

Stockholm 2002-03-07

Alternative Report to the Human Rights Committee

With respect to Sweden's commitments under the
International Covenant on civil and political rights.

From:

The Swedish NGO Foundation for Human Rights

and

The Swedish Helsinki Committee for Human Rights

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Summary

Article 1 paragraph 2

“The Right to Self-determination”

Sweden has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. The aim of the Convention is to ensure the dignity and rights of indigenous peoples. In Sweden, this would give the 17 000 persons belonging to the Sami people the right to use land and water according to their own culture and traditions and, thus, a certain degree of autonomy. The main obstacle and reason why Sweden has not ratified ILO 169 is said to be the question of land-rights. In 1997 a Governmental Committee was given the task of looking into the possibility and implications of Sweden's ratification of ILO Convention No. 169. In its report from 1999 the committee recommended accession within 5 years. It would be desirable for the measures proposed by the committee to come into effect as soon as possible. We believe that this would clarify the government's responsibility for the protection of the Sami people's tradition and culture.

Article 2 paragraphs 1-2

“The protection of civil and political rights”

The International Covenant on Civil and Political Rights has not been incorporated into Swedish law. The same is true of the First Optional Protocol, which gives individuals the opportunity to communicate with the Human Rights Committee if a State party has violated their rights. In our opinion the ICCPR, and the First Optional Protocol, should be made directly applicable in Sweden. As it is today, the courts or authorities almost never refer to international human rights instruments such as the ICCPR.

There is an obvious need for education and dissemination of information about human rights treaties and bodies. It must be stressed that to be able to exercise ones rights one needs to be informed of those rights. We therefore believe that a reference to the committees and the European Court of Human Rights should always be made in a judgment or a decision by an authority where the exercise of a right can be questioned.

“The constitutional protection of civil and political rights”

Human rights are given constitutional authority in the 2nd chapter of the Instrument of Government. However, not all rights covered by the ICCPR are accorded constitutional protection, only those given specific mention. Furthermore, the protection concerns, in the first place, Swedish citizens, even though it is often proclaimed that foreign citizens enjoys the same rights. The Swedish constitution does not embrace all the rights stated in the International Covenant on Civil and Political rights, neither in the light of content, legislation procedure nor in relation to the individuals that are mentioned in the covenant.

Article 3

“Violence against women”

According to official statistics, violence against women in Sweden is widespread and increasing. It is important to recognize the fact that violence against women is not uncommon. Recent investigations show that violent acts towards women exist in every part of Swedish society and that this is a problem that needs to be taken more seriously. There is an urgent need to improve the support for women who have been subjected to violence

from their spouse or relatives. After the murder of a 26-year-old Swedish woman with a Kurdish background it has become essential to examine the special needs that women with immigrant backgrounds can have in their contact with the judicial system.

“Trafficking”

To be a victim of trafficking is to be stripped of your human rights. Attempts have been made by the Swedish government to define trafficking. However, the proposal presented in a government bill targets only that trafficking that results in prostitution. It leaves out other forms of forced labour and risks undermining the universally accepted definition of the term. In our opinion, the assignment should not have been narrowed down to only prostitution. We believe that women who have been subjected to exploitation, assault, abuse, rape, forced marriages etc. but who do not fall into the current definition of trafficking – must also be provided with protection against their abuser and should not be punished (explicitly or implicitly) for illegal immigration.

“The two-year rule”

In order to receive a permanent residence permit as a partner of a Swedish citizen or of someone living in Sweden, the applicant needs to prove that she or he has been in a serious relationship for the past two years. A short while back, rules to protect individuals who have been abused or beaten by their partner were introduced. There is now a possibility for abused partners to receive a residence permit even before the two-year period has expired.

This piece of legislation is, however, seldom used, as the prerequisites are too hard to fulfil. This has created severe problems, especially for abused women. They are not considered trustworthy enough; there is a requirement from the investigators that the abuse needs to be frequent and women who only cohabit have severe problems in convincing the authorities that the partnership was for real. Thus, despite the fact that legislation exists, it does not give enough protection for a battered woman to be able to leave her husband as she then risks being deported.

“Female genital mutilation” (article 3 in relation to article 24)

In Sweden female genital mutilation has been prohibited by law since 1982. The law is, however, seldom applied but not because female circumcision does not exist. Despite the efforts to eradicate the practice the tradition of female genital mutilation persists and there are hardly any cases in which criminal charges have been put forward in a court of law.

“Women asylum seekers”

In 1997 Sweden introduced a new assessment to its refugee legislation on gender-based persecution. We believe, however, that the amendment serves no constructive purpose since persecution on the grounds of gender should be covered by the rules protecting and defining refugees. It can even be argued that the new provision impairs the equal enjoyment of asylum and protection. Sweden will however be forced to change this legislation, in the future affording e.g. women the right to asylum as refugees. In order to ensure a correct asylum process we suggest that the information requested by the decision making authorities in asylum cases should hereafter be gender based, paying attention to the particular political and social situation of women.

“Discrimination against women in the workplace”

Sweden is often ranked as the country that has come furthest in terms of achieving equality between men and women. Still women are discriminated against especially when it comes to wages. Decisions in the Labour Court concerning cases about equal pay for work of equal value, has been distressing. The government has taken genuinely positive steps toward achieving equality, which have worked, successfully in a number of areas.

However, in reality the implementing activities have not been forceful or judicious enough to realise the good intentions. A lack of implementation and enforcement of legislation and regulations tend to perpetuate inequality and discrimination. The insuperable obstacle may be the remaining patriarchal structures and the myths and stereotypes we still live with and which belittle that which is considered to be female and value supposedly male characteristics.

Articles 6 and 7

“Respecting Human rights after the attack of September 11”

The attack against the USA on September 11 created a western society in more or less constant concern for new terrorist acts. In many states, however, this concern has resulted in limitations in the right for individuals to exercise their human rights. In the international arena Sweden has called for a respect for the rule of law in the international campaign against terrorism. In practice, however, Sweden has acted in quite the opposite way, neglecting and violating human rights in order to carry out instructions from the international community that they consider to be unquestionable.

Since 11 September Sweden seems to have changed its practice when it comes to deporting or expelling individuals to states where they risk being tortured or sentenced to death. It is no longer a question of whether the possibility of torture or the death sentence exists or not - if the individual is a suspected terrorist, Sweden is ready to expel or deport them. The decision lies in the hands of the government and its decision on deportations or expulsions cannot be challenged.

We are deeply concerned about this new government practice as it is not only a violation of the principle of non-refoulement, it is contradictory to Sweden’s engagement for the abolition of the death penalty and violates national law as well as international human rights law.

Articles 7 and 13

“Prohibition of torture”

Sweden has been criticized 8 times by the UN Committee Against Torture for violating the principle of non-refoulement. A summary of the criticism put forward by the CAT shows that Sweden is too strict in evaluating asylum seeker’s credibility. Sweden has also been criticized for letting the authorities base their decision on confidential information that never reaches the person seeking asylum and that the decision does not contain any information on how the authority reasoned in the individual case. In our opinion the government and authorities have ignored the criticism and have not taken appropriate measures to deal with the complaints. We hope, however, that the deficiencies will be amended in the upcoming change of the asylum-process.

“The use of police force”

Discussions about the use of force by the police have intensified during the past years, mainly because several people have been seriously hurt or killed in confrontations with the police. Investigations concerning alleged police brutality rarely result in prosecution or other measures, it is not unusual that complaints are dismissed as the result of lacks in police education

The impartiality of the internal investigation of complaints against the police can be questioned, especially since there is little transparency in the process.

The available statistics do not show if any of the cases constituted illegal discrimination or if any of the crimes were racially motivated. This is a clear deficiency because we are convinced that there are xenophobic tendencies in the police force, as is the case in all areas of society. We stress the need for this matter to be investigated.

The death of OsmoVallo in 1995 was not an isolated incident, several others have followed. There seems to be a pattern of deaths in custody, in which the manner of restraint and/or excessive use of force by law enforcement officials may have caused asphyxia. These cases have not been investigated adequately and impartially enough. In our opinion measures need to be taken to ensure that deaths in custody are investigated promptly and independently and that the findings are subject to public scrutiny.

Articles 9 and 10

“Rules concerning detention of aliens ”

The detention of asylum-seekers in Sweden is inherently undesirable. A detention can further traumatize already traumatized individuals and cause an infringement of their human dignity. In Sweden there are no formal restrictions and no routines such as those suggested by UNHCR when it comes to detention of vulnerable persons and victims of trauma or torture. The detention can take place at any time during the asylum procedure and also after the claim has been rejected at the final instance. We also have some concerns about the adequacy of medical care at some of the detention centres when detainees have mental health problems. We insist that Sweden’s treatment of persons seeking asylum, which is a basic human right, should measure up to the international standard set by the UN.

Article 10 paragraph 1

”Institutional psychiatric care”

In comparison with other West European countries Sweden has had an extensive compulsory psychiatric care. During the past years however, voluntary alternatives to compulsory care have prevailed.

The number of institutionalised persons had increased sharply at the end of the 80’s but decreased during the first half of the 90’s and remained constant since then. In the mid 90’s reforms were made in an attempt to reduce the still extensive use of institutional care. In part the results remained unseen and people still suffer from consequences of the reform. Some were more or less left on the streets when having to leave the institution in which they had been living for years. Also, there are people living in institutions in what has been categorized as “undignified conditions” by the National Board of Health and Welfare.

“Children taken into custody”

During the 90’s the number of children taken into custody increased by 33 percent. The rise is especially remarkable where teenagers are concerned. Some of the children are placed in family homes others, especially older children, in youth institutions, some on voluntary basis, others against their own or their parents will. The number of cases ending up in compulsory care has, however, not increased, but is constantly high in relation to many other countries. Separating children from their parents and home environment is of course always an encroachment of the respect for family life.

The increase has not been sufficiently accounted for and needs to be studied further, both with regard to the cause of the increase, but especially with regard to the effects of the institutionalisation.

Article 13 (in conjunction with articles 17 and 26)

“Special measures against non-citizens”

According to the Special Control of Aliens Act, the Swedish police can, in certain cases, use secret wiretapping and secret wire-surveillance to eavesdrop on (exclusively) foreign citizens. The regulation gives the criminal investigation authorities considerably greater powers than those offered by other legislation in this field. We feel that the regulation is discriminatory and should be changed. If the individual is considered to be a threat to national security, he or she can be expelled by the government. There is however no possibility of appeal against a decision of expulsion, which is a violation not only of the right to a fair trial and personal integrity but also of the right to work, family life etc.

Further, the Aliens Act 7:11 gives the government an opportunity to expel an asylum-seeker if he or she poses a threat to national security or public safety. The expulsion can then be executed immediately and with out any chance of review or appeal. In our opinion this also violates every aspect of the right to fair trial.

”Dumping”

The main rule when executing a decision on deportation is that the rejected asylum seeker shall be transported back to his home country or to the state from which he entered Sweden. According to 8:5 of the Aliens Act, there is also a possibility to deport an asylum seeker to “any other country” than the country of origin. Allegedly, asylum seekers have, against their will, been deported to countries completely unknown to them and to which they have no connection. These mistakes have occurred because either their nationality has not been assessed at all, or the authorities have made a wrongful assessment of their nationality. The results can be devastating and the procedure of applying the rule and the rules themselves should be revised.

“Carrier liability”

In our view the introduction of an extended carrier liability is a punitive measure taken to compensate for the loss of migratory control when making the European Union open and accessible for all EU-members. Free movement in persons has caused a need for a stronger control of the outer borders of the union, through e.g. an extended EU visa-policy (indirectly causing smuggling of human beings). The new carrier liability means, in fact, that private entrepreneurs are exercising the powers of authorities, but without this being

recognized by legislation. When trying to avoid heavy fines, there is also a great risk of racial profiling from carriers. The possibility of carriers being relieved from sanctions if a persons who lacks documents in the end is granted a residence permit in Sweden, is not only giving even more powers and obligations to the carriers, it also opens up for even more discretionary behaviour and increases the insecurity of life and person for the asylum-seekers.

Article 14

"The right to a fair and public hearing and an impartial court"

The list from the UN Sanction Committee on Afghanistan of presumed terrorists or individuals presumed to be in some kind of contact, or supporting terrorists has created a legalistic and human rights vacuum, when being implemented in Sweden. Without having the possibility of defending themselves, Swedish Citizens were punished for a crime that did not exist, (presumed terrorist) and for which they of course were not convicted. No evidence was provided, no information disseminated.

The implementation of the list in Sweden violates a number of civil and political rights, first and foremost the right to a fair trial before an impartial judicial body.

"The right to legal aid and defence"

In 1983 economic difficulties forced the government to put forward a bill concerning more restrictive rules in the obligation to provide for a public attorney. It is always the court that determines whether the accused has a right to a public defence or not. Legislation only guarantees a right to defence if the crime committed is quite serious.

The right to a defence can of course have an impact on the outcome of the case, but the legislative change, caused by financial difficulties, has never been reviewed, neither has practice from different courts been compiled in order to look at how courts assess the right to a defence. Also, interpreters are not a right for the accused, but a possibility for the court if deemed necessary. We believe that there is a need to look into how courts assess the need for legal defence as well as for interpreters.

"Legal aid in civil cases"

The right to legal aid is decided by the degree of urgency and significance, the value of the object of the civil case and other circumstances that do not make it reasonable for the state to contribute to the costs. Paragraph 8 of the Legal Aid Act, is a general regulation that makes it possible to refuse legal aid. According to preparatory work legal aid should be denied when, for exaple, the applicant lacks any chance of winning his case. This means that the circumstances of a case are assessed prematurely, which is contrary to article 14, which requires a neutral court to try the case.

Article 17

"The protection of personal integrity"

The use of public camera surveillance is only permitted if certain requirements are met. Investigations show that only half of those licensed meet these requirements, which is, of course, totally unacceptable. We also believe that there is a need for the County

Administrative Board to more carefully consider the protection for personal integrity before granting new licenses.

"Secret surveillance"

In Sweden police use of covert coercive measures is regulated in the Code of Procedures and the law on secret camera surveillance. There are three types of secret coercive measures; telecommunication surveillance, wire-tapping and camera surveillance. In addition remote tacking is used, as well as secret recording devises although these uses are not prescribed by law. This is also in breach of the European Convention on Human Rights and Fundamental Freedoms. The only supervision of the means of coercion is that carried out by the Parliamentary Ombudsmen and this is merely a formal control.

Article 18

"The right to religion"

Freedom of religion is an absolute right for Swedish citizens which can only be restricted through changing the constitution. The protection is however not as strong when it comes to non-Swedish citizens, since this right can be restricted through simple legislation. According to the law the absolute right to religious freedom should only be applied to what is particular to religion. The right to freedom of religion is strictly connected to "religious questions" and it is stated that in activities other than purely religious, the religious communities are under the same laws as others. This opens for interpretation of what is essential to religious life and practice and could thus limit the individuals and communities right to practice their religion. The right for the individual to believe is thus not always a right to exercise this right.

Article 19

"Freedom of expression"

The Council of ministers of the European Union recently decided on a Framework decision on combating terrorism. The framework calls for member states to criminalize certain acts as terrorism when committed with *inter alia* the purpose of seriously frightening a population. In our opinion the definition paves the way for interpretations that enable the authorities to restrict and criminalize freedom of expression, the right to demonstrate and freedom of assembly.

The acts in themselves are already criminalized, naming these crimes acts of terrorism will only serve the purpose of opening possibilities for extreme measures to be taken and gradually infringe the exercise of human rights as well as the right to seek asylum. We are most concerned about this development and urge the government to use its powers within the Union to counteract such a development, as well as ensuring that national legislative procedures on the subject will be transparent.

Article 20 paragraph 2

"Prohibition against racial hatred"

Sweden is one of the leading countries in the world with respect to the production and distribution of "White Noise" (or White Power) music. Legal limitations, such as the statute of limitation, hinder swift and decisive measures to be taken against producers and

distributors of the music. The music plays a central role when recruiting young people into right-wing extremist groups. There is an obvious need to change the statute of limitation in order to be able to prosecute producers efficiently.

In 1994, a law tackling racially motivated crimes came into force in Sweden (The Criminal Code 29:2 p 7). However we are concerned that the law in question is not applied to a sufficient extent. It is a matter of great urgency that the practical application of the law be scrutinized, particularly in the absence of a law outlawing organizations that promote or incite racial hatred.

Article 21

“The Right to demonstrate”

The recent riots in Gothenburg during the meeting of the European Council Summit have revealed deficiencies in the procedures ensuring peaceful demonstrations. A large number of reports were filed against the demonstrators as well as the police but as of yet no police officers have been prosecuted, while many demonstrators have been convicted and sentenced to unusually long prison-terms. Many of the, often very young, demonstrators suspected of crimes were placed in custody for long periods waiting for their case to be heard. The inequitable approach towards the crimes committed during the riots demands further investigation. It is also disturbing that the investigations concerning police brutality lacks transparency. The interventions and the sentences against the demonstrators appear even more remarkable in light of the fact that no police officers have hitherto been charged as a result of the violence, unlawful intervention and abuses directed toward demonstrators and activists. A large number of the complaints against the police were never considered which means they were never open to public scrutiny. This is one occasion where independent examination of complaints would have been preferable.

Articles 23 and 24

“School child or child bride”

Swedish law (derived from private international law) allows girls under 18 from other countries to marry in certain circumstances without the permission of the county administrative board as is required for Swedish citizens. They can follow the laws of their native country as long as they are not Swedish citizens and are 15 years of age. This could lead to forming a family prematurely as well as experiencing difficulties such as dropping out of school, which in turn could diminish the possibilities of a desirable further education for the girl.

“Protection of the family”

When deporting a person who has been convicted of a crime, the court should take particular notice of his or her family situation. According to both the Aliens Act and the Criminal Code, having children living in Sweden should be a reason for not deporting a person. However, according to statistics, hundreds of children in Sweden are bereaved of one of their parents each year.

When deciding on a sentence for a crime Sweden uses the desert approach, in short choosing a punishment that is proportionate to the crime. We believe that deporting a

mother or a father can only be proportionate to the crime in very rare circumstances. Practice in this area must be changed and in accordance not only with Swedish legislation but also with the ICCPR as well as the Convention on the Rights of the Child.

“Child pornography and prostitution”

According to the Swedish branch of the international non-governmental organization Ecpat (End Child Prostitution, Pornography and Trafficking in Children), exploitation of children is a serious problem in Sweden. Child pornography is not the only or even the most common exploitation of children. Children are being trafficked and prostituted to a much higher degree than is being recognized by the government. It is quite obvious that awareness-raising is needed amongst social workers and other officials who are in contact with children, especially those in a vulnerable position, in order to detect child-exploitation and to give adequate help. Satisfactory legislation on possession of child pornography has been introduced in Sweden but it is not sufficient in fighting the dissemination of child pornography, especially on the internet.

“Children at refugee reception centres”

During the last, perhaps ten years, many young children have arrived in Sweden by themselves, seeking refuge or asylum. At times lone children have arrived in large groups, something that has caught the authorities off guard. It is apparent that the authorities, even though this is a phenomenon that has been going on for quite some time now, are not coping with the situation, especially not with the best interest of the child in mind.

The situation at the refugee reception-centres is at times alarming. In certain centres three times as many children than the centre can hold have been given accommodation. There are also reports of children disappearing and children being used in prostitution. Imminent changes are needed as the situation is stressing for both the maltreated children and the personal working at the centres.

Article 25

“The right to take part in the conduct of public affairs” (universal and equal suffrage and secret ballots)

Immigrants and Swedish citizens with an immigrant background often choose not to use their right to vote. Among non-Swedish citizens with a fairly low income, the percentage that votes is as low as 20 percent. Reports show that language or lack of knowledge of the Swedish language is one very important reason for the low participation in, especially local, elections. In our opinion Swedish education needs to improve and become a right for the individual even while they are seeking asylum in Sweden. It is also important that individuals arriving to Sweden are allowed to take part in Swedish society as early as possible, thus allowing asylum-seekers to work.

“Disability and democracy”

The limited access available at many municipal voting stations prevents some citizens with disabilities from voting secretly, and in some cases from voting altogether. Voting conditions should be the same for all, both for those with disabilities and for those without. Equally, this means that all election premises must be available to all, yet almost half of all such

premises in Sweden today (Govt Bill 2001/02:53) are seriously deficient in terms of accessibility for disabled citizens. In many cases, voting premises are located in school buildings that are not adapted to the needs of the disabled, in particular of those with mobility disabilities. A new electoral authority has been set up to improve accessibility but developments seem to be moving in the opposite direction as exemptions for inaccessible election premises have been submitted in 20-odd cases.

Article 26

“Equal protection and non-discrimination”

Swedish legislation presents a number of different prohibitions against discrimination. However, in our opinion, the different pieces of legislation do not sufficiently support each other and do not cover all areas of society. Thus, there is no comprehensive protection against discrimination but rather an incomprehensive patchwork. In 2000 the European Council adopted an additional protocol to the European Convention on Human Rights. Sweden has however not ratified the additional protocol and has at the moment no intention of doing so. We urge the government to, as a first step, ratify and incorporate Additional Protocol number 12 to the European Convention.

In 2001, 633 complaints on ethnic discrimination were reported to the Ombudsperson against Ethnic Discrimination. Out of these 273 pertained ethnic discrimination in the workplace. This is an increase of 66 percent compared to 2000. This is a worrying development even if the increase can be related to a higher degree of knowledge about the law and the possibility to approach the Ombudsperson.

“Unlawful discrimination”

According to the Criminal Code 16:9, unlawful discrimination is a crime that is punishable with up to one year's imprisonment. In 1999, a total of 239 cases of unlawful discrimination were reported, of which 210 were considered to have purely xenophobic/racist backgrounds. In most cases, a report was made after a private person has been refused entry to a restaurant on the basis of ethnic affiliation. In a number of cases it was also a question of discrimination by shops, housing and property companies, security companies, social services, workplaces and bus companies. It is nevertheless a sad fact that most cases do not end up in court. Statistics show that of 263 complaints raised in 1999, only four were brought to trial.

Article 27

“Minorities and language rights”

Despite the passing of the Minority Language Act there are various problems in the allocation of resources for the support of minority languages such as a lack of prioritisation in the municipalities. As language is one of the upholders of local cultures this amounts to a failure on the part of the State to support the right to take part in cultural life.

Introduction

Once the immediate shock caused by the appalling attacks on the World Trade Centre and the Pentagon on 11 September 2001 had subsided, the temporary paralysis that had gripped the international community was transformed into a global war against terrorism. The right to self-defence was extended in scope, and in the fight against terrorism the universality of human rights is now being reassessed. The tacit question seems to be – are the rights of all human beings to be respected equally? And are we to accept that certain innocent people are wrongfully afflicted – because they, perhaps due to their origins, may be assumed to be potential terrorists? Must we uphold the rights of certain specific individuals at all if there is the slightest suspicion that they are in some way associated with suspected terrorists? This ambivalence and inability to decide what priorities to choose has also become evident in Sweden. Suddenly, it is as though no-one is really sure if you *can* prioritise respect for human rights in a crisis situation.

Since the attack of September 11 there has been a change in attitude on such issues as who should be granted human rights, whose rights are worthy of protection and whether, in the fight against terrorism, human rights are still universal. Human rights as such have been questioned and are being challenged once again even in areas where they have recently gained ground, however fragile their foundation.

This attitude has been reflected in Sweden as well, and on a number of occasions recently some of the most fundamental rights of the individual have been violated, often in cases involving citizens with a foreign background or non-Swedish citizens.

The right to a fair trial, the prohibition against torture, the right to life and the right of an asylum-seeker to have his or her case reviewed by a higher court are just some of the rights that have been violated since 11 September. There is currently no preparedness in Sweden for responding to international demands for a joint effort against terrorism in a way that would preserve individual legal rights and privacy. Yet both the instruments and means are available, for instance through the International Covenant on Civil and Political Rights (ICCPR). However, we are seeing far too little effort on the part of the Government to apply this accord and protect fundamental human rights in the global fight against terrorism. We note, however, that the Government on occasion has shown concern about the course of developments, especially with regard to the freezing of assets. But we are not convinced that this concern is unconnected with the media exposure it has received.

In our view, the response of the Swedish Government to the freezing of the assets of Swedish citizens identified by the UN Sanctions Committee on Afghanistan as potential terrorists, reflects a lack of national and state assumption of responsibility as well as a clear inability to act. Once again, we would like to cite the duties of the state to implement human rights – to respect, protect and fulfil such rights. In the fight against terrorism, at a time when a wide range of international interests are demanding tougher action against potential or suspected terrorists, the state has a duty to protect the individual against violations by third parties. And it must do so regardless of whether the third party is another person, another country or another organisation. Sweden can never give up this responsibility towards the individuals within its territorial jurisdiction. We naturally welcome the Government's efforts in this connection to highlight the issue of greater legal protection in

the case of sanction decisions against private individuals taken by the UN Security Council. Parallel to such a modification, as we see it, the state is duty bound to ensure compliance with human rights within the national judicial system.

Also, as decisions in this area are largely taken behind locked doors, and sometimes without any judicial scrutiny whatsoever, we can never be sure if what has been sacrificed was in fact worth the price, whether the violations of human rights that have occurred and that will occur truly represent a step forward in the fight against terrorism or simply serve the terrorists' purpose: to demolish legal rights and the rule of law.

This report, therefore, will focus to a great extent on the changes in practice and attitude concerning the universality of human rights that have taken place since 11 September. This will be reflected in particular in Articles 6, 7, 13, 14 and 17.

Stockholm 2002-03-11

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Article 1 paragraph 2

The Right to Self-determination

Sweden has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. The aim of the Convention is to respect the dignity and rights of indigenous peoples. In Sweden, this would give the Sami people the right to use land and water according to their own culture and traditions and, thus, a certain degree of autonomy. There are approximately 17 000 persons belonging to the Sami population, about 2 500 of which are engaged in reindeer herding and live in Sami villages.¹ The main obstacle and reason for Sweden not ratifying ILO 169 is said to be the question of land-rights.² Ratifying the convention has through the years been the subject of many discussions and studies. The indigenous people directly concerned have emphasized their support for a ratification and their discontent with not being able to fully exercise their traditions and culture. At the same time, the Sami-council recognize the need for new legislation before ratification. (This legislative review is of course always customary before ratifying any international convention.) In 1997 a Governmental Committee was given the task of looking into the possibility and implications of Sweden's ratification of ILO Convention No. 169. The Committee states that Swedish legislation at the moment is not in coherence with the Convention when it comes to protecting the landrights of the Sami-people. Thus it suggests that a special Commission should be appointed in order to clarify among other things, the scope of Sami hunting and fishing rights on the land which they traditionally occupy.

As far as we know, no such commission has yet presented a report or even been appointed. In February 2002 the Court of Appeal for Southern Norrland ruled against a number of Sami villages that had claimed their traditional right to use private land in Härjedalen for winter pastures. The subject matter of the case was the interpretation of 'traditionally used land'. As at the preceding trial in the District Court of Sveg, the Sami villages failed to present sufficient evidence to prove that they had traditionally used the land. The court took the view that the Sami villages had failed to prove 'traditional use' as defined in Chapter 15 of the Land Code. A problem for the Samis, however, has been to prove traditional use in

¹ SOU 1999:25, "Samerna ett ursprungsfolk i Sverige. Frågan om Sveriges anslutning till ILO Convention 169." Committee-report SOU 1999:25, "The Sami, an indigenous people in Sweden. The Question regarding the Swedish ratification of ILO Convention 169." e.g. p 24

² (In 2001 Sweden was up for review before the European Court for Human Rights after a Sami-village claimed the right to a fair trial according to article 6 in the European Convention, when being denied the right to appeal a decision on the use of land for reindeer-herding. After a decision on admissibility to the court the case was settled ending up in an apology from the government and compensation to the Sami-village.)

the absence of proper written agreements.³ To date, the trial has cost the Sami villages millions of crowns (SEK) and the ruling may create serious problems for reindeer herding in the region if it is upheld in the event of an appeal to the Supreme Court. The Samis will then be forced to rely on separate agreements with each individual landowner, a situation they find precarious.

The ruling could quite possibly be in breach of Article 14 of the ILO Convention, insofar as the Swedish state has failed to take adequate measures to safeguard the Samis' right to use the land.⁴ Nor can we be sure that the ruling will not affect the forthcoming Government commission inquiry into the Samis' traditional right to use land and water, which must rely on court findings for its interpretation of 'traditional use'.

For this reason, the committee's recommendations should preferably be acted upon as soon as possible, so that at the very least the responsibility of the Swedish state to protect Sami traditions and culture is clarified.

Article 2 paragraph 1-2

The protection of civil and political rights

The International Covenant on Civil and Political Rights has not been incorporated into Swedish law. Neither has the First Optional Protocol, which gives individuals the possibility of communicating with the Human Rights Committee when a State party has violated their rights, yet become enacted law. However, Swedish jurisprudence means that Swedish law shall be interpreted in the light of its international obligations.

Civil and Political rights have taken a somewhat special position through the incorporation of The European Convention for the Protection of Human Rights and Fundamental Freedoms. The Swedish courts and authorities rarely apply the European Convention, although it is considered to be Swedish law, and almost never refer to the ICCPR.

Generally knowledge about the content of UN covenants is low in Sweden. It is probable that the awareness of the right to communicate with the Human Rights Committee is even lower. In our opinion the ICCPR, and Optional Protocol 1 should be made directly applicable in Sweden.

We also feel that educational efforts are necessary within the judiciary and among the authorities to increase knowledge of the existence and the content of conventions on human rights and State responsibility according to them. Information about the possibility to appeal to an international instance should also be generally disseminated. In our opinion a reference to the committees and the European Court of Human Rights should always be made in a judgment or a decision by an authority where the exercise of a right can be questioned.

³ See *inter alia* Ann-Charlotte Nilsson, 'Projekt urbefolkningar, mark och moral' in Gunner, Spiliopoulou-Åkermark's *Mänskliga rättigheter – aktuella forskningsfrågor*. Iustus förlag 2001.

⁴ Article 14 states: 'The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.'

“The constitutional protection of civil and political rights”

Human rights are given constitutional authority through the second chapter of the Instrument of Government. Nevertheless, not all rights are protected, only those that receive specific mention. Furthermore, the protection concerns Swedish citizens in the first place, even though it is often proclaimed that foreign citizens enjoy the same rights. The absolute rights which require an amendment of the constitution in order to be restricted or limited are:

- freedom of religion;
- protection against any authority forcing one to declare one’s political, religious or cultural beliefs or to be forced to participate in gatherings promoting a certain public opinion;
- protection against political registration;
- protection against capital punishment;
- protection against corporal punishment and torture;
- protection against banishment;
- protection of citizenship;
- the right to have deprivation of liberty tried by a court;
- protection against being held guilty of a crime that did not constitute a criminal offence when it was committed (*nulla poene sine lege*);
- protection against taxes and fees without legal support and
- prohibition of adjudication for an act, dispute or case twice (*ne bis in idem*)

Other civil and political rights that are protected by the Instrument of Government are:

- freedom of speech, freedom of information, freedom of assembly, freedom of demonstration and freedom of association;
- protection against forced physical encroachment, personal search, house search and other personal violations and also investigation of letters or other confidential items of mail and against wire tapping, secret recordings of telephone calls or other confidential messages;
- protection against deprivation of liberty and
- the right to a public trial.

These rights can be limited but only according to the principles of proportionality and purpose, Instrument of Government 2:12 2 paragraph, that is only to “satisfy purposes that are acceptable in a democratic society. The limitation can never go beyond what is necessary considering the purpose that gave rise to the limitation and can never extend so far as to pose a threat to the free formation of opinion, one of the foundations of the democracy. The limitation cannot be made solely on political, religious, cultural or other such grounds.” Most of these restrictions can also be the subject of a qualified legislation procedure.⁶

⁶ A so called minority-protection which means that if ten members of parliament make the demand, the law proposal can be postponed for months before a decision is made. This does not apply if five sixths of the voting members vote against the proposal.

Foreigners are, according to the Instrument of Government 2:22, equal to Swedish citizens in the exercise of several of the constitutional rights and freedoms. But regarding many of these rights non-Swedish citizens do not enjoy the same constitutional protection. These are:

- the right to freedom of speech, freedom of information, freedom of assembly, freedom of demonstration, freedom of association and freedom of religion;
- protection against forced physical encroachment (not torture or capital punishment), search and similar intrusion and also the investigation of confidential items of mail;
- protection against deprivation of liberty;
- the right to have deprivation of liberty decided on grounds other than criminal tried by a court;
- the right to a public trial and
- protection against interference due to belief.

The lower level of protection means principally that the rights can be limited to a higher extent through ordinary legislation and that such legislation does not have to observe the principles of proportionality or purpose. It should be noted that a fundamental right such as the right to religion could be restricted through ordinary legislation when it comes to foreigners. Legal limitations on civil and political rights can, however, never be introduced solely on the basis of a political, religious, cultural or other view, or discriminate against people *belonging to a minority*⁶ or due to sex.

The Swedish constitution does not embrace all the rights stated in the covenant on civil and political rights, neither regarding the content, the legislation procedure, nor as mentioned above, in relation to the individuals that are comprised in the covenant. Art. 2:1, for example, talks about “all individuals” who reside within a States Party territory, i.e. within its territorial jurisdiction. One should also add that at the time of the incorporation of the European Convention a new rule was introduced in the Instrument of Government 2:23 stating that acts of law or other rules or regulations cannot be passed in contravention of Sweden’s commitment to the convention. The European Convention as well as the ICCPR does not make any distinction between citizens and non-citizens. Since the Instrument of Government 2:23 and the European Convention could be seen as *Lex posterior* as well as *Lex specialis*, we believe that if the convention is more favorable it should take precedence when new laws concerning human rights are amended or legislated . The European Convention does not distinguish between citizens and non-citizens when it comes to limiting, for example, personal integrity, freedom of assembly, freedom of religion, freedom of speech or freedom of association. It is unfortunate that the Swedish constitution, the European Convention and the ICCPR do not correspond to each other.

Article 3

Equal rights of men and women

“Violence against women”

According to official statistics, violence against women in Sweden is widespread and increasing. This is a fact that perhaps is one of the most evident proofs of the existing

inequality and lack of power balance between men and women in Sweden. Men's attitude towards women is perhaps never as obvious as in the case of violent acts directed towards women on the sole ground of their being women.

According to statistics from BRÅ, the Swedish National Council for Crime Prevention, 20 517 cases of violent abuse towards women were reported in 2000. The same year, 8 734 complaints to the police on sex-related crimes were recorded, 2 024 of these were rapes. There is a slight decrease in the number of crimes reported in 2000 compared to 1999, but this is more a coincidence than a result of effective, preventive measures. The fact is that during the last decade violent acts towards women have increased consistently.

Earlier investigations have suggested that the number of cases of gender-based crimes is in fact much higher than what is reported to the police and authorities and thus shown in official statistics (although Sweden has a tradition of showing the number of reported, not only tried, cases in the national statistics). On May 14th last year, a research report by the Crime Victims Compensation and Support Authority was presented to the Government, confirming these suspicions.⁶ According to the investigation

- seven out of ten women have experienced violence or sexual harassment of some kind.
- 46 percent of the women in the study had been subjected to violence by a man after they had turned 15.
- Approximately every fourth woman had been exposed to physical violence during the last twelve months
- every third woman who had separated from or divorced her husband had been subjected to violence from her former partner and
- more than one fourth out of these women report systematic violence by the man they used to live with.

Physical violence dominates within a relationship. Outside the home, sexual violence is the most common form of gender-based violence. The study shows the need to give further attention to the severity and consequences of threats – and the need for adequate support to women who have been harassed and threatened by their partner.

Figures related to the number of convictions in cases of rape show that, in 1999, only 98 cases out of 2104 reports resulted in a sentence, which is approximately 4 percent. This has been explained to be related to the high degree of evidence needed to prove rape which in return is related to the description and prerequisites of the crime. Swedish National Council for Crime Prevention has recently been given the task of looking into the occurrence of sexually related crimes – we hope this will include studies to explain the low percentage of convictions in cases of sexual assault.

⁶ Although the investigation received more sincere answers than any earlier investigation, there is reason to believe that there are still many women who chose not to tell. And according to the investigation most women do not press charges – only 15 percent of the women in the study had reported the latest abuse against them to the police. Unfortunately reports seldom result in convictions

The study from the Crime Victims Compensation and Support Authority shows that it is important to recognize the fact that violence against women is not uncommon, it is not only committed by a few violent men, or, as some times has been suggested, by non-Swedish men. The investigation shows that violent acts towards women exist in every part of the Swedish society and that this is a problem that needs to be taken even more seriously than before. This is not to say that efforts in this direction have not been made – but they need to be dealt with as part of the struggle for equality between men and women, and as gross violations of fundamental human rights. The need for further education on the subject, not only for officials such as the police, but also for school children, especially for young boys, is urgent.

At a seminar entitled 'Blind Justice', organised jointly by the Swedish Discrimination Ombudsman (DO), the Crime Victims Compensation and Support Authority and others, Bernardita Nunez, a project manager with the National Organisation for Women's Shelters and Young Women's Shelters in Sweden (ROKS), described the situation for battered women from foreign backgrounds and their encounters with the Swedish judicial system. She noted that, just as in the case of battered Swedish women, the perpetrator was often a member of the immediate family. Many women of non-Swedish origin never contact the police. One of the reasons is a fear that the deeds of the men close to them will cast a shadow over the ethnic community as a whole – that racists will seize the opportunity to describe immigrants as a violence-prone group. She also noted that the violence inflicted on native Swedish and foreign-born women was basically the same, but was expressed in different ways. Still the women exposed to violence tend to need different kinds of assistance.

According to Bernardita Nunez, five factors influence the police in their contact with women of foreign extraction exposed to male violence ⁷:

- *Women's fear*

The women report previous instances of violence. They are also in a vulnerable situation: they are often dependent on their assailant for their continued residence in Sweden or for avoiding isolation.

- *Women are viewed with suspicion*

Case officers assume that the women are lying and try to prove this.

- *The offence is played down*

Substantial injury is a prerequisite if the police are to take the matter seriously.

- *Cultural blind spot*

Investigators introduce extraneous and irrelevant factors into their assessments.

- *The man is considered more credible*

The man responsible for the assaults is not criticised in the same way.

Following the highly exposed murder in January 2002 of a 26-year-old Swedish woman with Kurdish roots, the Government has now promised to review the special needs of women from immigrant backgrounds encountering the Swedish judicial system. We would like, however, to stress the great importance of not proceeding on the basis of an assumption that immigrants are more prone to violence than Swedes. As noted earlier, studies and statistics show that violence against women is as common among Swedes as among immigrants, but

⁷ Notes from the seminar by the Ombudsperson against ethnic discrimination www.do.se

sometimes takes a different form. Lethal violence against women is almost always inflicted within the family regardless of ethnic origin – the difference is that when Swedish men are the perpetrators the explanation tends to be sought in the individual or social circumstances of the case rather than in the culture.⁸ Future action must be based on an awareness that in the final instance the state is responsible for protecting individuals from violation of their human rights, even if the violations are committed by a third party and even if the abuses occur in the private sphere. We are also convinced that the solutions chosen must not segregate the problem but must encompass Swedish society as a whole.

“Violence, Women and Disability”

Women and girls with disabilities are more likely to be victims of violence because of their vulnerability. The right of disabled girls and women to live in freedom and safety should be fully recognized. Control of their own body should be guaranteed for disabled women, to protect them against physical, psychological and sexual violence. This is very important particularly for disabled women who have to stay in hospitals, rehabilitation and other institutions, and those who are unable to represent themselves. Plans and policies should be adopted to protect women and girls with disabilities from all forms of discrimination and physical, psychological and sexual violence, this is not yet a reality in Sweden.⁹

Much is yet needed to be done in order to be able to provide social and psychological support, sheltered housing such as women’s refuge centres and all other mainstream organisations and facilities (brochures, telephone numbers, therapists, etc.) in the field of violence and sexual abuse against women should be made accessible to women with all kinds of disabilities.¹⁰

“Trafficking”

There is no specific provision in the criminal code concerning trafficking. This does not mean that the different ingredients of the crime are not punishable – e.g. kidnapping, forced prostitution, slavery etc.

Trafficking and fighting organized crime has had high priority both before and during the Swedish presidency of the European Union. In 1999 the Parliamentary Law Committee on Sexual offences was given the task of defining the crime – but only trafficking that results in forced prostitution. The suggestions from the Committee concerning trafficking is now a government bill.

According to United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, trafficking is defined as: “the recruitment of people by the threat or use of force or deception for exploitation in prostitution, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery”. Furthermore, according to the 1956 Supplementary Convention on the Abolition of Slavery the Slave Trade and Institutions and Practices Similar to Slavery, forced marriage and debt bondage are included in “practices similar to slavery”.

⁸ Report from the National Council for Crime Prevention, 2001:211, written by Mikael Rying.

⁹ Kerstin Finndahl: “Dare to see it. A study on the occurrence in violence against women. Forum Women and disability 2001. Also: Women, men and disability. SOU 1998:138.

¹⁰ Simone Drakeland: “Investigation on the accessibility at women’s shelters for disabled women, 2000.

Even if forced prostitution must be dealt with urgently, the choice of leaving out other forms of forced labour risks undermining the definition of the term trafficking. In our opinion, the assignment should not have been narrowed down to only prostitution. It is important to remember that forced marriages do occur in Sweden and that it in some circumstances is more or less legalized (see article 24) – even though it is a violation not only of the Supplementary Slave Convention, but also of the International Convention on Civil and Political Rights as well as CEDAW. It is also a violation against the principle of non-discrimination since legislation only prohibits forced and teenage marriages between Swedes and thus only protects young Swedish girls and boys.

Women who are trafficked should not be treated as “illegal” immigrants, but, if they so choose, be treated as asylum-seekers. It is important to ensure that women who are victims of trafficking do not refrain from reporting abuse and sexual assaults or from seeking help to get out of their situation. We welcome the fact that the proposed legislative change criminalizes the trafficker - not the trafficked. However one of the prerequisites of the crime is that the victim was unlawfully coerced, deceived or otherwise improperly recruited for transport from one country to another. The government however states that a woman can be improperly recruited if she is in a particularly vulnerable situation such as, among other things, suffering economic hardship.

If a woman voluntarily agrees to being transported into another country and even to work as a prostitute, she would however according to the proposed legislation, be considered an illegal immigrant if she was discovered and the incitement to report abuse, assault, or exploitation might not be there at all. We believe that women who have been subjected to exploitation, assault, abuse, rape etc but who do not fall into the current definition of being trafficked – must also be provided with protection against their abuser and not be punished (explicitly or implicitly) for illegal immigration.

“The two-year rule”

According to the Aliens Act Chapter 2, paragraph 4, there is a right for a man or a woman whose partner is residing in Sweden to apply and receive a resident permit. The general rule is that the applicant is involved in a permanent relationship – and is able to prove that the relation existed even before immigration to Sweden. It is also possible for a man or a woman to apply for a residence permit because he or she will marry a man or woman who is a permanent resident of Sweden. A permit will, however, only be granted for a limited period, only after two years is it possible to receive a permanent residence permit as a relative, this however normally requires that the relationship is still on-going.

However, this two-year rule has created severe problems for women who live with an abusive partner. As a rule, women who leave their husband or the partner they are living with, before the regulated two-year period is over, are not allowed to stay in the country. The law has been changed and improved in favour of the abused, but this piece of legislation is seldom applied as the prerequisites are too hard to live up to. Women are not considered trustworthy enough, there is a requirement from the investigators that the abuse needs to be frequent and women who only cohabit have severe problems of convincing the authorities

that the partnership was sincere.¹¹ Thus, even though legislation is in place, it does not give enough protection for the battered woman to leave her husband since she will risk being deported.

It is the obligation of the state to protect individuals from human right's violations, even from a third party. In our opinion the two-year rule does not sufficiently protect women from being abused, battered and thus having her rights violated. Instead one could say that the situation creates a double violation, by the husband and by the state.

“Genital mutilation of women”

Genital mutilation of women has been totally prohibited under Swedish law since 1982. Consent does not detract from criminal liability and the offence is punishable by up to ten years' imprisonment. In 1998, attempting, preparing or conspiring to commit the offence, or failing to report it, also became punishable by law. The law is very seldom applied, however, which is not thought to be due to the non-existence of female genital mutilation.¹² It is also believed that relatives of the girls take them out of the country, and thereby outside Swedish territorial jurisdiction, in order to practise genital mutilation. In 1999, therefore, when the law was last amended, the double indemnity requirement was abolished.¹³ A prerequisite for prosecution, however, is that the persons concerned have some connection to Sweden; according to the *travaux préparatoires*, the law is not applicable to asylum seekers who had their children genitally mutilated before they sought asylum in Sweden.

The Government has also directed special information at those who have traditionally practiced genital mutilation on the girls in their families. Nevertheless, the tradition appears to survive. Girls are still genitally mutilated both in Sweden and abroad without this either being detected or investigated. The National Board of Health and Welfare recently reported on the outcome of a three-year project aimed at preventing genital mutilation. One of its conclusions was that there continues to be a need for new, targeted information efforts. In particular, the Board suggests, such information should be directed at religious leaders, men and vulnerable girls. As far as we have been able to determine, willingness to report genital mutilation has not been specifically studied.

“Women asylum seekers”

In 1997, a new ground for assessment was introduced into Swedish refugee legislation, "in need of protection", at the same time as the concept of *de facto* refugees was removed. The change did not, however, entail any widening of the concept "refugee".

¹¹ On the positive side, Swedish legislation does have a wide definition as to who is considered to be a close relative – i.e. partner: cohabitants and homosexual partners are treated as equal to married couples. But the relationship needs to be proven, you need to show that you have shared more than just an address. The easiest way is of course through a marriage licence.

¹² See *inter alia* Govt Bill 1998/99:70

¹³ Today, it is up to the Prosecutor-General to define the limits of Swedish judicial law in accordance with the rules on discretionary review of the right to prosecute. No changes were made in Chapter 2 of the Swedish Penal Code in respect of the rules on extraterritorial jurisdiction, a fact that was noted by a number of the bodies to which the amendment was referred for consideration.

The revised version of the Swedish Aliens Act now contains a specific sub-category providing protection for persons who fear persecution on account of their sex. Benefits afforded under this category, however, fall short of those under the 1951 Convention relating to the Status of Refugees, or under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Cases involving sex-related types of persecution could be regularly brought under the 1951 Convention or prominent human rights instruments. The provision has, according to both external and internal studies within the Swedish Migration Board, rarely been applied. Most women who apply for asylum in Sweden on account of sexual persecution or as the victims of sexual violence, are granted protection on humanitarian grounds. One of the reasons, perhaps, is that the conditions of the provision are just as tough to comply with as those applying to refugee status according to the Geneva Convention. The fear of persecution must, in both cases, be "well founded".

Recently the Migration Board has presented guidelines to improve the use of the sub-paragraph and to better ensure that the asylum-process is gender-sensitive. But to implement these guidelines involves information and education of both investigating officers as well as decision makers of the Board. The government must make sure that adequate recourses are being allocated for the implementation of these guidelines.

However, in our opinion, an additional provision of this kind serves no constructive purpose. It can even be argued that the provision impairs the equal enjoyment of asylum and protection, since the provision offers inferior protection compared to other, more favourable categories.

We believe that the government, in its directives resulting in the above mentioned guidelines, should have made it clear that the purpose was to ensure the enhancement of the 1951 Convention and thus ensure that women asylum-seekers are granted asylum in their own right and according to the main rule. As it turned out, the asylum-gender-guidelines focus instead on the extended use of the sub-paragraph.

According to a EU-directive, Sweden will shortly have to change its legislation in the area, making it possible for the individual to receive refugee status after being persecuted because of gender. We hope this legislative change will entail education of decision makers at the Migration Board and Aliens Appeals Board and that in the future, information received from e.g. embassies on the situation in a country will be gender sensitive and thus provide the information needed to determine both men and women's right to asylum.

"Discrimination against women in the workplace"

Even though Sweden has a long tradition of democracy, inequality between men and women prevails on the labour market in regard to wages and other working conditions and benefits.

Compared to most countries, Sweden has a high employment rate among both women and men. In 1999, 78 percent of all women and 84 percent of all men in the age range 20-64 were gainfully employed. The labour market is, however, still strongly sex segregated both in regard to occupations and hierarchies within occupations. A mere 13 percent of women and 11 percent of men are engaged in occupations with an even distribution between men and women (40-60 percent of each sex). Most women work in large and low-paid sectors. You

find them in the care and sales sectors, where wages are low. The male work force is engaged in technology, mechanics, building and construction and parts of the sales market. All these occupations are better paid than positions in the sectors where women are in the majority. Discriminatory attitudes prevent women from fully utilising their competence in working life – even though studies show that the reverse attitude could benefit the development of the economy.

Most of the managerial, expert and similar well-paid positions go to men. Large pay gaps between women and men at the same work place are due to a hierarchical system: men on top and women at the bottom.

According to the Equal Opportunities Act, equal work or work of equal value should receive equal pay. In spite of this, differences in pay persist. The wage gap between women and men today is as wide as it was 20 years ago. Women still earn 25 percent less than men. Today, with statistical gender analysis available, it is easier to compare differences between women and men:

- Female-dominated occupations have lower pay (value) than male-dominated ones.
- Men receive higher pay than women in most occupations.
- Pay-distribution is broader among men than women in most occupational fields.

There have been a few decisions in the Labour Court regarding the regulation in the Equal Opportunities Act on equal pay for work of equal value, but the results are distressing. Even if the court has been able to break important ground on the definition of what constitutes “work of equal value”, the difference in pay has always been explained as depending on other circumstances than sex-discrimination.

In 2000 an amendment to the Equal Opportunities Act came into force, which gives a legal definition to the concept of “work of equal value”. The recent change of legislation will hopefully cure some of the existing flaws, but we are not convinced that a legislative change will have a positive effect on the outcome of the proceedings in the Labour court. The reason for the negative outcome in the court was not due to difference in opinion as to whether two different kinds of job were of equal value, but that it could not be proven that the difference in pay was not related to other circumstances.

The Labour court consists of members representing trade unions and employers associations (apart from the judges). According to the Ombudsperson on Ethnic Discrimination (DO) there is a lack of interest among both trade unions and employers associations to combat ethnic discrimination. Unfortunately this may to some extent also be true when it comes to other forms of discrimination: i.e. questions regarding pay are almost exclusively controlled through collective bargains between the trade unions and employers’ associations, still injustices exist as is made very clear in this report. In this respect one might consequently question the impartiality of the Labour Court.

Though Sweden is often ranked as the country that has come furthest in terms of achieving equality between men and women, where women make up 50 percent of the government and 44 percent of the parliament, the great progress made has not benefited all women

equally. In fact, the situation of migrant women in Sweden may be worse than that of their sisters in countries that rank far behind Sweden in terms of equality among women and men. The percentage of unemployment among immigrant women is more than twice that of women born in Sweden. The marginalisation and discrimination facing immigrant women in Sweden disempower them both economically and politically and result in a series of social and psychological maladjustments and poor health that need to be urgently addressed. The downsizing of the state apparatus, the cuts in social and welfare services and employment opportunities in the public sector have primarily affected women as they make up the majority of employees and beneficiaries of this sector. Clearly this exacerbates the situation of immigrant women¹⁴, an already vulnerable group.

Articles 6 and 7 (and Article 13) The right to life, and the prohibition on torture

“Developments since 11 September”

Sweden has long pressed for the introduction of a global and unconditional ban on capital punishment. Our Constitution prohibits capital punishment; it is not even allowed in wartime. Sweden has signed and ratified both the Second Facultative Protocol to the ICCPR and Additional Protocol 6 to the European Convention. Sweden was also the initiator and an active agent in the elaboration of Additional Protocol 13 to the European Convention banning the death penalty in all circumstances, including for crimes committed in times of war and imminent threat of war. No derogation or reservation will be allowed to the Protocol that was adopted by the Council of Europe on 21 February. The adoption of the Protocol by the Council is considered to be a strong political signal to the effect that the death penalty is unacceptable in all circumstances.

For a number of years, Sweden has been working actively in the UN Commission for Human Rights to persuade the UN member states to at least agree to a moratorium on capital punishment. The Government brings up the abolition of capital punishment onto the agenda in all its talks held with the US, China and others.

Legislation concerning the expulsion or deportation of foreign citizens explicitly forbids the enforcement of such decisions where the individual risks torture or capital punishment in the state concerned. But since 11 September, Sweden’s image as a resolute opponent of capital punishment has changed somewhat. A short time after the attacks, Foreign Minister Anna Lindh stated on several occasions that Sweden might revise its legislation to make it possible for individuals to be expelled or deported to countries where they might be sentenced to death. In doing so, however, she stressed that such a move would be considered if requested by the UN Security Council. The Government line was that Sweden, instead of advocating an unconditional ban, might demand guarantees that the death penalty would not be carried out. Thus the Government felt the right to life could be made a matter of negotiation.

¹⁴ According to statistics from The National Integration Office most women born outside Sweden find jobs in the health and social care sectors (31,8 percent according to figures from 1998, the next most common line of business is with hotels or restaurants)

A couple of months later, the Government showed that it was indeed prepared to alter its usual practice in this area – even without a legislative change.

The people who were sacrificed for the sake of establishing a new Government approach were two men, a woman and five children: a family and a single man. The adults originally came from Egypt. In one and the same decision, the Government ordered all eight to be refused entry and sent back to Egypt, although it was aware that the two men and the woman faced torture there. The men, who had been convicted of terrorism by a military court and sentenced in their absence to 25 years in prison, now risk being sentenced to death.

On a number of occasions prior to 11 September, Sweden had been criticised by the Egyptian government for refusing to hand over suspected terrorists. At that time, Sweden cited *inter alia* the non-refoulement principle in support of its actions.¹⁵

The decision to send back the family and the man violated Swedish law on a number of points as well as Sweden's international obligations in this field. The cases were treated as asylum cases – which brings them under the Aliens Act. When the Swedish asylum process was reformed in the mid-1990s, following criticism from the Human Rights Committee among others, the Government was largely deprived of its right of decision in individual asylum cases. The Government retains a vestige of power however in the Aliens Act 7:11 in which Section 2 gives it the right to turn someone away “if the case is deemed to be of importance for the safety of the realm or for public safety in other respects, or for the country's relations with a foreign power or international organisation”. Initially, however, it is the Migration Board that decides whether the asylum seeker is entitled to refugee status or has other grounds for staying in Sweden – only in cases where asylum would otherwise have been granted but there is reason to suspect that the person concerned may constitute a threat to the realm or to public safety is the matter referred to the Government.

The Migration Board decided that the two men qualified for refugee status, but not the woman. Both men deny the accusations of terrorism. On the basis of confidential information from the Swedish Security Police, the Government nevertheless decided that both were to be refused entry in pursuance of the AA 7:11, Section 2. However, the men do not appear to have been considered a threat to national security or public safety in Sweden – rather, the decision appears to have been due to “the nation's relations with a foreign power”. In fact, in its written motivation the Government refers to UN resolution 1373 urging states to join together in the fight against terrorism and not to provide safe havens for terrorists.

Despite the fact that the woman was judged to have insufficient grounds for asylum, both she and the two men risk being exposed to torture if they return to Egypt. The men risk being sentenced to death. This assessment of their situation was initially shared by the Government.

Chapter 8 of the Swedish Aliens Act contains rules on the legal impediments to the enforcement of a direct or indirect expulsion order. Section 1 states: “An alien refused entry

¹⁵ This prohibits the expulsion of a person to a country where he or she may risk being exposed to torture or inhuman treatment.

or expelled may under no circumstances be conveyed to a country where there is strong reason to believe that he would be in danger of capital or corporal punishment or of being subjected to torture, nor to a country where he is not protected from conveyance to a (third) country where such a danger exists.”

The constitutional ban on torture, as previously mentioned, is unconditional. It also embraces the principle of non-refoulement. Nor does Chapter 8 of the Aliens Act offer any scope for derogation. Further, the ban is incorporated in the European Convention, which is valid Swedish law, in Article 7 of the ICCPR and in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ICAT).

Since article 13 of the ICCPR provides for exemptions from ‘due process’ where compelling national security interests are at stake, we contend that in cases where there is a risk of the person concerned being exposed to torture if sent back, the Government is not a suitable decision-making body. Also, the Government’s decision in the present case constitutes a violation of Article 13 in the European Convention and is therefore in breach of Swedish law.¹⁶ The Government is also perfectly aware that its course of action disregards not only the Swedish legal process but also regional and international law. Indeed, the written grounds for AA 7:11, Section 2, specifically prescribe that the Government may not order the expulsion of asylum seekers who risk being tortured or sentenced to death in the country to which they are due to be returned.¹⁷

In the 1951 UN convention on the legal status of refugees, Article 33:2 gives member states an opportunity to refuse a person asylum on the grounds of national security. This, however, is an article that should be applied very restrictively. The European Court of Human Rights in fact states that the principle of non-refoulement is broader in scope than Article 33.¹⁸ In this specific case, it is also possible to question whether the expelled men did in fact represent a threat to Swedish national security or public safety.

The Government felt it had the right to disregard all guarantees of protection, both national and international, as it had been assured by the Egyptian government that no death penalties would be effectuated (should such sentences be passed) and that the three would not be exposed to torture were they to be returned. According to reports from Egyptian NGOs as well as international organisations such as Human Rights Watch and Amnesty International, Egypt is a country where torture is practised and where death penalties are not only imposed but carried out. Also, the Egyptian government says the only assurances that have been given are that Egyptian rule of law will apply. Considering this it is quite evident that the guarantee does not give any further protection for the individuals.

¹⁶ See in particular *Chahal v The United Kingdom*

¹⁷ “In respect of the forms for submission of security matters to the Government, the Government noted that cases concerning refusal of entry or deportation should not be submitted to the Government for consideration under any circumstance if the foreign citizen concerned claims that he or she is in danger of being exposed to torture or inhuman treatment and such a claim is not evidently ungrounded. This applies irrespective of whether the prerequisites for such a submission are otherwise fulfilled, and the reason is that such a procedure might be in breach of Article 13 of the European Convention should the foreign citizen’s case only be considered by a single decision-making body and the decision were to go against him/her.” Sw Govt Bill SOU 1999:16 ‘Greater Protection of the Individual in Asylum Cases’. Final report of the committee reviewing the legal process in extradition cases (NIPU), pp 318.

¹⁸ *Chahal v The United Kingdom*, p 80, 49

The two men were detained and expelled covertly the day after the Government reached its decision. The men complained of cruel and inhuman treatment in the way the expulsion order was enforced. Apart from the fact that the procedure meant they were unable to appeal the decision under Swedish law – as noted earlier, Government decisions are not subject to appeal – the immediate enforcement of the order also meant they had no chance to appeal to international bodies such as the European Court of Human Rights, the Human Rights- or the CAT-committee. Nor do we believe that the Government is capable of acquiring the necessary insight into the situation that would allow it to be certain that the guarantee will be respected. Over a month passed after the men's arrival before the Swedish ambassador in Cairo was given the opportunity to meet them. On the same day, 23 January, the parents of one of the men were allowed to meet their son. Since then, however, the men's whereabouts are unclear and they still risk being tortured and maltreated. The Swedish Government promised to meet the men on a regular basis. Amnesty International has asked the Government to determine where the pair are being detained but has not received any information. Nor, as far as we know, are any further meetings scheduled. According to relatives who visited one of the men, he bore unmistakable marks of physical ill-treatment, and they also claimed that he had been tortured in Egypt while being held in isolation.

The woman and the children are still in Sweden, and the expulsion order has been suspended pending a decision on the case by the UN Torture Committee.

As far as the treatment of the woman is concerned, our view is that the Government violated the Aliens Act by considering her case and being the only decision-making body to rule on it. As she was never suspected of terrorism, her case should have been decided by a body where decisions are subject to appeal, firstly the Migration Board and subsequently the Aliens Appeals Board. Because their case was considered together with the cases of the two men, the woman and children have not had recourse to an independent ruling on their individual asylum grounds. (See also under Article 3 on women's right of asylum.)

By its actions, the Government is violating Swedish law, in this case primarily the rules concerning the ban on the enforcement of expulsion orders in Chapter 8 of the Aliens Act, and is also in breach of Articles 6, 7 and 13 of the ICCPR.

We are deeply concerned that the Government's actions in respect of the Egyptian asylum seekers may not be an isolated incident but instead set a precedent for Sweden's handling of similar cases in the future. Its reference to Security Council Resolution 1373 in relation to expulsion cases, its public declarations and its practical actions all show that the Government does not intend to live up to its obligations under Swedish and international law under any circumstances but is also prepared to violate the most basic of principles if the victims are suspected, potential or convicted terrorists. We consider this a very serious development.

“Articles 7 and 13 in general”

On eight separate occasions, Sweden has been criticised by the UN Committee against torture for breaches of the principle of non-refoulement. Further cases are continuing to arrive to the Committee. At present, one such case (see above) is awaiting decision. The Government's recent Action Plan for Human Rights in Sweden states that it views the criticism received from the UN expert committees in a very serious light. It also states that none of the expulsion orders concerned have been enforced following the Committee's criticism of the adjudication procedure.

We are of the opinion, however, that the Government and the responsible authorities have yet to take the Committee's criticism to heart. When the opportunity arises, the Government frequently claims that the CAT rulings are due to the fact that the plaintiffs have access to expert legal advice in Sweden and that Sweden is one of the few states to have given individuals the opportunity to submit appeals to the Committee.

A study of the cases brought before CAT shows that its criticism is often based on its opinion that Sweden takes too harsh a view when assessing the credibility of asylum seekers. The Committee also found that the Swedish authorities lacked sufficient knowledge of how torture victims behave. (The fact that people change their stories does not necessarily mean that they are lying; it may equally well be due to post-traumatic stress.)

Also, criticism has long been levelled at the Swedish procedure for dealing with cases, according to which much of the data on which the authorities base their decisions is kept from the individual, which in turn means that his or her legal protection is severely compromised. This naturally leads to some very unsatisfactory results for individual applicants, not least when they apply for the decision to be reviewed.

As a result of the criticism concerning the way cases are handled, the Government has now decided to abolish the Aliens Appeals Board and let specific county courts review asylum cases instead. This will probably mean the introduction of a two-stage process for asylum cases. Whatever changes are introduced, however, we wish to emphasise the Government's continued obligation to provide protection to individuals seeking to escape persecution. This process must not develop into judicial wrangling where the role of the state is to find reasons for debarring individuals from gaining protection in Sweden.

"Criticism from the European Committee against Torture, CPT"

The Committee's criticism is based on information gathered during a visit to Sweden in 1998. In its conclusions, the Committee stated *inter alia* that asylum seekers must be given a genuine opportunity to have their applications considered and that expulsion orders must be subject to independent review before they are enforced. Accordingly, it questioned the status of the Aliens Appeals Board as the first and final body of appeal for reviewing new asylum applications submitted on the strength of new information in the case.

The Committee also criticized the risk assessments performed in connection with non-refoulement cases, arguing that they were flawed. Hence, it sought a response from the Government on these points and also requested information on how the Government followed up decisions to expel/refuse entry to asylum seekers. No such follow-up is provided, however.

We consider that a follow-up of cases where asylum seekers claim they risk being tortured on return is absolutely essential. This will be of particular importance if the Government continues to substitute intergovernmental negotiations and guarantees for the principle of non-refoulement.

The CPT also questioned the appropriateness of allowing the police to handle the initial exchanges with asylum seekers and of thereby giving it power to decide whether asylum was

to be granted or not. While asylum seekers can appeal against decisions, the lack of information concerning their rights that is available to them reduces the practical significance of this prerogative. Thus many immigrants risk being turned back despite having a legitimate right to stay.

Regarding the enforcement of expulsion orders, the Committee emphasised that coercion may not be used to persuade someone to enter a transport vehicle or as punishment for failing to do so. In connection with the transportation of persons deported for having committed a criminal offence, the Committee was informed; *unauthorised* chains had been used to secure deportees. (A practice that was later banned.)

“Police use of force”

The rules concerning the Swedish police’s use of force are largely to be found in the Police Act (Section 10). It states that police officers may use force in the performance of their duties when other means are deemed inadequate and where such action is warranted by the circumstances. The use of force is to be subject to the principles of need and proportionality. In other words, force may only be used when necessary for the purpose of averting or eliminating an imminent danger or disturbance, and police officers may then only use the amount of force warranted by the action undertaken and by other circumstances. The principal rules on exemption from criminal responsibility are set out in Chapter 24 of the Swedish Penal Code.

The public debate on the police’s use of force in Sweden became more intense than ever as a result of the riots in Gothenburg during the European Council Meeting in the summer of 2001.¹⁹ The advocates of greater police powers and new weapons seem to have gained ground, while the discussion concerning what the police can do to avert similar episodes in the future – without the use of weapons – has faded into the background. In our view, weapons should only be used by the police as a last resort, and if this nevertheless proves necessary their use must be in proportion to the level of action required.²⁰

In recent years, a number of people have died or been seriously injured as a result of police violence. The best known case is probably that of Osmo Vallo. In our view, the investigation into Osmo Vallo’s death in a police cell in 1995 was neither adequate nor impartial. Furthermore, the death of Osmo Vallo was not an isolated incident. There is a pattern of similar deaths in custody, in which the manner of restraint and/or excessive use of force by law enforcement officials may have caused asphyxia, and which have not been investigated adequately and impartially.

We are also concerned about the manner in which police and prison officers restrain people in their custody, which can lead to death. Recent cases include the death of Bruce Joel Jason Hulthén, who had reportedly been restrained by several prison guards, including by sitting on him as he lay on the ground (in October 2000 charges were brought against a prison officer in connection with his death); and the death of Peter Andersson in November 2000, after being arrested and restrained by several police officers. It is alleged that after arrest he lay face downwards on the ground with his hands cuffed behind his back and that one police

¹⁹ See also under Article 17

²⁰ See the rules on police use of force in the opening paragraph of this section

officer sat on the back of his head/neck and another sat on his back, while two security guards held his legs.

The recent deaths in prison custody of Bruce Joel Jason Hulthén and in police custody of Peter Andersson, in both cases following restraint by several officers, raise concerns as to the use of excessive force and/or the techniques of restraint used by law enforcement officers. There is an obvious need for guidelines as to what techniques of restraint are allowed and to inform law enforcement officers of the content of relevant international human rights standards.

In recent years, there have been several cases of people being shot to death in confrontations with police. On one occasion, a police officer shot an alleged car thief in the back as he tried to escape, and the man later died. Another case concerned an officer's failure to keep his gun in his holster when pulling a drunken driver out of his car. In the ensuing tumult, the officer accidentally fired a shot, killing the driver. The most recent incident concerned a Kurdish man facing expulsion from Sweden who was shot to death by a police officer in a stairwell during an identity check.

As noted above, questionable cases of armed force on the part of police officers seldom lead to prosecution or to censure from internal police investigators. Where officers have been prosecuted, they have usually been acquitted. In such cases, it is not uncommon for a lack of proper training to be cited as grounds for exemption from criminal responsibility/grounds for acquittal. This occurred for instance in the above case of the drunken driver where the police officer concerned was cleared of suspicion on such grounds.

In seeking to prevent the use of excessive force by police, says the CPT, access to effective legal instruments is an important guarantee and deterrent. The Committee questioned two aspects of the procedure relating to complaints against law enforcement officials: the advisability of letting the police authorities themselves conduct the investigation and the problem of complaints seldom leading to disciplinary action when officials have been exempted from criminal responsibility.

Regarding the investigation of complaints, the Commission felt that the most appropriate course would be for an external body to deal with them. This would ensure that the investigations were both independent and impartial. The present system, with special internal investigative units, was not felt to satisfy the requirements outlined above.

Statistics from the Greater Stockholm police authority show that the number of reported complaints against local police in the 1990s increased from 738 cases in 1990 to 1,231 in 1999 (peaking in 1996 when 1,445 complaints were received). In the great majority of cases, no action was taken:

Year	Complaints	Not investigated	Prosecution	Persons convicted	Persons cleared	Disciplinary action
1990	738	242	23	18	5	3 warnings, 2 wage deductions

1991	955	328	43	24	19	5 warnings
1992	1,046	442	38	24	14	4 warnings
1993	1,073	534	33	22	11	8 warnings 1 wage deduction
1994	1,274	654	35	22	13	4 warnings 1 wage deduction
1995	1,270	751	44	25	6	5 warnings 1 wage deduction
1996	1,445	939	34	23	11	4 warnings 2 wage deductions
1997	1,274	899	34	23	11	4 warnings
1998	1,284	939	29	22	7	5 warnings
1999	1,231	872	33	22	11	6 warnings

The police's internal investigation department does not compile figures for the country as a whole, and it is thus not possible to review the situation in national terms.²¹ In order to see the whole picture and detect deficiencies in internal investigations we believe that at least national statistics should be available.

The statistics for the Greater Stockholm area show that suspected offences by police encompassed a number of different crimes. In the case of assault, however, the following figures apply for the area:

1990	14 reported	3 convicted
1991	153	3
1992	163	1
1993	175	3
1994	170	5
1995	185	2
1996	188	2
1997	168	4
1998	147	5
1999	168	1

The statistics show no cases of unlawful discrimination, nor is it possible to see if any offences had racial motives. This is a flaw, as we are convinced that the police force is no more free of xenophobia or racism than any other section of the community. The reply received from the police authorities is that such investigations would be too time-consuming.

Official statistics concerning doormen and security guards also contain few cases of unlawful discrimination or racially motivated crime. The Office of the Ombudsman against Ethnic Discrimination (DO) has only ten cases on its books, six concerning security guards or

²¹ In 2001, researcher Annika Norec presented a report, 'The Proper Authority: The Right of Police to Use Force', in which she had compiled complaints against police for the years 1982-1992.

doormen and four concerning police officers.²² The DO does not however follow up registered complaints and therefore does not know if the complaints led to any action.

In May 2000, the DO together with the Crime Victims Compensation and Support Authority and other bodies organised a seminar entitled 'Blind Justice' at which discrimination in the judicial system was a topic of discussion. In its report from the seminar, the DO made the following comments:

“The DO often receives complaints against the judiciary. These concern the police, the courts and to some extent the prosecutors as well. It has not been possible to prove ethnic discrimination – it is often a case of one person’s word against another’s – but it is clear that there are shortcomings in the way people are treated and that both prejudice and flagrant generalisations are expressed in reference to certain ethnic groups. The complaints indicate a widespread distrust of the judicial system.”

It is in our view tremendously important that inquiry is also made into the extent to which offences committed by police or security guards/doormen are racially motivated.

We share the view that the impartiality of investigations against the police can be questioned. According to opinion polls conducted by SIFO, Swedes have considerable faith in the police and say they would feel secure or much more secure if the police force was larger. Maintaining public confidence in the police is a matter of paramount importance, but we believe that the lack of external insight into investigating procedures together with the increase in the number of complaints against the police may lead to a loss of faith in the police system. Cases that are dropped for one reason or another are classed as confidential, which renders independent scrutiny impossible.

Article 9

The right to liberty and security of person

“Detention of asylum-seekers”

The detention of asylum-seekers is inherently undesirable. Seeking asylum is a basic human right according to Article 14 of the Universal Declaration of Human Rights. Placing asylum-seekers in detention can further traumatise already traumatised individuals and is a great infringement on their human dignity.

The detention of an alien who is seeking asylum can take place at any time during the asylum procedure and also after the claim has been rejected at the final instance. According to Chapter 6 Section 2 of the Aliens Act, an alien, whether a refugee claimant or an illegal migrant, over 18 years of age may be detained in a special detention centre if:

- (a) his/her identity is unclear;
- (b) detention is necessary for the investigation of his/her right to stay

²² Item 19930043, assaulted by guards at discotheque, Item 199404445, attacked by doormen at restaurant in Malmö, Item 19940609, discriminated against and assaulted by guard at restaurant in Stockholm, Item 200000425, problem with guard at restaurant in Stockholm, Item 200010739 incident at discotheque in Malmö, Item 19910168, assaulted by police in Uppsala when detained, Item 19970670, re. reported police abuses, Item 19990111, two young men from Bosnia were exposed to harassment/discrimination by police in Karlskrona, Item 20001024, re police abuse.

in Sweden;

(c) it is likely that he/she will be refused entry or expelled, or this is necessary to the enforcement of an existing refusal of entry or expulsion order.

In principle, detention under paragraph (c) can only be ordered if there are some reasons to presume that the alien otherwise will go into hiding or will engage in criminal activities in Sweden.

Detention under paragraph (b) is limited to 48 hours. In the other cases, it is limited to two weeks unless there are exceptional grounds for a longer period. However, if the refusal of entry or the expulsion order has already been made, the detention period may last up to two months, and even longer if there are exceptional grounds. Due to the possibility of extending the detention on exceptional grounds, there is no limitation to the overall detention period. However the decision to keep a person in detention must be reviewed every two months. Decisions regarding detention may be appealed to the County Administrative Court. A detainee always has a right to legal counsel if detained more than three days.

The rules regarding children (i.e. persons under 18) are stated in chapter 6 section 3. A child may be put into detention if the case will be decided under the accelerated procedure and if it is highly probable that the case will be rejected. This happens mainly in expulsions to safe third countries that the applicant has passed through on the way to Sweden. However, there must be a clear risk that the child would otherwise disappear and thereby prevent the expulsion from taking place for it to be detained. Furthermore the alternative measure of regular reporting to a police station or a Migration Board Office must first be used before resorting to detention.

A child may also be placed in detention if the child has previously been under surveillance through the reporting system and that has not proved sufficient to allow the expulsion order to be carried out. The child must not be separated from its legal guardian or if they are more than one, not from the other, by placing one guardian and the child in detention. If the child has no legal guardian detention can only be used in very exceptional cases.

When a child is placed in detention there is a maximum time limit of 72 hours after which the child must be released. Only in very exceptional circumstances can a child be detained for a further 72 hours.

Since October 1, 1997 the Migration Board has taken over responsibility for implementing decisions on detention and for running detention centres. Prior to that it was the responsibility of the police authorities, who sometimes used private security companies to supervise the detention centres. They also used police cells frequently and sometimes prisons. This system was criticised by NGOs because refugee claimants should not be treated as criminals. In the current system the officers of the Migration Board are not allowed to use force to implement a decision. They must therefore call on the police for assistance to for example escort an alien to or from the detention centre or to enforce and expulsion order when a detainee refuses to comply. In January 2000 the Migration Board asked to be able to use handcuffs on persons to be deported if they were believed to be prone to violence. The question is being examined by a law committee, which, however, in its proposal to the Government (SOU 2001:110), rejects the Migration board's request

“Guidelines for detention centres”

There are currently four detention centres in Sweden in or near the major cities of Stockholm, Gothenburg and Malmö and in the town of Flen with a total capacity of around 150 places. The Aliens Act contains specific rules on how the detention centre should be run. Aliens who are held in detention must be treated humanely and their dignity should be respected. By humane treatment is meant

- the foreigner is always the focal point and his or her case must be dealt with in a legally safe and expedient manner
- a good relationship must be established between the detainee and the staff right from the very outset of the detainee's entry to the premises
- the foreigner must be able to feel secure and safe in this exposed situation
- the staff must be sensitive to the needs of the detainee

Conditions in the detention centres should be similar as far as is possible to those at the regular reception centres run by the Migration Board. The only difference should be that the detainees are in a closed building and therefore have certain restrictions to their freedom of movement. Coercion or limitations in freedom of movement should not exceed what is necessary based on the grounds for the deprivation of freedom.

While at the detention centre the detainee has the right to a daily allowance in the same way as other refugee claimants (currently around 3 US dollars a day, since they have free board). However when an application for a resident ship has been denied the individual loses his or her right to monetary allowances. Instead they are provided with a bag of groceries once a week. Detainees are expected to help out with activities of daily living, keeping their rooms tidy and helping with work in the kitchen. If they refuse their daily allowance can be reduced.

The detention centres have to take responsibility for all those aliens who have received an expulsion or deportation order but with regard to persons who have an expulsion order because they committed a serious crime these persons are detained either by the prison authority or the police. Furthermore, detainees who pose a real threat to others can also be removed to police custody. However a child under 18 may never be placed in a prison or in a police holding centre.

Detainees are allowed visitors and to receive and make phone calls on an unrestricted basis but there can be limitations based on practical reasons regarding the safe running of the detention centre. A visit by legal counsel can only be supervised at the request of the detainee or legal counsel. If it is suspected that illegal objects have been handed over to the detainee then the detainee may be bodily searched after the visit. Visits should in general take place privately in a suitable room. If a visit is denied for some reason then the detainee has the right to appeal the decision.

The detainee is often body-searched by the police before arriving at the center. If a body search is ordered then the law stipulates that it must not be carried out more thoroughly than the situation requires. Respect should be shown towards the detainee and a witness should

be present unless this possibility is declined by the detainee. Women may not be bodily searched in the presence of other men unless they are doctors or qualified nurses.

Mail sent to the detainee can sometimes be the object of examination, in which case it should be opened in the presence of the detainee. An examination of the contents should not include reading a letter or other written documents. Mail from legal counsel, lawyers, international organs that have the right to receive complaints from individuals or from the UNHCR must not be opened.

The longest period a current detainee has been in detention is around 3 months. From the statistics for the whole of the country one can see that there are some cases where people are detained over 6 months however the majority of detainees remain just a few days at the centres. It is not fully clear from statistics what exactly happens to people who leave detention. These are the possibilities:

1. They are deported
2. They have the detention order changed to supervised reporting
3. A new application has been handed in and the Aliens Appeals board has made a stay in the deportation order
4. A new application has been approved and the applicant allowed to stay in Sweden

In most cases persons are deported but there is a need to improve reporting so that a full overview is possible in order to make a correct evaluation of the current policy. Since there are two authorities responsible for carrying out deportations, namely the police and the migration Board, they keep separate statistics. The police statistics cover cases that have been handed over to them by the Migration Board and people who are to be deported because of criminality and where there is a court order to expel them. From the police statistics for the year 2000 we can see that a total of 1563 cases were handed over by the Migration Board of whom 223 were placed in detention, 382 were allowed to remain under supervision with regular reporting and all 605 were deported eventually. 1056 were in hiding, although this is a statement that needs qualifying somewhat. Some of these persons may have left Sweden without the knowledge of the authorities in an attempt to seek refuge elsewhere so we do not know exactly how many aliens whose applications for residence permits (including asylum) have been turned down are in hiding.

There is in particular one area where Sweden does not fully respect the UNHCR principles and that is regarding the detention of vulnerable persons especially victims of trauma or torture. There are no formal restrictions in law to prevent this from happening and no routines such as those suggested by UNHCR are in force i.e detention should only take place on the certification of a qualified medical practitioner stating that detention will not adversely affect their health. There are also some concerns about the adequacy of medical care at some of the detention centres when detainees have mental health problems. The availability of psychological counselling is somewhat limited in relation to the need.

One aspect of the current Swedish law that we would like to see changes is setting a maximum length for detention for rejected claimants. The current law sets no limit to how

often the two-month period may be renewed. In the past claimants have been detained for up to two years but in practice today it is seldom that persons are detained longer than 10 months to a year, which in our opinion however is a too long period to live under this kind of conditions.

“Compulsory psychiatric care”

The conditions governing compulsory psychiatric care are specified in Section 3 of the Compulsory Mental Care Act (1991:1128). To be committed, patients must suffer from a serious mental disorder (para 1 (1)), have an imperative need of care that can only be met by ministration 24 hours a day (para 1 (2)) and refuse care themselves. Commitment to a public institution for compulsory care must be a last resort and for such a step to be taken there must be a danger that the health or life of the patient will otherwise be jeopardised. The mental disorder must be classified as serious.²³ Whether or not there is an imperative need of care is determined on the basis of such factors as the patient’s mental state and his or her circumstances.

Compared with the rest of Europe, compulsory psychiatric care has been extensive in Sweden. Reforms have been implemented to reduce the use of compulsory care, but the desired results have not been forthcoming. In July 2000, new rules were introduced aimed at strengthening legal protection for patients (including dual medical opinions and a mandatory court ruling in the event of reclassification from voluntary to compulsory). According to the National Board of Health and Welfare, the number of cases concerning compulsory care has decreased from approximately 8 000 a year (from 1993 to 1996) to 6 000 in 2001.²⁴

“Institutional care of the mentally ill”

In 1995 the psychiatric care system was reformed, decentralising the obligation to care for individuals with psychiatric afflictions to the local authorities and stressing the right of all to have their own home instead of being institutionalised. Unfortunately the reform was not 100 percent successful; people are still suffering from the effects of it. Some were more or less left on the streets when obliged to leave the institutions in which they had been living for years. They were not able to live by themselves or were not given sufficient support. This would account to some extent for the high percentage of homeless people with psychiatric disorders. Also, there are people living in institutions in what have been characterised as “undignified conditions” by the National Board of Health and Welfare. Some excerpts: “It is inhumane and unworthy of Sweden to see people still placed in institutions far away from their own home communities, with no possibility of influencing or controlling their own destinies or lives, and sometimes with too little access to psychiatric care and social support of good quality.” (...) “The forgotten patients hidden away in our secluded mental hospitals are in need of our help and support. Sweden must, in the spirit both of the WHO and of our own legislation, seek to provide those suffering from mental disabilities with the same kind of welfare rights and freedom of choice on where to live as the rest of us.”²⁵

²³ This is determined on the basis of three criteria. The nature and degree of the disturbance are assessed – where nature refers to the type of disturbance and degree means the extent to which it affects the personality – along with the risk of a relapse should the treatment be broken off too soon.

²⁴ The number of cases where the chief medical officer found compulsory care unnecessary under Section 6 (b) increased (from 238 cases in 1997 to 628 in 2001), and the proportion of patients who were switched from voluntary care to compulsory care (Section 11) fell from 17% to 13%.

²⁵ Article in Gothenburgs-Posten, May 2001, by Kerstin Wigzell, Director General of the National Board of Health and Welfare

“Compulsory care of substance abusers”

The Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents Act (LVM) is intended to supplement the voluntary care offered under the Social Services Act (SoL). The purpose of compulsory care is to motivate alcohol and drug abusers, etc, to join voluntary care programmes (LVM, Section 3).

The conditions governing compulsory care are specified in LVM Section 4, which stipulates that the abuse (of alcohol, drugs or volatile solvents) must be ongoing, that the abuser is in need of care in order to escape dependence and finally that this care need cannot be met through SoL or by other means. For use to become abuse, it must have reached a level where harmful consequences are induced or there is a clear risk of medical or social consequences of a harmful nature.

When assessing care needs, the questions asked are whether the abuse is serious and whether rapid, forceful measures are required to break the person’s habit. For compulsory care to be ordered, the person concerned must be deemed to be seriously imperiling his or her mental or physical health. Substance abusers may also be committed if they are clearly in danger of ruining their lives, for instance by losing their foothold in the labour market. If it is thought that substance abusers may seriously harm themselves or someone close to them, they may be taken into compulsory care under the LVM.

The number of people in compulsory care increased markedly in the late 1980s, then declined during the first half of the 1990s and subsequently stabilised at a low level. The National Board of Health and Welfare attributes the decline to a substantial reduction in the intake of alcoholics. There may well have been a significant economic factor as well, not least during those years in the 1990s when many local authorities were affected by the recession and forced to cut expenditure. Institutional care is highly expensive and many local authorities chose to invest instead – and to a greater extent – in out-patient care. According to the Board of Health and Welfare, however, there are no indications that care of substance abusers was cut back to a greater extent than any other social service activities in the late 1990s. The voluntary care alternatives available were the result of a deliberate strategy on the part of the local authorities and appear to have yielded equally good results or better in the case of heavier and older substance abusers. (Reaching young drug abusers, however, remains a problem.)

In the late 1990s, when the Social Services Act was amended, substance abusers lost the right to appeal against decisions under the Act affecting the care they were offered. As a result of amendments to the Act introduced on 1 January 2002, however, this right was restored.

**Article 13 (in conjunction with articles 17 and 26)
Expulsion only in accordance with law**

“The Special Control of Aliens Act”

According to the regulations in the Special Control of Aliens Act (1991:572), the Swedish police can, in certain cases, use secret wiretapping²⁶ and secret wire-surveillance²⁷ to eavesdrop on (exclusively) foreign citizens. The purpose of the law is to prevent politically motivated (criminal) acts of violence, threats and compulsion. It is for the government or the Stockholm City Court to decide if the law is applicable to the foreigner in question. It is up to the government to decide if the threat against national security is serious enough for expulsion. There is, however, no possibility for the individual to appeal a decision on expulsion to an independent authority or court, which is something that has been criticized by the European Social Committee.²⁸

In our view, the regulations on the use of compulsory measures is discriminatory since it can only be applied to non-Swedish citizens. It gives the criminal investigation authorities considerably greater powers than those offered by other legislation in this field. In addition, the fact that the individual cannot appeal to an independent court or authority constitutes violation of almost all human rights, besides the right to a fair trial and personal integrity, also to work, family life etc.

The Special Control of Aliens Act also provides a typical example of the possibility of making a distinction between the rights of Swedish and non-Swedish citizens (see above under article 2) Protection against an invasion of the confidentiality of an item of mail is not watertight for Swedish citizens either, but it is subject to scrutiny for appropriateness and proportionality (the Instrument of Government 2:12), a procedure, which it is only reasonable to assume, should also be the rule for restrictions involving non-Swedish citizens. One might also raise the question of whether this is not in breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Art 8, 6 in conjunction with Art 14. Since the Instrument of Government however in 2:15 states that no regulation may be in contradiction with the European Convention, one might even consequently argue that this piece of legislation also is a violation of the Constitution. Under the Aliens Act 7:11, the Government may expel/refuse entry to a foreign citizen if he or she represents a threat to the safety of the realm or to public safety. (See also under Article 6.) The expulsion order may then be enforced with immediate effect and the person concerned has no legal right to seek a court ruling or court hearing. Nor may the asylum seeker appeal against the Government’s decision.

We are concerned that the Special Control of Aliens Act and 7:11 p2, of the Aliens Act will be used even more frequently in the aftermath of the attack against World Trade Center and the war against Afghanistan. The search and combat of terrorism must be carried out in a level-headed way, avoiding the violation of fundamental human rights of the innocent and giving the suspects a fair chance of defending themselves. The government gives a yearly report on how many times the Special Control of Aliens Act has been used. In its report for

²⁶ Secret wiretapping is regulated in Rättegångsbalken (Code of Procedures) 27:18 and is defined as secret interception of the communication (written or oral) between two or more people via a telephone or fax etc.

²⁷ Secret wire-surveillance is regulated in Rättegångsbalken 27:19 and is defined as the hindrance of the use of a telephone (or fax, etc.) or the secret detection of how many messages have been produced from and to one or more specific telephone numbers, and when of these messages were conveyed.

²⁸ Conclusion concerning articles 1,5,6,12,13,16 and 19 of the (European Social) Charter in respect of Sweden, 1998.

2001 the government decided to report only on the first six months, which of course did not cover cases after September 11th. We hope this does not mean that a report for the second half of the year will not be made public. Since decisions regarding the use of 7:11, p2 of the Aliens Act, also concerns situation where an individual can be deported without a possibility to appeal, we believe that the government should make public how often this piece of legislation is implemented.

“Dumping of Refugees”

The main rule when executing a decision on deportation is that the rejected asylum-seeker shall be transported back to his country of origin or to the state from where he entered Sweden. According to 8:5 of the Aliens Act, there is also a possibility to deport an asylum-seeker to “any other country” than the country of origin.

Allegedly, asylum-seekers have, against their will, been deported to countries completely unknown to them and to which they have no connection. This has been made possible because their nationality has not *been assessed* or because the authorities have made a wrongful assessment of their nationality. A method often used by the Migrations Board, is assessing a person's nationality through “language-analysis”, something which has often been strongly criticized by experts on language. This means that the asylum-seeker has not been given a fair hearing of his/her case.

According to Swedish legislation, it is mainly the Migrationboard who decides to what country the asylum-seekers are to be deported. But in some cases this can be decided by the police (Aliens Act 8:11 and 8:17). This often concerns cases when the police has made a decision about deportation. Swedish police claimed in the program that the possibility of deporting a person to another country than the one he or she arrived from or is a citizen of, is commonly known within the police force.

“Carrier liability”

Since 1954, carriers have been required to pay the costs of return/outward journeys for persons brought into Sweden without valid travel documents. In 1989, stricter rules on carrier liability were introduced and now, as a result of Sweden's entry into the Schengen agreement, the issue has been raised once again. This time, however, it is not simply a matter of demanding recompense from the carriers for the return/outward journey but of combining this with separate penalty charges of up to 5,000 EUR per person. In our view, the new proposals in practice oblige the carriers to exercise a form of government authority, despite the absence of legal sanction.

Under the proposals, carriers are “required to check that an alien being transported directly to Sweden from a state other than a Schengen state possesses a passport and the necessary entry documents”. (Aliens Act 9:2, para 1). According to the *travaux préparatoires*, one of the requirements will be that the staff of airline companies, for instance, are able to assess the authenticity and validity of passports and visas. In principle, this also means that staff must be able to determine whether the people they take on board the carrier are likely to destroy their travel documents in the course of the journey. The reason is that if an alien had valid documents at the start of the journey but these have disappeared by the time of entry into

Sweden, this *may*, according to the *travaux préparatoires*, be sufficient grounds for exempting the carrier from the obligation to pay.

It is reasonably clear that both the *travaux préparatoires* and the departmental memorandums at the Government's disposal had some difficulty extending the definition of carrier liability. This may be deduced principally from the remarkable exemption grounds that have been included in the proposals. Unfortunately, these grounds impose still greater pressure on carriers and their staff to provide individual assessments. The present provisions already specify that carriers may be partly or wholly exempted from the obligation to pay if they can show that they have had "good reason to believe that the alien was entitled to enter Sweden" (9:2, para 2). According to the *travaux préparatoires*, liability to pay may lapse if "the carrier had solid grounds for assuming that the alien possessed refugee status/.../".²⁹ This notion is developed further in the draft law, thus: "Further, the obligation to pay a fee may lapse in cases where the carrier has had solid grounds for assuming that the alien was entitled to a (Swedish) residence permit". It continues: "...this does not mean that the carrier must seek to assess the person's status in relation to Swedish regulations concerning residence permits/.../". If the alien lacks travel documents or they are clearly false and "the carrier is of the opinion that a need for protection exists but has difficulty establishing contact with a government agency or the UNHCR/.../, such a humanitarian assessment should, if there are solid grounds to support it, result in a decision that charging a fee would be unreasonable."³⁰ Should the alien, despite possessing false papers or none at all, nevertheless be granted a Swedish residence permit at a later date, the carrier is exempted from any payment or penalty charge.

Carrier liability is a compensatory rule in response to the free internal movement of EU citizens. It is also to a great extent a result of the EU's visa policy, as is the increase in the trafficking of people. Introducing this type of supervisory obligation for private entrepreneurs such as airlines arouses clear misgivings. The risk of being burdened with substantial fines may cause staff to consider extraneous and irrelevant grounds, such as colour, nationality, etc, and may result in people from hardship countries being more exposed than others to this type of racial profiling. It could also mean that people fleeing from prosecution find it increasingly difficult to secure a safe haven within EU walls. Carriers are entrusted with the task of exercising government authority, but lack the legal sanction and public control that usually accompanies such a responsibility. Private citizens stopped by an airline, for example, cannot appeal against the decision. The Swedish authorities have replied that in such cases people can avail themselves of the Discrimination Ombudsman, citing unlawful discrimination, for instance. This is a proposal that both for legal reasons and in view of the realities of the situation has little chance of succeeding in practice.

Article 14 (Article 15)

The right to a fair trial before an impartial court

²⁹ Govt Bill 1988/89:86, p 206

³⁰ Ds 2001:74, p 9

“Freezing of funds”

On 9 November 2001, the UN Sanctions Committee on Afghanistan announced a decision that was to have momentous and lasting implications for three Swedish citizens. The Committee presented one of its lists of persons and organisations believed to be associated with Usama Bin Laden or the Al-Qaida terrorist network. The Swedes were on the list and within a few days all their assets were frozen.

The list was not preceded by any negotiations with the Swedish Government, the Swedish police or the Security Police or with the three individuals concerned. No information was presented outside the UN Security Council, which meant there was no opportunity to dispute it. (The Sanctions Committee based its decision on information received from the US government.) The three Swedes on the list strongly deny any connection with Al-Qaida and the issue is currently a subject of proceedings in the EC Court of Justice focusing primarily on the EU’s and Sweden’s actions in the matter. Via their lawyers, the three have also approached the US government to have the sanctions withdrawn.

In discussing this case, we will not be considering the legality of the Sanctions Committee’s decision as the purpose of this report is to scrutinise Sweden’s actions. The Swedish Government has also initiated a discussion with the UN on the subject of the sanctions lists, which is a development we welcome. In our view, however, Sweden’s actions – or lack of action – are in breach of the most fundamental principles of a law-based society, the ones we are supposed to be upholding at a time when they are threatened by terrorist acts, etc. The Swedish Government’s actions are in violation of a number of basic human rights, in the case of the ICCPR primarily Articles 14.1, 14.2, 14:3 a, b, c, d, e, 14:5, 15.1 and 17.

In 1999, the UN Sanctions Committee on Afghanistan was established by Security Council Resolution 1267. The Committee was to monitor member state compliance with the various measures outlined in Section 4 of the Resolution, including the following:

All states shall

b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee /.../ and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian needs.

In Resolution 1333, 2000, the Security Council broadened the scope of its sanctions against Afghanistan by also demanding that action be taken against persons or organisations associated with Usama Bin Laden. All states were to take further measures “to freeze without delay funds and other financial assets of Usama bin Laden and individuals and entities associated with him as designated by the Committee, including those in the Al-Qaida organisation, and including funds derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him, and to ensure that neither they nor any other funds or financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly for the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly,

by Usama bin Laden or individuals and entities associated with him including the Al-Qaida organisation.”

The Sanctions Committee was instructed to establish and maintain updated lists, based on information provided by governments and regional organisations, of individuals and entities designated as being associated with Usama bin Laden and Al-Qaida. The list that includes the three Swedes is called Security Council/7206 and was submitted on 9 November.

As the list of names from the Sanctions Committee was based on Security Council Resolution 1333 (2000) adopted under Chapter VII of the UN Charter, it was to apply with immediate effect under international law. It is not intended to have any horizontal impact, however – each member state is to ensure compliance with the UN resolution via its own national legislation.

In Sweden’s case, legislative authority concerning sanctions in response to threats to international peace and security has been transferred to the European Union. Sanctions relating to EU security are also a matter for the Council of Ministers. Decisions in this respect take the form of Regulations that apply in EU states with immediate effect. (As of 1999, even a Recommendation may be enough to enforce compliance on the part of Member States – see Swedish Govt Bill 1998/99:27). The EU Regulation adopted for the implementation of the UN resolution encompassed little more than the list of names from the Sanctions Committee on Afghanistan. The EU thereby adopted a Regulation that had an immediate effect in law, legislation that was not general in character but was specifically directed at a number of persons identified by name.³¹ This type of legislation runs contrary to Swedish legal tradition, as may be seen from the Instrument of Government 11:8.

The Swedish law supplementing the EU resolution in this area is the 1996 Act on Certain International Sanctions, which is a form of implemental legislation. It includes provisions concerning the criminal responsibility of individuals who fail to comply with the sanctions regulations. It also contains provisions describing the types of prohibitions that may be issued against a state. The law specifies for instance that a prohibition may not be applied to property that is intended exclusively for the personal use of the owner.

The fact that private individuals in Sweden, including Swedish citizens, can be punished via a UN Security Council resolution, a Sanctions Committee edict and an EU regulation appears to have come as a shock to Sweden. The Swedish Sanctions Act, for instance, contains no guarantees of legal protection. In late 2001, however, the EU adopted a resolution strengthening legal protection in respect of decisions relating to sanctions within the Union. Nevertheless, the general view still seems to be that these rules should only apply in the case of lists drawn up by the EU itself. It was felt that a list from the UN would ‘tie down’ the EU Member States.

The Government has not felt able to respect basic human rights in the case of the three Swedes whose assets were frozen – neither the rules in the international agreements that it has undertaken to observe nor those incorporated into Swedish law or enshrined in the Constitution. The Swedes who were punished because of their alleged association with a

³¹ The Regulations subsequently adopted by the Council of Ministers in this area (incl L 344/71) refer to “specific restrictive measures directed against certain persons and entities with a view to combating terrorism”.

terrorist organisation were sentenced without a hearing, without a chance to defend themselves, without any crime having been committed – and without the type of action of which they are suspected, ‘possible association with a terrorist organisation’, being classed as a criminal offence. Initially, the three Swedes were denied legal aid – despite the fact that they had no resources whatsoever at their disposal. Fortunately, this decision was reversed.

Irrespective of whether the Swedish Government or the Ministry for Foreign Affairs assist the Swedes in trying to obtain information from the UN Security Council or the US administration, the Government could in our opinion have enforced the UN and EU resolutions in a way that protected the legal rights of the individual. The laws and international conventions that govern the right of individuals to a proper trial, etc, apply in Sweden. The obligations that a state has towards the individual includes the obligation to protect him or her from abuse by a third party – this applies unconditionally, in our opinion, regardless of whether the party responsible for abuse is another state, an international organisation or a regional organisation.

“Legal aid and public defence counsel”

“Criminal cases”

Public costs for legal aid to suspects in criminal cases increased in the late 1970s and early 1980s. The fees of public defence counsel accounted for the bulk of these costs, which caused the Government to present a bill in 1983 (1983/84:23) introducing stricter rules regarding the scope of courts to appoint public defence counsel. The Government was chiefly concerned with preventing the routine appointment of public defence counsel for cases of a straightforward nature. New rules were introduced in Chapter 21, Section 3 a of the Code of Judicial Procedure with respect to the appointment of public defence counsel. It is the court that decides whether or not a person is entitled to public defence counsel. The basic principle is that a crime suspect must always have access to such counsel. In addition, public defence counsel may be appointed if any of the three following requirements are met:

1. if needed by the suspect in connection with the inquiry into the offence,
2. if a defence counsel is needed in view of doubt concerning which sanction is to be chosen and there is reason to impose a sentence prescribing a sanction other than a fine or a conditional sentence or such sanctions combined, or
3. if there are otherwise special grounds relating to the personal circumstances of the suspect or the subject of the case.

Where a suspect does not have access to counsel, it is the responsibility of the court to ensure that his or her interests are properly safeguarded, through ‘litigation management’.³²

³² **NJA 1986 p 86.** Attempted theft. The examination of witnesses was judged to be of such crucial importance for the outcome of the case that public defence counsel was to be appointed even if the case was otherwise fairly straightforward. An interesting point is that the Reading Clerk in the Supreme Court noted that the court was entitled to deny the plaintiff public counsel despite the possibility of a prison sentence being involved; it was important, however, to proceed with the utmost caution in such cases.

NJA 1984 p 787. The case concerned drunken driving. The Supreme Court ruled that public counsel should not be appointed except in cases where real doubt existed as to the sanction. The Court noted in its ruling that the Head of Dept contended in Govt Bill 83/84:23 that while the scale of punishment for drunken driving included imprisonment, this was in practice insufficient grounds for always allowing a suspect public counsel. In this particular case, the prosecutor had appealed against a district court decision and demanded a prison sentence, which was why the defendant was entitled to counsel.

NJA 1984 p 435. Assault. As the case required investigation of the question of whether the person addressed had been provoked or not, the Supreme Court felt that due to his inadequate grasp of the language and lack of education public counsel was required.

Further curtailments of the right to public counsel were considered necessary for reasons of economy and in the new Legal Aid Act (1996:1619, Govt Bill 96/9/9) the practice of providing legal aid in criminal cases was discarded. Counsel are, however, still entitled to apply for state reimbursement for travel to and from courts and for costs in connection with the gathering of evidence. Individual rights are not necessarily better protected by suspects being supplied with their own counsel than by the court providing litigation management.

Nevertheless, since the reason for the legislative change was financial, we feel that the system can be questioned and the results object for evaluation. We feel that it is particularly important to examine court practice in this area, especially with regard to how assessment is made of who should be supplied with public counsel and who not. Such an investigation has never been made.

In the same area, we have sought information concerning how courts assess a person's need of an interpreter and have found that no such data is available. The right to an interpreter is not described as a right for the defendant but a possibility for the court. It is important that a policy is developed at a central level concerning how such assessments are made in view of not only national law but also international human rights law such as article 14:3 f. It is also important to investigate the question of whether denials of requests for public counsel or interpreters may have affected the outcome of cases.

“Legal aid in civil cases”

Under Section 6 of the Legal Aid Act, legal aid may be provided to persons with an annual income not exceeding SEK 260,000. Legal aid is not a universal right but is subject to certain restrictions. In the case of private litigation, Section 6 of the Act embodies a generally framed regulation that allows courts to refuse a person legal aid. Before taking such a step, they consider the nature and importance of the matter in hand, the value of the object of litigation and whether other circumstances surrounding the case are such that it is not reasonable to let the state contribute to the costs. The *travaux préparatoires* make clear, for instance, that granting legal aid is not feasible if there is no chance whatsoever of the case being successful.³³

Thus legal aid may be refused even when the criteria set out in Section 6 are met. One objection that could be made to assessments of ‘reasonable certainty’ concerning the outcome is that they are carried out by courts before the law issue has been decided. Should a court decide not to grant legal aid due to the fact that there is no chance of winning the case, this could have a devastating effect as it would decide the legal issue at stake far too early in the proceedings. Swedish case-law contains a number of cases where legal aid was refused with reference to the principle of reasonable certainty.³⁴ None of these, however, refer more directly to an assessment that the case had no chance of success.

There have however been occasions when legal aid was refused with reference to the principle of reasonable certainty, for instance in a case concerning libel in a printed publication (despite an opinion from the Swedish Press Council that the printed matter was in breach of good media practice) and one concerning rescission of the purchase of a

³³ Govt Bill 1996/97:9 p 124 and Bill 1972:4 p 93

³⁴ National Court Administration Report, *Rättsbjälpslagen 1996:1619, sammanställning av intressant praxis version 2*, p p 8.

pleasure craft.³⁵ In an evaluation produced by the National Court Administration, the reasonable certainty rule is said to have worked well.³⁶

Legal aid has been made subsidiary to the applicants' own legal protection in the form of insurance (Section 9). Applicants lacking household insurance but who should have had such insurance in view of their coverage in other respects are also denied legal aid (Section 9, Para 2). In five cases, the Legal Aid Authority has rejected applications citing the rule in Para 2.³⁷ In these cases, it appears that the applicants have misjudged the extent of their insurance coverage and thought it included legal protection.

Swedish insurance companies have responded to this law amendment by raising their insurance premiums across the board by approx 3% in respect of house owner's comprehensive insurance and approx 5% in the case of ordinary household insurance.³⁸ These increases were smaller than feared, however, and legal protection has not been separated from household insurance.

In 1999, some 14,500 cases were dealt with, about 5,100 of them with reference to the new Legal Aid Act. In 2000, the latter figure had increased to approx 6,800 cases.³⁹

Ever since the Legal Aid Act was introduced, applicants have been obliged to pay a fee for legal aid. Originally, this fee was a set sum unconnected with the applicant's financial situation. Today, it is calculated both on the basis of the applicant's financial circumstances and on the costs that legal aid entails. New percentage rates were introduced into the fee system in 1999. As a result, a larger number of applicants will be in lower income brackets and thus pay less for legal aid. This change was introduced when an increase in real wages led to a growing number of applicants having to pay progressively higher legal aid fees.

The statement of reasons for the new law makes no secret of the fact that the legal aid reform was principally motivated by *realpolitik*. The need to reduce expenditure is given a prominent place in the statement and calculations illustrating the savings that can be achieved are openly included in the Government Bill.

Further economies may result from cuts in legal aid as this may mean fewer cases being brought before the courts. Litigation is a costly process and people lacking the necessary means are thus effectively excluded. This is because an excessively high fee, combined with an excessively low-income limit, makes it difficult for them to pursue legal proceedings. The *travaux préparatoires* for the rules currently in force, however, reveal an awareness of this dilemma. Fees must not be set so high as to prevent people from safeguarding their rights.⁴⁰ The National Courts Administration's evaluation showed that the cuts had not been as extensive as feared but that the savings requirement had nevertheless been met.⁴¹

³⁵ Legal Aid Authority Decisions 494/1998 and 58/1999.

³⁶ National Court Report, 'Uvärdering av rätts hjälpslagen 1996:1619', p 63.

³⁷ Legal Aid Authority Decisions 405/1998, 478/1998, 623/1998, 683/1998 and 157/2000

³⁸ A.a., p 33

³⁹ A.a., p 31

⁴⁰ Govt Bill 1999/2000:59 p 7.

⁴¹ National Court Report, 'Uvärdering av rätts hjälpslagen 1996:1619', p 30.

If legal aid is refused due to an assessment that the applicant is reasonably certain to lose the case, as described above, this conflicts with the rule in Article 14 (1) guaranteeing the right to an impartial trial. Settling the legal issue at such an early stage in the proceedings as the reasonable certainty assessment represents is not compatible with this principle.

Article 17

Protection of privacy

“Surveillance”

According to Chapter 2, Article 6 of the Instrument of Government, all Swedish citizens are protected against body searches, house searches and other such intrusions, against examination of mail and other confidential correspondence, and against wiretapping or the recording of telephone conversations or other confidential communications. Restrictions on these constitutional freedoms may only be imposed in an act of law (IoG 2:12). The Constitution also provides unconditional protection against registration based solely on a person’s political opinions (IoG 2:3) and protects citizens in their relations with public institutions from having to divulge their political, religious, cultural or any other opinions (IoG 2:2). Private citizens also enjoy constitutional protection against registration by means of automatic data processing (IoG 2:3), although “to the extent determined more precisely in law”.

Legal protection under the Swedish Constitution, therefore, is considerably more specific than the corresponding protection in the European Convention. The European Convention states: “Everyone has the right to respect for his private and family life, his home and his correspondence”. No interference with the exercise of this right is allowed except in law. Article 17 of the ICCPR adds a further dimension to this concept by stating that private citizens are also protected against “unlawful attacks on (their) honour and reputation”. All the various rules, however, specify that any restraints on personal freedom must derive from an act of law. Both the Swedish Instrument of Government and the European Convention state that such restraints may only be imposed only a purpose “acceptable to a democratic society”.⁴² The Instrument of Government adds a requirement concerning proportionality and expediency.⁴³ (As mentioned under Article 2, such considerations are not required in the case of non-Swedish citizens.)

The extent of the protection can be discussed – both as regards the opportunities available for restricting it but also as regards where the line is to be drawn between private/family life and public life. In our opinion, however, it protects individual privacy even when the intrusion occurs in a public environment, particularly where the storage and use of sound and visual recordings are concerned.

⁴² Article 8:2 of the European Convention specifies more closely that this is only permissible “if necessary (...) in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

⁴³ “The restraint must never go beyond what is necessary having regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the fundamentals of democracy. No restraint may be imposed solely on grounds of a political, religious, cultural or other such opinion.” IoG 2:12 para 2.

The Swedish law on camera surveillance states that this may be practised in public places if certain requirements are met. The law stipulates that such surveillance is to be carried out with due regard to the privacy of the individual and that the general public is to be informed by means of clearly visible public notices. The law also states that the county administrative board is the supervisory authority for such practices.

Under the law, permits for public camera surveillance are granted by county administrative boards. Post offices, banks and shops, however, only need to register by mail in order to set up cameras that film cash-point areas, entrances and exits if the purpose is to prevent crime. The statistics maintained by county administrative boards are far from complete and it is not possible to gain an exact picture of how great the increase has been in recent years of camera surveillance locations. The Office of the Chancellor of Justice, though, which is the review body in such cases, says growth in this area has been explosive. The Chancellor has contested a number of cases where individual privacy has been unduly disregarded in relation to the crime prevention benefit. Two appeal cases that are currently pending concern a permit to store surveillance film from a public bath and a decision to allow camera surveillance in taxis.

For the past two years, the Swedish Helsinki Committee has been carrying out random sample checks aimed at determining compliance with the law on camera surveillance on the part of permit holders and those who have reported that they maintain such surveillance. The checks showed that more than 50 percent of the camera locations investigated were in breach of the law. The violations concerned lack of public information showing that camera surveillance was in progress, the inadequate display of such information, and the focusing of cameras on a wider area than permitted. Even the Swedish Riksdag violated the law!

Despite the statutory duty of county administrative boards to maintain supervision of places under camera surveillance, only about 15% of these locations had been checked over the past four years.

As camera surveillance represents a significant infringement of privacy, this should be weighed against the benefits of pursuing such a practice. In our opinion, the pros and cons are not being adequately considered by the county administrative boards at present, nor – and in particular – by the shopowners exempted from registration for camera surveillance.

In our view, a development in an increasingly sophisticated technology together with the lack of proper controls represents an intrusion upon individual privacy that is not justified by the benefits in terms of crime prevention.

Only pictures from cashpoint areas, entrances and exits may be processed and stored without permission. Wiretapping or sound recording in shops is not allowed without a permit, while in post offices and banks cameras may only be activated when suspicion of a crime is present. The general rules concerning the processing and management of surveillance material stipulate that no persons other than those necessary for the performance of the activity are to have access to the material. In addition, the material is to be managed in such a way that all abuse is avoided, nor may the material be saved for more than a month unless required for a criminal investigation or the like. Applications to conduct camera surveillance must specify how many people will have access to the material stored. It

has not been possible, however, to discover from the county administrative boards to what extent these rules are being observed.

“Secret Surveillance”

According to General Comment 16 of the Human Rights Committee, “relevant legislation must specify in detail the precise circumstances in which such intrusions may be permitted. A decision to make use of such authorised intrusions may be taken only by the authority designated under the law, and on a case-by-case basis. Compliance with Article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto.” “Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wiretapping and recording of conversations should be prohibited. Searches of a person’s home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.”

In Sweden, police use of covert coercive measures is regulated by the Code of Procedure and the law on secret camera surveillance. Three types of covert coercive measures are permitted: telecommunications surveillance, wiretapping and camera surveillance. In addition to these three other methods such as remote tracking as well as certain other recording devices and hand cameras, are used although these are not prescribed in law. The term “other recording devices” in this context refers to concealed body microphones. Remote tracking means using technical equipment to track someone or something at a distance, e.g. by attaching a transmitter to a vehicle.

Every year, the use of coercive measures is subject to parliamentary review. The information available is based on an annual report from the Prosecutor General and the National Police Board. The report is only based on statements from crime fighting authorities and does not produce any information as to the efficiency of the surveillance methods or how they have been used. Consequently, it is difficult for members of parliament to gain substantial and proper information on the subject and to study it critically.

From the numbers and figures in the presented information one can, however, deduce that requests to use secret surveillance is hardly ever denied, something that gives us reason to believe that permissions are given more or less out of routine and not through scrutinizing the need or the infringement of human rights.

According to Swedish law authorities have no obligation to inform the person who has been subjected to secret surveillance about the methods being used. Not even after the event. There is no possibility of evoking a decision or of receiving compensation if the surveillance proves to be unjustified. What this proves is that there is a need for more transparency in the process and an improved control of how secret surveillance methods are being employed.

According to the European Court on Human Rights, insufficient possibilities to question the use of secret surveillance methods is a violation of article 12 of the Convention.⁴⁴

Another problem concerns how surplus information from different types of secret surveillance is to be managed. There is also a need for an independent assessment of the

⁴⁴ Klass v West Germany, 6/9 1978, A28

necessity and effectiveness of the secret coercive measures being used and for improvements of the information on which parliamentary controls are based. The legislator also needs to introduce a right for the individual to, afterwards, be informed about the use of these measures and to introduce some kind of committee or ombudsperson who will supervise how requests by the police are being granted, in order to improve the right to privacy and security of person. The only form of control in place today is that operated by the Parliamentary Ombudsmen and it relates only to the formal part of the process (e.g. when a request for permission to use coercive measures is submitted to a district court, for instance).

Article 18

The right to religion

In Sweden two new acts on religious communities and one act on the Church of Sweden came into force on January 1, 2000. The Act (1998:1593) on Religious Communities declares in the first Article that the regulation on religious freedom is found in the Instrument of Government and the European Convention on Human Rights and Fundamental Freedoms. The new legislation was the result of long investigations to abolish the State Church System. The formal link with the State has thus been dissolved but still the Church and the religious communities get some privileges from the state e.g. collecting member fees.

Freedom of religion is considered to be an absolute right for Swedish citizens and can only be restricted by changing the constitution. The constitutional protection is however not as strong when it comes to non-Swedish citizens, since this right can be restricted through simple legislation. According to the investigation on legal regulation on religious communities the absolute right should be applied to what is special for religion, either alone or in community with others to practice his religion. In this preparatory work the freedom of religion is strictly connected to “religious questions” and it is stated that in activities other than purely religious, the religious communities are under the same laws as others.⁴⁵ This opens up for interpreting what is essential to religious life and practice.

For a human rights based and secular organisation such as the Humanists, the separation of the church from the state did not create a change in favour of their possibility to exercise their belief and outlook on life. For years they have been struggling to get the same grants and possibilities to exercise their beliefs as the Church of Sweden or, with the new legislation, the Free-churches. The reform did however not include alternative lifestyles and when deciding on grants for free-churches and their communities, a community such as the Humanists were not included. The humanists offer alternative attitudes to ways of life, where the Universal Declaration for Human Rights is the guiding principle. The humanists believe in supporting a lifestyle for the non-believers that is based on humanist ethics, rationalism, critical thinking. Like Humanist organisations all over the world they organize name giving ceremonies, weddings, funerals. According to value studies, Sweden is one of the most secularised countries in the world. (According to World Value Studies/European Value studies 1999/2000)

⁴⁵ SOU 1997:41. *Betänkandet av utredningen om trossamfundens rättsliga reglering.*

In March 2001 the Humanists suggested to the government that an overall analysis of the conditions for secular organisations should be made – in order to give them similar support as the free religious communities. In December the same year the government decided to refuse this proposal. The Humanists mean that article 18 of the Covenant protects not only theistic but also non-theistic and atheistic beliefs and mean that the unequal treatment can be looked upon as a breach of the article.

The basic identity of the Church of Sweden has been defined in the Church of Sweden Act (1998:1591) in keeping with the Church's own picture of itself as Evangelical Lutheran. The aim of the definition was to emphasize that, despite the change in its relations with the State, it is still the same religious community as before the reform. Any law has not defined all the other religious communities. One main problem with religious freedom in Sweden is that individuals and communities experience that religious rites believed to be central to their belief in reality will be restricted by other laws not taking freedom of religion into account.

On June 1, 2001, the Swedish parliament promulgated the first Swedish law on circumcision of boys, to be in force from October 1. This law states that circumcisions can only be performed after the administering of an analgesic by a doctor, nurse or person with special permit. An inflamed discussion followed including tensions between the national principle of religious freedom and the UN Convention on the Rights of the Child. According to the Jewish Community of Stockholm circumcision of boys is essential to Jewish belief and a sign of identity and belonging to the Jewish community and as such a question of religious freedom. It claims that this is the first legal restriction on Jewish religious practice in Europe since the Nazi era.⁴⁶ (Female genital mutilation is outlawed and criminalized since 1982)

Other problems appearing when practicing religion is the Swedish prohibition of performing slaughter according to kosher and traditional halal rules. In the Swedish interpretation the Law on Animal Protection (1988:534) takes priorities over the interest of religion. Of course it is possible to live a religious life without eating meat or to import the meat but at the same time this is an issue of practice and observance. It has also been hard for persons of Buddhist faith to get permission to keep the ashes of a dead beloved in the altar of the house. This central Buddhist observance contradicts the Law on Funerals.

Sometimes it is very difficult to practice your religion at a place of work. A Muslim women who wear a veil find it hard to get work in Sweden and they are often discriminated against because of the way they dress.

Articles 19 and 21 (22)

Freedom of opinion, assembly and association

⁴⁶ <http://www.jf-stockholm.org/faq/#1>.

“EU terrorist legislation”

For a long time now, the countries of the world have been trying at both international and regional level to arrive at common definitions of terrorism and terrorists. The events of 11 September 2001 created a climate in which strong measures were widely demanded. In Europe, this caused EU ministers to assemble once again and review the prospects for joining together in a counter-offensive against the threat of terrorism. Suddenly, things began to happen very quickly. Previous deadlocks over definition problems and national sovereignty seemed possible to overcome.

At the end of the year, two Council resolutions were adopted aimed at improving Member States’ chances of effectively bringing to trial and convicting those responsible for serious crimes. (Council framework decision on combating terrorism, Council framework decision on the European arrest warrant and the surrender procedures between Member States.)

The two proposals have the appearance of a rush job and are being adopted far too hastily. Examination of the criteria for what may be considered terrorism shows fairly clearly that it is the purpose of the crime that is actually being targeted despite the fact that – or as – the introduction cites previous conventions in this area wherein it is stated that “terrorist offences cannot be regarded as political offences or as offences connected with political offences or as offences inspired by political motives”.

The two framework decisions taken together represent a threat to the rights and freedoms of all, and also risk being used to combat the legal position of refugees and reduce their chances of applying for asylum in Sweden. Statements in the Commission linking the fight against terrorism with the fight against ‘illegal’⁴⁷ immigration and the possibility of using the Schengen information system on both asylum seekers and persons suspected of serious crimes demonstrate clearly what is intended here.

Under the framework decision on combating terrorism, terrorism is defined as “intentional acts that by their nature or their circumstances may cause serious harm to a country or an organisation.” The acts referred to are:

- Attacks on human life that may cause terminal injury
- Serious attacks on a person’s physical integrity
- Kidnapping or the taking of hostages
- Causing extensive damage to a state or government facility, means of public transport, infrastructure, including data systems, a public place or a private area, resulting in danger to human life or substantial economic loss
- Unlawful seizure of aircraft or other means of passenger transport or freight transport
- Fabrication, possession, acquisition, transportation, supply or use of firearms, explosives or nuclear weapons, of biological or chemical weapons, or, in the case of biological and chemical weapons, of research and development.
- Releasing dangerous substances or causing fires, floods or explosions endangering human life
- Interfering with or disrupting the supply of water, electrical power or other basic natural resources where this endangers human life

⁴⁷ We are strongly opposed to the use of the term illegal to describe people who for one reason or another make their way to a new country without complying or being able to comply with the rules in force there. Europe has created the conditions for such ‘illegality’ by virtue of its own refugee policy.

- Threats to commit any of the above actions.

Such acts are to have been committed for the purpose of

- Seriously alarming a population
- Unlawfully forcing a public body or an international organisation to take or refrain from taking a specific action
- Seriously destabilising or destroying fundamental political, constitutional, economic or social structures in a country or international organisation.

In our view, the actions described here are already liable to criminal prosecution in Sweden and it is only the purpose that can add further circumstances rendering such actions as terrorist offences. This is a dangerous way of combating terrorism as the definitions are precisely as wide or narrow as one may wish them to be for one's own political ends. Nor are any explanations offered as to what the open descriptions of purpose refer to.

In our opinion the definition paves the way for interpretations that enable the authorities to restrict and criminalise freedom of expression, the right to demonstrate and freedom of assembly. It applies equally to protesting farmers demonstrating against cuts in farming subsidies by blocking roads with tractor convoys, to pacifist demonstrations by the Plowbill movement and to environmental actions by Greenpeace. And it naturally applies to stone-throwing youths at anti-EU demonstrations.(See also article 21 on this subject)

A note from the EU Presidency (Spain) to the EU working party on terrorism states (Presidency Note 5712/02, translated from Swedish):

“The working party in the course of its duties has noted a steady increase in acts of violence and vandalism at a range of EU events and summit meetings, carried out by radical extremist groups who have created explicit terror situations in society. This has been widely publicised in the media and become a matter of grave concern to the citizens of the European Union.”/.../ “These episodes are the work of ‘indeterminate groups’ acting under the protection of various niches and fronts in society. By ‘indeterminate groups’ we mean organisations that while taking advantage of the legal rights they enjoy pursue secondary activities that contribute to the achievement of goals characteristic of terrorist organisations.”/.../ “This evident process of manipulation already constitutes a serious threat and may worsen considerably in a very short space of time.”/.../ “So that we may join in preventing such situations, which have arisen in connection with various events and summit meetings organised by international bodies, including Community bodies, the Spanish Presidency proposes the introduction by means of a Council decision of a standard form for exchanges of information on acts of terrorism. This would be a highly valuable instrument for the prevention – and perhaps the detention – of violence-prone young radicals in our cities, who are being increasingly exploited as tools of terrorist organisations in the pursuit of their criminal activities.”

Those who support or by other means assist such organisations risk being viewed as advocates of terrorism. The authorities must of course be allowed to impose certain restrictions on what is permitted at a demonstration, for reason of national security or public safety. But such rules of procedure and security rules already exist – what is dangerous, of

course, is stamping a terrorist label on forms of expression that are protected under international and constitutional law. This not only makes it possible to suppress opposition if desired, it also enables the authorities both to deny people fleeing from political persecution a safe haven in Europe and to use extraordinary coercive measures increasingly and on an increasing number of individuals.

Article 20 paragraph 2 Prohibition against racial hatred

“White Noise music” (Fundamental law on freedom of expression 5:1, the Freedom of the Press Act 7:4 p11, and the Criminal Code 16:8 “Incitement to Racial Hatred”)

Sweden is one of the leading countries in the world with respect to the production and distribution of “White Noise” (or White Power) music. In October 1999, the Svea Court of Appeal confirmed the verdicts against four persons on the grounds of incitement to racial hatred. The Svea Court of Appeal lowered the sentences given by the district court, however, considering the crime committed to be an isolated incident. Contrary to this view, however, the defendants were key figures in the White Power music business, and during the proceedings in the Court of Appeal the prosecutor started legal proceedings against the defendants in a similar case of incitement of racial hatred.

A major problem in cases of White Power music is the statute of limitations. Legal proceedings must be initiated within one year from the day on which the material was disseminated. Often it is not possible to determine exactly when the material was distributed and in these cases it is impossible to initiate legal proceedings. The producers of White Power music often opt to consciously remove information relating to the start of dissemination with a view to avoid prosecution. It should be added that the concept of dissemination is not given a narrow interpretation, and it is usually sufficient that the music is available for sale.

Associations such as Exit,⁴⁸ confirm that there is the interest in in racist and neo-nazi ideologies is growing in Sweden. There is more recruitment taking place and new national organizations have appeared which according to Exit are only too successful in attracting new supporters. According to a recent in-depth interview study of Swedish ex-Nazis, music plays a central role in relation to the ideology: “White Power music is the most important way into to Nazism, and it is where the boys find the inspiration and material for both an ideological position and a male role that glorifies strength and violence”⁴⁹.

“Racially motivated crimes”

In 1994, a law tackling racially motivated crimes came into force in Sweden (The Criminal Code 29:2 p 7). According to this legislation, if the motive of a crime is to violate a person, an ethnic group or any other such group of persons on the basis of their race, colour,

⁴⁸ Exit Sweden supports Nazis who have defected from the movement.

⁴⁹ *Smaka känga, intervjuer med avhoppade nazister* (Taste my boot, interviews with ex-Nazis, edited by Jonas Hällén and Karl-Olov Arnstberg.)

national or ethnic origin, religion or other similar circumstance, the court shall consider this an aggravating circumstance that increases the severity of the crime. The wording “or other similar circumstance” includes such things as sexual orientation. The purpose of this new legislation is to clearly emphasize that courts have to pay special attention when ruling on racially motivated crimes and similar acts. Sweden also considers this legislation (together with some other provisions) to be a sufficient substitute for a law outlawing organizations that promote or incite racial hatred. (Sweden has been criticized a number of times by the CERD-committee for not outlawing racist organizations and thus violating article 4 of the Convention on the Elimination of Racial Discrimination.)

According to official statistics, this 1994 law has rarely been applied. Between 1 July 1994 and 1 April 1997, the law was applied in 24 cases — although one may reasonably suspect that the number of cases where the law could have been applied was much higher. However, official statistics in this regard are somewhat unreliable. Since the courts do not have the obligation to state in a judgement if this particular law has been applied — which is the case regarding some other regulations — it is impossible to collect relevant data for the statistics.

We are concerned that the law in question is not applied to a sufficient extent. It is a matter of great urgency that the practical application of the law be scrutinized, particularly in the absence of a law outlawing organizations which promote or incite racial hatred.

The government has stated that there is a high priority within the police force to fight racist crimes, despite this, there is, in our view, still a need for education concerning racist organizations and racist crimes within both the police and judicial systems. Far too few crimes with racist overtones are prosecuted today, probably due to a lack of knowledge or awareness as to the nature of racist crimes. Collaboration between the police and SÄPO (Swedish Security Service) in this field should be improved and not just result in an annual report.

Article 21

The right to demonstrate

Riots and police violence during the EU-summit

During the EU-summit held in Gothenburg in June 2001, violence took place between demonstrators and the police. Both lawful and unlawful demonstrations erupted in clashes between civilians and between civilians and police officers. The right to demonstrate is protected under the Swedish Constitution (see above under Article 2). Any laws that restrict this right must be acceptable to a democratic society. Chapter 2 Article 14 of the Instrument of Government offers further scope for restricting freedom of assembly and freedom to demonstrate. It focuses in particular on the need to maintain public order and safety at meetings and demonstrations, and refers to due regard for traffic. Otherwise these freedoms may only be restricted in the interests of national security or to combat epidemics. Laws regulating this type of situation are contained in the Police Act, in particular in Article 13 (On the police use of coercion, see above under Article 7.)

Paragraph 13 of the Swedish Police act gives the police a right to refuse, remove or in some instances take into custody someone who disturbs the order or is about to commit a crime. In using this paragraph, the police must make a judgment on a case-to-case basis. New rules were implemented in 1998, among others paragraph 13 c. This rule gives the police a right to refuse or remove a crowd of people, without making the case-to-case judgment. The police cannot however, take anyone into custody on account of this rule. “The provisions are aimed at maintaining public order, and not in the first instance at securing a later conviction for any offence”.⁵⁰ (Committee Directive 2001:60). A distinction is also to be made between paragraph 13 and 13 c. 13 c may only be used when the gathering is of an unlawful character. Otherwise, the Public Order Act is to be used.

Paragraph 13 has been used by Swedish police in order to isolate and round up large congregations of people, who have then been removed by bus to various different locations and from there sent home under their own steam.⁵¹ Now that paragraph 13 c gives the same opportunity to remove people certain risks occur. Even when doing case-to-case judgments, the risk is that the ‘wrong’ people may happen to be at the spot where this ‘rounding up’ process takes place and that arrests are not made on a case-on-case basis. Paragraph 13 c increases this risk.

During the EU summit in Gothenburg 2001, 575 people were taken into custody, 387 of them with reference to paragraph 13 and 188 with reference to paragraph 11.

One of the events that had a major impact on developments at the summit meeting was the police operation at the Hvitfeldtska upper secondary school on Thursday 14 June. This was one of the schools that the Gothenburg city authorities had made available so that demonstrators arriving in the city would have somewhere to sleep. On the Wednesday evening, the prosecutor ordered a search of the premises, as “it had previously emerged that various activities were under way inside the school, including, apparently, a command centre”.⁵² The following day, it was decided to seal the place off and body search the 500 or so people inside the school. The appointed negotiating group – comprising representatives of both the police and the demonstrators – then began talks with those confined within the school. Once they had reached agreement, however, and some 100 people had left the building (under the agreement, all were to be allowed to leave without having to produce identification, although they had to submit to a body search), the agreement was broken and the police were ordered to break into the school and detain everyone there instead. Just before midnight, the operation had been completed and the school had been emptied. By then, 453 people had been apprehended and transported to the police station.

According to the National Police Board report, the decision to break off both the search and the negotiations was taken because police had received information that activists from a known organisation were on the premises and were planning a breakout.

A similar incident occurred on the Saturday evening when police raided the Schillerska upper secondary school after being informed that demonstrators armed with handguns were inside.

⁵⁰ Committee Directive 2001:60

⁵¹ Decision by JO 1995/10/10

⁵² National Police Board evaluation report, page 60.

The prosecutor ordered the search but the task of entering the building was given to commandos from the national task force, who took over the school, masked and with automatic rifles drawn, and according to witnesses brutally detained the 78 young people inside. No weapons were found. Many of the young people lodged complaints with the police about the way they had been treated.

The period between the interventions at the two upper secondary schools was marked by street clashes between demonstrators and police. Encounters between police and demonstrators escalated in a number of different spots and stone-throwing, violent demonstrators met the police, while peaceful demonstrators in their turn were met by police apparently equipped to use force. However, as it turned out, the police were ill prepared for the resistance they encountered on the streets of Gothenburg. Three people were shot and injured in confrontations with the police. Many people were badly shocked and felt abused as a result of the treatment they received. A number of interventions were even criticised by the police themselves, including the operation at a city square, Järntorget, on the Saturday evening when two or three hundred people were unlawfully hemmed in and thus deprived of their freedom of movement for over four hours.

The police itself in one word summarized the police union report on the events in Gothenburg: Chaos. Almost 60 per cent of the officers interviewed said they lacked the necessary training for the tasks they were told to perform; 70 per cent said the information they received while on duty was inadequate and the same number said radio communications were poor; two thirds of the police officers lacked the proper equipment for performing the tasks they were given. In addition, they worked long shifts (on 250 occasions, individual officers worked for 19 hours or more at a time) and had only short periods of rest. Altogether, 541 of the 900 or so police that took part expressed some form of criticism against their commanding officers.

The National Police Board report of the events states *inter alia* that the police were not prepared for the level of violence they encountered, that the places targeted in police operations may not have been the most suitable ones, that police had succeeded in protecting the area where the heads of state and government were to meet but had failed to maintain order around the main street, Kungsporsavenyn, where the riots took place. But the report also pointed out that the peaceful demonstrators had been able to hold their demonstrations as planned for much of the time, at least during the first couple of days of the summit. Saturday, the day on which the national task force entered the Schillerska School, was adjudged the most critical time, when police were tired and also worried about the many threats being levelled against them.

In summary, the report said the police had been successful in controlling the public at the places in the city where the heads of state and government were present – and thus had eliminated the threat to these democratically leaders that certain of the demonstrators apparently represented. The police had not managed to maintain order in the town – their main task of preserving public order and safety had in taken second place, their principal task being to ensure the safety of the heads of state and government.

Following the summit, the prosecutors' office had over 600 complaints against demonstrators to deal with – and about 130 against police officers. By the end of January

2002, a total of 401 riot-related cases had been written off – and 50 of the complaints against police. Some 100 cases against demonstrators and activists remain as well as about 80 against the police, most of them connected with the operation at the Schillerska upper secondary school. A large number of the suspects – many of them very young – were forced to remain in police custody for long periods⁵³ while awaiting trial.

To date, 45 private citizens have been charged and no police officers. The prosecutor cleared the officers who shot at demonstrators of suspicion at an early stage. (Following the presentation of new evidence, the investigation into one of the cases was reopened but subsequently closed once more.)

The judicial aftermath of the summit, therefore, has largely involved criminal charges and sentences against demonstrators – almost exclusively young people – thought to have committed such serious crimes as riot, violent riot and sabotage. These are crimes that are subject to heavy sanction under the penal code. The instigators and leaders of a riot are liable to imprisonment for a maximum of four years while ‘other participants’ may be fined or sentenced to a maximum of two years’ imprisonment. In the case of violent riot, which was a frequent charge in the wake of the Gothenburg riots, the instigators or leaders can be sentenced to a maximum of ten years’ imprisonment and ‘other participants in the crowd’s proceedings’ to a fine or four years’ imprisonment at the most. The description of the crime not only assumes the presence of a crowd but also in a sense presupposes a kind of collective responsibility for what happens during a riot. The main difference between riot and violent riot is that violent riot assumes intent to commit ‘group violence on a person or property’.

From a sanctions perspective, one could of course question whether the penalties are proportionate to the gravity of the crime. The present disposition, however, is a result of the assessment made by legislators, albeit a very long time ago. It is then up to the courts to show how the actions involved relate to this nevertheless relatively complicated area of penal law. To make things more difficult, few precedents are available – perhaps because the descriptions of the crimes are formulated in such a complex (and archaic) way and also perhaps because the general disturbance that sometimes develops at demonstrations is seldom of the prescribed level for charges to be brought.

In the case of the Gothenburg court proceedings, however, the matter seems to have been fairly straightforward. Many young people were convicted on charges of violent riot and the sentences passed on the demonstrators were remarkably heavy – imprisonment in almost all cases and in many cases for as much as 12 months to two years. (The Gothenburg District Court sought to sentence one activist to four years’ imprisonment.) Under Swedish law, the youth of an offender is considered a mitigating circumstance. If a convicted person is aged 18 or less, prison sentences may only be passed if there are *extraordinary reasons* for doing so. If the convicted person is under 21, he or she may only be imprisoned if there are *special grounds* for such a course. In the present case, many young people were facing their first convictions – another reason for being spared imprisonment.

⁵³ The youngest of the Danish youths convicted of violent riot, an 18-year-old, was sentenced to a month’s detention in closed juvenile care but the sentence was written off due to his lengthy spell in custody.

At the end of January, a court of appeal sentenced eight young people to prison terms ranging from 16 months to two years and four months for complicity in violent riot. To a great extent, the evidence comprised SMS messages that the defendants had sent to one another and to friends when the police surrounded the Hvitfeldtska upper secondary school. The court was told that the messages were intended to help friends inside the school break through the police cordons. The eight were considered to have established a properly functioning liaison centre.⁵⁴

We find the heavy sentences alarming and in our opinion there is reason to examine both the type of evidence on which the sentences were based and how the burden of proof was allocated. There is also reason to examine if and to what extent the political motives involved affected sentencing – and how the court explained this.

The interventions and the sentences against the demonstrators appear even more remarkable in light of the fact that no police officers have hitherto been charged as a result of the violence, unlawful intervention and abuses directed at demonstrators and activists. A large number of complaints against the police were never considered which means they were never open to public scrutiny. This is one occasion where independent examination of complaints would have been preferable (see above under Article 7 on internal investigations of police use of force).

We question whether all the steps taken in all situations were justified and well considered in relation both to existing laws and to fundamental human rights. If not, the incursions on the schools, the mass arrests and the decisions to deprive hundreds of individuals of their freedom in a public place, and later the heavy sentences on activists and demonstrators, together represent a serious threat to such civil rights as the right to demonstrate, the right of assembly and freedom of expression and opinion.

We consider it essential that the commission currently reviewing the events in Gothenburg also examines how the events may have affected the exercise of these human rights and freedoms in Sweden.

Articles 23 and 24 Protection of the family and the rights of the child

“Children taken into custody”

During the 90’s the number of children taken into custody (either by force or through an agreement with the parents of the child) increased by 33 percent. This is the first time since the 1930’s that there has been an increase. The rise is especially remarkable where teenagers are concerned. The possibility of taking children into compulsory or voluntary care is described in two pieces of legislation, The Social Services Act (1980:620) and the Care of Young Persons (Special Measures) Act (1990:52). It is the concern and obligation of the

⁵⁴ The District Court originally sentenced the eight to between three and four years’ imprisonment for incitement to violent riot,

social services in each municipality to care for the well being of the children. In certain cases this may end up in children being removed from their home, according to the law, either because of a detrimental home environment (this includes children being abused) or because the child leads a destructive life (often criminality or drug abuse). It is also the obligation of personnel at e.g. schools, nurseries etc. to report cases or suspected cases of abuse to the local authorities. Children or teenagers who have been taken into custody are either placed in families or institutions for the young. (Teenagers more often being placed in institutions.)

Separating children from their parents and home environment is of course an encroachment of the respect for family life. On more than one occasion, cases concerning children being taken into custody have been brought before the European Court for Human Rights, one of the most recent being the Case of Lindelöf v. Sweden App no 22771/93. Up until now Sweden has managed to settle the cases through agreements on excuses and monetary compensation – in the Lindelöf case the compensation was exceptionally high, because of the suffering of the family.

The increase in the number of cases of children taken into custody during the 90's is alarming and needs further studies, especially as to what causes these extreme measures. At the same time statistics show that preventive measures to avoid custody also have increased, custody is thus not the only measures taken. As has been recommended by the parliamentary Welfare Committee (SOU 2001:52) it is especially important that studies on the effect of the institutionalisation are carried out. Do institutions really live up to the legislative goals, such as changing detrimental behaviour?

“Children of those deported due to criminal offences”

Under Chapter 4, Article 7 of the Aliens Act, a foreign citizen may be expelled from Sweden if he/she is convicted of a crime leading to imprisonment and is given a sentence heavier than a fine. Also, the court must be satisfied that the person concerned may continue to commit crimes or the case must involve a crime of a particularly serious nature. Chapter 4, Article 10, (1) stipulates that the court must take the person's ties with Swedish society into account, in particular his or her family situation. In the government bill 1993/94:159, p 15 it is stated that “The fact that the foreigner has family in Sweden should as a rule almost always mean that he or she also has an important connection to Sweden/.../ The other members of the family can often be just as affected by a family disruption as the convicted. It is of particular importance that children's need for their parents is taken into account/.../”

Children are protected under Article 24 (1) and families are protected under article 23. In its interpretations, Sweden commonly applies the “principle of Treaty-Conform Construction” This means that while international conventions may not enjoy the same status as Swedish law, they should be interpreted so as to confirm as closely as possible with Swedish law.

Statistics show a tendency not to interpret the rules according to the principle of Treaty-Conform Construction, and may very well not be in accordance with relevant national legislation. When sentencing, Sweden applies the desert approach. This means that the sentence should be proportionate to the committed crime. It is however doubtful if the courts take the damage of expulsion into enough consideration when sentencing. The reasoning behind the choice of punishment should always be made very clear in the court

decisions. To expel even when the family is staying in Sweden should only be possible in rare cases. Still 200 children each year are affected by the expulsion of their mother or father.⁵⁵

“School child or Child bride”

Swedish law (derived from private international law) allows girls under 18 from other countries to marry in certain circumstances without the permission of the county administrative board as is required for Swedish citizens (The law on certain international legal procedures regarding marriage and guardianship from 1904, rev. 1973/1904:26 p.1). They can follow the laws of their native country as long as they are not Swedish citizens and are 15 years of age. This could lead to forming a family prematurely as well as experiencing difficulties such as dropping out of school, which in turn could diminish the possibilities of a desirable further education for the girl. The law is particularly discriminatory as school attendance is compulsory up to the age of 16. Laws regarding marriage should of course be the same for everyone residing in Sweden, regardless of birth place, thus legislation must be changed urgently.

The problem is naturally not confined to insufficient legislation regarding marital age. Girls can be married off according to their national traditions at the early age of 13-14 and quit school even if marriage according to Swedish law is forbidden and the girl is under the obligation to attend school.

There is not only a need for a change in the legislation concerning the right to marry. We call for more accurate and clear information on the requirements of the law concerning schooling and follow-up of individual cases. Measures such as individually-adapted schooling, education and group counselling in sex education, intimate relationships and parental influence have been suggested.

“Children at refugee reception centres”

During the winter of 2002, there were alarming reports concerning both excessive intake and irregularities at the Carlslund refugee reception centre in Upplands Väsby. The main cause for concern was that the number of unaccompanied refugee children had increased sharply during the winter and that many of them had been placed in Carlslund.

At year's end, there were 461 children and young people without guardians on the Swedish Migration Board's books. Just over half of them were living with relatives or compatriots, while others were living in special group accommodation or in accommodation arranged by the Migration Board. The situation became acute when it was found that a further 82 unaccompanied children and young people had arrived by the beginning of February.

The situation at Carlslund was particularly difficult. At one point, almost three times as many children as the premises are built to take were living there. Both children and staff were under severe pressure. Staff reported that not only were the children not receiving the support and care they were entitled to (some 57 per cent of them were judged to be in need of psychiatric care) but some were disappearing. In certain cases, staff strongly suspected that they were being taken away for exploitation as prostitutes. Under the Social Services

⁵⁵ Deportation as a result of criminal activity. A study of those being deported and their children *Published by:* National Council for Crime Prevention, BRÅ, BRÅ-report 2000:18

Act, local authorities are responsible for all persons in their municipality. At the same time, however, the Migration Board is responsible for all persons in its care. The division of responsibility between government agency and local authority had long been discussed by the two bodies. Both appeared to take the view that responsibility for the children lay with the other. The children's right to a home and to the support of an adult contact suffered as a result of this unwillingness to assume responsibility for them.

The irregularities at Carlslund attracted considerable media attention – and led to a public debate in the Riksdag. In mid-February the local authority and the Migration Board reached an agreement whereby children at Carlslund with special needs were moved to separate accommodation in the area while a number of other children were moved to a centre in Hallsberg. At the time of writing⁵⁶, the number of children at Carlslund has been adapted to the space available on the premises. There is nothing to suggest, however, that a similar situation may not arise in the future, and quite rapidly, if a large number of asylum seekers, particularly unaccompanied children, arrive in Sweden and the division of responsibility between the Migration Board and the local authority is still unclear. At the Carlslund centre, union representatives have requested and been granted a temporary respite in client intake, and new child and juvenile case officers are to be recruited. New premises for child and juvenile programmes are also being sought.

It is clear, however, that better cooperation between local authorities and the Migration Board is required if children's rights are to be properly respected. It is also tremendously important that the Government is responsive to signals from the Migration Board regarding the need for further resources before the situation worsens to the same extent as at Carlslund. We also believe that the Board must recruit additional case officers specially trained to meet children's needs – both to help process asylum cases and to take part in the practical activities involved.

We are greatly concerned at the disappearance of children from Swedish refugee reception centres – according to the Migration Board they numbered 53 in 1999, 51 in 2000 and 87 in 2001. It is particularly alarming to hear from staff at the Migration Board that these children may have been drawn into prostitution. The disappearances are currently being investigated by the National Criminal Investigation Department.

“Child pornography and prostitution”

According to the Swedish branch of the international non-governmental organization Ecpat (End Child Prostitution, Pornography and Trafficking in Children), exploitation of children is a serious problem also in Sweden.⁵⁷ Child pornography is not the only or even the most common exploitation of children. Children are being trafficked and prostituted to a much higher degree than is being recognized by the government. Child prostitution exists on the streets but, which is considered to be an even bigger problem, in secluded areas. The hidden child-prostitution is relatively undisturbed since its existence is not widely known to social

⁵⁶ 18 February 2002

⁵⁷ “Kommersiell sexuell exploatering av barn i Sverige. En studie av kännedom om utnyttjandet av minderåriga i prostitution, pornografi och trafficking” Ecpat Sverige 2001. (“Commercial sexual exploitation of children in Sweden. A study on the knowledge about the use of minors in prostitution, pornography and trafficking.” Ecpat Sweden, 2001.)

workers or authorities. According to Ecpat, the phenomena of “sugar-daddies” or “protectors” and children being sold as sex-slaves also exist in Sweden.

Children of all ages are being exploited and the exploitation often continues for years. Many of the children have been used within a network, a kind of organized exploitation of youngsters. Some even have pimps. According to the Ecpat report on Sweden it is often children who are already vulnerable who are taken advantage of. To a very high extent it is often very close relatives who are exploiting the children, mothers and fathers included.

There is not a confined market for child exploitation; it takes place almost everywhere, in the home, at hotels and occasionally in restaurants and/or discotheques. Children posing at sex-clubs or being exploited in pornographic pictures are of course also subjected to the risk of ending up in prostitution.

The investigations made by Ecpat define the need for further governmental studies and research. It is also quite obvious that awareness-raising is needed among social workers and other officials who are in contact with children, especially those in a vulnerable position, in order to detect child-exploitation and to give adequate help.

During the last few years the number of web-pages on the Internet exploiting children has increased dramatically. Thanks to cooperation between different internet hot-lines, one of which is assessed by Swedish Save the Children, the project In-hope has been able to locate thousands of illegal web-pages, some of which have led to criminal charges being raised and users or distributors brought to trial.

According to Save the Children, Sweden, the new legislation in Sweden prohibiting the possession of child pornography has served its purpose. The difficulty now is fighting the use of children through the Internet – something that not only needs better and harmonized laws in other countries but also resources. Projects such as In-hope should be the responsibility of the states, i.e. the police, and not be dependant on the efforts of non-governmental organizations.

“The question of double indemnity”

As yet, there has only been one litigation against a Swede exploiting a child in another country. It is, however, a well known fact that Swedes, in particular Swedish men, tend to go abroad to buy child-prostitutes. The majority of the men would not, however, consider themselves to be paedophiles, since they normally would not have sex with a child, but are still capable of using children sexually when abroad.

One of the reasons for this lack of indictments against exploiters of children, is the need for a double indemnity criteria (or double criminalization); the act must be criminalized in the home-country of the offender as well as in the state where the offence is taking place. According to Swedish law, the offence, if being prosecuted in Sweden, needs to be considered to be serious. Not all laws and regulation prohibiting sex with minors (under the age of 18) are “serious” enough to be prosecuted in Sweden, but most of them are.

Organizations such as Swedish Save the Children and Ecpat have been pushing for a legislative change making it easier to prosecute Swedes exploiting children in another country. There is a pending suggestion from the parliamentary Committee on Sex-related

crimes to limit the criteria for double indemnity regarding serious crimes (committed against children under the age of 18).

Article 25

The right to take part in the conduct of public affairs

“Voting among immigrants”

At the parliamentary election in 1998, 81 percent of the Swedish voters decided to cast a vote. The polling among naturalized Swedes was considerably lower, only 67 percent decided to cast a vote. Among those who were granted citizenship during the last ten years, the polling was even lower, only 58 percent. Foreign citizens' participation in the local elections in 1998 was extremely low, only 35 percent compared to 78 among Swedish citizens. Women with a foreign background, however, seem to be more interested in voting than men – in 1998 the difference was approximately five percentage units. Among non-Swedish citizens with an average income above 200 000 SEK, polling was 50% while among those who earned less only 20% cast a vote.⁵⁸

Investigations⁵⁹ based on interviews with immigrants show that they often feel left out politically and socially. This feeling of being an outsider contributes to their reluctance to vote. The low polling is often motivated by the political situation, earlier negative political experience or by not feeling Swedish. The tendency not to vote also derives from other spheres than the purely political. Discrimination at the workplace is only one of the mechanisms that isolate immigrants from the rest of the society. Investigations also show that social differences affect an individual's political involvement. People with high income, high ranking professions and a longer education tend to participate in political life to a higher degree than others. The disparity in socio-economic status is, by the investigators, mirrored in the difference in resources such as time, money and civic skills (education, knowledge in language and the ability to write a document, organize meetings and hold lectures) and how they are related to Swedish born and immigrants. Investigations shows that lack of knowledge in Swedish is one of the main reasons behind the low polling. Another important thing to remember is the uneven level of education in the Swedish language that is offered immigrants. The education is rarely adjusted to the individual, it is not uncommon that highly educated individuals are placed in the same class as illiterates. Every third immigrant is locked out of most of the written information that is distributed by authorities and which the society believes is necessary to take part of as a member of the community, as a parent or as a member of the labour market.⁶⁰

At the moment the right to education in the Swedish language is restricted and expressed as an obligation rather than a right for the asylum-seekers. It is also endorsed with monetary sanctions, such as a reduction of the allowance if the available classes are not attended: thus

⁵⁸ Report from the Swedish Integration Board, 2000:145 "Varför röstar inte invandrarna?" (Why don't immigrants vote?)

⁵⁹ Grahn Strömbom Hanna, "Inte som svenskfödda soffliggare", 2000, Statsvetenskapliga institutionen, Gothenburgs universitet, referred to in Report 2000:14, by the Swedish Integration Board "Utanför demokratin? Del 1 Om invandrades politiska delaktighet. Sammanfattning och inledning." ("Outside Democracy? Part 1. On political participation among immigrants")

⁶⁰ Mats Myrberg, Anna-Lena E-Gustavsson och Åsa Ericsson (*International Adult Literacy Survey*)

an individual living at an Investigation Centre is expected to take part in the kind of education, in Swedish, that is provided. The regulation does not, however, give the individual a right to learn Swedish.⁶¹ An asylum-seeker is not granted a right to work but is actually prohibited from working, unless the application for a residence permit takes more than four months to deal with at the first instance. Asylum-seekers are never considered to be employees and are not protected through collective bargaining or legislation (except for some regulations regarding the working environment). And they are prohibited by law from being paid for their work, even if it is conducted at a firm or a factory.

Waiting for a definite decision, sometimes for years, is not only hazardous to the health of the asylum-seekers, it also creates an even greater obstacle for integration into the Swedish society, especially when education and work are not considered to be a right of the individual. This creates an unacceptably long take-off period before new inhabitants are able to even start to integrate into Swedish society.

In all, we believe that if asylum-seekers are granted a right to education and a right to work this will also create a better and inclusive social climate for the individual that will improve conditions for political activities and future participation in civil society

“Disability and democracy”

The opportunity to exercise and make use of one’s democratic rights, such as voting or having access to public information, is not axiomatic for all citizens in a society. Language can be a barrier, and for many people with disabilities lack of physical access is an obstacle.

The limited access available at many municipal voting stations prevents some citizens with disabilities from voting secretly, and in some cases from voting altogether. When people with impaired vision vote, they need the assistance of a family member, an election official or some other person. Chapter 9, Section 2 (2) of the Election Act states only that if a disabled citizen is unable to vote in the prescribed manner, he or she may seek assistance from someone else. The problem is, however, that such informal assistants are not bound by professional secrecy, which means that voters with impaired vision do not enjoy the vote secrecy that is provided for under Chapter 9, Section 7 of the Act. The difficulty of preserving one’s vote secrecy is particularly acute in smaller communities where many of the inhabitants know one another. The situation may also be aggravated by expansion of the personal election system as people are then required to show on the voting slip which candidate they want to vote for. The Government has not presented any solution to this problem. Another matter requiring action is the lack of party information distributed to the

⁶¹ There are a great number of individuals applying for residence permits in Sweden because of family reunification. The rule is that they are supposed to apply from abroad, but this is not always abided by. Close relatives might not be staying at the centre but with their family. Individuals not staying at the centre are not covered by the obligation for the Migration Board to offer meaningful activities such as education while awaiting the result of the investigation. Instead it is up to each municipality to provide economic assistance and – if possible – education. However there are municipalities that do not offer any kind of activities until a residence permit has been granted. It is also only then, that there is a legal obligation for the municipalities to act.

Swedish people. At best, this information is only partially legible for those with impaired vision, and is seldom printed in large letters or provided in digital form.

The lack of proper access to and inside election stations may also prevent others with disabilities from voting, or from voting in secret. While there is greater insistence on accessibility in the new Election Act (Govt Bill 2001:02:53) due to take effect this spring, the changes involved are insufficient. The proposals require local authorities unable to find accessible election premises to consult with the county administrative board. If such consultations do not turn up suitable premises, the Bill prescribes that people thus excluded be given the opportunity to vote “in an adjoining area”. It is not clear what “adjoining area” means in this context and there are no guidelines showing how voting is to take place in such cases – is a voting booth to be placed outside, is voting to take place in the foyer or outside, etc? Such special treatment might jeopardise the chances of people with disabilities to vote in secret.

Lack of accessibility not only makes it difficult to preserve vote secrecy in practice but also sends out a signal to the effect that citizens with disabilities do not have the same civil rights as those without. Voting conditions should be the same for all, both those with disabilities and those without. Equally, this means that all election premises must be available to all, yet almost half of all such premises in Sweden today (Govt Bill 2001/02:53) are seriously deficient in terms of accessibility for disabled citizens. In many cases, voting premises are located in school buildings that are not adapted to the needs of the disabled, in particular of those with mobility disabilities. Election premises in schools, for instance, may be located on upstairs floors. A new electoral authority has been set up to improve accessibility but developments seem to be moving in the opposite direction as exemptions for inaccessible election premises have been submitted in 20-odd cases.

The democratic rights of citizens with disabilities are often ignored at local level. Municipal efforts to increase accessibility have generally been deficient, and only one local authority has so far lived up to the Disability Ombudsman’s criteria for “excellent accessibility”. Only three local authorities in 10 offer “good accessibility”. In one in four, the premises in which local council meetings are held are not adapted to the needs of those with mobility disabilities. Most (64%) local authorities have not even adopted a specific programme on accessibility.

The opportunities for citizens with disabilities to take part in municipal decision-making are restricted by both physical and practical obstacles. Problems arise for instance when elected representatives with disabilities are to make their way to and from municipal meetings of various kinds. Public transport is often unsuitable for people with mobility problems, and this, together with the cuts in municipal transportation services, makes it difficult for citizens with disabilities to attend meetings and the like.⁶²

Poor technical means of assistance or a lack of assistance often leads to the exclusion of people with disabilities from discussions in local council bodies. Sometimes, the documents provided have not even been adapted for those with impaired vision. Despite the continuing

⁶² The problems have been outlined, *inter alia*, in SOU 2001:48, ‘Genuine Participation: Democratic Development in Local and Regional Government’.

presence of such problems, meetings are sometimes started and decisions taken without those with disabilities having any opportunity to acquaint themselves with the information and the various items of business.

To ensure that all citizens are able to take part in the political discourse, public information must be available to all. Today, one local authority in ten does not even produce information or documentation in an adapted form. The Freedom of the Press Act does not require public authorities to record documents on tape or to adapt them in any other way. Nor are electronically stored public documents available in any other form than as printouts, and vice versa. This means that people with impaired hearing who have Swedish as their second language are unable to obtain publications translated into sign language, that people with impaired vision are unable to obtain texts in Braille and that people with reading difficulties cannot obtain texts in an easily-read form, all of which means that they are excluded from a part of the democratic process as a result.

Article 26

Equal rights before the law

“Legislation against discrimination”

In the Instrument of Government there is a general prohibition against discrimination due to sex or against people *belonging to minorities*. This regulation in the Instrument of Government cannot be evoked in court – and it covers only a very small part of the grounds for discrimination that are accepted in the international community today.⁶³ Also, it has been interpreted as allowing, or at least not prohibiting, discrimination on, for example, ethnical grounds when the law asks for “specific or special reasons”.⁶⁴

Swedish legislation presents a number of different prohibitions against discrimination. However, in our opinion, all pieces of legislation do not sufficiently support each other. Thus, there is no comprehensive protection against discrimination but rather an incomprehensive patchwork. The workplace is the area best covered by the different pieces of legislation; in the law (1999:130) on measures against ethnic discrimination in working life, law (1999:132) on the prohibition against discrimination in working life against the disabled, the law (1999:133) on the prohibition against discrimination in working life on grounds of sexual orientation and the Equal opportunities Act (1991:433). (See also article 3 and 6) Still, there is no coherent definition of discrimination, e.g. whether the law requires indirect or direct (motivated) discrimination, nor is there consistency in the demands for action to be taken by employers or with regards to of the role of the supervisors (ombudsmen). Above all this creates an unclear and insufficient legal situation for the victims or targets of discrimination and also omits important areas in which discrimination can occur.

⁶³ In General Comment number 18, paragraph 7, the Human Rights Committee writes that it “believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”

⁶⁴ SOU 2001:39, “Ett effektivt diskrimineringsförbud” (An efficient prohibition against discrimination) sid 50.

Civil and political rights are protected in the European Convention for Human Rights, which is incorporated into Swedish law. The protection against discrimination in article 14 can only be used in conjunction with the substantive rights mentioned in the convention, thus mainly civil and political rights. In 2000 the European Council adopted an additional protocol to the European Convention on Human Rights. The protocol presents a general prohibition against discrimination through legislation or (authority) practice regardless of the substantive content of the law – be it civil and political rights or economic and social. As long as there is a law granting a right – this should not, and cannot be discriminating in itself or in effect. It also introduces a general protection against discrimination by authorities and officials, which at the moment is an area that is not sufficiently protected within Swedish legislation. (see also Unlawful discrimination below.)

Sweden has however not ratified the additional protocol and has at the moment no intention of doing so. This protection against discrimination from officials is said to be protected through the Swedish constitution (Instrument of Government 1:9) but this is not a rule that can be evoked in court. (There is a possibility of prosecuting officials through the criminal offence of unlawful discrimination, but as will be discussed below, this law has proven to be inadequate.)

Because of new EU-directives, Sweden is in the process of reviewing the legislation concerning discrimination and we urge the government to, as a first step, ratify and incorporate Additional Protocol number 12 to the European convention. Neither the additional protocol nor the EU-directive offer complete protection against discrimination by themselves.

“Unlawful discrimination”

According to the Criminal Code 16:9, unlawful discrimination is a crime that is punishable with up to one year’s imprisonment. In 1999, a total of 239 cases of unlawful discrimination were reported, of which 210 were considered to have purely xenophobic/racist backgrounds. The code targets mainly businessmen and manufacturers who in their activities discriminate a person because of his or her race, skin-colour, ethnic or national background or conviction. Officials or individuals action on behalf of an authority can also be prosecuted according to the legislation. In most cases, a report is made after a private person has been refused entry to a restaurant on the basis of ethnic affiliation. In a number of cases it was also a question of discrimination by shops, housing and property companies, security companies, social services, workplaces and bus companies.⁶⁵ The increasing number of cases concerning unlawful discrimination in the education system is a worrying development.

A complaint concerning unlawful discrimination is made to the police or the Ombudsman against Ethnic Discrimination. The Ombudsman is obliged by the law on the ombudsman against ethnic discrimination (1999:31) “to ensure by providing advice, or in other ways, that those who are exposed to ethnic discrimination are able to obtain their rights”.⁶⁶ The

⁶⁵ Security police report ”Brottslighet kopplad till rikets inre säkerhet 1999” [Crime linked to the internal security of the nation], p 16.

⁶⁶ § 3.

Ombudsman is not, however, able to take criminal matters to court, as this is the task of the public prosecutor.⁶⁷ It is nevertheless a sad fact that most cases do not end up in court. Statistics show that of 263 complaints raised in 1999, only four were brought to trial.⁶⁸ The main reason for complaints not being taken to court is the demand for intentional discrimination – the prosecutor needs to prove that the actual reason for the discriminatory behaviour was the victims race, skin-colour, ethnicity, religion, or sexual orientation. This demand for discriminatory intent and the discouraging result of reports concerning unlawful discrimination can, of course, have effect on the general trust in the judicial system. It has been questioned whether there really is any point in keeping unlawful discrimination as a criminal offence, when it is so difficult to uphold. We share the opinion of the suggestions from the one-person committee over-viewing the crime of unlawful discrimination, that unlawful discrimination might be more efficiently enforced in civil law – perhaps within the framework of a general prohibition against discrimination which should include the transformation of EU-directive 2000/43, as well as the incorporation of the Additional Protocol to the European Convention.

In the up-coming legislative process it is however imperative to ensure that significant areas are not excluded (the scope of the directive is restricted to the mandate of the European Union and does not include third country citizens, i.e. from outside the European Union) and also that victims of discrimination are granted adequate compensation, e.g. damages, for the biased behaviour. We urge the government to keep this in mind when incorporating the EU-directive.

We also believe that protection for individuals is best secured if they are also able to address an independent court such as the European Court for Human Rights, when a violation has occurred and all national remedies have been exhausted. This would also speak in favour of a ratification and incorporation of the additional protocol. We would like to point out that ratifying the additional protocol does not exclude the state-party from elaborating the prohibition against discrimination even further. (The protocol covers mainly discriminatory laws or discriminatory behaviour by public officials or authorities, but does not exclude the possibility of creating an obligation for positive actions by member-states to combat horizontal discrimination. When deciding not to support the additional protocol, Sweden showed reluctance towards the possibility of being held accountable for horizontal discrimination – we would like to stress that it is the obligation of states not only to fulfil and respect human rights but also to protect human rights against violations from a third party.)

In 1999, the law (1999:130) on measures against ethnic discrimination in working life was tightened up after an evaluation of the previous regulations showed that the purpose of the legislation had not been accomplished.⁶⁹ The Ombudsman against Ethnic Discrimination (DO) has now been assigned the role of investigator, mediator and prosecutor in cases where a private person has been refused employment or promotion or has been treated in a discriminatory way in the workplace due to his or her ethnic background. A new element in

⁶⁷ The Ombudsperson can however represent individuals in the Labour court when there is a case of discrimination in the workplace.

⁶⁸ SOU 2001:39, "Ett effektivt diskrimineringsförbud. Om olaga diskriminering och begreppen ras och sexuell läggning" (Committee report on unlawful discrimination "An Efficient prohibition against discrimination. On unlawful discrimination and the terms race and sexual orientation")

⁶⁹ Govt bill 1997/98:177, pp 10 ff

the 1999 law is that the subjective requirement has been removed — it no longer has to be proved that an employer has consciously discriminated against an employee or a job applicant, it is enough to be able to prove that discrimination has in fact taken place.

The law also requires both employers and employees to promote ethnic diversity and to combat discrimination in the workplace. The employer is also obliged to carry out targeted activities with a view to promoting ethnic diversity in the workplace. According to the Ombudsperson, this part of the legislation is not sufficiently abided by. Employers and trade unions do not take the question of discrimination in the workplace seriously enough. The Ombudsperson is concerned that the number of reports of ethnic discrimination will continue to rise when persons with immigrant backgrounds are better represented in the labour-market – as has been the case during the last year.

During last year (2001) a total of 633 reports of discrimination on the base of ethnicity were filed with the Ombudsman on ethnic discrimination (DO). Of these, 273 were about ethnic discrimination in the workplace and 311 about discrimination in society in general. Compared to the year before, (2000) when a total of 575 reports were filed, of which 164 were work related and 411 about discrimination in society, the total number of reports has increased by about 10%, whilst the number of work related reports increased by a full 66%.⁷⁰ The Ombudsman has pointed out that the increase in the number of reports of work related discrimination can have to do with an increased awareness of the law. However, many of the reported cases never lead to settlements or to judgements in the Swedish Court of Labour. Of the cases reported during the year 80% were discontinued due to the fact that discrimination could not be proven or because the period of prosecution (2 years) had expired.

As of 1997, the labour market situation has improved in Sweden, which has to some extent benefited foreign citizens in Sweden. However, the ratio of employment is still particularly low among non-Nordic citizens, compared to the corresponding ratio for Swedish citizens. It is particularly those who have arrived in 1994 or later who find it most difficult to find a place for themselves on the Swedish labour market.⁷¹

Many immigrants experience Sweden as a closed society; a society in which it is difficult to find your place and be accepted. Statistics show that unemployment among above all non-European immigrants in Sweden has been, and continues to be, high. During the second half of 1997, a little over half of the non-Nordic citizens living in Sweden were outside the labour market, and unemployment for this group had increased six-fold since 1990.⁷² At that time, 59 per cent of foreign citizens from Africa had no work, and the corresponding figure for Asian citizens holding a residence permit in Sweden was 40 per cent.⁷³

⁷⁰ DO:s nyhetsbrev nr 1 2002.

⁷¹ See the Swedish National Labour Market Administration's report "Arbetsmarknaden för utomnordiska medborgare" [The labour market for non-Nordic citizens], June 2000.

⁷² Govt bill 1997/98: 177, p 8.

⁷³ Ibid p 9.

Swedish citizens with a non-Nordic background also find it difficult to get work in the open labour market. In 1997, unemployment among naturalized citizens from Asia and Africa was 26 and 23 per cent respectively.

According to statistics concerning the situation on the labour market in 2001, (Statistics Sweden, October 2001) there have been improvements regarding the employment rate for inhabitants born outside the country – it seems that in particular immigrants from Bosnia and countries in Africa have found jobs to a higher extent than before. (Immigrants from the Nordic countries have always had a better position on the labour market). The improvement can to a certain extent be related to the improved economic situation.

Despite this somewhat positive change, there is still a need to analyse the change and to look into the prerequisites before describing this improvement as a new positive trend. The unemployment rate for people born outside Sweden is still three times higher than for people born in the country – nine as opposed to three percent. The degree of employment is considerably lower and the wage-gap is still very wide. Thus, you need to ask questions such as – when employment-rate among non-Swedish inhabitants is improving, what kind of jobs are we talking about, is the employment chosen according to the individual's skills and education? We already know that many immigrants are more or less forced to be self-employed, you see many well-educated individuals opening pizzerias or starting their own cleaning-services even though they would never be working in this trade had they had a choice.⁷⁴ And if immigrants chose to start their own business – do they get the adequate economic support for the kind of business they would like to start, or are they actually forced into being e.g. restaurant owners, because this is the only business the approving authorities believe will be successful - thus making this part of hidden or institutional racism. And are immigrants equally able to get loans from the bank as Swedish Citizens in order to start their own business, or are they dependent on private loans from relatives? For those who are employed you need to look at how many have long-term, fulltime jobs and how many have insecure short-term contracts or part-time jobs and also how many are employed in labour-market measures?

If the interest and the concern for pluralism in the workplace is low among both employers and workers-unions, as the Ombudsperson against Ethnic Discrimination describes, in what way do we make sure that people with an immigrant background are not the ones who lose out next time we face a recession? Also, many people with immigrant backgrounds are forced to accept jobs that are not at all in accordance with their education. Sometimes it is not even enough that the education has been complemented in Sweden. An organization such as FAI – Fackligt aktiva invandrare (Immigrants in the trade union) was actually created because of the lack of understanding at for example the employment office. According to FAI, there is still a lot to be done to ensure the right not to be discriminated in the workplace, in particular in making the law (1999:130) on measures against ethnic discrimination in working life known. According to FAI, the possibility of remuneration or

⁷⁴ Statistics from 1998 from the National Integration Office and Statistics Sweden, show that men born outside Sweden often work in hotel- and restaurants, (7.2%) and in what is called “other branches in the service industry” (7,1 %). According to the same source the level of education among non-Swedes is constantly getting higher. 12 percent of both women and men born outside Sweden have a college or university education, which is approximately the same for individuals born in Sweden (women 13 % though). The statistics are related to ages 25-64.

damages is not reparation enough, a public excuse however might have the effect of both avoiding similar behaviour in the future and creating awareness for the legislation.

One of the reasons for the stricter language used in the revised law on measures against ethnic discrimination was declared to be the difficult situation in the labour market for foreign citizens. But the law only covers situations in which a person has been able to apply for a job, or has already had one. In practice many immigrants are excluded from ever being able to apply for a job. The Somali Advice Bureau has been working on behalf of minority groups for many years now, and states that:

“It is our experience that racial discrimination occurs in both social contacts and at the work-place. Minority groups are faced with discrimination above all when they look for jobs. Since they neither speak fluent Swedish nor look like Swedes, they have not even been called to an interview. Swedish society *is* sealed-off. Information about Swedish society, its culture and lifestyles, is not always available to immigrant groups, and especially not to those immigrant women who often remain at home with their children. Many immigrant groups don’t know the difference between the Swedish political parties, and when this is the case it is naturally impossible for them to exercise their political rights. Nor are they active in trade union organizations, since they know very little or nothing at all about the trade union movement.”

Islamophobia and racial hatred after the September 11th attack

Within the framework of the European Monitoring Center, a Swedish NGO, Expo has conducted investigations on the increase of islamophobia and racial hatred after the September 11th attack. Two investigations have been presented – the latest on November 29th 2001. The report explains that exact figures are difficult to obtain. And while the Muslim community in Sweden experience a general repudiation of Islam and a growing insecurity and uncertainty of the future, the investigating authorities such as the Swedish Security Police and the Criminal Intelligence Service, suggest that they had expected an even worse scenario with open attacks against Muslims, than what actually took place. The Muslim council reports a marked increase in telephone hate calls or hate email arriving to the mosques or to individual Muslims.

One of the reasons for the difficulties in obtaining correct figures on the amount of racist crimes is that these kinds of crimes sometimes only are defined as such when a complaint has been brought to court. Cases are instead reported as robbery, assault, threats etc. the racially motivated part of the crime is considered to be an aggravating circumstance which should be considered when arguing for or deciding on a harsher punishment for the crime (BrB 29:2 p 7) Apart from unlawful discrimination and racial agitation, correct statistics on racially motivated crimes are thus difficult to obtain. When trying to obtain information on the occurrence of racist crimes or complaints on racist behavior within the police, the same problem occurs. (see also article 7)

Defiance of the law or of court-rulings

There are a number of laws in Sweden regulating social rights for individuals. Some of them are possible to evoke in a higher court when the concerned authority has turned down a request for assistance. The laws serve the purpose of fulfilling the right to an adequate standard of living as well as the right to work or education. Unfortunately some of these laws

have been used as political tools and can, and have been, implemented or interpreted restrictively for political and economic reasons.

According to the constitution, (the Instrument of Government chapter 8), the Local Government Act, and the Social Services Act (1980:629) it is the obligation of the municipalities to procure and further economic and social security, equality of standards of living and active participation in social life, for the individuals who are residing or otherwise staying within the geographic jurisdiction of the municipalities.

The autonomy of the municipalities is an important part of Swedish democracy and during approximately the last ten years the municipalities have been given more and more power over, in particular, health and social services. The early nineties were a time of transference of obligations from the regional authorities to the local authorities, reforming the services for especially the elderly and the disabled but also leaving the use of state subsidies more to the discretion of the municipalities. This transference has not, however, left all powers in the area to the locally elected municipalities. The government can still use means such as earmarking governmental subsidies, or other governmental regulations in areas of special concern. Parliament can pass laws that restrict the powers and self-determination of the municipalities.

Attempts to limit the autonomy of the municipalities are however often criticized by the municipalities and one could of course argue that the autonomy of the local councils ought to be in the interest of democracy and also in the best interest of the individual. According to international human rights law, it is, however the obligation of the state to respect, protect and fulfil human rights and municipalities must be seen as the agents of the state where the responsibilities for the implementation of the rights rest. Thus the enjoyment of the rights should not depend on where, in the state, the individual lives. Nevertheless, where economic and social rights are concerned, geographic discrimination does occur, even when the rights are legally defined and accordingly justiciable.

It is mainly questions of interpreting laws on social and economic rights, the economic situation and the political environment in the municipality and to some extent insufficient knowledge about the laws, that create inequalities in the enjoyment of the rights. The laws are to some degree vaguely written or constructed in a general way in order to contain the autonomy of the municipalities. This has created non-acceptable differences in the enjoyment of the rights and violations of the rights. According to studies you will find this kind of defiance of the law or court-decisions where mainly two pieces of legislation are concerned: The Social Services Act (1980:620) and the Act concerning support and service to persons with certain functional impairments (1993:387).

The general problems can be described as:
municipalities having different interpretations as to the level of the assistance, creating discrimination according to where the individual lives,
municipalities disrespecting the laws, often because of the alleged economic situation, and
municipalities disrespecting or ignoring court-decisions.

It is important to point out that a local authority cannot refuse an individual his or her legal rights, because of a lack of resources.

There have been attempts to come to terms with municipalities defying court rulings by introducing the possibility for the supervisors (the county administrative board) to decide for an injunction to take measures, with a small possibility of combining the injunction with fines if the municipality still does not abide by the court-decision. This is however only possible in regard to the two pieces of legislation mentioned above. As yet no one has been fined – which does not mean that the problem is solved, on the contrary.

There is currently a proposal for changing the possibility of using injunctions and to instead resort to sanctions. This change will be a better tool for the individual in particular because the new law states that measures to abide by the court decision must be taken “without further ado”.

The legislative changes proposed do not however deal with municipalities defying the law itself – only court-rulings. For most people, going to court to claim your rights is not only complicated it also takes some effort. As each case is individual there is also little hope for precedents even if the municipality would abide by other court-decisions. And, of course, assistance does not come automatically. As well as there being no consistency between municipalities when it comes to interpreting the laws, there are differences in routines when dealing with the matter. It is not uncommon that routines are so undefined or so complicated that they themselves are obstacles to the enjoyment of the rights. One of the perhaps most disrespectful ways for municipalities to denounce their obligations to respect and fulfil social and economic rights is to respond positively to the request of the individuals and then simply not act according to its own ruling. The Ombudsperson for the disabled and Swedish Disability Organisations in cooperation have criticized this behaviour since it leaves individuals in a vacuum; not being able to appeal or not having his or her rights realized.

Article 27

The right to take part in cultural life

“A general review of public language planning in the Tornedalen and Malmfälten regions of Sweden.”

Sweden has ratified the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. According to the act, Sweden’s national minorities and their languages are recognized and the minority languages are to be given the support needed to keep them alive. The languages recognized as minority languages in Sweden are Sami, Finnish, Meänkieli (the Finnish spoken in the Torne river valley, Tornedalen), Romani chib and Yiddish.

The Riksdag (Swedish parliament) voted in December 1999 to make Tornedal Finnish, Finnish and Sami the territorial minority languages of Sweden in the local authority areas (municipalities) of Jokkmokk, Arjeplog, Kiruna and Gällivare (Sami) and Kiruna, Gällivare, Pajala, Övertorneå and Haparanda (Tornedal Finnish and standard Finnish). (Govt Bill 1998/1999:143; SOU 1997:192, 193). The Minority Languages Act came into force in Sweden on 1 April 2000 (and the conventions on 1 June 2000).

In certain local authorities, however, problems are seen in the application of the new rights laws. It is thought, for instance, that parliament has not realized the import of recognizing dialects as minority languages, and that the resources allocated to the various groups to realize the objectives of the convention are both too small and inequitably distributed.

According to studies by the National Association of the People of Tornedalen, there are inequalities in the possibility to preserve and develop minority languages depending on priorities made by the municipalities but also because of attitudes in society. This also affects the use and right to mother tongue tuition and thus, since language is an important upholder of cultures, the enjoyment and development of traditions and cultures. (For more detailed information on the subject see the enclosed attachment.)