint to the Swedish Data Protection Authority.[48] The authority can, in its turn, initiate an investigation regarding the matter in order to determine whether the PDA has been violated.

Moreover, a person who has got his personal data registered or processed has a right to request the processor to cease with the processing in question. This can be done orally or in writing. The processor must then immediately investigate whether the remarks are justified and, if that is the case, correct or delete the specific personal information.[49]

[47] The article is applicable to structured data.

[48] The Data Protection Authority is the Swedish supervisory authority regarding personal data issues.

[49] The PDA Art. 28.

6. Right to be forgotten

6.1 Is there a statutory or case-law based "right to be forgotten" in Sweden?

If we define the "right to be forgotten" as the right for a data subject to ask for his or her personal data to be erased by the personal data controller under certain conditions, there does indeed exist such a right under the PDA. The principles underpinning such "right to be forgotten" are set forth in Article 12 and 14 of the Data Protection Directive, which has been implemented as Swedish statutory law through the PDA. However, if the "right to be forgotten" would be defined as something more specific or extensive, for example a right to be forgotten in a digital environment, there is no statutory or case-law based right in Sweden, over and above what follows from the Data Protection Directive and the PDA.

Under Swedish law, each data controller must, upon the request of a registered person, immediately delete, rectify or block personal data that have not been lawfully processed (including such data that is erroneous). The controller shall also notify third parties to whom the data has been disclosed about the measures taken, if the registered person so requests or if such notification would prevent substantial damage or inconvenience for the registered person. However, no such notification is needed if it proves impossible or would involve a disproportionate effort.[50]

6.2 Is there relevant case law in your jurisdiction regarding the "right to be forgotten" and/or are there other guidelines for a successful claim under the "right to be forgotten"?

In all, there are only four published cases from Swedish courts which concerns the "right to be forgotten", as it has been defined in Section 6.1 above: three cases from the Supreme Administrative Court, and one from the Göta Court of Appeal. The three cases from the Supreme Administrative Court relates to the obligation for a Swedish Authority (the Swedish Enforcement Agency and the Swedish Tax Agency, respectively) to rectify certain data in their databases.[51] The case from the Göta Court of Appeal concerns, inter alia, the question whether the Swedish Government was liable for damages for having failed to rectify certain personal data set forth in the grounds for a decision made by a County Administrative Court.[52]

As a starting point for their legal reasoning, the courts refers to certain fundamental requirements set forth in the PDA, i.e. that the controller of personal data shall ensure that (a) personal data is only processed if it is lawful, (b) the personal data that is processed is adequate and relevant for the purposes of the processing in question, (c) no more personal data is processed than what is necessary having regard to the purposes of the processing, and (d) the personal data that is processed is correct and, if necessary, up-to-date. After having assessed the circumstances of the case in light of these criteria, the courts in all four cases found that the data processed by the

[50] The PDA Art. 28.

[51] The Supreme Administrative Court, RÅ 2006 ref. 86 (I) and (II) and RÅ 2006 ref. 13.

[52] Göta Court of Appeal, RH 2008:87.

relevant authority were correct (both factually and from the perspective of the purposes of the processing), that the processing had been made in accordance with the applicable legislation and, consequently, that the plaintiffs' claims to have the data corrected should not be allowed. In the case from Göta Court of Appeal, the court therefore also found that no damages were justified.

To date, there are no general guidelines published by the supervisory authority, the Swedish Data Protection Authority, solely concerning how to make a successful claim under the "right to be forgotten". There is, however, rather extensive information concerning the rights of registered persons on the authority's website. [53]

6.3 Did the view on the "right to be forgotten" change in Sweden due to the European Court of Justice Case in Google Spain v. AEPD and Gonzáles (C-131/12)? Is there any case law arising from this decision in Sweden?

As in many other countries, the ruling of the Court of Justice in Case C-131/12, *Google Spain v. AEPD and Gonzáles* (the "**Google Spain Case**"), triggered public debate. Representatives from the Swedish Data Protection Authority, have stated that the ruling is in line with current legislation, while certain other experts in the field found the ruling surprising. Critics are saying that the Court of Justice did not, to a sufficient extent, take the protection of the freedom of expression into account, and that the ruling may have consequences that are difficult to assess at this point in time.

It is not possible to give a clear answer on whether the view in Sweden on "the right to be forgotten" has changed due to the Google Spain Case, but it is fair to say that it has been a topic for discussion and that it most likely will have an effect on this field of law. The Swedish Data Protection Authority has to this date received a number of complaints against Google, based on the allegation that Google has not complied with the registered person's requests to have the data erased. According to information which we have received, the Swedish Data Protection Authority is also considering whether to initiate supervision with regard to this specific matter. It remains to be seen what the scope of such supervision will be.

To this date, there is no case law which is can be said to have arisen out of the Google Spain Case. It has, however, come to our attention that a claim has recently been filed at the District Court of Stockholm which relates to the ruling in the Google Spain Case. According to the information we have obtained, the claimant in this matter had unsuccessfully requested that Google should remove certain search results which linked to personal information related to the claimant on a web forum. When Google refused to comply with the claimant's request, he decided to initiate a court process. Unfortunately, we do not have any information on the status of the case, but we can assume that it will be some time before Sweden has its first ruling arising from the Google Spain Case.

[53] www.datainspektionen.se (to a certain extent, information is also provided on other languages than Swedish, see http://www.datainspektionen.se/other-languages/).