

## The Proposed Swedish Systems of Free Legal Assistance and of Compensation to Victims of Crime

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*Summary.* A project for a new system of *free legal aid* is considered in Sweden, and a bill was presented to the Riksdag in January 1972. Under the auspices of regional public authorities legal assistance will under the new scheme be provided by public law firms or lawyers in private practice. The costs involved will be wholly or partly financed out of public funds. Only persons with an annual income less than 12000 U.S. dollars will be beneficiaries of the system and have in principle themselves to make a contribution to the costs, in relation to income and economic status. The system will in principle be applicable in all legal matters whether or not the case is brought before a court, a tribunal or an administrative authority, but professional business activities are excluded from the scope of the system, and legal aid may be denied where the applicant's claim is manifestly ill-founded.

Since July 1971 a new system for *compensation for personal injury to victims of crime* is in force in Sweden. In principle, compensation will be paid only where the circumstances are socially and economically particularly distressing, and there is no guarantee, that full and adequate compensation will be paid. Only claims exceeding 60 U.S. dollars will be considered and amounts exceeding 10000 U.S. dollars will normally not be paid. Compensation for moral damage will be paid only in exceptional cases. The system is administered by the Ministry of Justice, and the total amount available during the first fiscal year is 200000 U.S. dollars.

*Zusammenfassung.* Die schwedische Regierung hat kürzlich dem Reichstag einen Gesetzesentwurf vorgelegt, der eine neue Ordnung der *freien Rechtshilfe* zum Gegenstand hat. Ein hauptsächliches Kennzeichen der freien Rechtshilfe ist, daß juristischer Beistand, der ganz oder teilweise aus öffentlichen Fonds finanziert wird, grundsätzlich gewährt werden soll, so oft er benötigt wird, und zwar ohne Rücksicht darauf, ob die betreffende Streitsache vor ein Gericht oder eine Verwaltungsbehörde gebracht wird oder nicht. Rechtshilfe wird nur den Personen zugänglich, deren Jahreseinkommen 12000 U.S. Dollar nicht übersteigt. Die Hilfe wird auf der Grundlage eines Gebührensystems gewährt, bei dem der Antragsteller seinerseits Beiträge zu den entstandenen Kosten zahlen soll. Die Höhe dieser Beiträge ist im Verhältnis zum Einkommen und allgemeiner wirtschaftlicher Lage des Antragstellers festzusetzen. Die gewährten Vergünstigungen werden darin bestehen, daß ein juristischer Berater zur Verfügung gestellt wird. Die Gebühren des Anwalts und die Kosten für Untersuchung, Beweisführung, Begutachtung usw. werden aus öffentlichen Fonds gezahlt werden, aber jeweils Gegenstand eines Beitrags sein, der festgesetzt und in Rechnung gestellt wird. Jede Person soll berechtigt sein, einen kurzen juristischen Rat zu einer festen Gebühr von 10 Dollar zu erhalten. In Strafprozessen wird die Rechtshilfe erhältlich sein, wenn das Jahreseinkommen etwa 4000 Dollar nicht übersteigt. Die geltenden Bestimmungen, die das Recht des Angeklagten auf einen öffentlichen Verteidiger betreffen, werden jedoch von der neuen Einrichtung nicht berührt werden.

Seit dem 1. Juli 1971 ist in Schweden eine *Entschädigung aus öffentlichen Fonds für Opfer von Verbrechen* vorgesehen. Der neue Plan ist als ein Bestandteil des Sozialschutz-Systems zu betrachten: Es gehört zur staatlichen Verantwortung, Maßnahmen für die Unterstützung von

Opfern durch Verbrechen nur in solchen Fällen zu ergreifen, in denen die Umstände sozial und finanziell besonders bedrückend sind. Es besteht keine Garantie dafür, daß eine volle Entschädigung oder überhaupt in allen Fällen eine Entschädigung gezahlt werden muß. Entschädigung für moralischen Schaden wird gewöhnlich nicht vergütet werden. Das Opfer muß beweisen, daß der erlittene Schaden auf einem Verbrechen beruht. Nicht erforderlich ist die Vorlegung eines gegen den Beschuldigten ergangenen Urteils, aber gewöhnlich wird das Opfer beweisen müssen, daß eine polizeiliche Untersuchung stattgefunden hat. Die Beweislast liegt beim Opfer. Für alle gezahlten Beträge wird dem Staat ein Regreßanspruch gegen den Rechtsbrecher zustehen. Entschädigungsanträge sind an das Justizministerium zu richten. Obwohl die neue Institution erst seit 1. Juli 1971 in Kraft ist, ist sie auch für Schäden anwendbar, die durch Delikte erfolgten, die nach dem 1. Januar 1971 begangen wurden.

*Key words:* Legal assistance, Swedish system — Victims of crime, compensation.

In Sweden as in many countries of a comparable social and economic structure a system of *free legal aid* has been in force for a long time. This system is, however, very limited in scope. Under an Act of 1919 a person whose income and assets are not sufficient to cover the costs of legal proceedings, to which he is a party, may upon a written application and at the court's discretion be granted the benefit of having the litigation costs paid out of public funds. In practice this system of "free litigation" is applied rather restrictively. It is made available only to persons of particularly limited financial resources. A person with a gross income exceeding 20000 Swedish kronor or 4100 U.S. dollars will normally not be granted the benefits of the system.

In addition to this system of free litigation certain public institutions for legal assistance, which are in principle operating in the same manner as private law firms, provide services in legal matters free of charge to persons of limited means. Most of these institutions are operated by the local authorities and not by the State.

The present situation has been strongly criticized in recent years, in particular since the great majority of the people cannot enjoy the benefits of the systems now in force. This in fact means that the fundamental principle of equality under and before the law cannot be maintained to a full extent. Persons other than the very poorest or the very richest are in reality prevented from safeguarding their legal rights by addressing themselves to the courts, and the situation is continuously deteriorating as the costs of litigation are rapidly increasing. Another shortcoming of the present system of free litigation is that it is not applicable to proceedings before the administrative authorities. Furthermore, the administration of the present systems of legal aid is split up on a great number of local or regional authorities and there is no central coordination. Under these circumstances the available resources cannot be used with a sufficient effectiveness.

A couple of years ago the Swedish Government started considering a radical and far-reaching reform in this field. A working party within the Ministry of Justice was entrusted with the task of reviewing the entire situation with a view to the setting up of a new system, under which the State would play a much more important role and legal assistance would be offered free of charge or at limited and reasonable costs on a much larger scale than to-day. The working group's report was submitted in the early spring of 1970 after the observations of

interested authorities, institutions and organizations had been collated and the proposals had been examined within the Ministry of Justice, a Government proposal for a new scheme was presented to the Riksdag in January 1972.

Before introducing the main elements of the new scheme as it is at present envisaged, I should like to refer to another important factor in this context, namely the widespread use in Sweden of private insurance providing protection against costs and losses resulting from legal disputes in which the holder of the insurance policy or a member of his family may be involved. This so-called "legal protection insurance" is to-day automatically included in practically all insurance policies issued to individuals and intended primarily to protect their private property (in Sweden generally called "home insurance"). This new and rapid development on the insurance market has, of course, improved the situation of a great number of people. But for various reasons private insurance cannot be considered to be a realistic alternative to direct intervention by the State within the frame-work of its social welfare-policy.

The new scheme as it has been outlined in the Bill is a uniform and integrated system of legal assistance, wholly or partially financed out of public funds. One principal aim has been to provide legal assistance whenever it is needed and regardless of whether the relevant issue is one which has been or is about to be brought before a court or tribunal or an administrative body or it is only a matter to be negotiated with a view to the amicable settlement of a dispute.

There are, however, a number of restrictions which delimit the scope of the new scheme. First of all, persons in a particularly advantageous economic situation are altogether excluded from the benefits of the system. Legal aid is granted on the basis of a fee system, pursuant to which the applicant himself will have to make contributions to the costs involved.

These contributions are to be fixed in relation to the applicant's income and economic situation at large, according to a special scale. At a given maximum income level, yet to be finally determined but tentatively fixed at approximately 12000 dollars a year, the contributions will amount to 100% of the costs and there will be no free aid at all.

Furthermore, where the relevant dispute or case arises out of the applicant's professional business activities, the system shall in principle not apply, unless special circumstances so warrant. Companies and other legal entities will not — with the exception of the legal entity which consists of a deceased person's estate — be beneficiaries of the system. But as among individuals the system will in principle be applied without discrimination.

Of some practical importance is a general exception which excludes assistance under the system in matters regarding taxation on the basis of a person's income-tax return.

It is, of course, important that a scheme of this kind should not be misused so that totally irrelevant or manifestly unwarranted claims can be pursued at the expense of the tax-payers. It is therefore suggested that the competent authorities shall be entitled to reject an application for free legal aid in cases where the applicant does not have a legitimate interest in having his case tried or investigated.

The benefits obtainable under the system will mainly consist in a competent legal adviser or attorney being at the applicant's disposal, whose fees as well as the normal and reasonable costs for investigation, evidence, expertise etc., including certain expenses or losses incurred by the applicant himself, will be paid out of public funds, subject, of course, to any contribution that may possibly have been determined and charged.

An interesting and not altogether unimportant element in the new scheme is that all and every one will, regardless of his economic situation, be entitled to obtain brief legal advice from a competent lawyer at the trifling cost of 10 dollars or 50 kronor. Even this amount can in special circumstances be reduced or dispensed with altogether.

For persons whose gross annual income does not exceed three times the so-called "basic amount", established under the terms of the Swedish social insurance system, which varies according to the changes in the average costs of living and which is at present 7100 kronor or roughly 1450 dollars, no contribution at all will be charged. This means that persons with an income below 4400 dollars a year will in principle obtain legal aid free of any charge. The amount is increased in cases where the applicant is under a legal obligation to support members of his family or to pay maintenance allowances to such persons.

The State will have no right of recourse against the beneficiaries of the system in regard to any sum paid out under the scheme.

The preceding remarks relate exclusively to legal assistance in civil or administrative matters. The present system of free litigation is in principle applicable also to criminal proceedings. In such proceedings, however, certain other forms of legal aid are also available. Regardless of his economic situation the defendant is entitled to have a public defender appointed by the court, except where the defendant is only charged with a minor offence and where, for this reason, he is considered not to be in need of legal assistance. The public defender's fees are determined by the court and are paid out of public funds. But if the defendant is convicted, he is in principle liable to reimburse these expenses. Furthermore, certain costs for witnesses and other evidence may be paid out of public funds, subject to reimbursement by the defendant in case he is convicted.

This system will in principle be retained and left unchanged under the new scheme. But in addition thereto free legal aid will be available in criminal cases under the same terms and conditions as in civil or administrative matters, subject, however, to the important restriction that the new system shall not be applicable where the defendant's annual income exceeds the afore-mentioned amount of 4400 dollars.

The administration of the new scheme will be entrusted to special regional State authorities, but it is intended that certain issues which require specific knowledge of the relevant facts of the case shall be left to be determined by the court or administrative authority seized of the applicant's case.

The regional authorities will exercise their functions under the supervision of a central organ, which will be responsible for coordination and which shall secure uniformity in the application of the system. It will act as a body of appeal with regard to the decisions of the regional authorities.

Legal advisers and attorneys will be appointed by the regional organs among lawyers engaged in private practice or employed by public law firms, established and operated by the State. An expansion of the sphere of State activity in this field is envisaged to such extent as is necessary to meet the increasing demands for legal assistance.

The total costs of the present system of free litigation and other public legal aid amounts to approximately 22 million kronor or 4.6 million dollars. It is expected that the new system will involve an overall expenditure of 35—40 million kronor or 7—8 million dollars per year.

I shall now turn to the question of *compensation to victims of crime*. The rapid increase in the crime rate in recent years has created serious social problems. It is particularly so with regard to offences involving violence against individuals. For the victims of such crimes the personal injuries inflicted on them do not only lead to pain and suffering, sometimes for long periods of time, but do also entail substantial economic losses and expenses. The social security system, although it is highly developed in Sweden, is in most cases clearly insufficient to compensate these losses. True enough, the culprit is liable under the rules of the law of torts to pay full compensation to his victim. But he is in most cases notoriously insolvent, and even if he holds a third party liability insurance, compensation cannot be obtained, since exemption clauses in insurance policies unexceptionally exclude acts of wilful misconduct from the coverage. Consequently the victim is left without any protection, unless he is himself holder of an accident insurance or a life insurance, or the new type of insurance which is specifically designed to afford protection in cases of this kind and which is to-day automatically included in what I have referred to above as home insurance policies. It is, however, obvious that, as a matter of principle, private insurance with which potential victims may choose to protect themselves, cannot be accepted as a final and conclusive solution to the present problem.

In recent years several motions have been made in the Riksdag for the institution of a compensation scheme under which damages should be awarded out of public funds to victims of crime. The question has been considered by the Government in connection with the preparation of a Bill on a new Tort Liability Act, a Bill which was presented to the Riksdag in February 1972. These considerations have led the Government to propose, even before the completion of the Bill and in connection with its presentation of the State budget for the fiscal year commencing on 1st July, 1971, the inauguration of a compensation scheme in this field.

The Government rejects the idea that the State, being responsible for the maintenance of law and order in the community, should assume civil liability under legal rules for damage of this kind. In its opinion, there is no legal or even moral justification for such liability. The Government's approach is rather that we are here faced with a social problem and that it is the responsibility of the State to take measures with a view to rendering relief to victims of crime in cases where the circumstances are particularly distressing from a social and economic point of view.

On the basis of these considerations the Government has decided to limit the coverage of the new scheme to personal injury. The basic approach to the problem as a social rather than a juridical one also explains a number of suggested re-

restrictions which make the system differ substantially from similar schemes which are in operation in other countries, notably in the United Kingdom.

Accordingly, there will be no guarantee under the new Swedish system that compensation is paid in all cases and the victims will normally not obtain "full and adequate compensation" in the ordinary sense of this concept. No compensation at all will be awarded where the claim is not in excess of 300 kronor, or approximately 60 dollars. Amounts over 50000 kronor or 10000 dollars will be paid only where very special circumstances so warrant, e.g. that the victim has been totally disabled. Compensation for moral damage will also be granted only in exceptional cases. As a general rule — and this also applies to established economic losses or expenses — the amount to be awarded will be the subject of a discretionary examination, in the course of which account will be taken of any sums of compensation obtained from the social insurance scheme or from private insurance. The victim's economic situation in general will likewise be an important factor.

Compensation will be paid only upon a written application. It will be a prerequisite for an application to be granted that the applicant shows that he has been the victim of a criminal offence, normally by presenting the reports from a police investigation, but he is not bound to pursue his case against the culprit before a court with a view to obtaining a judgment against him. The victim will naturally have to prove the amount of the damage he claims to have suffered. People of particularly modest means may obtain assistance in the necessary investigation procedure free of charge. The State will in principle have a right of recourse against the culprit for any sums of compensation paid out under the new scheme.

The compensation system thus envisaged will be administered by the Minister of Justice himself. Constitutionally the decisions will be taken by the King in Council, i.e. by the Government.

Any estimate of the financial resources needed to make a system of this kind operate effectively must necessarily be approximative. It has been envisaged that the system should in the beginning and awaiting the experience of an initial test period be applied rather restrictively. The total amount available during the first fiscal year has therefore been set at 1 million kronor (200000 dollars) only. This may seem an exceedingly small amount, but in relation to the size of the population the sum is in fact slightly higher than the amount made available in the first year of operation of the British system.

The new Swedish scheme has come into operation as from 1st July, 1971, but will be applicable to any injury suffered as a result of a crime committed after 1st January, 1971. The situation will certainly be reviewed in the future in the light of the experience gained during the first year. It is, however, too early to-day to predict whether there will be an increase in the amount available or whether any other amendments of the scheme will be made.

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