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responsibility of the retiring Prime Minister. At the end of the process, the King appoints a new Prime Minister, as well as new ministers. In 1988, it turned out to be very difficult to form a new government. Four *dronningerunder* were needed in order to reach an agreement. Some of the mandates were broader than just finding a leader of the negotiations and forming a new government. All things being equal, the broader the mandates are, the more the King will be involved in the political process (Hansen 1988).⁸

The legal status of the guidelines just described is unclear and they may vary dependent on the concrete parliamentary situation (Zahle 2006: 157). Some constitutional theorists argue that the guidelines are legally binding (Zahle 2001: 207 ff, 214 ff).⁹ Others argue that the guidelines only have a political status (Christensen 1990: 197 ff; Jensen 1997: 84 ff). The unclear state of the law seems to provide the King with a certain flexibility when forming a new government, at least from a legal point of view. Especially, in a situation where a majority government cannot be established and there is more than one possibility of minority governments, there appears to be a certain room for manoeuvre (Ross 1983: 430). However, as mentioned earlier in practice there is a close cooperation between the Cabinet Secretary and the Head of the Ministry of State.

3.4. THE KING AND PUBLIC POWER IN THE MINIMALIST MONARCHY OF SWEDEN

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Introduction

Under the current Swedish Constitution, the distribution of powers to the monarch is based on one overarching principle, namely that the monarch shall have no formal power. This principle is based on the political compromise that formed the basis for the adoption of the current central fundamental law, the 1974 *Regeringsform* (Instrument of Government). In international comparison, Sweden stands out as formally limiting the role of the monarch to an extent that has made at least one foreign commentator question Sweden's status as a monarchy (Smith 2017: 215).

From the 1809 Instrument of Government to Constitutional Reform in 1974

The immediate predecessor to the current central fundamental law was the 1809 Instrument of Government. This fundamental law stated that the Realm should be governed by a King as a hereditary monarchy (article 1). He should govern the Realm alone, albeit for the most part on the advice of his counsellors (articles 4 and 7), then acting as *Kungl. Maj:t i statsrådet* (Royal Majesty in the Council of State). The Council

⁸ In the article, Hansen describes the process of forming a new government.

⁹ According to Zahle, the parliamentary principle entails that the political parties play an important role in the appointment of a new government, see also Zahle 2001: 210, 34.

of State met in the weekly *konselj* (cf French ‘conseil’). In some duties, the King acted by personal power. This was the case for his role as the Commander-in-Chief (article 14) and as head of the royal court (article 48).

The overall structure of the 1809 Instrument of Government grew ever more obsolete over the decades. Without constitutional amendments, the Council of State developed from being the King’s counsellors to a government, accepted by a majority in the Riksdag. In this way, parliamentary rule was established around 1918. According to constitutional convention, the King from now on always followed the advice of his ministers (Herlitz 1969: 99).

In the general modernisation of Swedish society, a constitutional reform project started in 1954. One central question was whether Sweden should remain a monarchy. The Social Democratic Party wanted Sweden to become a republic, while the more conservative parties wanted to retain the monarchy. The work of a cross-party committee of inquiry, supported by legal and political experts, ended in the so-called Torekov Compromise in 1971, named after a bathing resort in southern Sweden where the inquiry convened (Åse 2009: 29 ff).

This compromise meant that Sweden should remain a monarchy, but that the King should be stripped of all his constitutional functions, leaving a purely ceremonial and symbolic role. The formal legislative and political powers vested in the monarch under the 1809 Instrument of Government should be transferred to other constitutional actors. Under the leading principle of popular sovereignty, the new constitutional body of the *Regering* (government), consisting of the prime minister and the other ministers, should replace Royal Majesty in the Council of State. Other features of Swedish monarchy, not directly related to the exercise of public power, were to remain as they were, notably the legal status of the royal court as a special body under the direct and individual leadership of the king (SOU 1972:15, 80).

The proposal of the drafting committee meant a total constitutional reform with a new Instrument of Government to replace the 1809 Instrument. The proposal was for the most part accepted by the government, which proposed a government bill to the Riksdag (Prop. 1973:90). The Committee on the Constitution accepted the proposal without further comments on the role of the monarch (Bet. KU 1973:26, 29 ff). The new Instrument of Government was adopted by the Riksdag in 1974 and entered into force in 1975.

The Current Role of the King

Under the 1974 Instrument of Government, the King or Queen occupying the throne in accordance with the Act of Succession is the head of state (Chapter 1, article 5). If the King or Queen is unable to perform his or her duties, the member of the royal house in line of succession shall assume the duties of head of state as regent *ad interim* (Chapter 5c, article 4). Although the text of the Instrument of Government uses the term head of state, for simplicity we refer to the King in what follows.

The fundamental role of the King is regulated in the written constitution by the absence of formal powers (Warnling Conradson et al 2018: 110). Thus, the Swedish King neither signs new legislation, nor does he appoint the government (Nyman 1982: 182).

Also, the remaining tasks of the King are to a large extent left unregulated in the fundamental laws. Some clarity, however, is offered by the legislative materials to the 1974 Instrument of Government. The government bill makes rather vague references to the King's role according to custom and public international law. It especially mentions the King's state visits to other countries, his tasks relating to foreign and Swedish ambassadors and other representative tasks. The King's public activities 'shall be characterised by his role of representing the nation as a whole' (Prop. 1973:90, 173 ff, Nyman 1982: 183).

Relating to this latter role, the King may act as a unifying symbol in times of crisis. In this way, the King in January 2005 made a televised speech at a memorial ceremony for over 500 Swedish victims of the tsunami in Asia a few days earlier. The speech was very favourably received by public opinion (Åse 2009: 133 ff).

The legislative materials underline that the King may not give the impression of tensions between the monarch and the political branches of government. He should furthermore avoid taking part in activities that concern controversial social issues (SOU 1972:15, 139; Prop. 1973:90, 174; Nyman 1982: 183).

On some occasions, the King's public statements have given rise to debates relating to his neutrality. This was the case in 1989, when a televised documentary film on the brutal hunting of seal pups in Norway raised general indignation in Sweden. The King commented critically on the role of the Norwegian Prime Minister. This in turn spurred criticism from both Norway and political leaders in Sweden (Ögren 2006: 85; Åse 2009: 40).

There is no form of legal or political control of the King's actions. Further, the King cannot be prosecuted for his actions (chapter 5, article 7 of the 1974 Instrument of Government). This criminal immunity applies to both the official and the private capacity of the King's actions. However, this provision does not prevent Sweden from fulfilling its obligations towards the International Criminal Court or other such courts (chapter 10 article 14). The absence of criminal sanctions, however, does not imply that the King is above the law (Nyman 1982: 184).

The King shall also under the current constitutional order act as the head of *Kungliga Hovstaterna* (the royal court) and the royal family (Prop. 1973:90, 172 ff). The latter role is reflected in the provisions of the Act of Succession on marriage and travel abroad (see Calissendorff in chapter 8).

The King, acting within *Kungl. Maj:ts Orden* (The Order of his Majesty the King), may decide on royal orders according to *Ordenskungörelsen* (The Ordinance on Orders, 1974:768). A further competence – not regulated in any piece of legislation – is the possibility to award the status of *Kunglig hovleverantör* (purveyor to the royal court) (Föreskrifter rörande hovleverantörskap 2015).

Strömberg (2001-02: 723 ff) identifies a number of other tasks of the King, including participation in public festivities such as the award of the Nobel Prizes in Stockholm as well as acting as a patron of various private and quasi-public organisations. A special debate relating to this latter function concerned the King's role as patron of the Swedish Academy, founded in 1786 as a Royal Academy. Following a scandal in the Academy in 2018, the question arose whether the King had the power to amend the statutes. The King held the view that the statutes adopted by his predecessor King Gustav III were at his disposal, and decided on an amendment. The decision was legally founded on the view that the King as patron had retained this competence over this quasi-public body

ever since 1786, and that nothing in the 1974 Instrument of Government meant that the government had taken over this function (Sunnqvist and Wenander 2018: 570 ff). It is plausible that the government, concerned about the reputational damage to Sweden, and uncertain about the scope of its own legal authority, was content for the King to act. But in the ensuing debate, critics remarked that this could be seen as an attempt to strengthen royal power, which would be at odds with the principles behind the Torekov Compromise (eg Gustafsson 2018).

The King and the Riksdag

Under the principle of popular sovereignty underlying the 1974 Instrument of Government, all public power shall proceed from the people with the Riksdag as the people's foremost representative (chapter 1 articles 1 and 4). The 1974 Instrument of Government therefore has limited the King's role to a minimum (Nyman 1982: 182). Still, the constitutional relationship between the King and the Riksdag is not entirely clear (Bull and Sterzel 2015: 144). Not least, the written Constitution is silent on the scope for adopting further legislation on the King and the royal court. Sterzel (2009: 153) concludes that the Riksdag could only regulate the King's duties and status by constitutional amendments.

However, the Riksdag may regulate the King's activities indirectly, since it decides on the national budget, including the public funding of the royal court (Bull and Sterzel 2015: 144). This has opened up parliamentary discussions on the royal court's use of resources and on requirements of transparency (Bet. 2013/14: KU1, 12 ff). However, this is complicated by the partially unclear boundaries between public property and the private possessions of the King and the royal family (Sterzel 2009: 161 ff): see also Chapter 7. *Riksrevisionen* (The National Audit Office), an independent administrative authority under the Riksdag, may audit parts of the royal court, viz *Kungliga Slottsstaten* (the Palace Administration) and *Kungliga Djurgårdens Förvaltning* (the Royal Djurgården Administration) (article 2 of *lagen* [2002:1022] *om revision av statlig verksamhet m.m.*, the Act on Audit of State Activities).

When a new King or Queen accedes the throne, he or she may give an *ämbetsförklaring* (declaration of office) before the Riksdag (chapter 6, article 17 of the 2014 Riksdag Act; Prop. 1973:90, 270). Since there has been no succession to the throne under the current Instrument of Government, this provision has not yet been applied.

The King and the Government

How the King works with the government is described in Chapter 4.6. A new government takes office at a special Council of State before the King, in the presence of the Speaker of the Riksdag. The latter issues a letter of appointment on behalf of the Riksdag (Chapter 6, article 6 of the 1974 Instrument of Government). According to convention, the King concludes that a new government has taken office. After this, behind closed doors, the Prime Minister informs the King on the programme of the new government (Holmberg et al 2012: 310).

The Constitution contains an unusual provision if Sweden is at war, which may stem from Sweden's observation of what happened in Denmark and Norway during World War Two. In the event of war, the King shall accompany the government. Should the King be on occupied territory, or be separated from the government, he shall be considered unable to carry out his duties (chapter 15, article 10 of the 1974 Instrument of Government). The reason for this is the risk of an occupying power trying to use the symbol of the King for its own purposes (Prop. 1973:90, 462).

Conclusions

To conclude, the overall impression of the constitutional framework for the Swedish monarchy is that the Torekov Compromise has been carried out effectively. The scope for a King or reigning Queen to legally interfere with the work of the Riksdag or the government, or to take any formal political role is very limited. A special case is the curious legal status of the Swedish Academy, where the King actually made a formal decision in a much-debated matter. It is highly unlikely that there are other such hidden competences in the Swedish public or, in this case, quasi-public, sector.

Equally important are the more 'soft' constitutional powers of the King. The recurrent contacts with the Prime Minister may establish a certain scope for informal influence. The core of the constitutional role of the King is, however, his role as a symbol of the whole nation. A concrete example of this function is the King's speech at the memorial ceremony for the victims of the tsunami catastrophe. This is further reflected in the provisions on the King's role in situations of war.

The Swedish monarchy, resting on the 1971 Compromise, is an idiosyncratic model founded on a political compromise. Whereas certain aspects are indeed stretching the understanding of the concept of a constitutional monarchy, it also retains some archaic features which have not been changed by the 1974 Instrument of Government. In the latter category we find the role of the King as the head of the royal court and the royal family. The King's status outside of the constitutional structure based on the idea of popular sovereignty, the interplay between modern and archaic features and the combination of written and of unwritten law makes the constitutional role of the Swedish King partially unclear.

3.5A. CONSTITUTIONAL FUNCTIONS IN THE NETHERLANDS

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Introduction

The Netherlands is one of the few states that transformed from a republic into a monarchy, and this transformation was largely imposed on the Dutch by France and the United Kingdom. In 1806, the Emperor Napoleon created a Kingdom of Holland with his brother on the throne, but after only four years Louis Bonaparte was forced to abdicate and the Netherlands were annexed outright by France. The monarchical experiment had