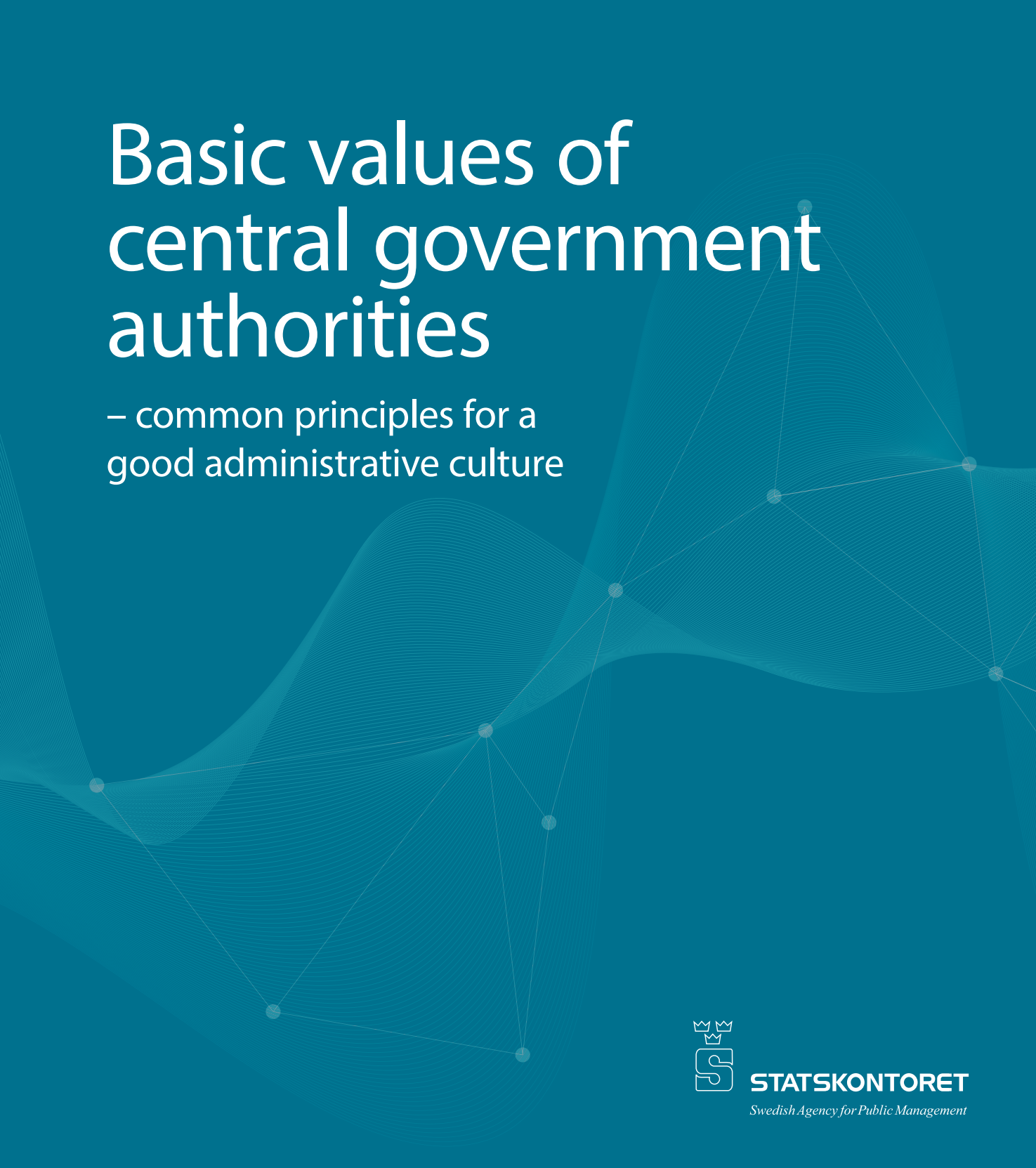
Basic values of central government authorities

– common principles for a good administrative culture



STATSKONTORET
Swedish Agency for Public Management

Good administrative culture in central government

The Swedish Agency for Public Management (Statskontoret) promotes and coordinates work for a good administrative culture in central government. Good administrative culture starts from the basic values for central government, and appropriate behaviour and attitudes inherent in this culture conform to these principles. Our work focuses on the importance of leadership and on what is inherent in the role of being a civil servant.

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Basic values of central government authorities – common principles for a good administrative culture

This publication gives you knowledge, as a central government employee, about the basic values of central government. The publication can be used for discussions and exercises on the fundamentals of what constitutes good administrative practice. It is aimed at all central government employees, but the text can also be relevant to you if you are working in a municipality, a region or for other public authorities.

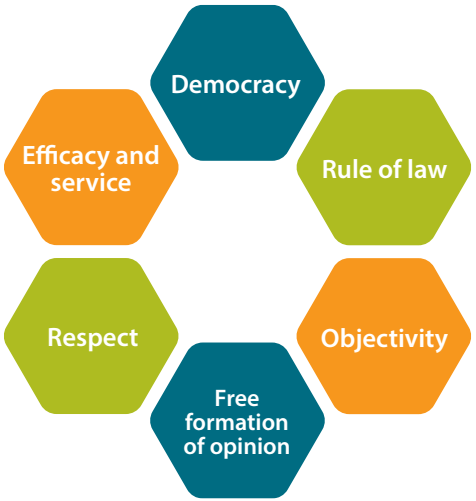
The publication presents some of the laws and rules you need to follow in your work. We describe the six principles that form the basic values of central government authorities, give examples and discuss behaviour and attitudes. We also show how government agencies can work to create conditions for a good administrative culture.

Contents

A common foundation for all central government employees

Constitutional law (in Sweden, known as fundamental laws), as well as other laws, set the boundaries for all central government activities. Together they express a number of principles that unite all central government employees, irrespective of what they work on and their professional role. As a central government employee, you must follow both these general rules and the rules that are specific to your authority's activities. These rules are intended to create an administration that is efficient, legally certain and free from corruption and the abuse of power. When you follow the rules, as a central government employee, and perform your tasks, you also contribute to public confidence in the administration.

There are four fundamental laws in Sweden:
the Instrument of Government, the Freedom of the Press Act, the Fundamental Law on Freedom of Expression and the Act of Succession.



The Instrument of Government is the foundation

The Instrument of Government (constitution) sets out the fundamental requirements for government authorities. The basic values of central government are based on the fundamental requirements in the Instrument of Government and consist of the six principles of *democracy, rule of law, objectivity, free formation of opinion, respect,* as well as *efficacy and service*. The principles are also fundamental tenets of other laws and ordinances.

The fundamentals of a good administrative culture

To create conditions for a good administrative culture that is democratic, efficient, law-abiding and free from corruption it is important that your authority really makes sure that all staff are aware of and understand the basic values of central government. In that work, it is important to discuss how the norms and cultures in its activities stand in relation to the six principles. These discussions help staff members to follow the applicable laws and rules and also to balance them against one another when needed.

Through active work of this kind, the authority creates the conditions for good administrative culture in its activities, i.e. a culture that is based on the basic values of central government and wherein behaviour and attitudes follow the principles. This is particularly important in the Swedish administration since it is decentralised. Government authorities and employees have a great responsibility for interpreting their mandates and tasks and shaping their activities. The principles in the basic values of central government and good administrative culture constitute the fundamental infrastructure needed for the whole system of autonomous agencies to function.

You can read more about this in the section *Creating conditions for a good administrative culture*.

Democracy

All public power in Sweden proceeds from the people.

Chapter 1, Section 1, first paragraph of the Instrument of Government

The Instrument of Government is the fundamental law that gives us the fundamental starting points for Swedish democracy and the role of the administration. In this section we focus on two points you need to be aware of regarding the principle of democracy. The first is that as a central government employee you are part of the chain of democratic governance and therefore work on behalf of the citizens of this country. The other is that you must promote democratic values when performing your duties.

The Instrument of Government gives us our starting point

The Instrument of Government sets out the starting points for the governance of Sweden. One central principle is that all public power proceeds from the people. Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage.

The Instrument of Government describes public institutions i.e., the institutions that are there to solve shared tasks in our society. The term public institutions means all public activities, for instance government authorities, municipalities, universities and courts. The public institutions must promote the ideals of democracy as guidelines in all sectors of society.

As a civil servant, you are part of the chain of democratic governance

Public administration is part of the chain of democratic governance. This chain of governance starts when citizens elect members of the Riksdag (the Swedish Parliament). A Government is then formed on the basis of the election result; its task is to govern the country. The Government implements the laws adopted by the Riksdag, but also has the power to introduce additional rules, called ordinances.

Central government agencies function autonomously, at the same time as they are subordinate to the Government. They must also follow all the laws adopted by the Riksdag. The Riksdag and the Government must not interfere in how government authorities act in particular cases. Their governance must fulfil certain formal requirements and be exercised through, for example, instructions in ordinances, appropriation directions and special directives from the Government. Informal signals are not sufficient.

Government authorities are part of a democratic system, since all public power proceeds from the people. As a central government employee, you are also part of the public institutions and the chain of democratic governance. Your role requires that you uphold and promote the principles laid down in our constitution. You are, quite simply, part of the structure of public power and you exercise public power through the decisions you are involved in making. You work on behalf of citizens and towards our common objectives. This distinguishes the role of a central government employee from that of a private employee.

The administration of justice by the courts has particular independence. Neither a public authority, nor the Riksdag, may determine how a court of law is to adjudicate an individual case.

Corresponding autonomy applies to authorities under the Government regarding the exercise of public authority against private persons. This means that the Government must not get involved in what decisions an authority makes in a particular matter. This obviously also applies to individual ministers. It is usually said that Sweden does not have "rule by ministers". This is a distinctive feature of Swedish administration.

Your role includes upholding democratic values

The Instrument of Government lays down that the public institutions must promote the ideals of democracy as guidelines in all sectors of society. This is an aim, however, and not a legally binding rule (provision stating aims). This means that private persons cannot demand their rights in a court under this policy aim and must instead find support in other laws setting out detailed rules.[1] For example, a person who feels that they are the victim of negative discrimination must rely on the rules of the Discrimination Act (2008:567).

The aim that the ideals of democracy are to be guidelines applies to all public activities. In addition to promoting democracy, the public institutions also have an obligation to:

- ensure that public power is exercised with respect for the equal worth of all and for the freedom and dignity of the private person;
- uphold the personal, economic and cultural welfare of the individual;
- promote sustainable development leading to a good environment for present and future generations;
- promote the opportunity for all to attain participation and equality in society and for the rights of the child to be safeguarded;
- promote the opportunities of the Sami people and ethnic, linguistic and religious minorities to retain and develop a cultural and social life of their own.

It can be hard to judge what democratic values are

When democratic values are set up as a criterion in, for instance, the laws regulating the right to government grants, it becomes clear that it is very difficult to interpret and assess them. Several freedoms are protected in the Instrument of Government, including freedom of expression, freedom of opinion and freedom of religion. This means that political and religious organisations applying for government grants have great scope to exercise their rights. But it is difficult to determine, once and for all, where the dividing line goes and in what circumstances an authority should award government grants.[2]

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1 Holmberg et al. The Constitution [*Grundlagarna*], 3rd ed. 2012, Norstedts Juridik, commentary on Chapter 1, Article 2 of the Instrument of Government.

2 Statskontoret 2017:13, Authority analysis of the Swedish Agency for Youth and Civil Society [*Myndigheten för ungdoms- och civilsamhällesfrågor*], pp. 60–62.

For instance, the Government, which decides what organisations are entitled to grants under the Act on Support to Faith Communities (1999:932), has refused Jehovah's Witnesses financial support on three occasions. One criterion for entitlement to grants is that the faith community contributes to maintaining and strengthening the fundamental values on which society is based. The Government has, for example, considered that Jehovah's Witnesses do not fulfil this since the organisation calls on its members to refrain from voting in democratic elections and receiving blood transfusions. But in all these cases the Supreme Administrative Court has set aside the Government's decision because individuals in a democratic society are free to refrain from voting or receiving health care.[3]

Another example is that the Swedish Agency for Youth and Civil Society (MUCF) refused the Sweden Democratic Youth (SDU) a government grant because the organisation did not respect the ideals of democracy in its activities. The SDU appealed, but both the Administrative Court and the Administrative Court of Appeal came to the conclusion that no grant was to be given. Among the points made by the courts were that the SDU had not shown that the organisation met the criterion of respect for the ideals of democracy and that their ideas programme contained generalised and negative forms of words about immigration and immigrants.[4]

As a central government employee, you must respect certain values, but you have freedom of expression

As a central government employee, you are part of the public institutions and therefore have to work for the principles that are set out in our fundamental laws and that our democracy is based on. At the same time, you have the same right to freedom of expression, freedom of information and other rights as all other citizens of Sweden. So you are free to express yourself on any subject at all without risking reprisals or other interventions. Since you can be seen, both in working life and outside work, as a representative of your authority, there is an inherent conflict here. We return to this in the section *Free formation of opinion*.

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[3] Rulings of the Supreme Administrative Court 2011 case report 10, 2013 case report 72 and 2017 case report 4.

[4] Administrative Court of Appeal in Stockholm, judgment of 26 January 2018, case no 3762-17.

Rule of law

> ***Public power is exercised under the law.***
>
> *Chapter 1, Article 1, third paragraph of the Instrument of Government*

The rule of law principle means that the activities of authorities must have support in the legal order, for instance in laws and ordinances. As a central government employee, you also have to be aware of and follow the rules that apply to the activities of your particular authority. Citizens have to be sure that government authorities follow the rules.

Government authorities must have support in rules for their activities

The most important aspect of the rule of law principle is that government authorities must have clear support in the legal order for the measures they take.[5] This applies not only to the part of their activities that has to do with making decisions that affect private persons, but to all activities conducted by an authority. There are many examples of courts setting aside government authorities' decisions because they have not had sufficient legal support. What has usually happened in these cases is that the authority has interpreted unclear rules and gone too far in its decision, thus making a decision on something outside their mandate.[6] For instance, the Supreme Administrative Court set aside the decision of the Swedish Work Environment Authority making an employer responsible for laundering work clothes. The Court considered that there was no statutory support for the decision since neither the Work Environment Act nor any authority regulations explicitly regulated any responsibility for work clothes.[7]

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5 Section 5 of the Administrative Procedure Act.

6 SOU 2010:29, A new Administrative Procedure Act [*En ny förvaltningslag*], p. 145.

7 Supreme Administrative Court ruling 2016 case report 46.

Another example is that the Supreme Administrative Court has concluded that the Swedish Social Insurance Agency did not have clear support in the law for requesting penalty interest on repayments of housing allowance.[8]

Not only must an authority have support in the law for its decisions or measures, it must also be able to show what rule it has used in a specific case.[9] This is important because private persons affected by authority decisions have to be able to predict and understand the outcome. Since 2018 the requirement for support in law is set out in the Administrative Procedure Act, which also states that there must be justification for a decision.[10]

Some matters must be stipulated in laws

The rule of law principle's requirement for support in rules also means stronger protection for our rights. Interventions in and restrictions of our constitutional rights and freedoms may only be made in laws and in certain specific circumstances. The Government cannot limit freedom of expression through an ordinance. Certain other rights cannot be restricted at all – for example torture or the death penalty are never permitted. Ordinances do not suffice for rules that are burdensome for private persons; they must have support in a law. For instance, an obligation for private parties to pay tax must be adopted by the Riksdag in a law.[11]

You must be aware of the rules that apply for your activities. Private persons are affected by the measures and decisions of government authorities. Sometimes this involves the exercise of public authority, for example a decision that a private person has to pay a charge or may receive a financial contribution. Then it is important that everyone can rely on the authority applying the rules correctly. One important aspect of the rule of law is that, as a central government employee, you must be aware of and follow the rules that are relevant to your specific task and your authority's activities. Here the picture is different in different parts of central government administration, and some activities and authorities have more – and more detailed – rules to follow.

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8 Supreme Administrative Court ruling 2005 case report 43.

9 SOU 2010:29, p. 146.

10 Section 32 of the Administrative Procedure Act.

11 Sterzel, The principle of legality [*Legalitetsprincipen*], (Principles of public law [*Offentligrättsliga principer*], ed. Marcusson), 2nd ed., 2012, Iustus förlag, p. 82 f.

Hierarchy of legal rules

There are a number of different kinds of legal rules. Collective names for them are *statutes* or *regulations*.

There are four constitutional, or *fundamental laws* in Sweden: the Instrument of Government, the Freedom of the Press Act, the Fundamental Law on Freedom of Expression and the Act of Succession. They are decided by the Riksdag. To pass a new fundamental law or adopt amendments or additions, the Riksdag must vote in the same way on two occasions and between these votes there must be an election to the Riksdag. This is to make sure that amending constitutional law is not a simple matter.

Laws, or acts, are adopted by the Riksdag, but here one vote is enough. A law is usually preceded by a government-appointed inquiry and then the Government presents a proposal in the form of a bill to the Riksdag. What is said in these documents, the legislative history, can help us to interpret the law, but, first and foremost, the text of the law is the most important source. Some matters must be stipulated in laws. This applies, for example, to rules about taxes or criminal offences and penalties.

An *ordinance* is decided by the Government. Generally an authorisation is required, i.e. there has to be a law that says that the Government may issue detailed regulations. The Government also has some scope to adopt its own rules without an authorisation. One example is the Government Agencies Ordinance (2007:515), in which the Government decides matters including how administrative authorities should generally be organised. Ordinances containing instruction for authorities regulate each authority's main tasks and organisation.

Authorities can also be given the right to issue *regulations*, which means that they can be authorised to write rules filling out laws or ordinances. They are often about specific details of the regulatory system, for example the Swedish Social Insurance Agency regulations on payments to participants in labour market policy measures (FKFS 2017:06) or the Swedish Tax Agency's Regulations on the income tax return e-service (SKVFS 2006:1).

General advice: General advice is also issued by authorities. These documents are guiding recommendations rather than formal rules that must be followed.

In the light of their specific tasks, all authorities must also put internal rules in place in order to perform their tasks. Rules, procedures and policies of this kind must be relevant and appropriate to the authority's activities. They should not be too detailed, and unnecessary duplication of regulations should be avoided.

For instance, an authority's rules of procedure do not need to repeat what is stated in the Government Agencies Ordinance. The sets of rules must also be disseminated throughout the organisation, so that all employees who have to apply the rules understand what they mean.

You must know the principles for interpretation

The rules are not always clearly formulated, and it is not always obvious how you should interpret them. Sometimes, different rules can be seen as being incompatible and hard-to-solve conflicts may arise between them. Then there are a number of interpretative principles that provide guidance about solving such conflicts. To begin with the rules have a hierarchical structure (see the adjacent information box). In brief, this structure means that fundamental laws take precedence over laws that then take precedence over ordinances. But there are also exceptions to the hierarchical structure. One example is that Section 4 of the Administrative Procedure Act states explicitly that provisions in other acts or in ordinances that differ from the wording of the Administrative Procedure Act, take precedence over that Act.

Another principle of interpretation is that rules in newer laws take precedence over those in older laws. Yet another principle says that more specific rules take precedence over those that are framed more generally.

As a central government employee, you must be acquainted with the fundamentals of these interpretative principles so as to be able to understand and interpret the rules that apply to your authority's activities. This helps you to understand the relationship of the Instrument of Government, the Administrative Procedure Act and the fundamentals of a good administrative culture to one another as well as their relationship to other rules.

Objectivity

Courts of law, administrative authorities and others performing public administration functions shall pay regard in their work to the equality of all before the law and shall observe objectivity and impartiality.

Chapter 1, Article 9 of the Instrument of Government

All central government employees have to act objectively and impartially. You must therefore be attentive to conflicts of interest that may arise. An objective and impartial central government administration, with recruitment based on merit, is required to enable government authorities to perform their tasks in a democratic, effective and lawful manner. It also contributes to maintaining confidence in the authorities and in the central government.

You have to be factual and impartial in all your activities

The objectivity principle means that government authorities are obliged to act in a factual and impartial way at all times. This objectivity must also characterise matters outside decision-making as such. The objectivity principle can also be interpreted as a prohibition. As a central government employee, you are prohibited from looking to interests other than those you are set to uphold. You are also prohibited from making decisions on grounds other than those set out in the rules in the case in question.

At a general level this is fairly simple. As someone working in a government authority, you are simply not allowed to take irrelevant factors into account when you make a decision. For instance, you must not allow friendships, family ties or personal views to influence you. In practice this gets more complicated with all the situations, behaviours and phenomena that can be linked to the requirements of the principle of objectivity. Situations where objectivity becomes complex include situations where there may be conflict of interest, questions concerning how authorities handle employees' secondary occupations (see p. 20) and questions concerning how you, as a central government employee, behave when interacting with members of the public.[12]

The requirement for objectivity is linked to the rule of law

Being objective is about you limiting what a decision can be based on. It is also about treating everyone the same way and about agencies acting according to their mandated tasks.

The objectivity requirement is linked to the requirement under the rule of law for support in the regulatory framework.[13] This is because laws and rules often give you some scope for making assessments. For example, certain types of permits or licences may only be awarded suitable applicants, but the rules often only say part of what constitutes such suitability. A stable financial situation may, for instance, be required. Then, when processing the matter, you must assess what that means in the specific case. The requirement for objectivity sets the limit for how far you can go in your assessment and what you can base your decision on. It must not matter, for example, that the person applying for the permit has been unpleasant or unwilling to cooperate. This means that, when processing the matter, you cannot allow your personal views or interests to colour your assessment.

Being objective also involves an obligation for the authority to be consistent in its decision-making and treat equivalent cases alike. It is, for instance, not objective to give one applicant extra service and benefits in one case while refusing others the same type of benefit in another case. One example is a building committee in a municipality that allowed a private company applying for a building permit to pay for the costs of an extraordinary meeting of the committee.

Principles may overlap

The principles of democracy, rule of law, objectivity and also proportionality are closely related and overlap to some degree. They can be described in a chronological sequence in which all public power proceeds from the people, which elects the Riksdag, which then decides which laws and rules are to apply. Government authorities must then be objective and impartial when they apply the rules and also find a balance between goals and means.

[12] SOU 2010:29, p. 149.

[13] For a longer and more detailed discussion, see Bull, The principle of objectivity [*Objektivitetsprincipen*], (Principles of public law [*Offentligrättsliga principer*], ed. Marcusson), 2nd ed., 2012, Iustus förlag, p. 101 f.

According to the Parliamentary Ombudsman, it was a flagrant departure from the objectivity principle to give a private person the opportunity to buy priority treatment of its case.[14]

The requirement for objectivity is also about the point that, as a person working in an authority, you should not be putting time and effort into matters outside your obligations and duties. To take an example, the County Administrative Board in Jämtland made a protection order for Great-Lake Monster [Storsjöodjuret] as a step in promoting the tourist industry. The Parliamentary Ombudsman criticised the Board since this was outside its remit, finding that the Board's possibility of issuing rules had been wrongly used and that the investigative measures required to issue the order could be questioned.[15]

Impartiality is ultimately about how the process is seen from the outside

Sometimes the terms objective and impartial are almost synonyms. It can, for example, be both subjective and partial to make a favourable decision that concerns a family member, but the terms apply to different aspects of impartiality.

Impartiality is concerned with how the decision-making process is seen from the outside. In contrast, objectivity is about limiting what a decision can be based on, about equal treatment and about authorities having to stick to their set tasks.

Even if the factual content is right, the relationship between you, as the person making the decision, and the person affected may have an influence on how it is seen from the outside. This is of great importance in ensuring that the power you exercise as an employee of an authority is legitimate and that citizens can have trust in you, in your authority and in the administration as a whole.

Requirements for objectivity and impartiality recur in several rules

The more generally framed requirements for objectivity and impartiality in the Instrument of Government are specified in other, more detailed rules. Generally speaking, the rules in the Instrument of Government have been difficult to apply in the cases examined by the courts or by the Parliamentary Ombudsman (JO).[16]

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14 JO 1999/2000 p. 366.

15 JO 2006/07 p. 362.

16 See, e.g. Rothstein, The Constitution in a multicultural society (Borderless– research in Sweden and around the world) [*Grundlagen i det mångkulturella samhället (Gränslöst – forskning i Sverige och världen)*]. Festschrift in honour of Dan Brändström, ed. Blückert and Österberg), 2006, Natur och kultur.

The Parliamentary Ombudsman's records of case law decisions only refer to the Instrument of Government in the more sensational cases of breaches of rules. This may be because the rules in the Instrument of Government are often in the nature of objectives, and in the Swedish legal tradition it seems to be easier to apply provisions in ordinary laws. This is one of the reasons why the Administrative Procedure Act has been supplemented with the principle of objectivity, for example (see the adjacent box). This provision is more established and can therefore be easier for courts and supervisory bodies to rely on.[17]

In addition to these fundamentals of a good administrative culture, there are other detailed rules derived from the principle of objectivity. They include those applying to substantive matters such as recruitment, secondary occupations and disqualification (see the boxes here and on page 21).

§ In its activities the authority shall be factual and impartial.

Section 5, second paragraph of the Administrative Procedure Act

§ When making decisions about employment in government administration positions, only objective factors, such as merit and competence, shall be taken into account.

Chapter 12, Article 5, second paragraph of the Instrument of Government

§ An employee may not have an employment or assignment or perform an activity that may adversely affect confidence in their or any other employee's impartiality in their work or that may harm the reputation of their authority.

Section 7 of the Public Employment Act (1994:260)

Central government employment has to be made on objective grounds

When a government authority appoints staff, it has to do so on objective grounds. The Instrument of Government states that merit and competence have to be decisive – the person who is most qualified has to be given the job. This means that personal contacts, friendships and other similar circumstances must not form the basis for appointment decisions.

As an example, the Swedish Higher Education Authority (UKÄ) criticised the University of Gothenburg. The background was that in a number of cases over a long period of time the University had not given information about job vacancies, which is contrary to Section 6 of the Employment Ordinance (1994:373). The Authority noted that it was also questionable whether the University had, through this conduct, followed the rules in the Instrument of Government and the Public Employment Act (1994:260) that appointment decisions have to be based solely on objective grounds. Moreover, the University had allowed fixed-term contracts to become open-ended, even though the conditions for doing so had not been met.[18]

[17] SOU 2010:29, p. 155 and Govt Bill 2016/17:180, A modern and legally certain administration [*En modern och rättssäker förvaltning*], pp. 60 and 289.

[18] UKÄ, decision 16 May 2017, reg. no 31-00471-15.

Secondary occupations may be prohibited if they risk harming confidence

A secondary occupation is any occupation or activity that you have as an employee alongside your employment in central government that is not attributable to private life.[19] For a secondary occupation to be classed as prohibited it has to harm confidence, interfere with work or be competing. Secondary occupations that harm confidence are prohibited by law, while secondary occupations that interfere with work or are competing are regulated in collective agreements.

The rules about secondary occupations are intended to prevent private interests colliding with public interests in a way that endangers public confidence in authorities. It is sufficient for there to be a risk that the public will question your or your authority's objectivity for a secondary occupation that harms confidence to be prohibited. It does not have to be shown that you have been or are feared to be partial in a particular case, or that public confidence in you or the authority has actually decreased.[20]

There are many examples of permitted and prohibited secondary occupations in case law. It can, however, be difficult to draw any far-reaching conclusions since the specific circumstances in each particular case are decisive.

One example of a prohibited secondary occupation is a police officer who was, in his spare time, the chair of an association that provided support and assistance for individuals who considered that they had been victims of violence in close relationships. The police officer's duties did not include criminal investigations, but the Labour Court still concluded that it was a confidence-harming secondary occupation.[21]

One example of a permitted secondary occupation is an enforcement officer at the Swedish Enforcement Authority who had assignments as a trustee in his spare time. The Labour Court concluded that while there was a risk of harming confidence, the level of the risk was justifiable considering the great public interest in being able to appoint suitable trustees.[22]

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19 Govt Bill 2000/01:147, Public employees' secondary occupations, p. 9.

20 Hinn et al. Public labour law [*Offentlig arbetsrätt*], 3rd ed. 2015, Wolters Kluwer, commentary to Section 7 of the Public Employment Act (1994:260).

21 Labour Court ruling 2018:45.

22 Labour Court ruling 2014:45.

It is your authority that has the responsibility for informing you, as an employee, about what kinds of secondary occupations may harm confidence. Your authority also has to decide whether or not to permit a secondary occupation. Then your authority must make an overall assessment of the risk of confidence in the authority being harmed and of whether the authority can nevertheless accept a certain risk in the specific case.

Conflict of interest is also about how things are seen from the outside

The rules about conflict of interest fulfil a preventive function. They point out certain situations where there is, generally speaking, a risk of you as a case officer or decision-maker taking account of considerations other than the rules and the facts of the particular case. The Administrative Procedure Act lists three types of situations that are always counted as conflict of interest, for instance when either you personally are, or a person close to you is, a party in the matter or can otherwise be assumed to be affected by the decision (see the text of the law shown alongside). So this has nothing to do with your morals or competence, but is about preventing and avoiding situations that may affect your impartiality.

It is important to bear in mind that the conflict of interest disqualification rules exist to protect both the private person affected by the decision and you as an employee of an authority. They act as a guarantee for citizens that authorities and their representatives do not abuse their power. Public confidence in the impartiality of government authorities requires that a disqualified handling officer is disengaged from a particular case. But the rules also set limits for you as a central government employee by clearly stating what types of situations you have to avoid.[23]

§

A person who takes part on behalf of an authority in the processing of a matter in a way that can influence the authority's decision in the matter is disqualified due to conflict of interest if:

1. either they or a person close to them is a party in the matter or can otherwise be assumed to be affected by the decision to a not insignificant extent;
2. either they or a person close to them is or has been a representative or counsel for a party in the matter or for someone else who can be assumed to be affected by the decision to a not insignificant extent;
3. they participated in the final processing of the matter at another authority and have, as a result of this, already taken a position on the questions to be examined by the authority as a superior instance; or
4. there is some other special circumstance that means that their impartiality in the matter can be questioned.

If it is obvious that the question of impartiality is of no importance, the authority shall disregard the disqualification.

Section 16 of the Administrative Procedure Act

§

A person who is disqualified must not take part in the processing of the matter and must not be present when the matter is determined either. However, they may perform tasks that no one else can perform without a considerable delay in the processing of the matter.

Section 17 of the Administrative Procedure Act

[23] SOU 2010:29, pp. 327–352.

You can only be disqualified due to conflict of interest if you have participated in a case in a way that enables you to influence the decision.[24] If you are disqualified you are not allowed to take part in the processing of the matter and are not allowed to be present when the matter is decided either.

In addition to these three typical situations, you may also be disqualified due to conflict of interest if there is some other special circumstance that means that your impartiality in the matter can be questioned (see point 4 on page 21). This means that you may also be disqualified even if you have, in actual fact, not fallen short in terms of the requirements for objectivity and impartiality.[25]

It is hard to determine where to draw the line. For example, a person complained that an inspector at the Swedish Health and Social Care Inspectorate was disqualified. The background was that the inspector was going to inspect a care provider where previous colleagues were working. The Parliamentary Ombudsman concluded that the fact that in the 1990s and early 2000s the inspector had been the manager of one of the persons reported and that they had subsequently had sporadic work-related contact and limited contact on Facebook did not mean that the inspector was disqualified in the processing of the supervisory matter.[26]

The responsibility is both yours and your authority's

It is your own responsibility to say when you fear that you may be disqualified. You are also obliged to say what secondary occupations you have and to give so much information about them that your employer can determine whether the secondary occupation may harm confidence in the authority.

Authorities also have a responsibility to make it easy for their employees to do what is right. As an employee you must be given correct information about what rules apply and the easiest way for you to report disqualification and secondary occupations, as well as how you should handle suspected corruption and other irregularities. Authorities are also required to systematically take charge of and process such information. This does not, for example, mean just making a list of all their employees' secondary occupations. An authority must ensure that the information is current and also make decisions about whether or not a secondary occupation is permitted.

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[24] Govt Bill 2016/17:180, p. 94.

[25] Bull (2012) p. 104.

[26] JO 2015/16 p. 526.

Corruption and irregularities – the height of partiality and subjectivity

The opposite to fulfilling the principle of objectivity is to act in a wholly subjective and partial way. There are many terms to describe conduct of that kind, but the most common are corruption and irregularities. These types of behaviour threaten citizens' confidence in society and the authorities. The Government has stated that corruption is *to abuse a public position in order to achieve an improper gain for oneself or others*.[27] This definition covers criminal acts like taking and giving bribes, inappropriate behaviour like favouring one tenderer in a procurement, recruiting a friend or over-use of travel or entertainment benefits. You can read more about corruption in the Swedish Agency for Public Management handbook *An Anti-Corruption Culture [En kultur mot korruption]*.

[27] Government Communication 2012/13:167, Swedish National Audit Office's report on government authorities' protection against corruption [*Riksrevisionens rapport om statliga myndigheters skydd mot korruption*], p. 5.

Free formation of opinion

Swedish democracy is founded on the free formation of opinion.

Chapter 1, Article 1, second paragraph of the Instrument of Government

Every citizen has the right to freedom of expression, freedom of information, freedom of assembly, freedom of demonstration, freedom of association and freedom of religion. This also applies to you as a central government employee. You also have freedom to communicate information, which entails special protection against inquiries into informant identity and reprisals. The principle of public access to information means that everyone has the right to transparency and being able to critically examine you and your authority.

Rights and freedoms are extensive, but there are limits

In Sweden everyone is free to air their thoughts, feelings and opinions without any authorities intervening. Freedom of expression applies both to oral and written communications and to images. But freedom of expression is not absolute and can be restricted. For such restrictions to be imposed, they must be necessary in a democratic society, for instance the prohibition of defamation or agitation against a population group.

§ Everyone shall be guaranteed freedom of expression in their relations with the public institutions: the freedom to communicate information and express thoughts, opinions and sentiments, and freedom of information: freedom to procure and receive information and otherwise acquaint oneself with the utterances of others.

Chapter 2, Article 1, points 1 and 2 of the Instrument of Government

Freedom of expression is protected in several laws (see the examples in the adjacent boxes). The Instrument of Government contains general protection and there are more specific rules about, for example, printed matter in the Freedom of the Press Act and about radio and TV broadcasts

in the Fundamental Law on Freedom of Expression. Freedom of expression is also a fundamental human right that is protected in the European Convention for the Protection of Human Rights Fundamental Freedoms and the UN's declarations and conventions on human rights.

§ The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

European Convention, Article 10(2)

You also have rights and freedoms as a central government employee

As a central government employee, you also have freedom of expression and the right to freedom of the press, freedom of information, freedom of association and freedom of assembly, just like everyone else. The protection in the Instrument of Government applies in relation to the public institutions, which means that, as a central government employee, you have a constitutional right to freedom of expression in relation to your employer. But in certain situations your freedom of expression may still clash with other parts of the basic values of central government.

Case law shows that your employer is extremely seldom able to take measures against you when you use your constitutional rights and freedoms. In one case a Swedish embassy decided to break off a student internship because the student was active in a movement that was regarded as undemocratic and xenophobic by all the parties in the Riksdag. The student had not said anything about this in his application, and he had also blogged in the name of the movement during working hours. The Embassy and the Ministry for Foreign Affairs considered that this harmed confidence in the Embassy and in Sweden. The case was reported to the Chancellor of Justice, who considered that the decision to terminate the placement was contrary to the student's constitutional rights and freedoms.[28]

In another case the Labour Court has said that there is a limit, but that it was not reached in the particular situation it was considering. A person who was employed as a police officer sent several emails with threatening and racist content to a senior municipal politician. The police officer referred to his occupational role in one of the emails. He was prosecuted for agitation against a population group but acquitted since he had not had the intention of spreading his statements to a wider circle. His employer nevertheless considered that the police officer had acted in a way that did very serious harm to confidence both in him as a police officer and in the Swedish Police Authority and therefore decided to terminate his employment. The Labour Court

[28] JK's decision of 7 August 2008, reg. no 7068-06-21.

arrived at the conclusion that the individual employee's constitutional rights and freedoms must be respected. Measures taken must not have the character of punishment because the employee has made use of these rights and freedoms. It was therefore wrong to terminate his employment. The Labour Court also wrote: *"However, there must be situations where, in view of the circumstances, it must nevertheless be considered acceptable to take labour law legal measures against an employee on account of circumstances linked to the use by the employee of their constitutional rights and freedoms."*[29]

The conclusion is that, as a central government employee, you can go a long way in exercising your constitutional rights and freedoms. However, in the role of a central government employee, it can still be wise to be aware of the grey areas.

Government authorities have to be open and transparent, and it has to be possible to follow the path to decisions

The principle of public access to information contributes to guaranteeing that authorities are transparent to citizens, who are thereby able to check their activities. This means that authorities' deliberations and decisions must be documented in official documents that are public. Everyone has the right to turn to authorities to access the content of these documents.[30] The right to access official documents may be restricted, for instance to protect national security, protect the personal or financial circumstances of private persons or to prevent or prosecute crime (see more about privacy protection in the section on *Respect*). The exceptions are extensive, and they are set out in the Public Access to Information and Secrecy Act (2009:400).

Documentation is important so as to be able to check that a matter has been processed correctly. It is also important for you as a central government employee to be able to show how and why your authority made a particular decision. As an employee of a government authority, it is important that you are aware of the democratic purpose of documentation.

Protection of communication gives public employees a special status

Protection of communication provides special protection for you when you use your freedom of expression to talk about things that happen at your authority. There are several parts to this protection. They include; freedom to communicate information, the right to anonymity, the ban on inquiries and the ban on reprisals. The rules on protection of communication are set out in both the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The examples we present alongside this section only come from the Freedom of the Press Act.

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[29] Labour Court judgment no 20/07, case no A 54/06.

[30] Chapter 2, Article 1 of the Freedom of the Press Act.

Freedom to communicate information means that everyone is free to give information on any subject whatsoever, for the purpose of publication in printed or other media (see the adjacent box). It is only when you turn to someone with a journalistic purpose that the freedom to communicate information applies. When you write something yourself, in social media for instance, you are not covered by the rules.

§ All persons shall be free to communicate information on any subject whatsoever, for the purpose of publication in print (freedom to communicate information). All persons shall furthermore have the right to procure information on any subject whatsoever, for the purpose of publication in print, or in order to communicate information under paragraph one (freedom to procure information).

Chapter 1, Section 7, first and second paragraphs of the Freedom of the Press Act

Nor can you make statements in the name of your authority in just any way you please. One example is three staff members of the Police Authority in Stockholm who were performing certain work duties at the Swedish Economic Crime Authority (ECA). They had made critical statements about the ECA in mass media. The leadership of the ECA had then decided that these staff members would no longer be allowed to make statements in the name of the ECA. The staff members saw this as a restriction of their freedom to communicate information. The Chancellor of Justice noted in their decision that it had not been established whether the ECA's measures had really restricted the staff members' freedom to communicate information. The Chancellor of Justice also noted that the freedom to communicate information does not include any right to make statements on behalf of the Authority. So there is nothing to prevent the leadership of the Authority from deciding that only certain people will speak for the Authority and also making this clear to staff members.[31]

The freedom to communicate information is not absolute and there are some exceptions. They include certain serious offences against national security. It can also be an offence to wrongly release secret documents, if this is done with intent.

The purpose of the freedom to communicate information is that it should be possible to publish information about government authorities to make public activities more transparent. It does not give you any special protection as a central government employee.

The *right to anonymity* means that neither an author nor a person communicating information needs to reveal their identity. Moreover protection of sources applies, i.e. a journalist who has received a communication for publication is prohibited from disclosing their source. The protection of anonymity also applies to persons who are not central government employees (see the adjacent box).

§ An author of printed matter shall not be obliged to have his or her name, pseudonym or pen-name set out therein. The same applies to a person who has communicated information for publication under Chapter 1, Article 7, and to an editor of printed matter other than a periodical.

Chapter 3, Article 1 of the Freedom of the Press Act

[31] JK's decision of 23 June 2009, reg. no 4660-08-30.

§

A public authority or other public body may not inquire into the identity of:

1. the author of material inserted, or intended for insertion, in printed matter;
2. a person who has published, or intended to publish, material in such matter; or
3. a person who has communicated information under Chapter 1, Article 7.

Chapter 3, Article 5 of the Freedom of the Press Act

§

A public authority or other public body may not intervene against a person because they have in printed matter made use of their freedom of the press or assisted in such use.

Chapter 3, Article 6, first paragraph of the Freedom of the Press Act

The *ban on inquiries into identity* means that an authority must not try to find out who a person communicating information is (see the adjacent box). Examples of inquiries into identity include questions or measures to get at who released or published information. Breaking the ban on inquiries into informant identity is a punishable offence.

The *ban on reprisals* means that an authority or other public body must not intervene against someone because they have used their freedom of the press and freedom of expression (see the adjacent box). Reprisals are all measures that lead to negative consequences for the individual, e.g. dismissal or a disciplinary sanction, but also less intrusive measures such as rebukes. Breaking the ban on reprisals is a punishable offence.

Whistle-blowing

As part of work against corruption and irregularities some authorities have chosen to set up a special function to receive tips and suspicions of irregularities. This is usually called a *whistle-blower function*. This kind of function can supplement employees' freedom to communicate information, but can never completely replace it. One of the problems is that it is not possible to provide the same protection of anonymity as in constitutional laws.

Respect

Public power shall be exercised with respect for the equal worth of all and for the freedom and dignity of the private person.

Chapter 1, Section 2, first paragraph of the Instrument of Government

As a central government employee, you have to strive to carry out your duties with respect for the individual and meet the requirements for non-discrimination and consideration of personal privacy. Equality, gender equality, compassion and integrity are key words in fulfilling these requirements.

Goals of all public activities

The principle of respect for the equal worth of all and for the freedom and dignity of the individual are part of what is called the statement of objectives in the Instrument of Government (see the section *Laws and principles of importance outside the basic values*). The Treaty on European Union and the Charter of Fundamental Rights of the European Union contain similar forms of words (see below in the section *Other principles in EU law*). Detailed rules about what is to be done to attain the objectives of this principle are, for example, set out in the Discrimination Act (see the adjacent box).

Protection of privacy

The catalogue of rights in Chapter 2 of the Instrument of Government lists fundamental rights and freedoms for all citizens, for example freedoms of opinion, like freedom of expression, and freedom from physical violations.

The European Convention protects human rights and freedoms. The Convention has had the force of law in Sweden since 1994. It has special protection in Chapter 2, Article 21 of the Instrument of Government, which states that no laws may be adopted that contravene the Convention.

The Discrimination Act (2008:567) sets out specific rules on discrimination both in working life and in contacts with public authorities.

The EU General Data Protection Regulation (GDPR) protects the right of all EU citizens to privacy in connection with the processing of personal data.

Non-discrimination

Discrimination means that a person is treated less favourably than someone else on subjective grounds.[32] The aim of respect is that the public institutions will counter any instances of someone being discriminated against in their contacts with the authorities. The Instrument of Government says that no one may be treated unfavourably on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation or age. The Discrimination Act also gives transgender identity or expression as a ground of discrimination.

§

Discrimination is prohibited […] when a person who is wholly or partly subject to the Public Employment Act (1994:260) assists the public by providing information, guidance, advice or other such help, or has other types of contacts with the public in the course of their employment.

Chapter 2, Section 17 of the Discrimination Act

The Discrimination Act covers you as a public employee when, for example, you give the public information, guidance or advice. It also applies to other contacts you have with the public in your work. If you breach this ban, your employer may be required to pay compensation for discrimination.[33] A person who is discriminated against may, at the same time, be a victim of a criminal offence, for example some form of hate crime, agitation against a population group or a sexual offence.

As a central government employee, you need to be able to identify and counter situations where discrimination may arise. Authorities also need to make particular efforts to treat people equally and to not treat anyone unfavourably on incorrect grounds.

Privacy

The protection of privacy is included in the Instrument of Government, the European Convention and the EU Charter of Rights. This is expressed by saying that individuals have the right to private and family life. The protection applies in relation to the public institutions and means that authorities may not intrude indiscriminately on a person's private life. Without consent to do so, authorities are, for instance, prohibited from keeping registers of inhabitants on the basis of their political views or ethnicity. For a breach of someone's privacy to be permitted, it must be judged to be necessary in a democratic society to, for example, maintain law and order.

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[32] http://www.do.se/globalassets/stodmaterial/faktablad-om-diskriminering-do.pdf (downloaded 28 May 2019).

[33] Von Essen, Work in public administration [*Arbete i offentlig förvaltning*], 2 ed., 2018, Norstedts Juridik, p. 65.

The Police Authority in Skåne had set up a register in which the great majority of entries contained persons who were of Roma origin or were married to a Roma. The Equality Ombudsman (DO) noted that the mere existence of a register cannot be discrimination, but can be a sign of the existence of ethnic profiling as a way of working. That is a way of working that then results in a risk of discrimination.[34] Some people entered in the register requested damages because their personal data had been processed incorrectly. The court of appeal came to the conclusion that the personal data had been included in the register solely on account of ethnicity, contrary to the rules of the Police Data Act. The registrants were therefore awarded damages.[35]

It is of central importance for privacy protection that authorities and other organisations handle and process personal data correctly. New rules have applied since 25 May 2018 through the EU's General Data Protection Regulation, or GDPR. The basic idea is that personal data, i.e. all kinds of information that can be associated with a living natural person, may only be collected for special legitimate purposes.

The starting point is that sensitive personal data must not be processed at all. This may, for instance, be data about ethnic origin, religious conviction or health and sex life.[36] Sensitive data may only be processed in certain circumstances; for example if a person has lost consciousness and personal data must be processed to check their blood group and medical history. Privacy-sensitive data of this kind are often protected by secrecy, which sometimes also applies between authorities.

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[34] Equality Ombudsman's decision of 20 February 2014 (GRA 2013/617).

[35] Svea Court of Appeal's judgment of 28 April 2017, case no T 6161-16.

[36] Von Essen, Work in public administration [*Arbete i offentlig förvaltning*], 2 ed., 2018, Norstedts Juridik, p. 66.

Efficacy and service

Authorities have to aim to treat citizens well, be available and give citizens service in an efficient way. As an employee, you need to understand why it is important to manage central government funds prudently.

§

Central government activities shall aim for a high degree of efficiency and observe good economic management.

Chapter 1, Section 3 of the Budget Act (2011:203)

§

The agency's leadership is responsible to the Government for the agency's activities and shall ensure that they are conducted efficiently and in accordance with applicable legislation and the obligations following from Sweden's membership of the European Union; that they are reported in a reliable and fair way; and that the agency manages government funds prudently.

Section 3 of the Government Agencies Ordinance (2007:515)

§

An authority shall ensure that contacts with private persons are smooth and simple.

The authority shall give private persons the assistance they need to look after their interests. The assistance shall be given to the extent that is deemed appropriate with regard to the nature of the question, the private person's need of assistance and the activities of the authority. It shall be given without unnecessary delay.

Section 6 of the Administrative Procedure Act

Efficacy is weighed against legal certainty and other values

Efficacy is about managing government funds prudently, but it is also about processing matters simply, rapidly and with sufficient quality. The requirement for efficacy is set out in ordinary laws and ordinances (see the adjacent box). So the principles in the Instrument of Government that we dealt with in previous sections take precedence over the principle of efficacy.

The efforts of authorities to be efficient must therefore be weighed against the fact that, as an employee, you also have to fulfil other requirements in the basic values of central government. In other words, you have to be quick and cost-effective, but efficiency must not mean that you neglect the rules about impartiality, investigation or communication with involved parties when processing matters.[37]

It is difficult to give a general answer to the question of what is a reasonable balance between low cost and rapid processing, on the one hand, and efficiency and legal certainty, on the other. This depends on aspects including the authority's mission and how the decision or measure affects the individual. You can find guidance in the other principles in the basic values, as well as in other legal principles such as the principle of proportionality (see the section *Laws and principles of importance outside the basic values*).

[37] Govt Bill 2016/17:180 p. 74 f.

There are several examples of occasions when an authority has attached too much importance to efficiency while other perspectives have been moved to the background. One of the more noted cases in recent years was when information security failed on account of an overly narrow efficiency perspective in connection with the Swedish Transport Agency's IT procurement.[38] The Swedish Council for Crime Prevention has also shown that, in the long run, too single-minded a focus on efficiency can actually constitute a risk for corruption and irregularities.[39]

All government authorities are obliged to provide service, be accessible and collaborate

As a government employee, you have to provide service, be accessible and collaborate (see the text of the law in the adjacent boxes). This applies to all authorities, including the courts when they process administrative matters.[40] The requirements apply to all administrative activities, but there are also even more detailed rules when it comes to processing cases and making decisions. There is, for instance, a special rule that a party in a matter has the right to access the supporting information for the authority's decision.

The rules governing the obligation to provide service and to collaborate are framed in terms of objectives and are therefore almost never examined in court. However, the Parliamentary Ombudsman has criticised authorities on many occasions for failings in their service obligation.[41] Time is a very important aspect in these cases. An authority must normally provide service straight away if it is to fulfil its function. For instance, in conjunction with a procurement an authority must answer the questions that tenderers have before the deadline expires.

§ A matter shall be handled as simply, rapidly and cost-effectively as possible without neglecting legal security.

Section 9, first paragraph of the Administrative Procedure Act

§ If an authority judges that the determination of a matter initiated by a private party will be substantially delayed, the authority shall notify the party of this. In its notification the authority shall set out the reason for the delay.

Section 11 of the Administrative Procedure Act

§ If a matter that has been initiated by a private party has not been determined in the first instance within six months, the party may make a written request that the authority determine the matter. The authority shall either determine the matter or refuse the request in a separate decision within four weeks after the date on which that request was received.

Section 12, first paragraph of the Administrative Procedure Act

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38 Ds 2018:6, Review of the Swedish Transport Agency's IT procurement [*Granskning av Transportstyrelsens IT-upphandling*], p. 230 f.

39 Swedish National Council for Crime Prevention (Brå) 2014:4, Corruption in government agencies. The exertion of unlawful influence on insiders [*Korruption i Myndighetssverige. Otillåten påverkan mot insider*], pp. 79–87 and Brå, Preventing and dealing with attempts to exert influence [*Att förebygga och hantera påverkansförsök*]. A handbook, 2017, pp. 24–26.

40 See Govt Bill 2016/17:180 p. 64–72.

41 An account is given in SOU 2010:29, pp. 191–193.

It is important that authorities do not see the service obligation as something secondary, and since 2018 there are also stricter rules in the Administrative Procedure Act about delays in processing. Among them are rules that private persons have the right to know why the processing of their matter is delayed and that, if more than six months have elapsed, the private person can request that the matter be determined.

In your work as a central government employee, a shortage of resources is never a valid reason for refraining completely from helping a private person. The service must be adapted to each case, and it can sometimes be difficult to know what a reasonable level is. As an authority employee, you have to decide how much service is appropriate in the specific case and how the authority has to allocate its resources. One point that may seem obvious is that you also have to express yourself in a way that is easy to understand. The Language Act (2009:600) says that Swedish has to be the authorities' main language and that you have to strive to use plain language.

§

An authority shall be available for contacts with private persons and inform the public about how and when they can make these contacts.

The authority shall take the measures regarding availability that are needed to enable it to fulfil its obligations to the public under Chapter 2 of the Freedom of the Press Act about the right to access official documents.

Section 7 of the Administrative Procedure Act

§

An authority shall collaborate in its area of activities with other authorities.

An authority shall assist private persons to a reasonable extent by itself obtaining information or opinions from other authorities.

Section 8 of the Administrative Procedure Act

The service obligation does not, for instance, include you giving advice that a lawyer with expertise in a certain area can give. In fact, giving too detailed advice might risk your and your authority's impartiality.[42] Nor does the service obligation require you, as an authority employee, to ensure that the private person affected is able to avoid time-consuming work to, for example, put together and submit the information needed to enable your authority to decide their matter.

The availability of authorities is closely linked to their obligation to provide service. An authority must state clearly how the public can reach it, in what way and at what times (see the adjacent box). It is particularly important that the authority is available so that anyone who wants to do so can have access to public documents.

Authorities also have an obligation to collaborate (see the adjacent box). This collaboration is aimed at making the administration as uniform and efficient as possible and also at facilitating private persons' contacts with the authorities. Collaboration has two purposes.

[42] JO 2007/08 p. 495 (decision of 20/11/2006, reg. no 4056-2005).

First, the general cooperation between authorities is intended to lead to private persons' matters running as smoothly as possible. As an authority employee, you also have to help other authorities in your area of activities. The limit to how far you have to go in doing so is governed by what mandate your authority has and what areas of contact it has with other authorities. It is also linked to the requirement of the rule of law that all authorities must have regulative support for all their measures. Some authorities have activities in roughly the same areas and therefore have to collaborate to a greater extent.

Second, collaboration is intended to make contacts with authorities easier for private persons. You have to help private persons to a reasonable extent. You may, for example, need to call another authority to get information so that you can answer a question. At the same time, it is important to bear in mind that certain sensitive personal data or information covered by secrecy and cannot be transferred freely between authorities.

Government authorities mainly work in Swedish

The Language Act requires authorities to use the Swedish language, and expressing yourself comprehensibly is an obvious part of your service obligation (see the texts of the law in the adjacent boxes). Moreover, your language has to be cultivated and simple, i.e. you have to endeavour to use plain language. This is particularly important in judgments and decisions concerning private persons.

§ The language of courts, administrative authorities and other bodies that perform tasks in public activities is Swedish.

Section 10 of the Language Act

§ The language of public services shall be cultivated, simple and comprehensible.

Section 11 of the Language Act

To give one example, the Parliamentary Ombudsman criticised the framing of a decision by the Swedish Health and Social Care Inspectorate (IVO). A patient had reported their dentist and the Inspectorate had made two decisions that criticised the dentist. According to the Parliamentary Ombudsman, however, the framing of the decisions and the language used were of an unacceptably low standard since, for example, the decisions contained incomplete sentences and incorrect sentence structures. In addition, the Inspectorate used inappropriate forms of words about the person who had made the report.[43]

The requirement for plain language covers not only text but also spoken language. The language at hearings and other oral processing in courts and at administrative authorities therefore also has to be cultivated, simple and comprehensible.[44]

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[43] JO 2015/16 p. 507.

[44] Govt Bill 2008/09:153, Language for all – proposal of a Language Act [*Språk för alla – förslag till språklag*], p. 48 f.

An extreme example of the opposite is a case officer at the Swedish Social Insurance Agency who called a person who had applied for sickness benefit. By mistake the case officer left a message on the applicant's answering service in which they called the person "thick in the head," said that they "only had back problems" and were not a "mental wreck lying screaming on their couch." The Parliamentary Ombudsman noted that the forms of words used by the case officer were contrary to the requirement for objectivity and that it was obviously part of a good administrative culture to maintain the requirement of correct treatment/tone.[45]

The public institutions also have a particular responsibility for protecting and promoting the minority languages in Sweden. They are Finnish, Yiddish, Meänkieli, Romani Chib and Sami.

[45] JO, Decision of 30 November 2018, reg. no 1855-2018.

Laws and principles of importance outside the basic values

The basic values of central government are not exhaustive. There are more laws and principles that we need to be aware of as central government employees. In this section we draw particular attention to the principle of proportionality and the principle of subsidiarity.

Fundamentals of a good administrative culture

A new feature of the Administrative Procedure Act since 2018 is the heading *Fundamentals of a good administrative culture*. Legality, objectivity and proportionality are listed under that heading. The Act also lists service, availability and collaboration as fundamentals of a good administrative culture.

Several of these terms are already included in the basic values of central government. Legality and objectivity are included in the Instrument of Government. The principle of efficacy and service includes availability and service to some extent. So the new Administrative Procedure Act is not taking up anything new. The reason why they are mentioned there is that these important rules for the processing of matters have to be stated clearly in the Administrative Procedure Act.[46] This is why it is important in this context to also take up and describe the principle of proportionality, even though it falls outside the traditional statement of the basic values of central government (see the text of the law in the adjacent box).

§

The authority may only intervene in a private interest if the measure can be assumed to lead to the intended result. The measure must never be more far-reaching than needed and may only be taken if the intended result is in reasonable proportion to the inconvenience that can be assumed to arise for the private person the measure is aimed at.

Section 5, third paragraph of the Administrative Procedure Act

[46] Terms of reference 2008: 36, A new Administrative Procedure Act [*En ny förvaltningslag*], p. 9.

Proportionality – a European principle

An assessment of proportionality has three components, which are described in slightly different ways in court rulings, legislative history and legal research.[47] The assessment of these three parts is intended to find a balance between goals and means.[48]

- Appropriateness: Is, or is not, the aim of a measure to satisfy the intended purpose?
- Necessity: Is the intervention necessary to achieve the intended purpose or are there equivalent, less intrusive alternatives? This means that a measure must not be more far-reaching than is necessary.
- Proportionality in the strict sense: Is the advantage gained by the public institutions reasonably proportionate to the harm caused by the intervention to the individual?

§ The property of every person shall be so guaranteed that no one may be compelled by expropriation or other such disposition to surrender property to the public institutions or to a private subject, or tolerate restriction by the public institutions of the use of land or buildings, other than where necessary to satisfy pressing public interests.

Chapter 2, Article 15 of the Instrument of Government

§ A police officer who has to exercise an official duty shall intervene, with observance of the provisions of acts and other statutes, in a way that is justifiable in view of the purpose of the intervention and other circumstances. If force must be used, the form and degree of force used shall be limited to what is needed to attain the intended result.

Chapter 1, Section 8, first paragraph of the Police Act (1984:387)

The principle of proportionality has its roots in European cooperation. It is defined in the Treaty on European Union, and several articles of the European Convention stress the importance of balancing public and private interests.

The principle has long been used in Sweden as a general principle for interpretation. It can be said to be a generally recognised legal principle that aims to find a reasonable balance between advantages for the public institutions and disadvantages for the private person.[49] It has also been included in Swedish legislation in a number of areas. One example is the rule in the Instrument of Government on protection of property that says that everyone's property is protected, except when it is required to satisfy pressing public interests. Another example is that the Police Act says that a police officer may only intervene in a justifiable way. Force may only be used to the extent needed to attain the intended result. (See the texts of the law in the adjacent boxes.)

There are several similar examples of specific rules saying that authorities must assess proportionality before making decisions or taking measures.

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47 Helmius, The principle of proportionality [*Proportionalitetsprincipen*], (Principles of public law [*Offentligrättsliga principer*], ed. Marcusson), 2 ed., 2012, Iustus förlag, pp. 133–162.

48 Govt Bill 2016/17:180, p. 61.

49 See SOU 2010:29 pp. 172–176 and also Govt Bill 1993/94:117, Incorporation of the European Convention and other matters concerning rights and freedoms [*Inkorporering av Europakonventionen och andra fri- och rättighetsfrågor*], p. 39 f.

Since 1 July 2018 the proportionality principle is included in the Administrative Procedure Act. It applies, in principle, to the processing by all authorities of all types of matters, but also to other administrative activities. It is both about making decisions and about taking other kinds of day-to-day measures. The principle means that an authority must not take a measure in the public interest without taking opposing private interests into account at the same time.[50] This helps, for instance, to make the processing of matters by authorities more careful and correct, and to more often avoid unnecessary appeals. For all private persons, the principle means that they have clear support in the law for their interests.[51]

The principle of subsidiarity

The *principle of subsidiarity*, or the *principle of proximity*, sets out conditions for when the EU may act instead of Member States in certain areas where both the EU and Member States may make decisions. The principle consists of two criteria: The Union should only take an action if the objectives of the action cannot be sufficiently achieved by the Member States (insufficiency criterion), and therefore can be better achieved at Union level (better criterion).[52] The principle prohibits the Union from taking measures when an issue can be dealt with effectively by Member States themselves.[53] The purpose is for power to be exercised as close to citizens as possible.

Other principles in EU law

The Treaty on European Union states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.[54]

The principle of *conferral* is a kind of legality principle for the EU. It means that EU institutions may only make decisions in areas agreed by Member States in the Treaties. The Treaty also mentions the principle of proportionality. The Treaty says that this principle shall apply when the Union uses its competencies.[55]

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50 See, e.g. the Supreme Administrative Court's judgment of 29 January 2019, case no 2063-17.

51 SOU 2010:29, pp. 181–185.

52 Hettne et al, Subsidiarity in the EU after Lisbon [*Subsidiaritet i EU efter Lissabon*], Report from the Riksdag 2013/14:RFR10, p. 23.

53 Panizza, Fact sheet on the EU [Faktablad om EU] 10/2018, p. 2.

54 Treaty on European Union, (2016/C 202/1), Article 2.

55 Article 5.

Creating conditions for a good administrative culture

Authorities need to make sure that all their staff members really are aware of and understand the principles in the basic values of central government. It is only when all central government employees are aware of and act in accordance with these principles that the administration can be really effective and legally certain. This requires active work that also includes explaining the relationship between the principles and various norms and cultures to be found in their activities and among their staff.

Active work is required

Active work in authorities with the basic values of central government is what lays the foundation for a good administrative culture i.e., a culture that is based on the basic values of central government and wherein behaviour and attitudes conform to these principles. This requires engagement by both leaderships and staff and deliberate ongoing work including all staff to develop and uphold good administrative culture. The work and this culture create conditions for good administration with authorities that are better at performing their set tasks in a democratic, efficient and legally compliant way. This can also contribute to maintaining high confidence in government among all citizens of and inhabitants in Sweden.

The basic values need to be discussed and made more specific

The basic values of central government are formulated at a general level. Authorities therefore need to fill them out in their day-to-day activities and to discuss the issues and dilemmas that are specific to them. This is particularly so when the different principles may come into conflict with one another.

As has been stated in this publication, you must, as a central government employee, follow rules and procedures, but also process matters quickly. However, having too much of a focus on low cost and quick delivery can conflict with the requirements that authorities have to be both efficient and legally certain.

Another difficult question as a central government employee is what you can and should make statements about in public. You have freedom of opinion and freedom of expression just like other people, but you must, at the same time, make sure that no one views what you say and think as a private individual as coming from your authority. There is a grey area here, where what you do and say in your leisure time can affect the authority where you work.

This is the kind of conflict that everyone working in an authority may be faced with in their work. To be able to handle situations like this, all central government employees need to understand their role. Authorities therefore need to train their staff about the basic values of central government, about what other specific rules apply to their activities and about what it means to be a central government employee, for instance at a court or higher education institution. Authorities also need to give their staff space to discuss difficult situations and practice handling dilemmas in a way that makes them concrete for each authority. Doing so can make their discussions interesting and relevant in their day-to-day work situation.

Case law and government authority decisions

Supreme Administrative Court

2005 case report 43

2011 case report 10

2013 case report 72

2016 case report 46

2017 case report 4

Judgment of 25 January 2019, case no 2063-17

Labour Court

2014:45

2018:45

Judgment of 7 March 2007, no 20/07, case no A 54/06

Court of Appeal and Administrative Court of Appeal

Judgment of Svea Court of Appeal of 28 April 2017, case no T 6161-16

Administrative Court of Appeal in Stockholm, judgment of 26 January 2018, case no 3762-17

Parliamentary Ombudsman (JO)

JO 1999:2000, p. 366

JO 2006:07, p. 362

JO 2015:16, p. 507

JO 2015:16, p. 526

Decision of 30 November 2018, reg. no 1855-2018

Chancellor of Justice (JK)

Decision of 23 June 2009, reg. no 4660-08-30

Decision of 7 August 2008, reg. no 7068-06-21

Equality Ombudsman (DO)

DO's decision of 20 February 2014 (GRA no 2013/ 617)

This publication describes the basic values of central government. The publication can be used for discussions and exercises about the fundamentals of what is a good administrative culture.

In this publication the Swedish Agency for Public Management describes the six basic values of central government, gives examples and discusses behaviour and attitudes.

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