

Speech on European Day of Lay Judges, 13th of May 2017

**by Morgan Johansson
Swedish Minister of Justice**

Ladies and gentlemen,

First of all, welcome to Stockholm! I know it's a bit cold here, considering it's May, but on the other hand what did you expect so far north! But we do have sunshine, and I really hope you will enjoy your stay here in our beautiful capital!

I'd like to express my gratitude to Marika af Winklerfelt and the Swedish Association of Lay Judges for inviting me to this occasion. And I'm grateful to you all for your work to serve justice in your respective countries. You play an important part in the legal system in your countries.

I happen to know one or two things about this. I myself was once a lay judge. I was a lay judge for five years, first in a district court in my hometown Lund in the south of Sweden, and then in a court of appeal. I know how demanding – but also exciting – the assignment can be. And I have to say that when I had to give it up when I started to work here in Stockholm, I really missed the assignment.

You learn a lot, you are a part of important decisions that really change people's lives, and you see parts of your society that you wouldn't have seen otherwise.

What I learned then, as a layman judge, is very useful to me even today as Swedish Minister of Justice. And I would advice everyone at some point in life serve as a lay man judge – if you are suited for it, because not everybody is.

It is my conviction that the participation of lay judges in the courts strengthens the rule of law in a modern democratic society. It increases transparency in the courts and enhances confidence in the legal system.

I'll come back to that, but first I'd like to say a few words about the history of lay judges in Sweden and our current system.

Sweden has a long and proud tradition of lay judges. The Swedish institution of lay judges goes back to the thirteenth century. During this period, the lay judges were primarily viewed as a means of evidence, whose purpose was to determine the truth in the case. The lay judges made their statements under oath.

In later years, the task of the lay judges evolved and they were supposed to deliver an acquittal or a conviction of the defendant. A simple majority was required for a conviction. The lay judges were appointed in each specific case among those who were present at the proceedings. Later on, the lay judges became a permanent part of the court.

Initially, the lay judges seem to have addressed only matters of fact, whereas the presiding judge determined matters of law. During the seventeenth century, the

lay judges started to determine matters of law as well. On some occasions the lay judges handed down a sentence that was more lenient than stipulated by law.

In 1734 there was a complete revision of the Swedish laws. The new law replaced the medieval laws and to this day it is still in effect in some parts. The law of 1734 codified the existing system of lay judges. The cases in the district courts were decided by one presiding judge and twelve members of the community. The lay judges voted as a collective body and had to be unanimous to overrule the presiding judge.

During the last century, the number of lay judges who participates in each case has been gradually reduced. When lay judges take part in the court of first instance, the general rule nowadays is that the court consists of one professional judge and three lay judges. On the other hand, the lay judges now have individual votes, which gives them a strong position. They also participate in additional types of courts, for instance administrative courts and courts of appeal.

Serving as a lay judge in Sweden is an honorary task. Before they start to serve, they must swear a judicial oath. They promise and declare that they will judge fairly and never be influenced by extraneous considerations. In taking this oath,

lay judges give far-reaching assurances that they will apply Swedish legal rules in their judicial activities.

The judicial oath is the same for lay judges and professional judges. This practice emphasizes that both types of judges have the same responsibility to apply the law correctly and even-handedly. Lay judges and professional judges are also on an equal footing when it comes to deciding the case. As I said, each judge has an individual vote and the right to reserve themselves against the judgement of the court. The lay judges have a say in all aspects of the case, including matters of law.

There are more than 8 000 lay judges in Sweden. Most of them serve in a district court, which is the general court of first instance. The lay judges take part in cases concerning criminal offences and family disputes.

The district court consists of one professional judge and three lay judges. The courts of appeal consist of three professional judges and two lay judges.

There are also lay judges in the administrative courts. They handle disputes between citizens and the authorities, for example concerning taxation, social insurance benefits and asylum. Lay judges take part in all these types of cases. Just as in the district courts, the lay judges are in the majority. But in the administrative court of appeal, the lay judges play a more limited role. They only participate in cases concerning compulsory care.

The Swedish system of lay judges is particular because we have never had a jury system for criminal cases. Most European countries have had a jury system at some point, at least for more serious crimes. The only instance of jury trials in Sweden is in matters concerning freedom of the press and freedom of speech.

When I defend the lay judge system against those who want to reduce it, or even abolish it, and we have those people in Sweden too, I usually use at least three, in my opinion, strong arguments.

First of all, you get better court decisions. I think it is often a general rule that a group of people with varying backgrounds and experiences make better decisions than a group of people with the exact same background. This is particularly valuable for assessment issues, for example, for evaluation of evidence, reasonability issues and choice of sentence. So I say the system increases the quality of judgements.

Second, the lay judges give the courts a broad picture of the general conception of justice in society. In a democracy laws are made in Parliament, by the representatives of the people. And with a lay judge system, the people also can exercise some control over the application of the law in particular cases. When professional judges and lay judges serve together, the lay judges can ensure that the administration of justice is in line with the general values of society.

And it also means that the administration of justice is transparent and open to scrutiny. By monitoring the operations of the court, the lay judges can reduce any suspicions among the public that the courts are not objective in their rulings.

And those two things, control and transparency, leads to maintaining public confidence in the judicial system. And in fact, studies show that a majority of the Swedish people have high confidence in the courts. And the level of confidence actually has increased over time.

We have 8 000 lay judges in Sweden – that is 8 000 ambassadors for the Swedish legal system, who in their everyday lives can explain to the public how the system works. You should never underestimate that. I believe that the lay judges play an important part in maintaining the confidence in the courts.

Third, we get court rulings that almost everyone can understand when we read them. When the court deliberates, the professional judge gets an opportunity to lay out the questions before the court to the lay judges in a pedagogical manner. He or she is constantly trained to explain things too people who are not lawyers themselves. The discussion within the court then helps to clarify the reasoning of the professional judge. This process hopefully translates to the written judgement, so that the parties and public can get a better understanding of the court's opinion. The lay judges act as safeguards against rulings that are too technocratic or difficult to understand.

So, to sum it up: we get better quality in the decision making process, better legitimacy for the legal system and court rulings that the public can understand. And that is not bad.

For all these reasons, I am committed to preserving the institution of lay judges. The Swedish government has recently decided against a proposal to decrease the participation of lay judges in our courts.

But of course, everything can get better. So we have to develop and strengthen the system of lay judges.

As I mentioned, lay judges can be seen as representatives of the people. The composition of the entire body of lay judges should therefore reflect the composition of society as a whole. Currently that aim is met with regard to gender and ethnicity, but not age. The lay judges are on average older than the population at large.

The government has therefore commissioned the Swedish National Courts Administration to take measures in order to increase the number of younger lay judges. There has been some encouraging development in this regard, but much work remains to be done.

As I said, one purpose of lay judges is to enhance the public's confidence in the judicial system. It is therefore important that the lay judges who serve in our

courts are suitable for the task. The Swedish system was recently strengthened in this regard. A lay judge has to be suitable for the assignment with regard to discretion, independence, lawfulness and other circumstances. The court shall dismiss a lay judge who, by committing crimes or otherwise, has proved incapable of the assignment.

It is also important that lay judges receive proper training. Since last year, it is mandatory for all lay judges in Sweden to take part in an introductory and continued training by the courts. The focus of the education is on publicity and confidentiality, disqualification, ethical orientation and the fact that being a lay judge is not a political assignment.

To conclude, I would once again like to thank The European network of Associations of Lay Judges for your important work in promoting lay judges.

The Swedish government encourages this mission and is firmly committed to preserving and developing the institution of lay judges.

Thank you.