

Summary

It may seem odd, but elected representatives in Swedish municipalities have very limited legal liability for their decisions – at least in areas that are not specially regulated or do not involve the exercise of public authority.³ This means, for example, that a municipality can sell a municipal swimming facility to an individual for one krona, even if the decision has been appealed and violates the Local Government Act. Local politicians can only be held accountable at a political level, by their own party or by voters on election day. This lack of legal liability has been highlighted repeatedly by the Parliamentary Ombudsmen in recent decades.⁴

In the general discussion, however, this phenomenon – referred to as municipal contempt of the law and contempt of court – has been somewhat overshadowed. And legislators have not been able to handle the problem. Contempt of the law means that a municipality more or less deliberately ignores applicable laws and takes action, decisions or conducts operations in violation of these laws. Contempt of court means that a municipality does not comply with a court order or judgment. These two types of contempt are different in character but are often treated as one and the same under the heading of municipal contempt.

One of the earliest examples is the Gullspång case from 1988, in which members of the municipal executive board were charged with enforcing a decision that had been expressly prohibited by a court. In violation of the Local Government Act, the executive board had decided to provide financial support to a local business operator. The decision had been appealed and the court had

³ The exercise of public authority is a legal term that involves, simply put, deciding on action against individuals, prohibitions etc., and benefits to individuals and similar. It is an expression of the power of society over the individual.

⁴ See, for example, sections 4.2, 4.9 and 4.10.

decided on a prohibition against enforcement. The municipal executive board financially supported the business operator regardless, which led to the Office of the Chancellor of Justice charging the members of the board with misconduct. The members were subsequently acquitted in the Supreme Court because misconduct is not applicable when municipalities breach the Local Government Act.

The question of how to combat municipal contempt has been investigated several times, particularly in the 1990s and early 2000s. It has not been discussed to any great degree in recent years, despite fairly consistent petitions from the Office of the Parliamentary Ombudsmen. Virtually every annual official report by the Parliamentary Ombudsmen contains one or more cases of municipal contempt. However, the issue is not currently being handled by legislators. Previous inquiries, which proposed both municipal fines and sanctions against individual elected representatives, have essentially not produced any results. The problem has often been viewed as too complicated and it has been argued that the measures in the proposals constitute an intrusion on local self-government.

A pertinent question is why does municipal contempt exist at all? Surely it ought to be natural for all municipalities to follow existing legal rules and the judgments and decisions of the courts? However, there are likely to be several explanations for the contempt.

One explanation may be that municipalities perceive certain legislation as cumbersome and maladjusted to their needs. For example, the requirements concerning public procurement of goods and services are often problematic. The Public Procurement Act is notoriously difficult to apply and the temptation to make a direct award in violation of the regulations, without a complicated and costly procedure, is no doubt great. It is precisely in the area of public procurement that several cases of municipal contempt can be found. Today, however, the sanctions are relatively severe and the problems of municipal contempt in the area of public procurement will likely reduce in scope.

Another explanation is the temptation to support local businesses financially. Under the Local Government Act, the possibility of providing support to local business operators is very

limited. A company that is a large employer in a municipality cannot receive any help from the municipality in the event of a financial crisis and imminent bankruptcy, even if it is in the municipality's interests to help the company and make sure that the members of the municipality have jobs and incomes. Here, the temptation to provide financial support in violation of Local Government Act regulations can be great. Such cases are occasionally highlighted in the media.

A third explanation is the existence of areas in which individuals have been given considerable legal rights that can be difficult for municipalities to meet. For example, the Act concerning Support and Service for Persons with Certain Functional Impairments provides individuals with considerable rights that can be very costly for a municipality.

These three examples show areas in which the municipal reality is not in tune with the requirements of the legislation. However, it is not acceptable for municipalities to ignore legal regulations or court orders that are not in their interests or they do not agree with. Regardless of the reasons behind municipal contempt, the phenomenon must be handled by legislators.

In this connection, it must be noted that the problem of municipal contempt is essentially non-existent in the other Nordic countries. In Finland, misconduct is still clearly regulated in criminal law. Violation of official duty, which is regulated in Chapter 40 of the Finnish Penal Code, makes misconduct and neglect in official duty an offence. There is personal criminal liability for contempt of the law and contempt of court. The Danish system also contains personal liability, and decision-makers who ignore legal regulations and judgments can be fined. In Norway, supervisory authorities can *ex officio* reverse or amend municipal decisions. The Swedish lack of supervision, liability and sanctions is thus unique from a Nordic perspective.

One way to rectify municipal contempt is to change the legislation that the municipal sector has difficulty supporting, such as by increasing the ability of municipalities to provide financial support to individual business operators. An obvious problem is that the interests of individual municipalities may be contrary to important national interests. Another, possibly greater, problem is that Swedish legislators do not have sole control over the issue. In

most cases, providing support to business operators violates State aid prohibitions in EU law. The requirements concerning public procurement also derive from EU law. Quite simply, not all legislation can be adapted to the needs and wishes of individual municipalities.

However, there are other ways to tackle municipal contempt. The central proposals put forward in this report can be summarised in the following points:

- Reintroduce extended criminal liability for misconduct, including related sanctions
- Introduce a duty to prosecute on municipal employers for certain types of offences
- Clarify the function and responsibility of municipal employees with a special chapter in the Local Government Act to strengthen their position (for example, through the possibility of registering a diverging opinion in decisions) and regulate the handling of secondary occupations that undermine public confidence
- Tighten the requirement on rectification in the Local Government Act so that municipalities to a greater extent than currently are forced to rectify decisions that have been reversed by a court
- Amend the general rule for enforcement of municipal decisions so that enforcement is less able than at present to take place before the period for appeal expires
- Introduce a possibility for the administrative court to combine a prohibition against enforcement with a conditional financial penalty

In the long run, it is unacceptable for Swedish law, democratically approved by the Riksdag, the Swedish Parliament, not to be followed by all municipalities. This risks eroding the respect of citizens for the entire legal system and is hardly compatible with the basic requirements of the rule of law.