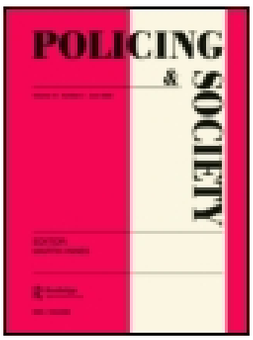

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Legal limits to prioritisation in policing – challenging the impact of centralisation

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ABSTRACT

This article illustrates, through a combination of administrative and legal perspectives, how ambitions to centralise prioritisation decisions within a police organisation can be limited by the legal rules relating to crime investigations and public order policing. As a case study, we use the centralisation of the Swedish Police, a reform intending to reduce the previously far-reaching operational independence of regional police authorities in favour of a centralised and uniform single authority. Through this case study, we analyse the interaction between the legal and institutional frameworks of policing and prosecution, including positive obligations enshrined in the European Convention on Human Rights. We conclude that legal responsibilities affecting the Swedish Police may significantly limit the possibility for managers and officers to de-prioritise many cases and public order concerns, which, in turn, may limit the ability to divert resources to other—centrally prioritised—tasks. Failure to account for such limits may cause reform ambitions to collide with legal responsibilities in day-to-day operative policing. The results indicate that research into organisational reform and police prioritisation may benefit from a more systemic analysis of the legal and institutional factors limiting institutional discretion.

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Introduction

A police force in crisis?

For many years, the public debate about policing in Sweden revolved around the issue of criminal cases taking far too long to investigate. In the early 2000s, it evolved into a highly critical discussion about the overall ability of the Swedish Police to clear up reported offences. Following what was at the time observed as a centralising administrative trend among the police forces of comparable European countries (Fyfe *et al.* 2013), the Swedish Police was reformed and reorganised into a single authority in 2015. Since then, public criticism has yet again fallen upon delays and lengthy investigations, in the face of which police employees have blamed high workloads and an increasing lack of resources in the new organisation (Sveriges Radio 2017b). Other reporting suggests that crime investigation into certain offences stalls because other types of crime are prioritised by the police (Horvatovic 2017, Sveriges Radio 2017a). Public complaints that there are too few police officers on active duty at night in sparsely populated areas have been mirrored by the Swedish Police union, arguing that more officers are needed to guarantee a safe and sufficient working environment for the police

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(Nilsson 2017). While the Swedish Police force continues to struggle with managerial issues and a perceived lack of resources, they are still expected to respond quickly and efficiently to public order concerns, as illustrated by the policing of a large and controversial neo-Nazi demonstration in Gothenburg in 2017, requiring a quick reallocation of significant resources and personnel from their ordinary responsibilities across the nation (Swedish Police Authority 2017c).

Responding to the public debate, the Swedish government pledged significant financial resources in an effort to increase the number of police employees by 10,000 no later than the year 2024 and, as a consequence, decided to expand police education to two more campuses in 2019 (Marmorstein 2017, Swedish Government 2018). Prior to the organisational reform in 2015, the political consensus was that centralisation of police authorities would remedy this, partly through a more efficient use of resources within the police and partly through a better ability to make centralised prioritisations (Swedish Government Official Reports 2012). A few years later, a new consensus has emerged around the idea that increased financial resources are the solution. As such, the idea that organisational reform would solve the overall concerns of ineffective policing seems to have been partly abandoned. This raises the question of what possibility the reform had, as it was designed, to influence the prioritisations of daily policing. In this article, a wider and important relationship between institutional and legal frameworks regarding police prioritisation is further explored.

Prioritisation – an overarching theme

While the 2015 police reform opened up significant political and managerial influences over policing in Sweden, legal obligations were left more or less intact with respect to the core areas of police responsibility— to uphold public order and security and to detect and investigate crimes. On the one hand, this reform seemed to infringe upon what international analysts referred to as the *operational independence* (cf. Caless and Tong 2013, Lister 2013) of the Swedish Police, initiated as it was by the government and making all police districts subject to administrative rule from the national centre, which was intended to make the police organisation easier to govern (Swedish Government Official Reports 2012, p. 20). Although it was never a part of the public debate, the 2015 reform took clear aim at the issue of relative police autonomy, i.e. of where the line should be drawn between the ability of the police to prioritise and the ability of government to interfere (cf. Chakrabarti 2008, Newburn 2012, Raine and Keasey 2012, Lister and Rowe 2015, Roach 2018). On the other hand, it seems that by keeping legal obligations intact, the Swedish reform may, in fact, have severely limited the potential for politicisation and centralisation of prioritisation decisions.

The reform architects thus retained police *discretion* in the true legal sense of the word (cf. Thévenin 2016), leaving it up to the police themselves to decide where, when, and how to apply resources, as the legal mandate for decision-making in individual cases was still largely delegated and independent (Swedish Agency for Public Management 2017, p. 11). This duality of discretion in policing, not limited to the Swedish context, is connected to the nature of policing. On the one hand, the police have far-reaching discretion with respect to those they observe and focus their attention on, a form of discretion Elizabeth Joh has named 'surveillance discretion' (Joh 2016, p. 16, see also Selbst 2017, p. 119). On the other hand, the implications of policing on individual rights causes policing to be surrounded by significantly more detailed and restrictive legal rules aimed at limiting when and how police powers *may* be used in relation to individuals, as well as when they *must* be used to protect individuals or groups (see further below). Discretion in this sense, however, is not necessarily a key to behavioural understanding (what police in the field do), a topic that has been the subject of intense scientific interest focusing on issues such as stress, coping mechanisms, and organisational culture (Mastrofski *et al*. 1987, Rowe 2007, Hansson *et al*. 2015, Buvik 2016, Gundhus 2017).

Instead, discretion in the sense we are interested in here takes aim on more systemic aspects of whether legal rules apply or not, how this affects the success and failure of centralisation and prioritisation efforts, and the ability to follow policy demands while complying with legal rules. In this

sense, this study continues the classic work of Goldstein (1963) and, more recently, Myhill and Johnson (2016), pointing out that 'police leaders and managers continue to perform a 'double shuffle', accepting universal and officially imposed processes while recognising that those processes are unworkable without the application of discretion' (Myhill and Johnson 2016, p. 17). Goldstein, along with Myhill and Johnson, point to the need to acknowledge rather than hide the discretion needed to mediate policy, law, and the realities of the job. In this study, however, we highlight similar effects on the specific issue of prioritisation that raise more system-related issues in the intersection of resources, rule of law, and efficient policing.

Also, while many legal rules on policing are possible to reform as a step in an overarching police reform process, any analysis of the ambition to centralise decisions on police prioritisation must also consider a second layer of legal obligations that are not subject to change by parliament. These are the positive human rights obligations of the state and its police organisations to respond to and investigate crimes that violate the human rights of persons under their jurisdiction (see further below). Such obligations will interact with and create limits on the interpretation of national rules on policing, further explaining the legal limits to prioritisation efforts at both the systemic and individual levels.

In light of the above, the aim of this article is to contextualise and examine interaction between institutional and legal frameworks which may restrict and impose limits upon internal police prioritisation. Particular attention is given to how internal prioritisation interacts with the legal framework, including issues relating to European human rights and the positive obligations of the state. To illustrate how a police organisation and individual decision-makers may be torn between an overarching need for prioritisations and counteracting legal requirements, the Swedish Police will be used as an example. Through a focus on legal rules, we aim to illustrate the normative room for prioritisation as it pertains to policing in Sweden. This, in turn, will contextualise the impact of organisational reform in relation to prioritisation. While the object of this study is the Swedish and European legal framework and the Swedish Police force, many of the issues involved are likely to be relevant for a broader European context. In any case, the study illustrates how a police force may respond to the need to prioritise within a legal framework restricting such prioritisations and makes recommendations regarding both policy and practice in relation to such prioritisations, in light of the need to respect European human rights instruments. By including both the normative layer and internal managerial issues, this contribution adds new perspectives on existing research on both discretion and centralisation, as well as questions of operational independence.

The point of departure for this contribution is thus that the ambition to centralise prioritisation within a police organisation must consider the legal framework surrounding the police as a public authority, its law enforcement task of investigating and preventing crime, and the responsibilities of individual police officers in the execution of their respective tasks. Otherwise, there is a risk of political and organisational prioritisations conflicting with legal requirements. Beyond the obvious normative concern that such prioritisations may run afoul of legal rules, it also risks undermining prioritisations, as lower levels of the organisation must mediate between internal policy demands and legal rules. This second concern may create difficulties in achieving the core ambitions of uniformity and efficient control, which underpin the current reform.

The precarious balance between reform and police autonomy

The 2015 Swedish police reform

Prior to 2015, the Swedish Police were geographically divided into 21 regional and independent police authorities. There was a national authority ('Rikspolisstyrelsen') with responsibility for dealing with cases and events pertaining to the national level. Rikspolisstyrelsen was also authorised to define and decide upon national regulations for policing but did not have the authority to give direct orders or decide what the regional authorities should do in concrete situations. The

organisation precluded direct national steering, whether in administrative, organisational, or operative issues (Swedish Government Official Reports 2012, Swedish Agency for Public Management 2016). The 21 different police authorities were not organised or subdivided into a strict administrative hierarchy.

Since 2015, however, the Swedish Police is formally one authority, Polismyndigheten (the Swedish Police Authority). It has been horizontally separated from Säkerhetspolisen (the Swedish Security Service) which forms a separate, independent agency. The current Swedish Police Authority is territorially divided into seven Police regions, which are subdivided into Police districts, which are further divided into Local police districts (Swedish Police Authority 2018a, Ch. 2 Sect. 2–11). The organisational model as such is strictly uniform and hierarchical, which means that one police authority exists for the whole country.[1] Following a decades-long trend among Swedish government agencies, the Swedish Police is the last government agency in Sweden to merge under one Director-General (Swedish Agency for Public Management 2010). As such, it is expected to achieve administrative flexibility, efficiency, clarity in delegation, and unity of purpose and steering. In no small way, this makes the 2015 Swedish Police reform part of a broader administrative trend in European policing (Wennström 2013).

Centralisation of prioritisation and legal requirements: Icebergs ahoy!

The idea of centralising the Swedish Police is connected to an overarching ambition to increase the quality, efficiency and uniformity of the police. As described by the committee drafting the initial proposal, the significant difference in measurable results between the regional police authorities that preceded the current organisation could either be ascribed to the data underpinning the measurement of results, or differences in prioritisations, working procedures, and methods (Swedish Government Official Reports 2012, p. 20). Seemingly leaning towards the second explanation, the committee found that the differences must be attributable to the inability of the national governing board to make decisions that were binding for regional police authorities (Ibid.). As such, the centralisation of (binding) decision-making must also be understood as a centralisation of decision-making about prioritisations, working procedures, and methods. In the following, we will focus on the issue of centralised prioritisation. First, however, it is worth bearing in mind that while the Swedish Police Authority has undergone administrative centralisation, the legal framework for operative decision-making related to policing tasks can only be described as significantly decentralised. This dual nature was highlighted by recent evaluations of the reform describing the goal of the reform as a combination of centralised steering with increased delegation and independence which the individual officer is ensured by law (Swedish Agency for Public Management 2017, p. 11). According to Swedish law, many important decisions in both public order policing and crime investigations are assigned to crime investigation leaders and other decision-makers on the ground, or, in the case of later stage investigations of more serious crimes, prosecutors belonging to a different public authority (see further below).

Consequently, while the centralisation of the police organisation may have been intended as a centralisation of prioritisations, the legal responsibilities of individual officers and crime investigation leaders nevertheless remained, in effect forming a parallel layer of decision-making authority which in many cases may override centralised prioritisation decisions. Therefore, to a certain extent, the new organisation operates in a legal environment based on an understanding of police work and decision-making structures which significantly predate it.

Furthermore, recent evaluations of the reform (Swedish Agency for Public Management 2017, p. 33, Swedish Agency for Public Management 2018, p. 85–101) suggest that centralised steering at the national level is internally perceived as difficult to interpret by the lower levels of the police organisation. There are too many conflicting policies which lack an internal order of priority, as well as a mix of process steering and detailed decision-making on how to prioritise resources. In

these initial evaluations, the conclusion has been that priorities in practice are still made at the regional or local managerial level.

Facing the institutional and legal framework

Section 1 of the Swedish Police Act states that police work 'shall be aimed at maintaining public order and safety, as well as providing protection and assistance for the public' (transl.: Swedish National Police Board 1999). The expression 'maintaining public order and safety' is intended to also include the discovery and investigation of crime (Berggren and Munck 2017, p. 34). Police duties are explicitly prescribed in the Act in sections 2–2a and include tasks such as crime prevention in a broad sense.[2] Even if both the purpose and duties are regulated by law, the regulation is not exhaustive and has been deliberately formulated to preserve flexibility and adaptability in the face of societal change (Berggren and Munck 2017, pp. 34 and 39–48). This implies that new areas of responsibility may arise regardless of organisational principles and that the crime focus may change over time. With respect to crime investigations in the Swedish Police organisation post 2015, tasks related to crime investigation are divided up between different levels: Some crimes are supposed to be investigated by the National level, some by the Regional level, some by the Police district level, and some by the Local police district level. The Local police district level is also generally responsible for crime prevention and operational activities (Swedish Police Authority 2018a, Ch. 3 Sect. 6–17). Hence, tensions emerge within and across different organisational levels concerning resources. Any attempt to mitigate such tensions thus depends upon the ability of each organisational level to prioritise and manage within and between levels. Nevertheless, how much autonomous prioritisation does the regulatory first principles of the Swedish system of public governance allow?

Given the relative formal autonomy of Swedish public agencies, not least the police, prioritisation should be a simple task. The Swedish Agency for Public Management talks about 'the autonomy of government agencies operating at arm's length from their 'home' ministries [and how] this separation of policy-making and administration is no NPM [New Public Management] idea: we have practiced it for centuries' (Swedish Agency for Public Management 2010, p. 29). In effect, Swedish state agencies have long operated under what some scholars refer to as a system of meta-governance in public management, according to which the government guides the activities of its agencies in a general direction, often via organisational and budgetary decisions, but importantly also allows the agencies to deliberate the finer details of their work (Peters 2010, Jacobsson *et al*. 2015). From the perspective of government, the key to such a system is to equip agencies with the proper ability to act upon and adapt to social complexities and change, as opposed to forcing through detailed goals or demanding specific results (Sundström 2015). For the Police Authority, then, prioritisation should be simplified by only having to answer to national government and by having to do so on the topic of broadly defined political goals. In contrast to, for example, England and Wales, the Swedish Police Authority appears more monolithic. There are no competing political interests or decision-making levels for policing in Sweden similar to those of the directly elected Police and Crime Commissioners in England and Wales (Raine and Keasey 2012, Gilmore 2013, Lister 2013, Lister and Rowe 2015, Wells 2018). In the Swedish system of governance, decisions about budget use, staffing, and priorities remain, first and foremost, internal agency affairs.

Essentially, the work of Swedish government agencies such as the Police Authority are guided by policy but invested with a constitutional obligation to disregard even laws and government regulations that contravene superior legislation such as constitutional rules (Swedish Instrument of Government, Ch. 12 Sect. 10). Furthermore, public authorities are vested with a constitutional independence from the government, itself, as well as other government authorities with respect to individual decisions and the application of the law (Swedish Instrument of Government, Ch. 12 Sect. 2). This Swedish constitutional peculiarity is tied to the idea that laws, not policy, should decide the outcome of individual cases, and while government agencies are subordinate to the

government, the government should steer towards the general and forward-looking, rather than concern itself with individual cases (Nergelius 2014, p. 294–296, Derlén *et al*. 2016, p. 236–239). In general terms, this so-called *administrative dualism* means that public agencies in Sweden are relatively autonomous in their interpretation and implementation of governmental policy. Also, in principle, regulation by law precedes regulation by government policy. This element of dualism in the Swedish system enables public agencies at least formally to challenge the quality and appropriateness of government policies on legal grounds. The balance between law, politics, and public administration in the Swedish system of governance would therefore seem formally conducive to legalism, expert rule, and internal prioritisation. Institutionally, the system empowers public agencies vis-à-vis government ministries to form a system based on the principle of negotiated hierarchy (Christensen *et al*. 2007). As such, government agencies are attributed with a constitutionally guaranteed balancing role between democratic and legal power in the Swedish system of government, especially in individual cases.

Whether the formal system of public governance actually does empower public agencies and helps them make priorities, however, is far from clear (Jacobsson *et al*. 2015, Swedish Agency for Public Management 2015). The balancing role of Swedish public agencies is precarious for several reasons. As indicated at the outset, the role and function of national policing is becoming increasingly politicised in Sweden, but 'the politicisation of crime' (Cf. Downes and Morgan 2007, Savage 2007) plays out differently on different systemic levels. For example, recent terrorist acts and threats have induced new lines of thought regarding the national balance between prevention and mitigation in policing (Strandh and Eklund 2015). In conjunction, new information about the changing nature of crime and violence in Sweden is creeping into the public perception of safety (Swedish National Council for Crime Prevention 2017a). Increasingly, and particularly in the wake of the 2015 police reform, police employees bear witness to a widespread sense of disempowerment, stemming not only from a significant crime investigation backlog but also from an ever-increasing workload as new and different forms of criminal activity are politicised (Swedish National Council for Crime Prevention 2017b).

In his national plan for 2017–18, the then National Police Commissioner Dan Eliasson expressed his sincere hope that the post-reform worsening of overall performance results would soon be a thing of the past (Swedish Police Authority 2017b). The actual policy document nevertheless begins by reverting to the very broadly and flexibly defined police tasks set out in the Swedish Police Act of 1984 and then transforms them into five 'strategic initiatives' to increase the sense of public safety in Swedish localities and improve economic efficiency in the organisation and the overall success rate of crime investigation (Ibid.). This agency policy does not, however, explain to what extent these initiatives replace the original strategic initiatives from 2015 (Genomförandekommittén för nya Polismyndigheten 2014). Nor does it explain to what extent these strategic initiatives should be regarded as priorities or, to the extent that they are, which other broadly and flexibly defined police tasks may be de-prioritised. In this sense, the police agency policy is more or less an echo of earlier governmental directives.

A governmental disincentive to prioritise?

If regulation by law in the Swedish system of government is kept flexible and broad for strategic and adaptive reasons, why can governmental steering not compensate for the lack of priorities? The managerial capacity of the Swedish government, if taken to mean the right to govern what agencies actually do, is distinctly limited to a few areas. The political power of a given Swedish government vis-à-vis its agencies emanates from six competencies, or platforms (Norén Bretzer 2017, pp. 142–153). First, the government can initiate new law, which must then be passed by parliament. Second and similarly, the government can pass the national budget and fiscal corrections through parliament. Third, the government appoints the chiefs of state agencies, which means that a Swedish government may appoint chiefs that they trust or believe to be true to

certain ideological convictions. Importantly, these chiefs cannot be removed by another government simply on ideological grounds. Fourth, the government can monitor and evaluate the activities of state agencies but shares this competence with parliament. Fifth, the government can initiate and control how agencies are organised and/or reformed, as it did in the 2015 police reform. Sixth and last, the government issues instructions to agencies such as those discussed above.

However, the degree to which a given Swedish government actually steers a public agency such as the Police Authority is dependent upon both parliamentary and legal principles. Consequently, political priorities are also, for the most part, given by the Swedish government in broad and flexible terms. As mentioned above, it is up to each new Swedish government to decide how much autonomy it wants its agencies to have, although limited by the agencies' constitutional independence in relation to individual decisions and application of law. The result is what might be called a negotiated institutional settlement between perceived necessity and desirability. In addition, it is easier for ministers of government to countenance far-reaching operational independence considering that the chief of the agency will be left responsible when things go wrong, not the minister of government (Norén Bretzer 2017, pp. 133–135).

Legality as the intended pivot upon which to balance political and legal power in the Swedish system of public governance is reminiscent of the proverbial double-edged sword. It safeguards the relative institutional autonomy of the Swedish Police from undue or unidirectional political influence, but it also blurs the boundaries between what constitutes the core of police work, on the one hand, and which wider sectoral responsibilities are implied by such generalising tasks as upholding public order, security, and discovering and investigating crimes, on the other. Thus, in a governmental system based on a precarious balance between law and politics, legal limits and policy change contribute to a sedimentation of strategies and tasks in Swedish policing.

All institutional aspects considered, political steering appears comparatively weak in the Swedish system. Whereas the organisational principles prior to the 2015 reform invited regional and local political influences over how policing was implemented in Sweden, the ensuing centralisation closed the door. Again, and as shown above, contrasting the current Swedish system with, for example, the influential Police and Crime Commissioners in England and Wales, it appears that the Swedish Police Authority is better placed to de-prioritise regional and local political considerations post-reform. An element of comparative interest in the new organisation are the so-called 'citizen promises' (Swe: 'medborgarlöften'). The idea is that the new authority is tasked with outreach to municipalities and responsible for keeping up a dialogue with citizens in different Swedish localities about their general perception of safety and security and whether or not there are particular measures the police may take to improve certain situations (Swedish Association of Local Authorities and Regions 2018, Swedish Police Authority 2018b). From the perspective of prioritisation, however, there are two problems related to this organisational mechanism. Horizontally, the actual interaction is between police officers and elected municipal representatives or civil servants. The information about citizen needs and wants is thus filtered through local political institutions. Vertically, it is unclear exactly what status the written agreements between local police areas and municipalities should be attributed in the centralised post-2015 police organisation. To what extent interaction and agreements with municipalities could be a source of prioritisation for the police remains, by and large, unclear.

Legislative pre-prioritisation and limits to police prioritisation

As stated above, our starting point was that ambition to centralise must consider the legal framework such as individual police officers' responsibilities in the execution of their respective tasks. Therefore, the question of how much discretion is left for the individual police officer in a legal sense is relevant. In a context of limited resources, prioritisations necessarily imply de-prioritisations of tasks. The

normative room to de-prioritise certain tasks, or not investigate certain reports, will vary depending on the legal framework surrounding policing. Compounding this systemic problem of prioritisation in the Swedish context, as will be shown, is the legal principle of mandatory crime investigation and prosecution.

Ability to prioritise – crime investigation

In terms of prioritisation within the area of crime investigation, the Swedish legal system is based upon the principle of mandatory prosecution, which contains a duty to investigate a crime and, if there is sufficient evidence, a duty to prosecute the crime (Landström 2011, pp. 233–234).[3] The opposite of this is a legal system based on the opportunity principle. In such a system, a report of a crime does not automatically necessitate the launch of an investigation, and there is more room for individual decision-makers to decide whether it is in the public interest or not to investigate the crime. This leaves decision-makers with an opportunity to weigh different circumstances for and against further investigation and prosecution, considerably increasing discretion (CPS 2013). By contrast, the mandatory principle expressed in the Swedish Code of Judicial Procedure states that a crime investigation *shall* be initiated as soon as, based on a report or another reason, there is cause to believe that an offence subject to public prosecution has been committed (Swedish Code of Judicial Procedure (hereafter SCJP), Ch. 23 Sect. 1 p. 1). The expression 'cause to believe' imposes a low level of proof that an offence has been committed (Bring and Diesen 2009, pp. 151–157). Today, there are only a few crimes that are not subject to public prosecution, putting the vast majority of criminal acts under the duty to investigate (SCJP, Ch. 20 Sect. 3).[4]

This implies that an investigation normally ought to be conducted and that police and public prosecutors have limited discretion to prioritise which criminal cases ought to be investigated unless there is a rule expressively stating an exemption. Furthermore, the rules stating exemptions are of different kinds.

First, it is not necessary to launch an investigation if it is manifest that it is impossible to investigate the crime (SCJP, Ch. 23 Sect. 1 p. 2). A common example is a bicycle theft, in which it is clear from the beginning that there are no available leads or investigative measures to take (Government bill 1994/95, p. 94). This rule was introduced for procedural reasons, to avoid the situation in which one formal decision had to be taken to launch an investigation, and in the next moment, another formal decision had to be taken to close down the investigation. It is, however, not a rule allowing the authorities to prioritise between cases, even if there are examples from practice that the rule has been used in that way (Swedish Parliamentary Ombudsman 2003/04, p. 118).

Second, there are some offences such as minor fraud or minor damage where it is presumed that such an offence normally should not be investigated, since the law stipulates that the prosecutor should only prosecute these cases if it is in the public interest (Swedish Penal Code, Ch. 9 Sect. 12 p. 2 and Ch. 12 Sect. 6, and SCJP, Ch. 23 Sect. 4a). In such situations, the legislator has pre-set prioritisations since the main rule instructs police and prosecutors not to investigate and prosecute such offences unless warranted by specific circumstances in the particular case.

A *third* rule, which is more practical and relevant for prioritisation, concerns when the suspect has, or is suspected of having, committed more than one offence. In such situations, it is possible to avoid investigating some of the offences and select which offences to investigate, if no further sanction in addition to the sanction for the selected offence(s) is needed (SCJP, Ch. 20 Sect. 7 p. 1 (3) and Ch. 23 Sect. 4a). The reason for this rule is to create cost-effective procedures, and the rule is closely linked with the criminal sanction system in which the court must decide one penalty for all offences committed by the defendant (Swedish Penal Code, Ch. 30 Sect. 4 and Ch. 34). The rule allowing for a choice of investigation in these situations gives the investigating authorities the power to pick a suitable amount of offences to investigate, to allocate resources and, in the long run, be able to charge and prosecute more suspects with the same amount of resources (Landström 2011, p. 199).[5]

According to a *fourth* rule, it is also possible to avoid investigations in certain situations in which the suspect is due for psychiatric or special care for functional impairment (SCJP, Ch. 20 Sect. 7 p. 1(4) and Ch. 23 Sect. 4a). This rule is also connected with the penalty system, since the reason for the rule is based on the idea of suitable treatment of the suspect to prevent him/her from committing future crimes, or so-called individual prevention (Landström 2011, pp. 145–148).

Finally, there are certain rules according to which it is possible to avoid investigations because of circumstances of individual cases. The limits for using these rules differ depending upon the seriousness of the offence (SCJP, Ch. 20 Sect. 7 p. 1(1) and p. 2). For example, one rule relating to minor offences may be used if the offence in the individual case seems trivial or further investigation and prosecution seems unnecessary or inhuman, e.g. if the suspect is a very old person (Swedish Prosecutor General 2008, pp. 25–31). For serious offences, on the other hand, there is a rule for extraordinary situations used very restrictively (in only a couple of cases per year) which may, for example, be applied for humanitarian reasons if the suspect suffers from a very serious illness (Ibid., pp. 47–48). Common to these kinds of rules is that they are supposed to be applied because of some special circumstance in the individual case, not to function as a general instrument for prioritisation.[6] There must be circumstances in the case forming reasons against crime investigation (and prosecution). Rules may not, for example, be applied to avoid investigating certain kinds of offences, as this could potentially lead to decriminalisation of those offences (Ibid., p. 26).

Accordingly, the clear main rule in the Swedish legal system is a duty to initiate and conduct investigations into criminal acts. The public prosecutor has the authority to prosecute crime, and it is an official duty of the police and prosecutors to investigate, unless there is an applicable rule stating an exemption. Consequently, the authorities should, from a legal point of view, investigate almost all offences. As such, the discretionary space for authorities to decide whether to investigate or not is limited, as well as the possibilities for prioritisation. The Swedish rules have been subject to official inquiries, but the main principle of mandatory prosecution remains. It has been held that the principle promotes equality before the law, counteracts arbitrariness, and contributes to realising the threat of punishment, and, in that way, supports the general prevention of crime (Cf. Landström 2011, pp. 67 and 233).

The police's responsibility for crime investigation

Given the general duty to investigate, the question arises of the extent to which it is the responsibility of the police authority, as such, to investigate crimes. In Sweden, the Police Authority and the public prosecutor are responsible for crime investigation, except in the case of certain offences investigated by special authorities such as the Swedish Customs, Swedish Economic Crime Authority, or Swedish Security Service (Swedish Police Act, Sect. 3).

The task of investigating crimes is divided between the police and the public prosecutor. The prosecutor will lead the investigation if the matter is not of a simple nature, as soon as someone is reasonably suspected of having committed the crime or if special reasons so require it. This concerns domestic crime cases, for example, or cases concerning sexual offences against children. The prosecutor also leads the investigation in all cases in which a suspect is arrested and remanded in custody (SCJP, Ch. 23 Sect. 3 p. 1, Swedish Prosecution Authority 2005). In all such cases, the prosecutor may enlist the assistance of the Police Authority (SCJP, Ch. 23 Sect. 2 p. 2). The Swedish Prosecution Authority has no investigative staff of its own, however. The assumption is that when the prosecutor leads the investigation, the police are responsible for carrying out investigative measures such as conducting interrogations and enforcing coercive measures, while the prosecutor holds the overall responsibility.

If the matter is of a simple nature, however, the Police Authority is responsible for leading the crime investigation and will retain full responsibility. Such is the case in the bulk of common cases, including assault, theft (even serious theft), fraud, property damage, possession of drug offences, and traffic offences. These are sometimes referred to as 'police-led crimes' or 'everyday

crimes'. The Police Authority also leads the investigation in cases concerning crimes that are more serious until reasonable suspicion has been reached in relation to one person or more of having committed the crime (SCJP, Ch. 23 Sect. 3 p. 1, Swedish Prosecution Authority 2005).

The stringent requirements relating to the investigation of suspected offences are combined with further requirements related to the reporting of such offences. In the Swedish Police Act, there is a further rule stating that when a police officer becomes aware of a crime, (s)he is obligated to report the crime to his or her superior as soon as possible. Only if it is a summary offence (for which the penalty is a fine) and the crime according to the circumstances is insignificant may the police officer decide not to report the crime (Swedish Police Act, Sect. 9). This rule is not intended to widen the scope of police officer discretion, however. When the rule was adopted, the intention was that a decision about remission to report could be used in cases concerning small matters, in which an investigation (and later prosecution) could be seen as objectionable (Berggren and Munck 2017, pp. 79–80).

As shown, the legal system is based on a duty to report every crime and holds few rules allowing prioritisation in the sense of not investigating certain crimes. This is regardless of intent such as, for example, to allocate resources to other investigations. In this way, the legal rules promote the prioritisation of investigations as such and may further be seen as a driver to reduce the priority of other tasks such as crime prevention in a broad sense or general measures to provide public security.

Prioritisation – public order and security

In terms of the task of upholding public order and security, the legal limit for prioritisation is less clear. Historically, it has been held that the opportunity principle is to be applied within this area (Sjöholm 1978, p. 106–107). The Swedish Police Act, which came into force in 1984, stipulates tasks for the police, in general, and regulates police powers and legal principles about how to behave and act while conducting police work. The Police Act does not, however, explicitly state how to prioritise.

Formerly, there was a general rule in the Swedish Police regulation, stating that a police officer should 'take such measures that, in comparing the interests at stake, appear to be the most pressing' (Standard instruction for police officers 1925, Sect. 11). In Swedish legal literature, it has been deemed that legal principles of how to prioritise may be discerned behind such a rule (Sjöholm 1978, p. 109). That general rule has not been transferred to later police regulation, however. Currently, for police employees working at the Operations Centre and Police Contact Centre, the Police Authority has internal regulations stipulating how public calls are to be prioritised (Swedish Police Authority 2017d). In the current Police Ordinance (2014), there is also a rule concerning police officers' duties in their spare time. According to this regulation, a police officer has a duty to interfere by him or herself in cases of more severe crime or serious disturbances to public order and security. In such situations, the police officer is responsible for taking such immediate actions as conditions require (Police Ordinance, Sect. 16 p. 1(3)).

To summarise, legal responsibilities within this area are less clear. More is left to the individual officer's discretion, even though there are rules indicating that severe crimes and serious disturbances ought to be prioritised.

Challenges at different levels

The limited legal room for explicit prioritisation (and ensuing de-prioritisation) within the area of crime investigation leads to challenges for the police. The 2015 police organisation, as described above, is territorially subdivided, and issues of prioritisation arise, both between levels and between units at the same level. On the Local police district level, for example, the challenge is to have enough police officers working day and night to staff a sufficient number of police officers by the hour to respond to incoming calls or events. Our introductory example, concerning the number of police officers on active duty at night in sparsely populated areas yet again illustrates

the problem of prioritisation. This challenge exists in parallel with the responsibility to tend to the bulk of ordinary, everyday crimes, which falls under the auspices of Local police districts (Swedish Police Authority 2017a).

Adding to the complexity, another example in which the primary responsibility rests on the Police district level are sexual offences against children. These are not led by the police from the start but by a public prosecutor belonging to the Public Prosecution Authority. At the same level, investigators work on murder cases, which may be led by the Police Authority during the initial stage. In these situations, investigators at the same level may experience significant cross-pressure, as they are required to function primarily as a resource for the public prosecutor, on the one hand, and for the police organisation, on the other. Again, referring to one of our introductory examples, there are clear empirical indications of this cross-pressure.

Based on what we know, other examples are readily imaginable. For example, a large protest or public event might be planned, or some similar large-scale situation may occur, which requires the police organisation to allocate resources in preparation for potential disturbances to the safety and security of society. Here, the recent large influx of refugees to Sweden in 2015 and 2016 springs to mind. Following a decision by the government to temporarily reinstate internal border controls to maintain public order and internal security (Swedish Government 2015), police officers from all over Sweden were temporarily stationed along border crossings in the south of Sweden to perform identity checks and maintain public order (Swedish National Audit Office 2016, pp. 39–40).[7] A subsequent evaluation of these border controls by the Swedish National Audit Office found that there had been no systematic efforts within the Police Authority to reduce the negative effects on regular policing tasks in the reassigning of officers to border controls (Ibid.).

In sum, these and similar situations illustrate the need for and inevitability of prioritisation, while at the same time exposing how the legal limits for actual prioritisation may be limited. As will now be shown, the room for prioritisation may be even smaller than this analysis of the Swedish legal context suggests.

Human rights obligations as a normative limit and source of prioritisation

Positive obligations limiting prioritisation

While the Swedish legal framework establishes limits on the possibility to prioritise, the legal rules establishing those limits can, of course, be changed. There is, however, another legal layer of obligations of importance to ascertain the drivers and limits of prioritisation, which is the doctrine of positive obligations flowing from the European Convention on Human Rights (ECHR, 'the Convention'). As a signatory state to the Convention, Sweden—and its government agencies and agents—are obligated under art. 1 of the convention to respect and protect the rights enumerated in the Convention. Beyond the obligation not to interfere with the rights of the Convention beyond the limits of the ECHR—as interpreted by the European Court of Human Rights (ECtHR, 'the Court') —this also implies certain positive obligations to act to ensure the fulfilment of those rights (Xenos 2012, Derlén *et al*. 2016, pp. 271–273).

Although implemented as Swedish law (Lag (1994:1219) om den Europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna) and enjoying a special status through a provision in the Swedish constitution (Swedish Instrument of Government, Ch. 2 Sect. 19), the Convention is interpreted by the ECtHR as a living instrument to ensure an effective protection of convention rights in view of present-day conditions (Rainey *et al*. 2017, pp. 76–81). From a domestic standpoint, the Convention thus forms an external normative layer of obligations, though one Sweden is bound to respect both as a state party to the convention and through the internal legal rules of the Swedish constitution and the Act implementing the Convention as Swedish law. This also implies that to the extent the ECHR limits the room for prioritisations,

these limits are beyond the control of the Swedish legislator, barring a departure from the Convention system as such.

These positive obligations are of particular importance within the sphere of policing, as the doctrine has largely developed in the wider context of states' failures to prevent or investigate serious violations of convention rights attributable not to the state or its actors but to other individuals on the horizontal plane, in particular when such violations take place in violation of national law (Xenos 2012, pp. 104–105).

Positive obligations can be seen to affect policing in four primary ways: (i) the requirement of a functioning legal framework, (ii) the requirement of effective investigations, (iii) the requirement of preventive operational measures, and (iv) obligations flowing from civil and political rights.

Requirement of a functioning legal framework

The first effect of positive obligations on policing is indirect, as the legislator in a state party to the Convention is required to create a legal framework whereby individuals' rights are protected against attacks from other individuals. In *X and Y v. the Netherlands*, one of the first positive obligation cases delivered by the ECtHR, the legal framework in the Netherlands had gaps which led to serious violations of a disabled girl's sexual integrity to go unpunished, as the criminal law did not provide the girl and her family any avenue for seeking justice or claim reparations. The state thus failed to meet the positive obligations implicit in the Convention (X and Y v. The Netherlands (8978/80), 26 March 1985). Similarly, in *M.C. v. Bulgaria*, the Court found that the prohibition of rape in Bulgaria did not provide effective protection against serious violation of convention rights by requiring the victim to actively resist the sexual assault (despite empirical evidence showing that victims often 'freeze' during such assaults) and found a violation under article 3 (M.C. v. Bulgaria (39272/98), 4 December 2003). This further implies that convention law limits states' ability to offload certain cases to the civil law system (thus relying on individuals' own civil actions, for example), or simply disregard certain situations, if the situation at hand implies a violation of convention rights.

The responsibility to provide a functioning legal framework to respond to violations of rights further extends to the investigatory phase. In *K.U. v. Finland*, a fourteen-year-old boy was the subject of a fake online contact ad in his name, in which he purportedly sought contact with older men who could 'show him the way'. Though the act of creating the ad did fall under a criminal statute, the police were effectively unable to pursue the only viable avenue of crime investigation. This was due to Finnish law at the time not allowing investigators access to information from internet service providers about individual subscribers behind an IP number, unless the investigated offence reached a certain level of severity, which was not met in the circumstances of the case in question (K.U. v. Finland (2872/02), 2 December 2008, §§ 6–14). Finding that Finland had failed to meet its positive obligations under article 8, the ECtHR stressed the young age of the boy and the serious violation of his sexual integrity which the crime entailed. As such, the Court held that Finland had not provided a legislative framework that gave the police effective means to investigate such violations (Ibid., §§ 40–51). Consequently, this places a responsibility on the legislator to ensure effective tools for crime investigations if the lack of such tools will effectively create a horizontal impunity for certain violations of the convention. Important to note in this regard is that the responsibility to create such investigatory tools must be read within the limits of the negative obligations of the Convention. As such, positive obligations cannot extend so far as to allow convention states to violate, inter alia, the procedural obligations of the Convention or the right to respect of private life (See K.U. v. Finland (2872/02), 2 December 2008, p. 49, Osman v. the United Kingdom (23452/94), 28 October 1998, p. 116 and 121). It may be noted that this positive obligation has recently been discussed as a necessary impetus of legislative measures on the retention of communications data in Sweden, pointing towards its function as a normative driver of legislative action (Swedish Government Official Reports 2017, pp. 60–61).

Effective investigations

A second and more direct effect of positive obligations relates to the responsibility to conduct effective crime investigations. This requirement is, according to the ECtHR, tied to the maintenance of public confidence in the rule of law (See Bouyid v. Belgium (23380/09), 28 September 2015, § 133, N.D. v. Slovenia (16605/09), 15 January 2015, § 60). While conceptually a positive obligation since it requires a positive action by the convention state, it is often seen by the court as part of the procedural limb of the corresponding convention article. While several components of these procedural responsibilities have been articulated in response to cases in which agents of the state itself have been responsible for violations (e.g. McCann and Others v. the United Kingdom (18984/91), 27 September 1995), or in which the state had a duty of care towards an individual (e.g. Paul and Audrey Edwards v. the United Kingdom (46477/99), 14 March 2002), they also extend to a range of different conducts which constitute interferences with convention rights by other individuals without any state involvement (See Menson v. the United Kingdom (47916/99), 6 May 2003, Rantsev v. Cyprus and Russia (25965/04), 7 January 2010, § 232). As put by Kjelby (2015, p. 69), the context of this responsibility ranges 'from rather 'minor' body inflictions, to threats, sexual assaults and attacks on several aspects of privacy and private property. Even car accidents and industrial accidents could give rise to issues of positive obligations under these articles and require criminal proceedings'.

Indeed, it is true that while suspected violations of certain rights under the Convention such as the right to life in art. 2 and the freedom from torture in art. 3 will imply more far-reaching responsibilities of the state to effectively investigate (see Malik Babayev v. Azerbaijan (30500/11), 1 June 2017),[8] this requirement to effectively investigate may be triggered by more mundane situations— the defamation case in *K.U. v. Finland* mentioned above is a telling example.[9] Furthermore, the fundamental convention rights under art. 2 and art. 3 will together cover many common types of crime investigations such as domestic abuse (See e.g. Kontrovà v. Slovakia (7510/04) 31 May 2007, E.M. v. Romania (43994/05), 30 October 2012, Valiulienė v. Lithuania (33234/07), 26 March 2013), rape (See e.g. P.M. v. Bulgaria (49669/07), 24 January 2012, I.G. v. the Republic of Moldavia (53519/07), 15 May 2012), and even 'hit-and-run' accidents (Railean v. Moldova (23401/04), 5 January 2010), as well as, of course, murder and attempted murder.

While the scope of the requirement to conduct an effective investigation is, to a certain extent, context-dependent, some general principles may, however, be articulated from the Court's case law.

The responsibility to act upon a credible complaint about a suspected crime is a very basic primary responsibility of police authorities (Valiulienė v. Lithuania (33234/07), 26 March 2013, § 80). It also entails a responsibility for authorities to act on their own initiative once matters have been brought to their attention (Rantsev v. Cyprus and Russia (25965/04), 7 January 2010, § 232).

In the context of the right to life under art. 2, the Court has stated that an effective crime investigation must be 'capable of leading to the identification and punishment of those responsible' (Ibid., § 233; See also Paul and Audrey Edwards v. the United Kingdom (46477/99), 14 March 2002, § 71). This does not entail that states are obligated to find a culprit in every case; the Court has stressed that it is not 'an obligation of result but of means' (Ibid.). Thus, it entails avoiding deficiencies in investigations, which undermines the ability to reach a conclusion, or to take reasonable steps to secure evidence and follow viable leads (Ibid.). In the context of a hit-and-run accident, the Court, for example, held that this included the securing of eyewitness testimony, forensic evidence and, where appropriate, an autopsy. The Court concluded that '[a]ny deficiency in the investigation which undermines its ability to establish the cause of death, or the person or persons responsible will risk falling foul of this standard' (Railean v. Moldova (23401/04), 5 January 2010, § 29).

Beyond the operative investigative demands of following leads and securing available evidence, the state also has a certain responsibility to put criminal law matters before a criminal court and try the facts of the case. Allowing cases to become time-barred or not bringing cases to court where evidence exists may thus run afoul of the positive obligations flowing from the ECHR (Valiulienė v. Lithuania (33234/07), 26 March 2013, § 85–86).

Consequently, the Convention requires not only that the police act on their own volition to investigate crimes brought to their attention but that available evidence be gathered. In combination with the limits of actually bringing criminal law matters forward to prosecution when feasible, these aspects of positive obligations will limit the normative room for de-prioritising cases by closing investigations or limiting the investigative measures taken.

Preventive operational measures

A third effect relates to the obligation of the police to take preventive operational measures in light of a concrete and credible known threat against a person's life or health. This aspect of positive obligation can be traced back to the ECtHR case of *Osman v. the United Kingdom*, which highlights that police authorities are not only obligated to investigate crimes but that the obligations also extend to a certain responsibility to protect. The Court has been clear (Rantsev v. Cyprus and Russia (25965/04), 7 January 2010, § 219*)* that:

> [T]he scope of any positive obligation cannot be interpreted in a way which imposes impossible or disproportionate burdens on the authorities, bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources.

Consequently, this obligation is circumscribed in several ways. The so-called *Osman test* (Osman v. the United Kingdom, (23452/94), 28 October 1998, § 116) to determine the existence of a responsibility for preventive operational measures requires that:

> [I]t must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

Having established that these criteria are met, the Court will determine what reasonable measures the state could have adopted (with due regard for due process rights, the rights of others, and the interests of society) and if the state succeeded in adopting such measures. As it does not require authorities to succeed, if reasonable measures were implemented, it is thus a conduct-based rather than a result-based obligation (Ebert and Sijniensky 2015, p. 347).

This illustrates how police authorities are, to a certain extent, legally obligated to operate and act upon incoming information, which places certain limitations on the ability to plan or prioritise freely between operative and administrative duties or between investigatory and preventive efforts. The 'Osman doctrine' further highlights the event-driven nature of police work and indicates the normative difficulties involved in pre-planning and pre-prioritising police work.

It is worth noting that while positive obligations limit the room for prioritising, or rather, de-prioritising certain cases, the same obligations also contain within them a certain implicit normative prioritisation of their own. Cases relating to serious violations, or concrete risks of such violations, of convention rights under art. 2 and art. 3 are of particular concern from a Convention standpoint. Furthermore, cases relating to children seem to activate positive obligations to a slightly higher degree, as illustrated by *X and Y v. the Netherlands* and *K.U. v. Finland* mentioned above.[10] Finally, it is increasingly likely that the case law of the ECtHR contains within it a doctrine of vulnerable groups, whereby convention states have more far-reaching responsibilities to secure the rights of those groups in society, such as Roma, who are at risk of systematic discrimination or xenophobic violence (Peroni and Timmer 2013).

Operative demands flowing from political rights under the ECHR

Beyond the criminal field, the police are tasked with many other responsibilities under the Convention that will implicitly limit the way the police authority is able to freely prioritise. These responsibilities flow primarily from the overarching responsibility of the state to guarantee political rights under

the Convention. As the police represents, more often than not, the relevant authority for upholding public order and ensuring the security of public gatherings, the responsibility of the state in this context will translate into one belonging to the police authority.

The most illustrative example of this obligation are the responsibilities with respect to peaceful public protests and assemblies. Here, the state has a far-reaching obligation to ensure that such expressions of rights under article 11 of the Convention may take place without undue disruption from counter-protestors.

To secure the right to conduct a peaceful protest, the ECtHR has held that participants must be able to hold a demonstration 'without fear that they will be subjected to physical violence from their opponents' (Plattform 'Ärzte für das leben' v. Austria (10126/82), 21 June 1988, § 32). While the right to peaceful protest includes a right to counter-demonstrate, this does not extend to inhibiting the original demonstration to the point that it deters open expressions of views on controversial issues (Ibid.). The state, however, has wide discretion concerning the means to be used to enable lawful demonstrations to take place. In the leading case related to positive obligations in this context, the Austrian police went to considerable lengths, including the deployment of a large number of uniformed and plain-clothes police officers, riot control units, and cordons, to ensure a controversial pro-life demonstration could take place. Despite disruptions from counter-demonstrators, the ECtHR held that the positive obligations had been met. As with the positive obligations to secure the physical integrity of individuals, the obligations flowing from political rights must, as in the investigation of crimes, be understood as an obligation of measures and not results (Ibid., § 34).

As such, it is difficult to discern the more specific limits of positive obligations in this area beyond the general principle of taking reasonable measures to ensure that even controversial demonstrations may take place without fear of physical violence.[11] These reasonable measures may, however, drain significant resources from everyday policing.

Policing – between a legal rock and hard prioritisations

The public Swedish debate about policing follows many of the same trajectories as the general political debate about social and economic priorities. In the media, agencies are perceived to be too slow or too meagre in their service delivery, while at the same time costing taxpayers a lot of money. Service delivery is seen to be unevenly distributed across the territory of the nation and discussed, more often than not, in terms of how large city areas or big events consume public resources in a way that geographically remote or socially and economically disadvantaged areas cannot. During the first decade of the 2000s, much of this mediated public critique was directed towards the Swedish Police Authority. Although still a structurally decentralised public agency, the Swedish Police was unable to prioritise improving its results in clearing up reported offences. By centralising the Swedish Police through the major organisational reform in 2015, the Swedish government intended to remedy this situation. As discussed in this article, however, this major effort to reduce the operational independence of regional and local decision-making levels in Swedish policing may have made some progress towards increasing governability. Efficient prioritisation, however, still founders on three systemic factors the 2015 reform left untouched. One is the legal responsibility and authority attributed to lower levels of the police organisation, even to individual police officers and regardless of organisational format, by the 1984 Swedish Police Act and the Swedish Code of Judicial Procedure. The other is the historically determined and constitutionally provided relative autonomy of public agencies in Sweden vis-à-vis the ministries of government. The third are the human rights obligations limiting the normative room for de-prioritisation of certain cases and tasks.

As the preceding analysis of legal rules limiting prioritisation in the Swedish system shows, overall responsibilities for the police as regulated in the Swedish Police Act have deliberately been formulated in vague terms. Public policy, economic realities, and local ambitions must nevertheless be mediated against a rigid legal framework governing matters of security and crime, as well as a strong legal presumption to act on, and to investigate, incoming reports. While, implicitly, the

Police Authority as a whole is responsible for upholding many of these requirements and for ensuring a functional police force, it is the officer on the ground or the operative decision-makers who have to balance and mediate policy demands and legal requirements in practice. To give a practical example, a central policy prioritising organised crime or violent street crime in a certain area will put individual crime investigators and lower-level managers in a position where other responsibilities such as active crime investigations into domestic violence or sexual abuse will have to be de-prioritised or put on the back-burner (see Horvatovic 2017).

As noted in recent government evaluations of the Swedish Police reform, decisions at the national level of the Police Authority often imply increased ambitions within a certain policy area which, in practice, requires local reallocation or earmarking of resources for this particular purpose (Swedish Agency for Public Management 2017, p. 33). Under conditions of reallocation or earmarking, individual officers must balance such prioritisations against hard legal requirements to follow leads and to take reasonable steps in investigating cases before they become time-barred. Here, the space for the individual officer's discretion may differ depending on the legal system. In Sweden, however, there is, in fact, limited legal room for a decision not to investigate a reported crime or to abandon a crime investigation. The room for prioritising crime investigations over security and public order policing is also limited, given the extensive responsibilities of the police to secure political rights and to prevent known and credible threats against life. As such, the main legal principle that reported crimes ought to be investigated clashes with the reality of limited resources, and the solution may be to leave cases on the table. In detail, these legal rules differ between legal systems and imply differences in the ability of police organisations to explicitly or implicitly prioritise. However, in a legal system allowing wider discretion than Sweden, there are still certain limits such as the ECHR that are important to take into account to understand the actual room for prioritisation discretion in practice.

While positive obligations under the ECHR must, according to the ECtHR, be interpreted in a way that does not create an unreasonable burden on police authorities, given their limited resources, there is a considerable overlap between the requirements of the ECHR and the Swedish Police Act, as well as the Swedish Code of Judicial Procedure. The latter does not provide the same interpretive leeway as the Convention, establishing both a strong normative demand for police action and one that the police organisation is currently ill-equipped to live up to in practice. In any case, both layers of legal obligation place clear limits on the potential for prioritising (or rather, the room for implicit de-prioritising) by closing crime investigations, allowing them to become time-barred, limiting public order policing, or not responding to emergency calls. Instead, if available staff and resources are to be considered a zero-sum game, other policing tasks such as crime prevention programmes are less regulated and thus more open to (de)prioritisation decisions. In the long run, the de-prioritising of such tasks may be an undesirable effect, but it is likely to correspond with what actually happens in everyday policing. Another way to (de)prioritise is to reduce the effort to detect such crimes, which, in the absence of active policing efforts, will not be reported by anyone— i.e. using the 'surveillance discretion' (Joh 2016) of the police in such a way as to reduce case-loads. This will, however, collide with explicit prioritisations, as it implies a significantly reduced ability to curtail certain serious crimes such as the trade in illegal drugs and weapons. Meanwhile, it is worth noting that nothing in the Convention limits more generous rules allowing police to close investigations into petty crimes such as minor theft or drug possession. As such, given the political will to do so, reforms of the Swedish rules on crime investigations to enable further prioritisation in such cases is a possible avenue towards an increased impact of central decision-making.

Legal requirements may provide partial explanation for the dilemmas discussed in this article, some of which appear frequently in public Swedish debate. These limits and challenges are not new, however, and a reformed police organisation will not make them disappear. Instead, the challenge for the new Police Authority is to develop its ability to deal with them and, furthermore, to lay the questions of the need for prioritisation and how this can be done on the table. An ensuing challenge will be to secure legitimacy of the required priorities (and of the resulting de-prioritisations), both within and outside of the police organisation.

In its final evaluation of the new police organisation, the Swedish Agency for Public Management (2018) found that, despite a plethora of remaining problems, the organisational reform was deemed structurally successful. The major problem was depicted as a lack of leadership within the organisation. By contrast, we would argue that the failure of the organisational reform to consider and adapt the legal and institutional framework is a more likely explanation. As has been shown, the legal requirements affecting the Swedish Police are quite strict within certain areas of crime investigation and public order policing. Meanwhile, political steering in those areas still available for such steering is weak, and operational independence *vis-à-vis* the government is quite significant. In sum, this seriously challenges the potential impact of centralised prioritisations. While this does not discount a lack of internal leadership as a potential explanatory factor, the challenges this leadership faces, given the wider systemic conflicts we have identified, must be taken into account.

Moving from the Swedish case studied here to a wider European context, our findings suggest the following. First, while detailed rules on policing may differ, the implications of both institutional and legal frameworks on the ability of police to reach efficiency demands through prioritisation must be taken into account. Second, legal aspects at the European level such as the ECHR will affect the ability of police to prioritise through de-prioritisation, which will affect police organisations in Council of Europe member states. Compared to prior studies, this combined understanding of institutional and legal factors adds a layer of complexity that challenges pre-existing ideas about discretion.

Notes

1. Except for those tasks which fall within the area of responsibility of the Swedish Security Service (Swedish Police Act, Sect. 3).
2. The police are also responsible for giving assistance to other authorities, involving transportation of people, including youths or individuals with psychiatric illnesses, subject to compulsory care. Furthermore, the police by tradition are responsible for some other matters such as applications for passports and weapon licenses (Berggren and Munck 2017, pp. 46–48).
3. In some cases, the prosecutor, as an alternative to prosecution, may impose an order for summary penalty (SCJP, Ch. 48). These rules do not have an impact on whether to investigate the crime or not, since that is a decision made after the crime investigation is conducted and therefore not of interest here.
4. One example is some forms of insult crimes (Swedish Penal Code, Ch. 5 Sect. 5).
5. Initially, the rule was meant to save resources in court, leaving only the prosecutor the power to not prosecute in those cases, and the adopted rules were more limited (Landström 2011, pp. 145–148).
6. There is also a rule stating that it is possible to avoid crime investigation if continued inquiry would incur costs not in reasonable proportion to the importance of the matter, and the offence, if prosecuted, would not lead to a penalty more severe than three months in prison (SCJP, Ch. 23 Sect. 4a 1 p. 2). This is a restrictive rule, thought to concern cases in which the potential crime is based on complicated resource-intensive civil law matters (Swedish Prosecutor General 2008, pp. 44–46).
7. The size of these reassignments was decided centrally at the national police level but largely handled within each police region on a voluntary basis, as individual officers could declare interest in being assigned to the border; hence, selection and assignment varied depending on the police district (Swedish National Audit Office 2016, p. 39–40).
8. As the Court recently reiterated in *Malik Babayev v. Azerbaijan* (30500/11), 1 June 2017, § 64: 'Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective'.
9. While the case concerned the legal framework, putting such a legal framework in place would be pointless unless it also implies a responsibility to use it to investigate.
10. See also *Söderman v. Sweden* (5786/08), 12 November 2013.
11. Worth noting is art. 17 in the convention allowing for certain hateful expressions to be exempt from protection such as Neo-Nazi expressions, demonstrations, or organisations.

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