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Parliamentary Control of the Government and the possibility to dissolve Parliament: the case of Sweden

The essay provides a general survey of the legal possibilities the Swedish Parliament can exercise its control over the Government. Several constitutional ways, such as the vote of no-confidence or the control by the Ombudsman, are presented and illustrated by examples of the arena of politics. Thereby, the author gives an introduction not only to the mere facts of the Swedish constitution concerning the governmental accountability in relation to parliament, but also his assessment of the (political) effect and results of the mentioned ways of control.

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1 I. INTRODUCTION: GOVERNMENTAL ACCOUNTABILITY IN RELATION TO PARLIAMENT

The basic rule in the Swedish constitution is that the government is accountable or responsible as a whole, or as a collective as it is sometimes expressed, for its actions. As will be explained below, the individual responsibility and accountability is legally and formally limited (e.g. Instrument of Government, IG, chapter 7, article 3 and chapter 11, article 7). Nevertheless, such accountability may be established, since the real scope of action of the individual minister is undoubtedly greater than those rules do indicate.¹ Individual ministers may of course also be held accountable for their political statements, comments, points of view etc, which may set the more specified rules on their accountability into motion. Thus, an individual accountability for ministers before the Parliament does exist, as follows clearly from the rules on the parliamentary vote of no-confidence.

² Except for the strictly legal accountability mentioned above, the ministers are accountable only to the Parliament, whereas the civil servants are not, as may have been expected, legally accountable to the Parliament or the Government. Instead, they may be subject to the control conducted by the Ombudsman (cfr IG chapter 12, article 6), an original Swedish invention which is however legally speaking not extremely forceful.² On the other hand, the civil servants have a full legal responsibility for their actions and may be prosecuted at any time for any irregularities conducted within their professional activities. In other words, they have no immunity at all. Also the general transparency within the public administration and the accessibility of documents is likely to contribute to the supervision of their activities, also from the media.

³ Legally speaking, the collective accountability means, as stated above, that the government as a whole is legally accountable and responsible for the Government's decisions, which are made at meetings where at least five ministers must be present (IG chapter 7, article 4). Obviously, illegalities or other irregularities are extremely rare in those kinds of decisions, but the only possibility to avoid such accountability is for the individual minister to have his or her dissenting opinion entered into the record from the Government meeting (IG 7:6). Should that actually happen – which is rare but not

¹ This is also underlined in one of the leading constitutional comments, E. Holmberg/N. Stjernquist, *Vår författning*, 13th ed., Stockholm 2003 p. 132.

² Originally, in the 18th century when this institution was founded or in 1809 when it was given its current features, it was considered very important in terms of protecting the rights of the citizens against the public administration, but today it is more or less restricted to criticizing individual mistakes by public servants in an annual report.

unique – the dissenting minister will not be held legally accountable for the decision. In the eyes of the public, he or she will probably also avoid political responsibility (but is on the other hand likely to see his or her influence within the government reduced).

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- 4 What could be further mentioned, however, is the unclear constitutional situation concerning the co-operation between the Social Democratic Government and two supporting parties, the Left and the Green Party, that took place from 1998 until 2006. The latter ones did then not form part of the Government and were thus formally not accountable for its decisions, but at the same time they did have advisors working in some Ministries and major political decisions, including budgetary ones, were made after negotiations between the Government and those parties. As mentioned above, this state of affairs was increasingly criticised for the very fact that it undermined political accountability in the traditional sense.
- 5 Furthermore, both decisions in relation to the budget and other political decisions are subject to *parliamentary control*. In fact, a special chapter in the IG, chapter 12, is devoted to this topic. As will be explained below, the possibility to declare a lack of confidence in a Minister is probably the most important part of the instruments at the Parliament's disposal in this respect (IG chapter 12, article 4). Apart from that, any member of the Riksdag may submit an interpellation or put a question to a minister on any matter concerning the minister's performance of his official duties (12:5). More detailed rules on those institutes are to be found in chapter 6 of the Riksdag Act. A permission from the Speaker is necessary in order for the interpellation to be addressed to the Minister³, who is formally not obliged to answer. However, should an answer not be given within two weeks, an explanation for this is required.
- 6 The role of the Constitutional Committee, which is regulated in chapter 12, articles 1-2, is very important in this respect. The rules on the possibility for parliamentary committees to call or summon civil servants to questioning, in order to examine whether the government or individual ministers may have acted incorrectly in relation to public authorities or otherwise, are to be found in chapter 4, article 11 of the Riksdag Act.⁴ Such meetings, where civil servants are asked to provide information, may be open to the public or not depending on the circumstances (Riksdag Act 4:13). It is however only a matter of providing information. Such persons are for instance never heard under oath. Civil servants working for authorities under the Government – i.e. the vast majority of the public bodies, as explained above – who doubt the wisdom of passing information to one of the different parliamentary committees, of which there are totally sixteen, may refer the request from the committee to the Government for a final decision on whether to occur before the committee or not (Riksdag Act 4:11).
- 7 Debates in the chamber of the Swedish Parliament are normally open to the public, as mentioned above. Apart from debates and "hearings" within the Committees, the Parliament may organise special hearings with experts. Such a hearing on the increased scope of separation of power in the traditional sense and the role of the courts was e.g. organised by the Constitutional Committee in March 2000 and, interestingly enough, the issue of accountability and control was discussed in the same way through a general discussion at a public hearing where no decisions were made in November 2005. Also the new Committee drafting constitutional amendments (*Grundlagsutredningen*), which is supposed to deliver proposals before the election in 2010, has organised two similar events in March and April 2005, as well as a number of seminars on constitu-

³ Should the Speaker and the majority of the Riksdag not agree on whether the question may be put forward, the Constitutional Committee will have to decide the issue.

⁴ Those rules were enacted after the above-mentioned affair in 1988 concerning a private person, Mr Ebbe Carlsson, who had initiated his own investigations into the murder of the former PM and was supported in his actions by the Minister of Justice. The majority of the Constitutional Committee then found that open hearings could take place and that also civil servants should be called to those.

tional issues.⁵

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8 II. VOTES ON LACK OF CONFIDENCE

The other ways of exercising parliamentary control are through votes on lack of confidence and the control exercised by the Constitutional Committee. According to IG chapter 12, article 4, the Riksdag may at any time declare that a minister no longer enjoys its confidence, though such a declaration requires support of more than half the total membership of the Riksdag (i.e. 175 members). The motion calling for such a declaration must however be supported by at least one tenth of its members (i.e. 35). Such questions against individual members have been raised at various times, e.g. 1985 when the Foreign Minister Mr. Bodström was accused of not supporting an official Swedish position against the Soviet Union. However, such a motion has never been supported by the majority, but when the Minister of Justice Ms Leijon resigned in 1988, this was a direct consequence of the fact that the majority, consisting of right-wing parties and the Communist Party, had declared its will to vote against her.

9 The same procedure applies in relation to the PM, but as mentioned above, the difference is that if he or she should resign, the other ministers must also be discharged by the Speaker (IG 6:7). This is a clear case of dissolution, then, but could also be described as a kind of "collective dismissal". However, it must be noted that, in a situation where the Parliament has declared its lack of confidence in a minister – the PM or another one – he or she does actually not have to resign if the Government may call for an extraordinary election within one week from the declaration. Such elections may never be called within three months from the date when a newly elected Riksdag is convened (IG chapter 3, article 4), but otherwise this possibility remains open for the Government in such a situation.⁶ However, until now, such extra elections, when the Parliament has thus been dissolved, have in fact never taken place. There is thus no strong tradition in Sweden of dissolving the Parliament.

10 As mentioned above, the PM may also in other situations dismiss Ministers at any time. In fact, the former PM Mr Persson did from March 1996, when he took office, until September 2006 dispose over a total of 51 Ministers, although only some twenty are sitting in the Government simultaneously. This also reflects the increasingly strong position of the PM, which is now starting to be criticised in the doctrine and even sometimes described as "presidential" in its nature.

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11 It must also be mentioned that every year, the Constitutional Committee exercises an examination of the ministers' individual performance of their official duties, as well as the handling of Government business in general. The Committee writes an annual report to the Parliament on its observations, which is quite often a matter of political controversy. However, the party representation in the various parliamentary committees, including this one, corresponds to the situation in the Parliament as a whole, which makes open criticism against the Government somewhat less likely and unusual. The President of the Constitutional Committee does however always represent the opposition. And should the majority of the Committee reach the conclusion that criticism against a minister is required, it will state so in its report (a so-called "*prickning*", which may be politically sensitive but lacks formal legal significance).

⁵ The speeches of the two conferences in March and April 2005 are published in an unnumbered SOU 2005, called *Behöver demokratin nya spelregler?* The content of the 37 speeches made there are commented by Nergelius in the article *Constitutionalism in Change – A Short Essay on (the Lack of) Contemporary Perspectives in the Swedish Debate*, in Nergelius/O. Zetterquist (ed.), *Law, State and Democracy in Multi-Level Governance*, Stockholm 2006 (Stockholm Studies in Democratic Theory) p. 46-57.

⁶ In June 1988, when Ms Leijon was forced to resign, this option was not interesting for the Government should she have chosen to face the vote of confidence, since an election was going to take place in September that year anyway. In fact, the government has never had to use this possibility.

- 12 In order for the Committee to fulfil its duties, it is entitled to have access to the records of decisions taken in Government matters and all the documents pertaining to such matters. It may also act upon the observations of other committees.⁷
- 13 In relation not least to EU matters, also the birth of the new National Audit Office, which is since 2002 regulated in IG chapter 12, article 7, is of great interest. This new public authority resides under the Parliament and has replaced both the old National Audit Office, which worked under the Government, and the so-called Parliamentary Accountants, who were politicians and acting MP's!⁸
- 14 To summarise, vote on lack of confidence for a certain minister and the annual reports of the Constitutional Committee are the two main instruments for the Swedish Parliament to exercise its control over the Government. The government may dissolve the Parliament and a vote on lack of confidence in a minister may lead to or provoke a similar result, but dissolution of the Parliament has not been an important instrument as such in Swedish history or constitutional tradition. Further reform proposals are from time to time suggested in the debate. Thus, the topic is a "living" one within the doctrine.⁹ However, it should be noted that Grundlagsutredningen, the newly appointed committee dealing with constitutional reform, has not been instructed to look into this particular issue.¹⁰

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15 III. FURTHER REMARKS ON PARLIAMENTARY CONTROL

It should also be noted that the system of political accountability for the government was vividly discussed in the first week of December 2005, as a result of the report from the special Commission on the responsibility for mishandling of the consequences of the *Tsunami* in south-east Asia on 26 December 2004, in which some 600 Swedish citizens died.¹¹ The report was clear in placing the main responsibility for things that had not functioned during and after the catastrophe on the government and the Prime Minister in particular. The main criticism was that a national alert system in times of catastrophes and urgent crisis had never been installed. Thus, the public authorities had no real instructions and simply did not know exactly how to act in this totally unexpected and unforeseen situation.

- 16 In the aftermath of the report, it was much discussed whether the opposition parties should have called for a vote on lack of confidence against the Prime Minister, in line with IG chapter 12, article 4, and thus against the whole government. Finally, on the 6th December 2005, they decided not to do so but to wait instead for the inquiry that the Constitutional Committee was going to start. But in view of the very sharp criticism already launched in the report, together with the previous situations e.g. in 1980, 1985 or 1996, when such votes have been called for what seems to be less severe errors, this decision does not seem to be entirely logical. It shall thus be viewed in light of the fact that a new Parliamentary election will take place in September 2006, which means that the opposition has had an obvious political interest in keeping the issue "alive" as much as possible until then, rather than seeing it formally settled by such a vote almost a year in advance. In particular, this was the case since it seemed clear that the Government's supporting parties, i.e. the Left and the Green Party, would not have

⁷ Those rules on the Constitutional Committee are to be found in chapter 12, articles 1-2 IG, as mentioned above.

⁸ The new agency is called, in Swedish, *Riksrevisionen*. It has thus replaced both the former bodies Riksrevisionsverket and Riksdagens revisorer.

⁹ See, among others, J. Höök/O. Lundin, *Kontroll och ansvarsutkrävande i svensk offentlig förvaltning*, Nordiskt Administrativt Tidsskrift 2001 p. 117-128 and J. Ekroth, *Några reflektioner angående Konstitutionsutskottets granskning av regeringen*, in N. Berggren/N. Karlson/J. Nergelius (ed.), *Makt utan motvikt – Om demokrati och konstitutionalism*, Stockholm 1999 p. 189-235. Among political scientists, see among others L. Lewin, *Bråka inte! – Om vår tids demokratisyn*, Stockholm 1999.

¹⁰ Its instructions are to be found in *Kommittédirektiv 2004:96*.

¹¹ The full title of the report is *Sverige och tsunamin – granskning och förslag*, SOU 2005:104.

voted against the Prime Minister should such a vote have taken place. Still, from a legal and constitutional point of view, the decision not to ask for such a vote here was hardly justified.

- 17 Instead, the Constitutional Committee of the Parliament came to examine the behaviour of the Government during and after the Tsunami quite thoroughly, as a part of its regular supervision of the Government. In fact, the opposition parties placed some lawyers and other MP's who are legal experts within the Committee for those particular hearings, which somehow seemed to be intended to underline their legal and not exclusively political nature. The findings of the Committee are to be found in the report KU 2005/06:8¹², presented in March 2006, in which sharp formal criticism was raised against a number of ministers, including the Prime Minister and the Foreign Minister. Thus, a "prickning" did in fact occur here. However, the Foreign Minister, Ms Freivalds, choose to resign in March 2006 before the report was published, allegedly for mishandling of issues related to the Danish so-called *Muhammed crisis* but in reality acting as a scapegoat for the whole government after the tsunami event. After that, the opposition parties decided not to raise a vote of confidence against the PM or any other minister. In 2007, further examinations concerning the actions of the former government during this crisis have been carried out.

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- 18 Without criticising the existing Swedish rules in this field as such, which would be futile when they have actually existed for quite a long time and will obviously not be subject to revision for yet quite long— partly because they are considered to be a part of the existing constitutional tradition – a few distinctive features, that are in fact slightly problematic, may after all be identified.
- 19 One such feature is the important but quite puzzling role of the Constitutional Committee, KU. As mentioned above, the parliamentary examination of how the government has conducted its activities in the past year is done mainly through the works of this body (chapter 12, article 2 IG). As far as the political examination is concerned, the main problem here seems to be that the party representation within the committee is the same as for the parliament as a whole, a fact which reduces the possibility of the opposition to criticise the government for mis-management of certain issues. But even more puzzling, perhaps, is the tendency clearly shown through the hearings on the Tsunami aftermath, namely that the work of the Constitutional Committee also tends to be of a legal character. This is a kind of examination, then, the legal basis of which is unclear and does not follow clearly from the IG (where the rules in chapter 12, articles 1-2 do actually not distinguish between different kinds of control in this way). However, from the accountability point of view, it seems clear that the supervision exercised by the Constitutional Committee must above all be a political one (which does not exclude that clear violations of law, like the one made by Ms Leijon in 1988, may be subject to political criticism, since a minister who violates the law is not likely to be handling the job very well and may of course also make a political error, at the same time).
- 20 Another clear feature is of course the very strong emphasis on parliamentarianism and popular sovereignty within the whole Swedish constitutional system. From the accountability point of view, perhaps the absence of any control as such of the activities of the Parliament, the legislative branch, is the clearest example of this. "Parliamentary control" in the sense of chapter 12 IG does obviously only refer to the control exercised by the Parliament over the other branches of Government.
- 21 From a practical point of view, apart from the absence of a strong system of judicial review and the relatively weak general position of the courts, the judicial branch, this is perhaps most visible through the model of so-called "negative parliamentarianism" that

¹² The full official title of which is Granskning av regeringens krisberedskap och krishantering i samband med flodvågskatastrofen 2004, vol. 1-3, KU 2005/06:8.

is used when a new PM and thus a new government is being appointed. The fact that this can – and does in fact regularly – take place with the support of only a minority of the MP's does obviously lead to a tradition of weak governments. At the same time, another interesting feature or pattern, that Sweden seems to share with UK, is that a strong formal emphasis on parliamentarianism does actually lead to a situation where the government is the stronger actor, that regularly takes initiatives and has the ability to force the Parliament to obey its wishes. It seems clear that a strong parliamentarianism does not automatically lead to efficient modes of political accountability. On the contrary, a situation where the government is supported by a majority of the Parliament without actually comprising or representing parties that possess such a majority, may actually be described as the worst possible as far as political accountability is concerned.

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22 **IV. LITERATURE**¹³

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¹³ Generally speaking, the impact of the doctrine has been limited, in law in general and, in fact, within constitutional law in particular.