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Migranternas rättigheter under hot *(Migrants' rights under threat)*

On October 10, 2024, our researchers from WP5 on HRJust & Migration, *Paul Lappalainen* (Sweden) and *Olha Bulhakova* (Ukraine), attended the scientific seminar “**Migranternas rättigheter under hot**” (“**Migrants' rights under threat**”) organized and hosted by the NGO “Civil Rights Defenders” with the support of the Swedish Postcode Lottery.



The guest panellists were *Pernilla Leviner*, Professor of Public Law with a focus on children's rights and social law at the Faculty of Law at Stockholm University; *Rebecca Thorburn Stern*, Professor of Public International Law at Uppsala University and Visiting Professor of Human Rights at the Faculty of Law at Lund University; *Anna Lundberg*, Professor in Sociology of Law at Lund University; and *Kavot Zillén*, Associate Professor and Senior Lecturer in Public Law at Stockholm University.

The first lively discussions took place on such pressing issues for both Swedish and international society as the possibilities and conditions for admitting Ukrainian wounded soldiers and child victims of Russian terror to Sweden (in particular under the Medevac medical humanitarian programme) and the treatment of similar victims from Gaza.



This was followed by the speakers' reflections on the current legislative processes, where speed is an ingredient factor, meaning that government inquiries are not getting the time they need. Inquiries are also given detailed political instructions as to the details of the legislative proposals to be produced, regardless of if the inquiry concludes that such measures will be ineffective or not.

HERE ONE COULD QUESTION THE ETHICAL INTEGRITY OF THE HEADS OF SUCH INQUIRIES. WHILE THE INQUIRY IS ONGOING, IT IS A TEMPORARY INDEPENDENT GOVERNMENT AGENCY. INDEPENDENCE GOES BY THE WAYSIDE WHEN THE RESULTS ARE PRE-DETERMINED IN THIS MANNER.



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Various norms that have guided government inquiries in the past are now being skipped with increasing frequency. There are the detailed instructions given to the inquiries. The speed with which they are expected to act. This is also compounded by the all-too-brief time limits set for public consultations. Even government agencies complain about the limited time for such responses, especially when such inquiries are produced at an increasingly faster pace.

Another related issue that emerged was the implementation of UN conventions. Some of the focus here was on the applicability of these and the international law more generally when it comes to protecting the rights of refugees/asylum seekers/migrants.



One example brought up by *Professor Leviner* was a case where the right to deny economic support to an asylum-seeker (but perhaps a person in legal limbo) was challenged. The court said they could be denied this right due to an earlier precedent – a precedent that was set before parts of the Convention on the Rights of the Child were incorporated into Swedish law. There were additional comments on the need for Swedish law to live up to its human rights obligations – and the need to argue for judgments that applied the conventions in a convention-compliant way. There was also an idea that local governments sometimes feel a need to override national law because of a higher law, such as the ECHR.

Professor Lundberg brought up the example of Malmö and access to information available at local schools there concerning the legal status of some pupils. In closing, there seemed to be a stated consensus among all academics that at times it may be necessary to break the law, to live up to a higher standard.

IT COULD BE ASKED, IF LIVING UP TO A HIGHER STANDARD, E.G. THE CONSTITUTION, IS THIS REALLY BREAKING THE LAW OR ARE THE PARTICULAR ACTORS SIMPLY LIVING UP TO THEIR DUTIES AS PUBLIC OFFICIALS?



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In the short time available for questions, *Paul* asked:

- **Where are the lawyers who could take these cases to court?**
- **Which civil society organizations can be relied upon?**

The panel raised the need to challenge the legality of the current interpretations of various laws, particularly those aimed at restricting the rights of migrants. The deteriorating situation can be seen on the [Civil Rights Defenders website](#).

Did law schools prepare law students for this kind of argument? Especially in an atmosphere in the courts where judges, given their age, have been trained in law schools to question the legal significance of, for example, UN conventions and the Swedish Constitution.

The response, somewhat hesitantly, maybe the organizations in the room.

They pointed out that the ECHR is given a higher level of respect today. However, they expressed doubts about the interest of judges/courts in other conventions, as well as in particular the Swedish Constitution. They also pointed out their own need to have law schools improving the ability of law students to bring up and argue “higher law”.

