

LEGAL REQUIREMENTS FOR TRANSPARENCY IN HIGHER EDUCATION INSTITUTIONS

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ABSTRACT

To describe and assess the legal requirements for transparency in appointments and promotions in the higher-education institutions of Sweden.

The study explore legal documents.

There is potential for further research to explore transparency in similar procedures in other comparable countries.

Quality assurance and quality control with respect to appointments and promotions in higher-education institutions might be enhanced by legal requirements for transparency of documentation and decision-making procedures.

The study provides original research into the administration of part of the Swedish public service and suggests that this might be seen as a potential benchmark for quality assurance and quality control with respect to public access to documentation and decision-making procedures.

Keywords: appointment, promotion, higher education institutions, university, Sweden

INTRODUCTION

Unlike many other Western countries, the Swedish public sector remains dominant in many areas of society—especially in the welfare system, which is largely built upon a large public sector. The Swedish public sector consists of three principal categories—(i) government bodies; (ii) county councils; and (iii) local municipalities. The present paper explores the first of these. In particular, it addresses the managerial environment of higher-education institutions, the vast majority of which are government bodies. The objective is to describe the legal requirements for transparency in appointments and promotions in Swedish higher-education institutions.

In many countries there is some degree of public access to the documentation and decision-making procedures in appointments and promotions in higher-education institutions; however, in most

countries, such transparency is not as marked as is the case in Sweden. For example, Swedish law requires that almost all documentation and information on decision-making procedures shall be available for public access unless specific reasons exist to the contrary. Both private higher-education institutions (which are a small minority) and public higher-education institutions (which constitute the vast majority) are required to adhere to the principle of public access to official records.

The Swedish system can thus be seen as an interesting and potentially fruitful area of research regarding transparency in public administration. The term ‘transparency’ is used here to refer to public openness in allowing citizens access to documentation and decision-making procedures. The author contends that such transparency:

- enhances the perception of the public sector among citizens; and
- discourages malpractice and corruption.

CONCEPTUAL FRAMEWORK

The conceptual framework for the present study can conveniently be considered in terms of: (i) managerial framework; and (ii) theoretical framework. Each of these is discussed below.

Managerial framework

In most Western countries, constitutional requirements and the freedom-of-information legislation stipulate a certain degree of access to official records in the public sector. However, the Swedish approach to the principle of public access to official records is, in many respects, more far-reaching than most comparable countries—including fellow member countries of the European Union (EU).

This policy of transparency is exemplified in Swedish higher education, which is largely a public-sector undertaking.

In Sweden, the overriding responsibility for higher education and research rests with the Swedish government through the Riksdag of the Swedish parliament. Parliament determines the objectives, guidelines, regulations, and resources that are to be applied to Swedish higher education. Education and research, taken together, form the remit of the Ministry of Education and Science. This ministry is responsible for education and research in general, and is assisted in the specific field of higher education by the National Agency for Higher Education (NAHE).

NAHE exercises quality control over Swedish higher-education institutions as part of a general watching brief on behalf of the government and/or in response to specific initiatives from time to time. The agency also checks to ascertain whether the rules adopted by the higher-education institutions themselves are: (i) clear and consistent for employees and students; and (ii) compatible with legislation and administrative rules. The aims of NAHE's supervisory activities are thus to ensure that the rules are followed and to ensure that the needs of the public and private individuals are met. In carrying out these tasks, the agency is subject to regulations issued by the government regarding: (i) the tasks that are entrusted to NAHE; and (ii) how the agency is to organise its operations. Under this regime, NAHE:

- conducts quality audits of higher education;
- exercises supervision of individual higher-education institutions;
- reviews and analyses the higher-education system by providing a comparative frame of reference for international quality assurance in Swedish higher-education institutions;
- evaluates qualifications awarded abroad and compares them with Swedish standards;
- supports educational renewal and development; and
- provides information about studies and encourages student enrolment.

The NAHE's legal department supervises the higher-education institutions. The department also provides the material on which the Higher Education Board of Appeals can base its decisions on various issues. In addition, NAHE has been empowered by the government to issue regulations in a number of areas. These regulations supplement or clarify the provisions found in the Swedish *Higher Education Act* and the *Higher Education Ordinance*.

Theoretical framework

In Sweden, all public-sector units are governed by the principle of public access to official records. The application of this principle is laid down in the Swedish Constitution (the *Regeringsformen*), the Press Law (the *Tryckfrihetsförordningen*), and the *Official Secrets Act* (the *Sekretesslagen*). All documents arriving at a public-sector unit must, with few exceptions, be recorded in a daily record. Once a document is thus recorded in the diary journal of a public-sector unit, that document becomes a public document. Public-sector units are under a legal obligation to make such public documents accessible to citizens when required.

The higher-education sector is governed by this principle of public access to official records. This principle is of particular interest when it comes to legal requirements regarding appointments and promotions in the higher-education institutions. The legal framework consists of the *Higher Education Act* (the *Högskolelagen*), the Higher Education Ordinance (the *Högskoleförordningen*), and the *Statute Book of the National Agency for Higher Education* (the *Högskoleverkets författningssamling*). The *Higher Education Act* applies to higher-education institutions run by the state, county councils, and local authorities. The provisions of the Act are supplemented by regulations in the Higher Education Ordinance. Any regulations that are issued are published in a series of publications called the *Statute Book of the National Agency for Higher Education*.

The third chapter of the *Higher Education Act* provides an overall framework for appointments and promotions in higher educational institutions, whereas the local provisions of higher education institutions provide the details (including the criteria for evaluation). Although these criteria and provisions vary among different higher-education institutions, they must comply with the *Higher Education Ordinance*. This ordinance provides guidance on the underlying process of documentation and decision-making procedures.

The areas of particular interest in the theoretical framework (outlined above) for appointments and promotions in higher-education institutions can be divided into four stages:

- initial stage;
- preparatory stage;
- performance stage; and
- evaluation stage.

Each of these is detailed below. (For the underlying legal extracts and the author's comments, see Appendix 1.)

Initial stage

- *Positions of appointment and promotion:* different categories of teachers (such as professors, associate professors, assistant professors, lecturers, research assistants) and promotions from one of these categories to another.
- *Rules for appointment and promotion:* the specifications of the rules and their application.
- *Applications for appointment and promotion:* how applications are to be made by those seeking appointment or promotion.

Preparatory stage

- *Discrimination of applicant in appointment:* allowance for positive discrimination to promote gender equality at work.
- *Criteria of appointment and promotion:* academic, teaching, administrative, and other skills required to qualify.
- *Requirements of appointment and promotion:* subject area and assessment grounds (and their respective weights against each other).
- *Announcement of appointment:* advertising or other equivalent procedure to provide all information about the appointment.
- *Preparations of appointment and promotion:* related proposals and the observance of local rules.

Performance stage

- *Review panels for appointment and promotion:* the constitution of such panels.
- *Formal reports of appointment and promotion:* individual reports from each member of the review panel documenting the skills of the applicants, their relative ranking, and reasons for decision on recommendation
- *Eligibility for promotion:* whether the applicant should be promoted and whether the applicant meets the eligibility requirements.
- *Qualification for promotion:* an assessment of the skills of every applicant in relation to: (i) each of the assessment criteria for the position; and (ii) an overall assessment.

Evaluation stage

- *Final decisions on the appointment and promotion:* submission of proposals to the vice-chancellor, and the decision made by the vice-chancellor.
- *Appeals against appointment and promotion:* provision for an appeal (against adverse decisions) to the National Board of Appeal for Higher Education.
- *Final decision on appeals in relation to the appointment and promotion:* made by the National Board of Appeal (against whose decision there can be no further appeal).

METHODOLOGY

The study involved the examination of legal documents and the conducting of interviews with leading executives in various Swedish higher-education institutions. The content analysis of the legal documents (i.e. with extracts and comments) have been excluded due to space constraints.

IMPLICATIONS

Transparency is apparent in all of the four stages identified above. In the *initial stage*, the position to which a candidate is to be appointed must be made explicit and the category of teacher required for the position must be specified. The rules of appointment and promotion must be made available to candidates at the institution of higher education. Any application received for an appointment or a promotion must be entered into the diary journal of the higher-education institution, thereby becoming a public document. Any failure to abide by these requirements in the initial stages can be grounds for subsequent appeal to the Board of Appeal.

In the *preparatory stage*, positive discrimination among applicants is permitted to promote gender equality; however, such discrimination is not allowed to contravene the requirement for objectivity in making the appointment. The criteria of appointment and promotion must be explicit in terms of academic, teaching, administrative, or other skills required, and the weightings given to each must be clearly stated. The position must be publicly advertised, or an equivalent procedure must be followed to provide all relevant information about it. The faculty board (or a body especially set up for the purpose) is responsible for preparing the advertising material and other arrangements in connection with the appointment. In carrying out their tasks, they are required to observe all local rules for appointment and promotion. These procedures must all be transparent and in the public domain.

In the *performance stage*, review panels for appointment and promotion must be appointed on the basis of advice from two or more persons (usually external). Men and women must both be represented, unless there are strong reasons to the contrary. Each person on a review panel is required to provide an individual written report that describes the skills of the applicants, their relative ranking (in appointments), and the reasons for the panel member's recommendation. The formal proposal of appointment or promotion must include an account of: (i) the assessment of the skills of applicants in relation to each of the criteria that apply to the position; and (ii) an overall assessment against all the criteria. The use of external review panels contributes to fair and correct procedures in appointment and promotion. All evaluations from the members of the review panel enter the public domain.

In the *evaluation stage*, recommendations for appointment (or promotion) are submitted to the vice-chancellor of the relevant institution, who makes the final decision. Appeals against the vice-chancellor's decision can be made to the National Board of Appeal for Higher Education. The decisions of this board are final. These processes also contribute to fair and correct procedures in decision-making. Any doubts or ambiguities that individuals might have can be clarified objectively. The transparency required in the legal framework is reflected in the administrative processes described above.

In summary, the overall transparency in all stages of the procedure for appointments and promotions in Swedish higher-education institutions appears to be in accordance with the legal requirements for quality assurance and quality control. The senior legal adviser at the Board of Appeal (who was interviewed for the present study) argued that the legal requirements of transparency in the documentation and decision-making procedures, including the existence of the Board of Appeal itself, have a preventive effect on possible irregularities in appointments and promotions. The Board of Appeal (2004) has reinforced this opinion by issuing a written statement to the government contending that the availability of appeal to the board is a significant factor in maintaining public confidence in the process of appointments and promotions in the Swedish higher-education sector. However, the

present study has also identified some potential *weaknesses* in the system. They can be summarised as follows:

- the potential for a lack of transparency in certain matters; and
- a tendency towards rigidity and inflexibility in the system.

Each of these is discussed below.

First, there is *potential for a lack of transparency* in certain important matters. Although transparency is required (and ostensibly maintained) at all stages of the process, this transparency refers only to the formal procedures. Informal processes might be less transparent and more difficult for outsiders to scrutinize; moreover, it is possible to omit parts of the procedures in the different stages without this being revealed. For example, informal discussions and contacts can occur among the members of various bodies—such as a review panel or a faculty board. The purpose might be to seek consensus and produce a unanimous evaluation. These discussions are not transparent, and can be significant in the overall process. In spite of the supposed transparency of the system, there are significant factors that are not documented.

Secondly, a *tendency towards rigidity and inflexibility* can be discerned in the system. Indeed, it can be argued that the Swedish system is bureaucratic, time-consuming, and expensive to manage. The system is biased towards formal procedures and formal academic qualifications. Innovative methods of assessment are not facilitated or encouraged. In particular, relational competencies—such as being a collaborative team player—are difficult to substantiate in the assessments used by the system.

CONCLUSIONS

The present study concludes that, in accordance with legal requirements, there is transparency at all stages of documentation and decision-making in appointments and promotions within the Swedish higher-education sector.

The requirement for public disclosure at all stages of the process means that procedures and decision-making can be scrutinized by outside observers, including colleagues of applicants, journalists, and other interested citizens. This reduces the likelihood of any suspicion or speculation arising with respect to the proper handling of these issues. The requirement for public disclosure also encourages objective treatment of all matters within the process, and mitigates against nepotism or other inappropriate behaviour. In the final analysis, this is likely to enhance quality assurance and quality control in this aspect of public administration. Potential weaknesses in the system may occur such as: potential for a lack of transparency in certain matters; and a tendency towards rigidity and inflexibility in the system.

Despite these difficulties, the present study concludes that the legal requirements for procedures in appointments and promotions within the Swedish higher-education sector encourage high levels of transparency. Such transparency of appointments and promotions provides a solid foundation for quality assurance and quality control in higher-education institutions. Furthermore, it promotes openness and fair play in documentation and decision-making procedures.

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