



Background note

Conference on democracy in Europe

How can parliamentarians help to safeguard and strengthen democracy and the rule of law?

18–19 June 2023

The Swedish Parliament,
Former Second Chamber

The general idea of the conference on democracy in Europe is to give us as parliamentarians an opportunity to discuss how we can help to safeguard and strengthen democracy and the rule of law. Parliamentarians have an important role to play as legislators, but more than just a robust constitutional framework is required to protect democracy and the rule of law. Rules can be changed, sidestepped or ignored. Therefore, as the formal protection may be insufficient, defending our democracy and the rule of law ultimately concerns the resilience of the political and legal culture in a democracy, and public trust in society's institutions and those who work there. This presupposes a shared approach and a culture that safeguards the rules. Parliamentarians play an important role here, it is possible to speak of the resilience of our political culture.

Point 42 of the Venice Commission's Rule of Law Checklist takes up this aspect:

42. The contextual elements of the Rule of Law are not limited to legal factors. The presence (or absence) of a shared political and legal culture within a society, and the relationship between that culture and the legal order help to determine to what extent and at what level of concreteness the various elements of the Rule of Law have to be explicitly expressed in written law. [...] It is important that in every State a robust political and legal culture supports particular Rule of Law mechanisms and procedures, which should be constantly checked, adapted and improved.

A free and open debate is of fundamental importance in a democracy. We live in times of heightened political tensions, and contributions to the debate are often charged and polemical. The first session of the conference will focus on the democratic dialogue and the significance of parliaments. One of the opening speeches will deal with the role of parliaments in a world of intense political conflicts. Relying on a distinction proposed long ago by the scholar Anatol Rapoport, the address argues that the purpose of political institutions is to transform "fights" into two more ordered forms of conflicts: "games" and "debates." This is something parliaments have long done and continue to do – members of parliaments follow procedural rules that help turn politics into a game, and they engage in debates about important issues.

The Committee on the Constitution anticipates a forward-looking discussion on how we as parliamentarians can and should act to safeguard the democratic dialogue. Possible topics for discussion could include:

- Treatment, respect and listening in the political dialogue.
- How do we safeguard the role of the minority and the opposition?
- How do we deal with heightened political tensions and what are the risks of polarisation? Is polarisation unequivocally negative?
- What impact do deliberately false statements have on the public debate? What are the consequences for the formation of opinion in society and for our democracy?

The second session will deal with the importance of safeguarding the independence of the courts and trust in society's institutions. In Sweden an all-party committee of inquiry recently submitted a report containing several proposals to strengthen the protection of the independence of Sweden's courts and judges (SOU 2023:12).¹ The inquiry maintains that the independence of the courts is a fundamental precondition for the rule of law and a well-functioning society. The courts should be an effective legal instrument for individuals and companies wishing to protect their rights, to guarantee that proceedings are conducted in a fair manner and to protect fundamental freedoms and rights. The Committee also

¹An English summary of the findings of the inquiry is available here (p. 42ff): <https://www.regeringen.se/contentassets/fcde0b9ad7154db5a01527f72b0f4103/forstarkt-skydd-for-demokratin-och-domstolarnas-oberoende-sou-2023-12.pdf>

maintains that it is crucial that the tasks of the courts can be conducted without risk of undue influence, which presupposes that the courts and individual judges have the conditions to act independently. It is also crucial that the courts and individual judges are perceived as independent by the public.

In the annual Rule of Law Report for 2022, the Commission summarises developments related to the rule of law in the EU member states, for example, as regards the independence of the courts. The Commission refers to a couple of surveys conducted in 2022, that show that the perception of judicial independence among companies improved in about two thirds of member states when compared to 2021. However, among the general public, the surveys pointed to decreases in the perception of judicial independence in more than half the member states.²

From a democratic perspective, it is also important that the public feel that they trust other institutions in society. A precondition for achieving a high level of trust is that the institutions are characterised by objectivity and impartiality.

During the second session, the Committee looks forward to a discussion on how we as parliamentarians should approach the courts and other institutions in society in order to maintain public trust in these institutions. Possible topics for discussion could include:

- The boundary between the legislator's competence and the tasks of the judicial power.
- General statements or opinions that can affect trust in society's institutions.
- Statements regarding individual matters dealt with by public authorities or in judgments etc.; beforehand or afterwards.
- The importance of contributing to a well-functioning public administration and of safeguarding free media and academic freedom.

²The 2022 EU Justice Scoreboard and Eurobarometer 2022.