

SUMMARY

English summary of Brå report No 2009:13

Unlawful influence on prosecutors
and judges

The Swedish National Council for Crime Prevention (Brå) – centre for knowledge about crime and crime prevention measures.

The Swedish National Council for Crime Prevention (Brå) works to reduce crime and improve levels of safety in society by producing data and disseminating knowledge on crime and crime prevention work.

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The Swedish National Council for Crime Prevention (Brå)

Information and Publications Division

Box 1386, 111 93 Stockholm

Tel: +46 (0)8 401 87 00, fax: +46 (0)8 411 90 75

E-mail: info@bra.se

Brå on the internet: www.bra.se

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Unlawful influence on prosecutors and judges

Report 2009:13

Brå – centre for knowledge on crime and crime prevention

The Swedish National Council for Crime Prevention (Brottsförebyggande rådet – Brå) works to reduce crime and improve levels of safety in society by producing data and spreading knowledge on crime, crime prevention and the judicial system.

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Telephone +46 (0)8 690 91 90, fax +46 (0)8 690 91 91,
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Production:
The Swedish National Council for Crime Prevention,
Information and publishing,
Box 1386, 111 93 Stockholm
Telephone +46 (0)8 401 87 00, Fax +46 (0)8 411 90 75,
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Introduction

In this chapter, we cover the Swedish part of the study. As in previous Brå studies we will refer to the term unlawful influence, which is harassment, threats, malicious damage, violence and corruption aimed at prosecutors or judges for the purpose of influencing their exercise of duties (Brå 2005:18, cf. Brå 2009, Brå 2009:7, Brå 2008:8). In other words, it does not regard all types of harassment or threats; the intention should be to influence how a prosecutor or judge conducts his or her work. Although unlawful influence is more common before a verdict has been reached, incidents that occur after a court ruling has been passed can also be a form of unlawful influence (Brå 2008:8, Brå 2005:18), provided that the perceived purpose is to influence future exercise of duty in regard to rulings. For example, criminal groups might deliberately make use of unlawful influence to instil fear (Brå 2009:7, Katz 1988, Wierup 2007).

The purpose of this study is to survey unlawful influence on prosecutors and judges with regard to the following questions:

- How common is unlawful influence?
- Are relatives of the prosecutors and judges also targeted?
- Which actors are believed to be behind unlawful influence?
- In what types of situation does this occur?
- To what extent is unlawful influence reported to the authorities?
- What is being done, and what can be done, to prevent unlawful influence?

The significance of professional roles in regard to unlawful influence

In order to understand the motives behind influencing judges and prosecutors, one must first understand how prosecutors and judges in the district courts and county administrative courts carry out their work. What types of decisions are subject to unlawful influence? More knowledge about the professional roles makes interpreting the results of the study easier.

The prosecutor – a visible individual who starts legal proceedings

In previous studies, prosecutors have been identified as the occupational group within the judicial system that is most exposed to unlawful influence (Brå 2005:18, cf. Åklagarväsendet report 1995:7). Compared with other persons in authority, prosecutors are more often perceived as acting independently, and in some cases as the driving force of the process.

The Code of Judicial Procedure stipulates that the prosecutor, not the public authorities – the Swedish Prosecution Authority (ÅM) and the Swedish Economic Crime Authority¹ (EBM) – decides whether or not to take action. Furthermore, the prosecutor is described as an individual, an individual who takes proceedings, whose opinions are presented and who decides whether or not to appeal. One of the prosecutors had the following to say in our online survey:

In connection with a feature on [a TV-show] about a case I had pursued, in which my efforts were unfairly described as weak, I immediately received a number of unpleasant phone calls. People would call and make abusive remarks in a rather shocking manner. It's impossible to just shake it off, it leaves emotional scars.

The prosecutor represents one side of the case, and although he or she should also take into account factors that are favourable to the defendant, the prosecutor is probably often perceived as an “opponent”.

Furthermore, the prosecutor is often involved in the early stages of the judicial process, making decisions that are often negative for the defendant (detention order, prosecution etc.) In other words, the prosecutor as an individual is an exposed person and becomes a clear target of unlawful influence.

There are also differences depending on what type of cases the prosecutor is pursuing. Preliminary investigations of a more sensitive nature that receive a lot of media attention will possibly lead to a greater perceived threat than cases that pass by unnoticed. However, in this study we can only compare prosecutors within the Swedish Prosecution Authority and the Swedish Economic Crime Authority. Even if certain cases of economic crime receive a lot of media attention, those cases still do not generate the same emotions as some cases of sexual or violent crimes that are handled by the Swedish Prosecution Authority. Furthermore, prosecutors in economic crime cases encounter a different type of suspects than do other prosecutors. The person against whom judicial proceedings are brought is a deciding factor in whether or not they will attempt to influence the process unlawfully, as elaborated below.

The district court judge – a neutral person at a late stage of the judicial process

A reasonable explanation of why judges are less exposed to unlawful influence, as indicated by previous studies, is that they become involved at a later stage of the judicial process (Brå 2005:18, cf. Åklagarväsendet report 1995:7). The preliminary investigation is finished and a prosecutor has started proceedings, and thus the possibility for influence might

¹ In Sweden, there is an authority that focuses on combating economic crime. They employ prosecutors as well as police officers etc.

be considered small. It is reasonable to assume that the more time that passes – with interrogations and various measures by the police and the prosecutor – the less charged the encounters with the judicial system are. Furthermore, the judge as an individual is not as exposed or as forceful as the prosecutor, and is probably regarded as a more natural and reserved party. It is also less common for judges to appear in the media. Instead, they choose to communicate in writing, through their rulings.

In the district courts, criminal cases are handled alongside family cases. Previous research suggests that the risk of unlawful influence is greater in family cases than in criminal cases (Geiger 2001).

The county administrative court judge – correspondence from the desk

Unlike district court judges, county administrative court judges have not previously been the subject of studies on unlawful influence. Cases in the county administrative court include disputes between individuals and the central government, which comprises more high risk cases than one might expect. They handle cases involving tax crime, extradition and citizenship, social insurance related cases, LVU (the Care of Young Persons Special Provisions Act) and LVM (the Care of Abusers Special Provisions Act) related cases as well as cases related to drivers licenses and premises licenses (The Swedish National Courts Administration's website).

Unlike district court judges, their colleagues in the county administrative courts rarely meet with the litigants in the cases. Administration is mostly carried out in writing, which differs significantly from the process in the district courts, where judges and prosecutors meet potential perpetrators on a daily basis.

Nevertheless, county administrative court judges are exposed as they are responsible for the cases, as are the district court judges. At the starting point of a case, when the documents are received by the county administrative court, the documents are always communicated to the opposite party. In the following correspondence that generally takes place, the people at the county administrative court who are handling the case are identified. Even if the judge does not sign all the documents during the correspondence, it is likely that a judge would be called in if a party is deemed to be threatening or inclined to attempt to influence the court.

Method

The report is based on the results from an online survey that was conducted in Sweden and Finland, and administrated by the Finnish research institute HEUNI. The selection, method and limitations of the study will be presented in the following section. Furthermore, seminars

have been held with people who work with security related issues at the National Courts Administration, the Swedish Prosecution Authority, the Swedish Economic Crime Authority and the Swedish Security Service, along with prosecutors and judges “in the field”.

The layout of the Finnish and Swedish surveys was more or less the same².

Online survey

Selection

The study comprises all the prosecutors at the Swedish Prosecution Authority and the Swedish Economic Crime Authority, and all permanent and non-permanent judges (assistant judges and deputy judges) in the district courts and county administrative courts.

The reason why the survey covers unlawful influence over an 18-month period is because Brå wanted it to be of the same length of time as the previous study (cf. Brå 2005:18).

The number of people who received a link to the online survey is shown in table 1.³

Table 1. Number of participants in the survey.

Category	Number
Prosecutors, Swedish Prosecution Authority	762
Prosecutors, Swedish Economic Crime Authority	95
Judges, district courts	598
Judges, county administrative courts	274
Total	1 729

Data collection

On 26 March 2008 emails with a link to the survey were sent out to all the participants. Before and in connection with the sending out of emails, information about the survey was posted on the intranets of the Swedish Prosecution Authority, the Swedish Economic Crime Authority and the National Court Administration. A reminder was sent out by email on 10 April and additional reminder calls were made in May and June to the chief prosecutors and deputy chief prosecutors at the Swedish Prosecution Authority and the Swedish Economic Crime Authority, and to the chief judges at the National Courts. These measures were taken in order to improve the response rate.

² The Finnish survey comprised different categories of judges, and respondents were asked to enter their contact details if they had any further information that they wished to share. The Swedish survey, on the other hand, ended with a request to contact Brå if they had any information on unlawful influence.

³ Those whose email addresses were not working, or who were on leave of absence during the time of the survey, have been excluded.

Response rate

The survey was completed by 1 096 people (out of 1 729); a response rate of 63 per cent. The response rate of the various groups can be seen in table 2.

Table 2. Response rate.

Category	Number	Percent
Prosecutors, Swedish Prosecution Authority	450	59
Prosecutors, Swedish Economic Crime Authority	78	82
Judges, district courts	387	65
Judges, county administrative courts	178	65
Total⁴	1 096	63

The respondents of the Swedish survey correspond to the studied occupational groups with respect to age and gender.⁵ In other words, the decline is not distorted towards these variables in any of the groups.

As well as answering the multiple choice questions, many of the prosecutors and judges chose to add their own comments to the survey or write about their own experiences of unlawful influence in a final, fully open-ended question.

Surveys of sensitive issues are sometimes criticised for failing to include the really serious cases, as those people affected are too drained to complete a survey. However, the Swedish survey is estimated to have covered these types of cases as well. The survey results are considered to be reasonable, based on the assessments of the security administrators at the National Courts Administration, the Swedish Prosecution Authority and the Swedish Economic Crime Authority.

Measuring unlawful influence

One difficulty with studying unlawful influence is to distinguish it from the threats, harassment and other incidents that are not intended to influence the exercise of duties. For each form of influence, Brå and HEUNI have asked: “During the last eighteen months, have you been exposed to [form of influence] where you believed that the purpose was to influence your exercise of authority (in that situation or future situations)?” In other words, we did not inquire about all types of threats or harassment, but only those that were perceived to have a more qualified purpose; to exert an influence – now or in the future. Since future influence is also of interest, events that occur after a negative ruling – as a

⁴ The first page was not registered for three of the respondents. The page included questions about where they work, among other things.

⁵ Cf. Brå 2009:13 for a more detailed discussion about the methods.

form of revenge – may also be relevant. This is because those types of events might influence future exercise of duties.

Intervening against people in public places is not part of the prosecutors' or judges' roles. Judges in particular become involved at a later stage of the judicial process, with a – compared to police officers – more limited assignment. Cases are to be decided, and might have serious, non-desirable consequences for the potential offender of unlawful influence. With this in mind, it is not surprising if prosecutors and judges interpret most threats and harassment as attempts to influence their exercise of duties.

Proportion of prosecutors and judges that have been exposed to unlawful influence

Diagram 1 shows the proportion of prosecutors in the Swedish Prosecution Authority and the Swedish Economic Crime Authority and judges in the district courts and county administrative courts who stated that they had been exposed to one of the five forms of unlawful influence. The 'negative influence' column includes all respondents who have been exposed to harassment, threats, malicious damage, and/or violence during the 18-month period. It is mainly harassment, but also threats, that were reported by prosecutors and judges. Only a small proportion of each group has been exposed to malicious damage, violence or received improper offers.

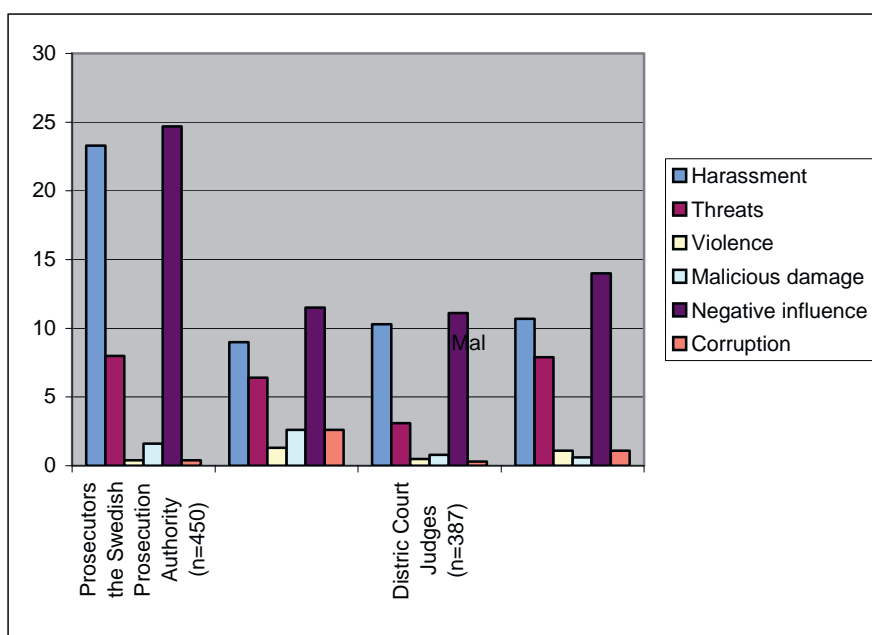


Diagram 1. The proportion of prosecutors and judges who stated that they have been exposed to unlawful influence during an 18-month period. In percent. (n=1 096)

Although there are fundamental similarities in the answers, with respect to forms of unlawful influence, there are some central differences. The prosecutors at the Swedish Prosecution Authority have reported unlawful influence to a much higher degree than the other groups. The reports mainly concern harassment; threats are much less common. The other forms of unlawful influence are barely noticeable in the diagram, as only a few individuals have reported them.

The responses from the district court judges follow the same pattern as those from prosecutors at the Swedish Prosecution Authority, but on a much smaller scale. County administrative court judges have been exposed to unlawful influence to a higher degree than have their colleagues at the district courts. This is mainly because more judges are subjected to threats.

The reports from the prosecutors at the Swedish Economic Crime Authority follow a similar pattern as the county administrative courts, but on a somewhat smaller scale. The difference between harassment and threats is small. If harassment, threats, violence and malicious damage are grouped together, approximately the same proportion of district court judges and prosecutors at the Swedish Economic Crime Authority have reported unlawful influence, while county administrative court judges have reported a somewhat higher occurrence. It is important to note that very few prosecutors at the Swedish Economic Crime Authority have reported any unlawful influence, which means that the differ-

ences between the columns of harassment, threats, malicious damage and corruption do not represent a large number of people.

Since only a small fraction of prosecutors at the Swedish Economic Crime Authority have reported unlawful influence, they could not be presented as a separate category in the following discussion. Instead, they are grouped together with the other prosecutors, forming a single category.

Exposure depending on gender, age and the town's population size

There are no major gender differences with respect to exposure to unlawful influence. Women, female judges in particular, have reported a slightly higher exposure to harassment (cf. RKP report 1994:2 for similar results). Furthermore, the survey results do not indicate that any specific age-group is more at risk of unlawful influence than others.

People in medium-sized cities stated more often that they had been subject to "negative" influence attempts (although 79 per cent had not). People living in small towns or in their surroundings, on the other hand, are less exposed (88 per cent have not experienced unlawful influence). Judges and prosecutors in large cities were somewhere in between (85 per cent not exposed). The results are fairly consistent with previous research (Harris et al 2001).

Relatives are rarely targeted

We also asked whether their family members or friends had been exposed to unlawful influence during the last eighteen months, where they believed the intention was to influence their exercise of authority. 1 per cent of the respondents reported that relatives had been exposed to such events. In other words, it is very rare for relatives to be direct targets of unlawful influence (cf. RKP report 1994:2, Åklagarväsendet report 1995:7, Junninen 2007, Harris et al 2001).

Have judges and prosecutors become more vulnerable?

Compared with the results from the previous Brå survey (Brå 2005:18) a somewhat larger proportion of judges and prosecutors reported that they have been exposed to unlawful influence. For most forms of unlawful influence the changes are small and Brå estimates that most of these can be attributed to semantic differences in the questions⁶ and a lower response rate in this survey. Furthermore, people who have experienced unlawful influence might be more inclined to complete these types of surveys.

⁶ For example, in the previous survey (Brå 2005:18) the question about harassment was "have you been subject to serious harassment", while in this survey the question was "have you been subject to harassment that intended to influence your exercise of authority".

However, one difference that cannot be explained by this is the proportion of prosecutors (mainly from the district courts) who reported that they have been exposed to harassment. In this survey, a higher proportion of prosecutors have reported this type of unlawful influence. 21 per cent of prosecutors⁷ stated that they have been exposed to harassment in the last 18 months, compared with 11 per cent in the previous study (Brå 2005:18). Although the question has been formulated differently and the response rate was lower, the difference in the prosecutors' answers between this survey and the previous one is substantial. One possible, partial explanation for this difference is that the Swedish Prosecution Authority has intensified its work against unlawful influence since the previous survey. The authority has a zero tolerance policy against unlawful influence. Such a zero tolerance would also affect the reporting of harassment in particular; an offence that is not necessarily punishable (cf. discussion in Brå 2000:15 on the relation between serious and more diffuse cases). Therefore, it could be the reporting that has increased, not the actual incidents.

However, other information indicates that actual harassment has also increased. Safety analysis at the Swedish Prosecution Authority points to a tougher work environment, and a perceived increase in the threat level for prosecutors. According to the Swedish Prosecution Authority, this is mainly because of the current focus on organised crime. Previous research shows that this group often resorts to subtle forms of influence, which we categorise as harassment, but avoids violence and direct threats (cf. Brå 2008:8, Brå 2009:7, Brå 2005:18). This suggests that the "actual" harassment have increased. Therefore, the reasons behind the increase seem to be both a lower level of tolerance among prosecutors in regard to harassment and unlawful influence, and increased activity among the offenders as a result of these measures. This group of offenders is more inclined to use harassment in particular as a method of influence.

Few cases of threats and violence, more cases of harassment

Out of those who have been subjected to harassment, most have only been harassed once (32 per cent). 70 per cent of those who have experienced harassment have been exposed to it once, twice or three times. However, some people have been subjected to harassment on several occasions, from 10 to approximately 40 occasions. The proportion of respondents who reported repeated harassment was similar in all groups.

Most of the judges and prosecutors who reported that they had been subject to threats reported one (53 per cent) or two occurrences (25 per

⁷ This refers to all prosecutors, meaning from both the Swedish Prosecution Authority and the Swedish Economic Crime Authority.

cent), but some had been threatened as many as five times. Judges and prosecutors have similar proportions of threats.

Since only a few judges and prosecutors report that they have been exposed to malicious damage, violence or improper offers, it was not possible to make comparisons between the groups. However, not only is it striking that these types of events are rare in proportion to the cases of unlawful influence, but also in the number of times they have occurred. Out of the 13 persons who reported malicious damage, 11 of them had only been exposed to it once. The same was true for violence, as most of the respondents who had reported it had only been exposed to it once, although some did report as many as three occasions. Finally, five of the seven persons who reported that they had received improper offers had only received one offer during the 18-month period. Of course, this is not an accurate measurement of actual corruption, since people who accept bribes probably would not mention it in a survey. However, the results do indicate, as does previous research, that the occurrence of improper offers is small, especially in proportion to harassment and threats.

Unlawful influence is widespread, but not an everyday occurrence

Even though a high proportion of prosecutors, especially from the Swedish Prosecution Authority, and judges have reported unlawful influence, most of them have only been exposed to it once or twice during the studied period. This indicates that unlawful influence is not an everyday occurrence for prosecutors and judges, but that it is rather unusual.

The results support the assessment of the working team who in 1995 concluded that there is a risk of being subjected to threats (this includes harassment) at some point in a career, especially for prosecutors, but that the risk of being subjected to violence is much lower (Åklagarväsendet report 1995:7).

However, Brå estimates that not all prosecutors and judges are at the same risk of being exposed to unlawful influence. The difference in exposure between district court and county administrative court judges, and between prosecutors at the Swedish Prosecution Authority and the Swedish Economic Crime Authority, illustrates how the type of case a person handles affects the risk of being exposed to unlawful influence.

Influence at the workplace

Regardless of the form of influence, most unlawful influence occurs at the prosecutor's or judge's workplace, as indicated by previous research (Brå 2005:18, RKP report 1994:2, Åklagarväsendet report 1995:7, Harris et al 2001).

Approximately half (45 per cent) of those who reported that they had been exposed to harassment stated that the harassment consisted of

unpleasant phone calls, letters, emails or text messages to the workplace. The second most common form, marking, was not nearly as common. A marking is rarely punishable; it might just be a gaze or a gesture. It is often difficult for the victim to define in what way the incident was threatening. One example is when outlaw motorcycle gang members stand outside someone's workplace or home, wearing their club vests, and stare at him or her (cf. Brå 2009:7, Brå 2008:8). Since harassment can be of very subtle character, a zero tolerance policy such as the one mentioned above can make people acknowledge these types of incidents to a higher degree.

The distribution of other forms of harassment can be seen in table 3.

Table 3. The most common forms of harassment, according to the survey. In percent.

Form of harassment	In percent (n=171) ⁸
Unpleasant phone calls, letters, emails or text messages to the workplace	45
Marking	13
Verbal attacks or insults	11
Complaint to the Parliamentary Ombudsmen (JO), complaints, criminal complaint or similar	9
Mapping of oneself or relatives	8
Unpleasant phone calls, letters, emails or text messages to the home (private)	6
Other	5
Tip-off on covert threats	4

One difference between the groups is that the judges (at the district courts and county administrative courts) to a higher degree have reported that the harassment take the form of unpleasant phone calls, letters, emails or text messages to the workplace. In the online survey, one judge described a previous incident:

I received an email [...] with an indirect threat along the lines of “having someone killed only costs x kronor”. However, the email was addressed to a number of people beside myself, and had clearly been composed by a mentally deranged person. It was very unpleasant to receive the message, but it has not influenced me in any way.

The second most common form of harassment towards judges was complaints to the Parliamentary Ombudsmen (JO), complaints, criminal complaint or similar actions for the purpose of harassing the judges. The answers are more varied among prosecutors, although the alternative that included unpleasant phone calls, among other things, was the

⁸ Two persons did not answer the question.

most common in this group as well (40 per cent). Out of the 13 people who had reported mapping, twelve were prosecutors. The same was true for unpleasant phone calls, letters, emails or text messages to private addresses; 8 out of 10 were prosecutors. There are some prosecutors that have been subject to mapping. In the online survey, several judges and prosecutors described how easy mapping is. One prosecutor writes:

They have established where I live. This information was gathered from the Internet site [name], which publishes address information. Since I have an unusual last name, it only took them a few minutes.

In previous surveys mapping and the influence that is aimed at the personal realm has been linked to criminal gangs and networks (Brå 2005:18, Brå 2008:8). Those types of groups often try to expose the private person behind the public authority function through harassment. This may be done through mapping or through subtle threats that allude to information about family members or private property (Brå 2009:7).

Table 4 shows the different types of threats that prosecutors and judges have been subject to. As with harassment, threats are most commonly received by phone, letter, text message or email at the workplace.

Table 4. The most common forms of threats, according to the survey. In percent.

Form of threat	In percent (n=68)
Phone calls, letters, text messages or emails to the workplace	43
Communicated in person	27
Tip-offs or second hand information	12
Phone calls, letters, text messages or emails outside of work	6
Other	6
<i>Did not answer the question</i>	7

There are some differences between the groups. County administrative court judges have to a greater extent (9 cases out of 14) stated that the threat was communicated by phone calls, letters, text messages or emails to the workplace. Other answers are spread across the various alternatives. In six out of twelve cases, district court judges have had threats communicated to them in person. In four cases they were communicated by phone calls etc. to the workplace. In the survey, a district court judge tells about a previous case of unlawful influence:

A few years ago, I myself was the target of phone terror, with aggressive phone calls that sometimes constituted direct threats from a mentally unstable person. It was very unpleasant for my family and me.

Among prosecutors, three main types of threats were found. Firstly, 15 out of the 41 affected prosecutors reported that they received the threat by phone calls etc. to the workplace, 11 reported that the threat was made in person and 7 reported that they received the threat through tip-offs and second hand information. In fact, of the eight persons who gained knowledge of a threat through tip-offs, seven were prosecutors. Threats via tip-offs were relatively common among prosecutors in the previous survey as well. Interviews carried out in other studies on unlawful influence illustrate the difficulties involved in assessing threats that are not conveyed directly to the targeted person (Brå 2009:7, Brå 2008:8, Brå 2005:18). Since the victim has not met the offender, it is not possible to draw any conclusions, based on how the offender acted, on the likelihood of the threat being carried out. Sometimes the tip-off comes from someone whose identity must be protected, which complicates open communication about the unlawful influence and makes evaluating the threat more difficult. Tip-offs from criminals regarding threats towards prosecutors do not necessarily have to be real; they could serve other purposes (shifting focus away from oneself, gaining status).

The three remaining forms of unlawful influence were relatively uncommon, which is why there are no tables of the results. Almost all, 12 out of 13, of those exposed to malicious damage reported that it was directed at private property, such as their home, their front door or their car. None of the seven persons who reported that they had been exposed to violence had to undergo medical treatment, which suggests that the answers mainly refer to less severe forms of violence. The improper offers that have been reported by prosecutors and judges are of varying nature. Individual cases regard gifts such as meals, sweets, items, money, internal rewards and offers of profitable deals.

Prosecutors are exposed in the early stages of the process while judges are exposed during deliberations or correspondence

The survey does not indicate at which stage of the judicial process the malicious damage, violence or improper offers occurred, as not enough people have been exposed to it. However, it is possible to see patterns in harassment and threats that apply reasonably well for all forms of unlawful influence. The results are shown in table 5.

Table 5. When harassment and threats take place. In percent.

	Harassment (n=171)	Threats (n=68)
Before or during the preliminary investigation	29	24
Start of prosecution	8	4
Correspondence in county administrative court	4	9
Main proceedings/hearings/court proceedings for warrant of arrest	26	24
Pending judgement	5	4
Appeal to court of appeal/administrative court of appeal	12	16
After the judgement has gained legal force	11	9
<i>Did not answer the question</i>	6	10

The follow-up questions were completely optional, which has generated some internal decline in answers. The results show that about one fourth of all unlawful influence occurs before or during the preliminary investigation. In table 5, there are signs of harassment occurring at a somewhat earlier stage than threats, perhaps due to its more repetitive nature. Main proceedings or hearings are other risk situations. In the survey, many judges and prosecutors wrote that safety has to be improved in the court room and in its immediate surroundings.

The roles of the prosecutor and the judge differ in that prosecutors become involved at a much earlier stage in the judicial process. Thus, unlawful influence towards prosecutors also occurs at an earlier stage. Only 17 per cent (19 persons) of the prosecutors who had reported harassment stated that it occurred after the main proceedings. Among district court judges, the corresponding number was 43 per cent (17 persons) and for county administrative court judges 58 per cent (11 persons).

Even if the proportion of persons exposed to unlawful influence during correspondence is relatively low, it still constitutes a risk situation for county administrative court judges.

Several judges point out that prosecutors are more exposed in the court; partly because there are more visible as individuals, but also due to organisational matters. One judge writes:

So far, many judges have been spared from unlawful influence, probably because judges are seen as fairly neutral compared to the prosecutors. The risk of unlawful influence in the court appears to be fairly small, since judges take “internal routes” to the hall. Surely it’s much worse for prosecutors, who often pass through the public areas. It has long been thought that prosecutors should stay in close contact with the injured party and be present in public spaces. It is therefore difficult to arrange for “special entrances” for prosecutors without also improving the conditions for the injured party, who surely can be exposed to unlawful influence in public areas.

The time of a threat follows a similar pattern as that of harassment. It is mainly before or during the preliminary investigation, as well as during the main proceeding, that the threats take place. As with harassment, prosecutors receive them at an earlier stage in the judicial process. After the main proceedings, threats are more common than harassment in all three groups.

Results on offenders

Diagram 2 shows which types of offenders the prosecutors and judges report are behind the harassment.

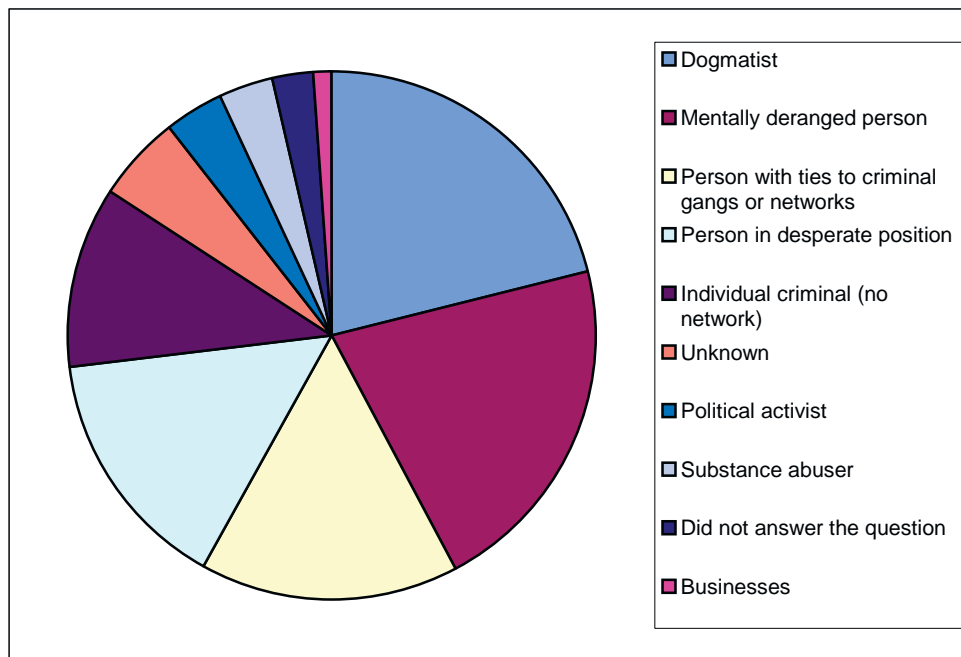


Diagram 2. Reported offenders – harassment. In percent. (n=171).

The diagram shows how individual offenders, such as mentally deranged persons, desperate persons and dogmatists are believed to be behind the majority of the harassment. Both the judges and the prosecutors identify these actors. A district court judge describes a typical case with an individual, non-criminal actor:

It is mainly in family cases (custody trials) where I have been exposed to harassment. It's not unusual for parties in such cases to become aggressive and threatening at the prospect of an undesired ruling. They often phone back and demand that we re-examine the ruling.

The diagram also features criminal gangs or networks.⁹ It is mainly prosecutors that have reported those types of actors. Criminal gangs and networks constitute 22 per cent of all influencers that has used harassment. Therefore, persons with ties to criminal gangs and networks are the most common offenders of unlawful influence against prosecutors. Important is the fact that members of criminal networks are believed to have a higher capacity of carrying out threats and harassment (Brå 2008:8). For example, there are often more than one of them, they are believed to be knowledgeable about how to influence people and have access to firearms (Brå 2009:7, Brå 2008:8). Moreover, these type of gangs use all forms of unlawful influence, compared to individual actors who usually stick to one or two forms of influence (Brå 2007, Brå 2005:18).

County administrative court judges, on the other hand, have reported that the offenders usually are dogmatists; in about half of the cases. District court judges have reported mentally deranged actors in just over a fourth of the cases, about the same as for dogmatists.

Prosecutors and district court judges have reported more types of actors than the county administrative court judges. Even though judges have reported a smaller number of incidents, it would seem logical that county administrative court judges are exposed to fewer types of offenders than prosecutors and district court judges who have a wider distribution of cases, and therefore meet several different types of persons.

⁹ The answer choices in the survey that regard criminal networks and groups included outlaw motorcycle gangs, prison gangs, youth gangs, Eastern European criminal groups and people involved in other organised crime. These categories have been used by the Police and by Brå in previous studies on unlawful influence (Brå 2005:18, Brå 2009:7, cf. RKP KUT report 2005:2b).

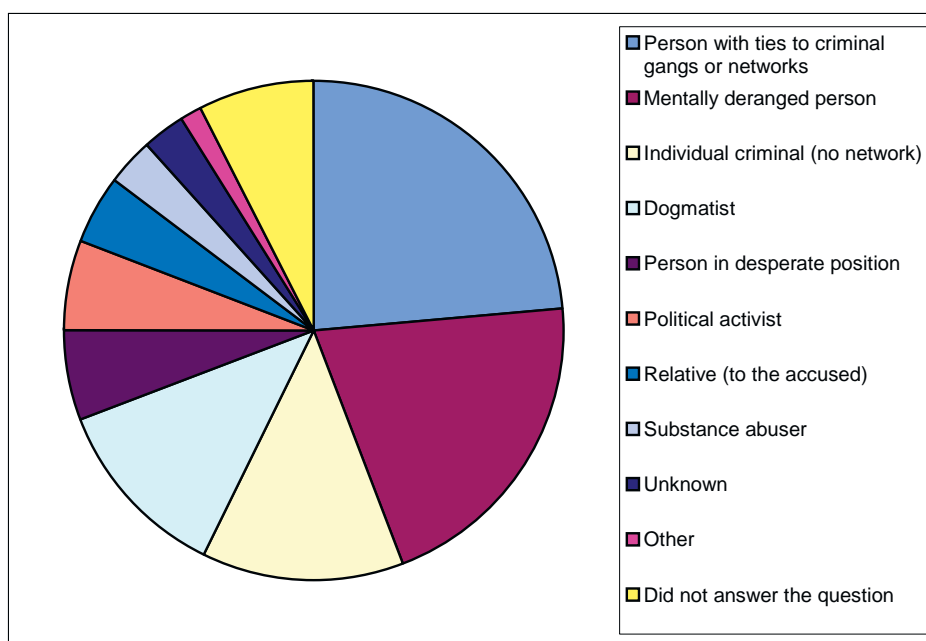


Diagram 3. Reported offenders – threats. In percent. (n=68).

Threats are believed to be carried out mainly by people with ties to criminal gangs or networks, with the second most common group being mentally deranged persons, as seen in diagram 3. Dogmatists are not as frequent as they are in harassment cases, neither are people in desperate situations. Individual criminals constitute about the same share of the offenders as for harassment. In total, individual offenders make up close to three quarters of all perpetrators.

Those who reported that the offenders were members of criminal gangs or networks were all prosecutors (39 per cent of the prosecutors). Among the 12 district court judges who stated that they have been subject to threats, seven different types of offenders were reported. In other words, their answers were diverse. County administrative court judges have mainly reported two types of offenders; mentally deranged persons (6 out of 14 judges) and dogmatists (3 out of 14). It is not surprising that dogmatists are one of the two groups, since county administrative court cases are characterised by individuals on the one side and the central government on the other. Some of these individuals are considered dogmatists.

As mentioned above, only a smaller number of instances of malicious damage, violence and corruption occurred. Therefore, we do not present any statistics on offenders of those forms of unlawful influence. Especially in cases of malicious damage, the perpetrator was unknown (cf. Brå 2009:7).

Consequences

The previous Brå study showed that the most common consequence of harassment and threats was that prosecutors and judges had considered quitting on one or several occasions (one third of judges who had reported threats, and just over a fourth of the prosecutors who had reported harassment, Brå 2005:18). Only a few stated that they had taken sick leave or that they at least once had been influenced in such a way that their exercise of duty could be questioned. Some reported that they had hesitated about a measure or avoided a task (9–15 per cent of judges and prosecutors, respectively).

Although research indicates that the consequences of unlawful influence are the most noticeable right after it has occurred, there is a risk of permanent consequences if the victims do not receive treatment or other measures (Brå 2009:7, cf. Brå 2008:8). If unlawful influence was not professionally treated at the workplace, there is the risk that colleagues who have not been exposed themselves become passive and resort to self-censorship.

Only one question in the survey regarded the reactions and consequences of unlawful influence. The question was “who did you tell about the unlawful influence”. The answers for harassment and threats are shown in table 6.¹⁰

Table 6. Who did you tell about the unlawful influence? In percent.

	Proportion of those subject to harassment. In percent (n=171)	Proportion of those subject to threats. In percent (n=68)
One of the below alternatives	94	88
Person in responsible position (one of the alternatives manager, security administrator and human resources manager)	64	68
Manager	58	59
Colleague	54	35
Relative	30	32
Security administrator/safety officer	18	27
Friend	15	15
The police (report)	13	27
Human resources manager, union representative or similar	2	2
Other	2	3

¹⁰ The number of people who had been exposed to the other forms of unlawful influence was too few for the answers to be presented in a table.

Perhaps the most important aspect is that the majority of those exposed to harassment or threats told someone about it. One reason why some of the answers were merged into one category, 'person in responsible position', is that an exposed official sometimes speak with a superior who then tells the security administrator. About two thirds of all threats and harassment are reported to the employer.

There are some differences between the judges and prosecutors who reported that they have been exposed to unlawful influence. There were about the same proportion of prosecutors who told their manager as there were prosecutors who told a colleague (55 and 54 per cent). Judges were more inclined to tell a superior (63 per cent among both types of judges) than they were to tell a colleague. County administrative court judges in particular were less inclined to tell a colleague (47 per cent). Previous research has shown the importance of managers taking their responsibility, but it requires that they know about the incident.

Some prosecutors and judges stated in the open-ended question that they did not receive the support they had wanted from their superiors. One prosecutor wrote about what had happened after he had been subject to unlawful influence in the form of harassment:

Although the caller never said anything, it was still very unpleasant /.../ even though I understood that they probably would be content with just making scary phone calls. During the main proceedings [I received new threats and] the discomfort grew stronger. My manager did not seem to take the thing seriously. It was only because of [my own initiative] that it was reported to the security administrator.

While just over a fourth of the prosecutors and county administrative court judges have told a relative about harassment, 43 per cent of the district court judges have. Those judges also told a friend about the incident to a higher degree than the other groups. County administrative court judges, on the other hand, were more inclined to tell their security administrator/safety officer and report the harassment to the police (21 per cent for each of the alternatives), than were their colleagues in the district courts (10 and 13 per cent respectively).

Furthermore, the prosecutors have not reported unlawful influence to the police to any great extent (13 per cent), but were more inclined to tell their security administrator/safety officer than were the district court judges (20 per cent). The three groups have in common that they have not told their human resource managers, union representatives or similar persons to any greater extent.

About the same proportion of those subject to threats told someone about it as those who were subjected to harassment. The largest difference was that fewer told their colleagues about the threats. However, more people told their security administrator or safety officer, and reported the threats to the police.

Influence at the workplace

Although this study is mainly aimed at unlawful influence towards individual civil servants, there is another dimension.

Even if someone is not been exposed to unlawful influence personally, incidents involving colleagues could have a domino effect in the form of unease, fear or worry (cf. Vossekul et al 2001). One county administrative court judge wrote about the fear of being exposed to unlawful influence:

Several of my colleagues and my manager have had their homes vandalised and have also received threats by telephone and on the Internet. I think this is very serious and it worries me. It seems to be pure luck that it hasn't happened to me. Unfortunately, the risk of the perpetrators succeeding in influencing the outcome isn't non-existent, no matter how professional we judges are. At the very least, they have managed to affect our routines and security measures and instilled a feeling of unease. This is, of course, totally unacceptable and has to be stopped.

Thus, the consequences of unlawful influence go beyond the individual civil servant (cf. Brå 2005:18, Brå 2009:7).

It is true that judges are under close scrutiny, as all rulings and judgements are in writing, and therefore can be inspected afterwards. However, there is often a relatively wide discretionary scope where assessments of evidence and other subjective factors could head in the "wrong" direction. This means that judges have the possibility to affect rulings and judgements, in a form of self-censorship.

Prosecutors have a wider discretionary scope as they decide how a preliminary investigation should be conducted and which coercive measures to apply. Inspecting those types of decisions, many of which are not documented, is a lot more difficult than reviewing a written judgement. This means that a prosecutor could allocate resources in an inappropriate way in order to achieve a certain result. Moreover, there is a discretionary scope such as matters of judgement, similar to those of judges, even though the doings of a prosecutor are a lot less exposed.

In a survey, it is nearly impossible to assess whether self-censorship is a problem. People who engage in self-censorship would probably not mention it to researchers. The survey results do however indicate that people worry about unlawful influence. The damages the self-censorship would cause show how important it is to take unlawful influence seriously. This includes taking preventive measures and reducing the consequences of the unlawful influence that is currently taking place (cf. Brå 2009:7).

Conclusions

Unlawful influence on prosecutors

According to previous research, prosecutors are the occupational group within the judicial system that is the most exposed to unlawful influence (Brå 2005:18). This is partly because the prosecutor is exposed as an individual; not least because the individual prosecutor, not the authority, takes legal proceedings and talks to the media. It is likely that they are seen not as representatives of the authority, but rather as individuals. Furthermore, they become involved at an early stage of the judicial process – in many high-risk or complex matters they are involved as early as in the preliminary investigation.

Prosecutors from the Swedish Prosecution Authority stated that they have experienced unlawful influence to a higher degree than their colleagues at the Swedish Economic Crime Authority. The biggest differences were found in harassment cases. Threats are also made against the two categories of prosecutors. Malicious damage, violence and inappropriate offers, on the other hand, are uncommon. It is also rare that relatives are subjected to pressure with the underlying purpose of influencing the prosecutor's exercise of authority.

Harassment and threats are mostly communicated through phone calls, emails, text messages and letters to the workplace. It is mainly prosecutors who are exposed to methods such as marking, mapping, and consignments or phone calls to the home, but those types of unlawful influence are far from everyday occurrences. This is because these prosecutors encounter a certain type of cases and suspects.

Unlawful influence on prosecutors often occurs as early as during the preliminary investigation stage, or possibly during the main proceedings. After these stages in the judicial process, unlawful influence is less common. This suggests that most offenders have well thought-out intentions; they attempt to influence the judicial process and are not simply seeking revenge. Most of the prosecutors who have been subject to unlawful influence have told someone about it. According to the survey, most of them told their superior or a work colleague.

The reason why the two categories of prosecutors experience different levels of unlawful influence is that they handle different types of cases, with different defendants, different levels of media attention and different degrees of focus on safety issues. Economic crime rarely receives the same attention as cases involving violent or sexual crimes, which are handled by prosecutors at the Swedish Prosecution Authority. Criminals know the rules and therefore do not always use unlawful influence. Still, the focus on organised crime has probably led to increased pressure on the prosecutors. People with ties to criminal gangs or networks are also believed to be relatively active offenders of unlawful influence on Swedish prosecutors.

In fact, members of criminal gangs and networks stand out as a group believed to be behind a lot of harassment and threats against prosecutors. This is especially true for threats. Other frequent offenders of harassment and threats are mentally deranged people, individual criminals, desperate people and dogmatists.

Unlawful influence on judges

Previous research on unlawful influence has only included district court judges, especially those involved in criminal cases. However, research has indicated that county administrative court judges and judges involved in family cases could be equally exposed to unlawful influence (cf. Geiger 2001). County administrative court judges handle cases of disputes between individuals and the central government, where the outcome may have significant consequences for the individual. We therefore chose to include all judges in this study.

The results show that county administrative court judges are more exposed to unlawful influence than are district court judges. County administrative court judges have reported almost as many cases of threats as they have of harassment, while District court judges mainly reported harassment, and not as many threats. Only a few judges in either category reported that they have been subject to malicious damage, violence or improper offers.

However, compared to other groups involved in the judicial process, judges are relatively spared from unlawful influence. This is because judges become involved at a late stage in the judicial process. The potential offender has already encountered other groups in the judicial system, and it is possible that for each instance the encounters become less charged. Furthermore, judges receive less attention as individuals. The judge is accompanied by lay assessors and is perceived as part of a collective in a way that prosecutors are not. The judge also has a less prominent role in the process, and unlike the prosecutor the judge does not take sides.

Both categories of judges have stated that threats and harassment are mainly received through phone calls, text messages, emails or letters to the workplace. County administrative court judges are subjected to unlawful influence during the correspondence process. One disadvantage of the correspondence is that it distances the judge from the other parties. The form of communication might encourage threats or harassment, since the offender does not know who the judge is and might not understand the process very well. While written correspondence does provide protection against the form of unlawful influence that occurs in connection with meetings and proceedings, the form of communication itself might increase the risk of unlawful influence.

District court judges stated that they have mainly been exposed to unlawful influence during the main proceedings or in connection with an appeal to a court of higher jurisdiction. Thus, unlawful influence also

occurs during personal encounters. In those situations, the actual meeting causes the unlawful influence. Furthermore, the court is a high-risk location for unlawful influence on victims and witnesses (Brå 2008:8).

The two categories of judges believed that the same types of offenders were behind the unlawful influence. Their two most frequent answers were dogmatists and mentally deranged persons.

Judges who were exposed to unlawful influence mainly told their superior about it. Out of all the groups studied, district court judges were the most likely to tell friends and relatives about the unlawful influence.

Unlawful influence in the judicial process

The occurrence of unlawful influence follows a clear pattern. It occurs during the preliminary investigation and the judicial process. The periods when unlawful influence occur also follow a clear pattern. After a decision has been made or a judgement has been passed, the possibility of influencing that specific case is generally low. However, it could be possible to influence future actions and decisions of the prosecutors or judges. Their colleagues' exercise of authority could also be influenced.

The high-risk time periods could be the same for several groups. Unlawful influence has a progressive character, seeking to influence someone to take a certain action or be passive in a manner that benefits one's own cause. Therefore, unlawful influence rarely occurs after the sentence has passed and the case is already decided. This finding was true for all groups; prosecutors, judges, persons in authority, victims and witnesses (cf. Brå 2005:18, Brå 2008:8, Brå 2009:7). International research indicates similar results, which means that this situation is not an exclusively Swedish phenomenon (cf. Harris et al 2001, Fyfe 2001).

Judges and prosecutors agree with the victims and witnesses that the main proceedings are a high-risk point of time for unlawful influence (cf. Brå 2008:8). The main proceedings involve a meeting between the parties and constitute an opportunity to influence the other side. Friends and relatives of the actual offender could also communicate the threat (cf. Brå 2008:8). Given this situation, the judge has an important role to play in maintaining order, as the chairman of the court.

As stated above, prosecutors stand out from other occupational groups in the judicial process in that they are more exposed to unlawful influence and also receive more attention as individuals. The significance of this publicity becomes increasingly clear in the light of an American study on threats and violence against judges. In the United States, judges report more cases of unlawful influence than prosecutors do. This is believed to be because American judges receive more publicity and attention than the prosecutors, and has a greater symbolic value to the American judicial process (Calhoun 2001, Jones 2003).

As previously mentioned, judges in Sweden are part of a collective in a completely different way. They do not wear any special gowns, do not

run campaigns and are less visible in the media. Furthermore, the judge does not sit alone in the session chamber, but usually together with lay assessors, which reinforces the notion of the ruling collective.

These two factors; clear high-risk points of time and the significance of individual visibility and publicity, could function as a starting point as we now conclude the report with suggestions for preventive and easing measures.

Preventive and easing measures

The following section is based on the results of the report, but is specifically an analysis of the open-ended questions and the seminars.

Central mobilisation?

The study shows that the National Courts Administration, the Swedish Prosecution Authority and the Swedish Economic Crime Authority work actively to prevent unlawful influence. Security administrators and safety officers are recruited, strategies are formulated, incident reporting systems are in place or underway and educational documents have been developed. In other words, activity is high at the central level.

It is more difficult to assess initiatives at a local level, as is assessing initiatives at the public prosecution offices and the courts. While the Swedish Prosecution Authority and the Swedish Economic Crime Authority are individual public authorities, the Swedish courts are made up of 87 public authorities. All of these are administrated directly by the Government, which complicates local cooperation.

The survey shows that some workplaces have introduced tighter restrictions on visitors, increased internal dialogue, reinforced the shell protection and introduced a system for incident reporting, among other things. In the open answers in the survey, other workplaces were described as having good routines or being spared from unlawful influence. However, some prosecutors and judges stated that the security routines at the workplace were inadequate. Poor routines and insufficient professionalism were some of the complaints.

The premises are important

Based on the answers to the open-ended questions and the seminars, it seems clear that when it comes to security related questions, judges and prosecutors place a lot of emphasis on the premises, especially the court. A district court judge writes:

Security at the courts has to be improved. There is no surveillance or any other form of protection inside or outside the session chambers. Someone could bring a weapon unhindered, except for when there are security controls. Incidents are unusual, but when they do happen we are completely exposed.

Access checkpoints and security gates are recurring suggestions for how to increase security in the courts. An ongoing investigation on court safety is currently looking into these issues (Ministry of Justice dir. 2008:127). The investigation also covers “retreat routes” for the staff and prohibitions for the audience to bring outdoor clothes or bags into the session chambers and conference halls. One suggestion is to have a special staff entrance in order to decrease the risk of unpleasant encounters.

One point that has been raised is that prosecutors are not as well protected as the judges in the courts. This is because the judges have “internal” routes to the halls while the prosecutors go through the regular entrance. The even more vulnerable position of witnesses and injured parties has also been highlighted. Furthermore, some respondents stated that the courts sometimes use medical institute halls, which do not meet the same safety regulations as regular halls.

Decrease the exposure of individual civil servants

Several prosecutors point out that they act as individuals, which makes them exposed as persons. The prosecutors are also identified in the media. As mentioned above, the Code of Judicial Procedure stipulates that the prosecutor, not the Swedish Prosecution Authority, takes action. This differs greatly from occupational groups such as police officers, who act as representatives for an institution.

Within the National Courts Administration, a new media strategy has been outlined, which states that comments on court findings and rulings should be made by a judge from a different court. This policy has been introduced in order to not make the judge in the case more exposed. It has been suggested that this model be introduced at other public authorities as well.

Another suggestion for high-risk cases is to get more prosecutors involved in the case, which has already been tried in some cases. This makes the prosecutors more apparent representatives of the public authority, as the following quote clearly illustrates:

Our strength is that we are an organisation with many civil servants. The impression should be that it is pointless to threaten someone, since there is always another civil servant to take their place. In other words, the exercise of public authority isn't personal. That is our greatest protection.

There were considerably more prosecutors than judges who mentioned the need for protection of personal information. This is probably because of their publicity, but also because of the more offensive role of the prosecutor and their higher exposure to unlawful influence. Some expressed concern about how easy it is to find someone's personal in-

formation on the Internet. A few respondents remarked that protective measures are not taken until after "something" has happened, when it might be too late or require too extensive countermeasures, such as moving.

Furthermore, participants at the seminars argued that judges and prosecutors should think about what information they post about themselves on blogs and similar Internet sites.

Increased awareness and mental preparedness

Some refer to the need for 'mental preparedness'. Mental preparedness is the awareness of risks and of what might occur in the profession. People who are mentally prepared are not as scared when a situation arises, and are better able to handle it. One important source of knowledge is the data from the incident reporting system. Having a good understanding of what has happened and what the current situation is like is the most important form of knowledge. There is room for improvement here, as the survey shows that only two thirds of all threats and harassment are being reported to superiors or security administrators at the public authorities.

Harassment is difficult to handle

In previous publications, Brå has emphasised the importance of counteracting the effects of harassment (cf. Brå 2005:18, Brå 2008:8, Brå 2009:7, Brå 2007). As harassment is often subtle, it might be difficult for the victim to interpret; does it constitute a threat? Am I in danger? It might be left to the imagination, which could lead to self-censorship, even among persons who have not been subject to unlawful influence. Since harassment is the most common form of unlawful influence on prosecutors and judges, the authorities must put a lot of effort into handling it.

Difficult to balance taking threats seriously and not exaggerating

Several respondents described how they were not taken seriously when they were subject to unlawful influence. This is a problem that other occupational groups also have expressed (Brå 2005:18, Brå 2009:7). However, some judges warn that too much focus on unlawful influence creates an exaggerated threat and instils fear. Although some persons have been subject to unlawful influence, they have handled a considerable amount of investigations and cases where there were not any complications. The risk of violence and malicious damage is especially small. The challenge is to assess the situation realistically, which is not an easy thing to do. Part of this work is to increase awareness and mental preparedness, as mentioned above.

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