FUNDAMENTAL RIGHTS SERIES

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
(CFR-CDF)
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN SWEDEN IN 2003

January 2004

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[*] submitted to the Network by Professor Maja K. Eriksson with the assistance of Dr. K.Åhman and L.Oskarsson.

Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lituanie), Florence Benoît-Rohmer (France), Martin Buzinger (Rép. Slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Dean Spielmann (Luxembourg), Pavel Sturma (Rép. Tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par Olivier De Schutter, assisté par Valérie Verbruggen.
Les documents du Réseau peuvent être consultés via :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The **EU Network of Independent Experts on Fundamental Rights** has been set up by the European Commission (DG Justice and Home Affairs), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), Rick Lawson (The Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxembourg), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by Olivier De Schutter, with the assistance of Valérie Verbruggen.
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PRELIMINARY REMARKS

1. The National Human Rights Action Plan

As a general judgment, it would not be an overstatement to say that Sweden has always been in the forefront of the promotion and protection of human rights internationally. On 30th of October 2003 the Government submitted to the Swedish Parliament (*the Riksdag*) a written communication on human rights and Swedish foreign policy.[1] It is made abundantly clear in this document that human rights protection shall continue to form an important part of Swedish foreign policy.

During 2003 the Swedish Government has continued its work with implementing the National Human Rights Action Plan which is to span over a three-year period and applies to 2002-2004.[2] The Plan describes Sweden's responsibilities and the role of various actors regarding work on human rights issues. In order to improve the promotion and protection of human rights the Action Plan emphasises the importance of education and information about human rights. Different authorities subsequently reported on their activities to the Government in 2003. The first regional conference on human rights for the local municipalities (*kommuner)* was held in Gothenburg in November 2003. One of the purposes of this gathering was to make people aware of municipalities' role in the protection and realization of human rights.

The Government's web site for human rights (www.manskligarattigheter.gov.se), which is considered as an important part of its effort to disseminate knowledge of human rights[3], has been completed with additional materials on human rights. According to estimates, there are in average 9, 000 visitors every month. There is, furthermore, an ambition to translate into Swedish all future Swedish reports to the UN treaty bodies as well as the bodies' concluding observations and to make those documents available at the above referred web site for human rights.[4]

The Government has also started its work with translating materials on human rights, which are of significance to the judicial system. A report from Uppsala University on, among other things, how the Swedish courts apply the chapter on human rights (Chapter 2) in the Swedish Constitution (*Regeringsformen* (RF)) [5] and the European Convention on Human Rights, has been submitted to the Government.[6] According to the report the domestic courts are not to that extend familiar with the European case-law as they should.[7] Finally, the specially created Intergovernmental working group on human rights has enlarged its mandate as to include currently, among other things, a review of the Swedish reservations to various human rights treaties.

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[1] Regeringens skrivelse, Skr. 2003/04:20, *Mänskliga rättigheter i svensk utrikespolitik*, Stockholm 30 October 2003.
[2] The Ministry of Justice, the Department on Democracy Issues, *Rapport om åtgärder som genomförts under 2003 i anledning av skrivelsen En nationell handlingsplan för de mänskliga rättigheterna*, Promemoria, 7 November 2003, p. 1.
[3] CCPR/CO/74/SWE/Add.1, 14 May 2003, p. 4.
[4] The 15th and 16th periodic reports submitted by Sweden in accordance with Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination, 15 July 2003, (CERD/C/452/Add.4) §116, p. 20.
[5] Instead of one written Constitution, Sweden has four fundamental laws, which all have constitutional status (Chapter 1, Article 3 of the Instrument of Government). They are: 1. The Instrument of Government (*Regeringsformen* (SFS 1974:152)), 2. The Act of Succession (*Successionsordingen* (SFS 1810:926)), 3. The Freedom of the Press Act (*Tryckfrihetsförordningen* (SFS 1949:105) and 4. The Fundamental Law on Freedom of Expression (*Yttrandefrihetsgrundlagen* (SFS 1991:1469)).
[6] The Ministry of Justice Report, op.cit., p. 2. For a more thorough and detailed analysis of the application of the ECHR by Swedish Courts see *J.Södergren*, Axplock II-ur svensk konventionstillämpning, Europarättslig tidskrift 2003, pp. 659-683.
[7] Similar views, *i.e.* the poor application of international case-law by the Swedish courts have been expressed during a seminar for practicing lawyers, which took place at the end of November 2003. See, *O. Abrahamsson*, Oavsättliga domare borde protestera mer, SvD 2 December 2003, p. 4.

Despite the many positive features with regard to the promotion and protection of human rights in Sweden, it must also be admitted, that there are still some imperfections in the Swedish legal system and/or practice as well as areas of non-compliance with established standards of public international law and EC/EU legal standards.

2. The EU Treaty on a Constitution for Europe

In Sweden there has been a vivid discussion about the content of the future EU constitution.[8] In the Parliament the majority of the representatives are in favour of the draft text of the new EU constitution.[9] The strongest scepticism has been expressed by some members of the Left Party and the Green Party but critics also cut through the party barriers. In October 2003 the Government sent its communication- The European Convent on the future of the EU - (*Europeiska konventet om EU:s framtid*) to the Parliament.[10] The Parliament discusses this communication and voted on the 20th of November 2003 for a common point of view for the Government to bring to future negotiations.

The following few questions, which have attracted attention, may be distinguished in the general debate about the future EU structure and constitution: whether there should be a President or not; whether there should be rotated voting in the Commission; whether the European Council should be able to change the voting system from unity to qualified majority; whether there should be a changed voting system in general; whether there should be a common asylum and migration policy without any national exceptions and finally whether there should be a flexibility clause for the Council of Ministers in order to increase its authority in specific areas.

According to current statements made by the Swedish Prime Minister Göran Persson, there will probably be no plebiscite in Sweden on the new EU constitution.[11]

In the Swedish debate, according to the communication from the Government to the Parliament of 2nd of October 2003, many institutions and authorities[12] welcome the idea of adherence of the EU to the European Convention as well as the strengthening of the legal status of the Charter of Fundamental Rights.[13] However, the Swedish Supreme Court (*Högsta domstolen*) has expressed, among other things, some concern about possible difficulties with the application of the Charter of Fundamental Rights of the EU on the domestic level. Many articles in the Charter are, according to the court, vague as to their content. Others are concerned about the consequences the Charter of Fundamental Rights would have for the powers of the Union.

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[8] For the most recent comments in the doctrine see, e.g. *J.Almer*, EU:s framtidskonvent: en översikt, Svenska institutet för europapolitiska studier, (Sieps), Nr 1u, Stockholm 2003; *M.Hellner*, Skyddet av grundläggande fri- och rättigheter i framtidens EU, Sieps, Nr 11, Stockholm 2003; *J.Almer*, EU:s framtidskonvent - resultatet, Sieps, Nr 3u, Stockholm 2003.

[9] Poll: *Majority of Swedes want Parliament to ratify new EU constitution*, Jai in the News, European Commission, 3 November 2003, p. 4; *L.Hennel & D.Nilsson*, Kritik över blockgränserna, SvD 22 October 2003, p. 9 and *J.Fröman*, Matchen om EU:s författning, NU 41/03, pp. 12-13. The Swedish Save the Children, *Rädda Barnen* has, in addition, expressed its satisfaction with the greater focus on children's rights in the proposed new EU Constitution. Yttrande, *S.Ek*, Europeiska konventet om EU:s framtid, 1st of September 2003.

[10] See Regeringens skrivelse, Skr. 2003/04:13, *Europeiska konventet om EU:s framtid*, 2 of October 2003.

[11] Representatives for other political parties, who are members of the Parliament, demand, however, a referendum on this issue. See *L.Olsson*, Krav på folkomröstning om EU:s nya grundlag, SvD 21st of October 2003, p. 8; *D.Nilsson*, Bred enighet i riksdagen om EU-linje, SvD 21 November 2003, p. 22; *B.Brink*, Mp vill folkomrösta om grundlag, SvD 24 November 2003, p. 6.

[12] The Swedish Constitution contains rules of procedure concerning the adoption of new legislation (*Regeringsformen* (RF) Chapter 7, Section 2). When preparing new legislation necessary information and opinions shall always be obtained from the public authorities concerned. Organizations and private persons shall be afforded an opportunity to express an opinion where necessary.

[13] See Regeringens skrivelse, Skr. 2003/04:13, *Europeiska konventet om EU:s framtid*, 2 October 2003, pp. 20-21.

The Swedish Government on its part now welcomes the idea of a binding Charter of Fundamental Rights in the Member States of the European Union. It is convinced that the amendments that have been done during the work on the EU Treaty on a Constitution for Europe, will help increase the understanding of how the Charter will influence EU law and what are the powers of the Union. The Government further welcomes the proposition about the accession to the European Convention on Human Rights. In its view this would give a better protection as to survey ability and to uniformity. The position of the European Court of Human Rights will also be strengthened according to the Government. This in turn will give the citizens better legal security (*rättssäkerhet*).

According to the Government, incorporating the Charter of Fundamental Rights into the Treaties and the adherence to the European Convention are two separate measures complementing each other. Together they will assure that the European Union is placed in a position to ensure a high degree of protection of human rights and fundamental freedoms.

Finally, mention should be made of the amendments of the Fundamental Law on Freedom of Expression (*Yttrandefrihetsförordningen* (SFS 1991:1469)) which took effect on 1st of January 2003. The aim of this legal reform has been to improve the possibilities to take legal measures against racial agitation. (See Chapter III, Article 21 in this report)

CHAPTER I: DIGNITY

Article 1. Human dignity

National legislation, regulation and case law

The European Union has been very active in recent years in the standard-setting in the field of human genetics and biotechnological advances. The EU Directive 98/44/EC on the legal protection of biotechnological inventions, which sets out intellectual property rights and what can be patented, including genetic material of human origin and human cloning, calls for certain changes to be made in the Swedish legislation. The Justice Department has therefore recently, on 13th of November 2003, revealed a proposal for new legislation (the necessary changes concern, *inter alia,* The Act on Patent (*Patentlagen* (SFS 1967:837)).[14] The new provisions shall enter into force on 1st of May 2004.

One of the essential objectives of the legislative reform is to formally refer to and thus legally ensure the protection of human dignity. It shall be established, among other things, that the human body during its various stages of development shall not be patented.[15]

A new and specifically designed Act on the review of the ethics of any research carried out and which relates to human beings, (*Lag om etikprövning av forskning som avser människor*, (SFS 2003:460)) was promulgated by the Swedish Parliament on 5th of June 2003. In its § 1 it is established that the aim of this legislation is to protect the respect for human dignity in any research which concerns human beings as well as research with biological material stemming from human beings. The Act shall enter into force on 1st of January 2004.

Article 2. Right to life

International case law and concluding observation of international organs

The UN Special Rapporteur on Violence against Women, Mrs Yakin Ertürk, praised the Swedish Government during an expert meeting in Stockholm, which took place on 4-5 of November 2003, for the package of various measures that had been developed during the year under review to protect girls in patriarchal families, including its financial support to several Women's organisations established in Sweden as well as internationally. An international conference on violence in the name of honour, including the issue of "honour murders", in which foreign-born residents had killed daughters who had wanted to pursue a Swedish life-style, will be conducted in Sweden during the autumn in 2004.[16]

National legislation, regulation and case law

Sweden is known for its sustained role in the international community's efforts to abolish the death penalty. Protocol No. 13 to the ECHR, which bans the death penalty in all circumstances, entered into force on 1st of August 2003 in Sweden.[17]

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[14] Ministrty of Justice, Lagrådremiss, *Gränser för genpatent m.m.-genomförande av EG-direktivet om rättslig skydd för biotekniska uppfinninga*, p. 2.
[15] Op. cit., p. 4.
[16] Ministry of Justice, note 2, p. 3 ; Ministry of Justice, Pressmeddelande, *Jakin Ertürk medverkar på expertmöte om hedersrelaterad våld*, 29 October 2003, p. 1.
[17] Government Bill, Prop. 2002/03:32, *Tilläggsprotokoll till Europakonventionen - dödsstraffets totala avskaffande i Europa*. A few adjustments in the national legislation followed the ratification. See *e.g.* Förordning om

Euthanasia is still a crime under Swedish law. There has been no discussion in the legislature to revise the current rules in force.

Practice of national authorities

The long-term work to promote child safety has led to a decrease in mortality rates and serious injuries among children and young people in Sweden. Nevertheless, accidents continue to be the main cause of children's mortality.

To Sweden's credit, mention should be made of the broad view of child safety, which includes preventive work with respect to injuries as a result of violence and self-inflicted acts. In other words, both physical and psychosocial environments must be taken into account in preventive efforts. There is, however, a need for an authority with overall responsibility for children's and young people's needs which can identify areas that are currently divided between agencies in different sectors. A proposal for a legislation on public authority with overall responsibility for issues relating to safe and stimulating environments for children and young people has been put forward recently by a commission of inquiry in an interim report.[18]

The Government has allocated additional SEK 100 million in 2003 to sheltered housing and other measures for young people at risk of honour-related violence.[19] Acting on government instructions, the Swedish Integration Board, in cooperation with other institutions, has highlighted good examples and methods for preventing conflicts between the individual and the family that may be caused by ideas about honour.[20] Another report, which focuses on relations between the individual and the family as a carrier of culture and its influence on the ability of the individual to meet the values and demands of the new country, was delivered by the Association of Local Authorities in Stockholm County in March 2003.[21]

The National Centre for Battered and Raped Women has engaged in methods development, research and support for women who are victims of violence. Currently, a special investigator looks at arrangements for turning the Centre into a national institute for disseminating knowledge and developing methods for combating violence against women.[22]

Terrafem (a support network for immigrant women) has received funds to set up an emergency telephone service in some twenty languages to support and help girls and young women at risk of honour-related violence.

Reasons for concern

Sweden is one of the few OECD countries which have enforced a law explicitly prohibiting the physical punishment of children. Nevertheless, a recent study presented by UNICEF -

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ikraftträdande av lagen (2003:74) om ändring i lagen (1994:1219) om den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna (SFS 2003:474).

[18] Barnsäkerhetsdelegationen, SOU 2003:19, *Barns rätt till säkra och utvecklande miljöer. Framtida huvudman*.

[19] Ministry of Justice, *Government initiatives to help young people at risk of honour-related violence*, Ju 03.21 e, September 2003, p. 1.

[20] The material *Instructive examples-preventing individual-family conflicts*, report 2002 :14 is available on : www.integrationsverket.se/upload/Publikationer/Larande.pdf (in Swedish only).

[21] The reports' title is : *Working with patriarchal families- A survey of activities*. It is available at www.ksl.se (in Swedish only). The Swedish Integration Board published in 2003 surveys, which give specific examples of preventive action in relation to violence against girls and women. See *The way in. Voices on integration and gender equality* ; *Patriarchal enclaves or non-man's land ? Violence, threats and restraints towards young women in Sweden*.

[22] For information and materials on violence against women see : www.kvinnofrid.se

Innocenti Research Centre reveals that the annual number of deaths from maltreatment is relatively high, *i.e*., 10 children die each year.[23]

Despite the fact that the Swedish Government has enacted policies to prevent and eliminate violence against women, the measures seem to not have been sufficiently forceful and efficient. In other words, there are reasons for concern with regard to the persistence of domestic violence.[24] Over 20, 000 cases of domestic violence against women are reported each year and between 20 and 30 women are murdered by men with whom they have close relations.[25]

Article 3. Right to the integrity of the person

National legislation, regulation and case law

The Committee on Genetic Integrity, which was entrusted with the task to submit proposals for changes in the Swedish legislation that are considered necessary to permit research, *inter alia*, on stem cells from surplus fertilised eggs from *in vitro* fertilisation, released its interim report[26] at the end of 2002. In the course of its work, the Committee discussed what conditions should apply if women are to donate eggs for research purposes. In its view, such donations should not be forbidden. It suggested, furthermore, that financial compensation to the donor must only consist of expenses and loss of income.

Several of the Committee's proposals have been included in the new legislation, which has been adopted during 2003. For example, the new Act on the review of the ethics of any research concerning human beings and biological material from human beings (*Lag om etikprövning av forskning som avser människor* (SFS 2003:460) was approved in June 2003 and shall enter into force on 1st of January 2004.[27] The Act prescribes the creation of a new system for reviewing the ethics of research to be carried out and that the research in question shall not be allowed unless it has been approved by some of the special, independent, regional, ethics boards (§24). According to § 31, appeals against rejections of applications on research projects of that kind can be lodged with a central board of appeal.[28] More importantly, the new Act contains the requirements for research within the above mentioned area to be approved. In § 8 it is explicitly referred to the protection of human rights and fundamental freedoms. At the same time it is also underlined that consideration should be taken of the interest in that new knowledge may be developed through research.

Since there is no general prohibition to conduct research through the production of fertilised eggs for these purposes, the Swedish Government might registers a reservation to Article 18§2 in its future ratification of the European Convention on Human Rights and Biomedicine of 4th of April 1997. The relevant provision forbids the production of embryos for research purpose. Sweden signed the Convention in 1997.

Research on fertilised eggs is, in other words, still permitted, albeit subject to the conditions stipulated in the modified Act of 1991 concerning measures taken with fertilised eggs from

[23] *A League Table of Child Maltreatment Deaths in Rich Nations*, Innocenti Report Card, Issue No. 5, September 2003, pp. 4 and 33; *Rapport om barnmisshandel i rika länder*, UNICEF idag, Nr. 3, 2003, p. 15.
[24] *O.Billinger*, Kraftig ökning av våldet, SvD 8 October 2003, p. 13 ; Brå är sig likt, SvD 18 October 2003, p. 4.
[25] See The Equal Opportunities Ombudsman (JämO), Claes Borgströms speech delivered during a conference organised by Kvinna till Kvinnas in Dubrovnik, August 2003, p. 2, available on-line : http://www.jamombud.se/nyhetspresscent/jamostalvidkvin.asp See also, *Fler våldsbrott och färre rån*, Advokaten, November 2003, p. 9.
[26] Delbetänkande av Kommittén om genetisk integritet, SOU 2002:119, *Rättslig reglering av stamcellforskningen*.
[27] *Forskning på människor ska regleras i lag 2004*, Universitetsläraren No 2, 2003, p. 7. As a consequence of the legal reform the Personal Data Act has been amended as of 1st of January 2004 (*Lag om ändring i presonuppgiftslagen* (1988:204), (SFS 2003:466)) as well as the ordinance on this subject matter (*Förordning om ändring i personuppgiftsförordningen* (1998:1191) (SFS 2003:618)).
[28] See also *G.Sthyr*, Nytt organ för etikprövning, Universen Nr 11/03, p. 3.

humans for the purpose of research or treatment. (*Lag om åtgärder i forsknings - eller behandlingssyfte med befruktade ägg från människa* (SFS 1991:115)). The new Act - *Lag om ändring i lagen* (1991:115) *om åtgärder i forsknings- eller behandlingssyfte med befruktade ägg från människa* (SFS 2003:462) shall enter into force on 1st of January 2004.

Limitations corresponding to those that apply to research on fertilised eggs are valid for the transfer of somatic cell nuclei. The Committee on Genetic Integrity proposed that reproductive cloning should be unequivocally forbidden.[29] Therapeutic cloning or nuclear transfer, which is the scientific term for cloning has, however, been considered as an acceptable and legal technology.[30] It is believed that stem cells from cloned human embryos may in some instances have advantages over other kinds of stem cells. Representatives for some religious groups have strongly opposed this direction in the current legal development.[31]

New permissive rules on the use of some modern procreative technologies including *in vitro* fertilization (IVF) were adopted by the Swedish Parliament during the period under scrutiny. The new *In Vitro* Fertilization Act (*Lag om befruktning utanför kroppen* (SFS 2002:252)), which provides for the possibility of, *e.g.*, egg donation entered into force on 1st of January 2003. *In vitro* fertilization with both eggs and sperm donations are, however, forbidden. According to Section 3 "A fertilised ovum may be implanted in the body of a woman who is married or living in a permanent relationship with a partner, only with the written consent of her partner or husband. If the ovum is not the woman's own, the ovum shall have been fertilized by the husband or partner's sperm ".

Sweden has abandoned the doctrine of anonymity of the donor. In consequence, a child born as a result from donated gamete has the right to know the donor's identity when he/she has reached "sufficient maturity". In other words, the need for the child to know its roots is considered essential in Swedish society. Heterologous artificial insemination shall take place only at Swedish university hospitals.

The Committee on Genetic Integrity suggested, furthermore, in its interim report that §15 in The Transplantation Act (*Transplantationslagen* (SFS 1995:831)), which prohibits dealing commercially in biological material should be made more stringent.

The new Act on Biobanks in Medical Care (*Lagen om biobanker inom hälso- och sjukvården m.m.* (SFS 2002:297))[32] , which deals with the collection of human biological material, its storage and use for certain purposes, entered into force on 1st of January 2003. According to Chapter 3, Section 1 tissue samples may not be collected and preserved in a biobank without informing the donor of that intention and about the purpose(s) for which the biobank may be used, and obtaining his or her consent. Moreover, tissue samples may not be collected from an embryo or foetus and preserved in a biobank without informing the mother who is bearing or has borne the embryo or foetus.

The above mentioned Act has been amended (*Lag om ändring i lagen* (2002:297) *om biobanker i hälso- och sjukvården m.m*. (SFS 2003:468)) and its new wording has been made compatible with the new requirements on review of the ethics of research concerning human beings. The new provisions shall come into force on 1st of January 2004.

[29] SOU 2002 :119, p. 15.
[30] *Terapeutisk kloning blir snart tillåten?*, Universitetsläraren, No 2, 2003, p. 6. In the opinion on the proposed legislation submitted by the Faculty of Law at the Uppsala University it has been stressed that the Committee's motivation for the permission of cloning for therapeutic purposes as well as the production of fertilised egg for research purposes seems not to be sufficient. Remissyttrande, Dnr JURFAK 2003/20, *Rättslig reglering av stamcellforskning* (SOU 2002:119), p. 1.
[31] *R .Johansson*, Viss kloning kan tillåtas i Sverige, SvD 30 January 2003, p. 7.
[32] See for comments on the new legislation: *S.Wolk* (red.), Biobanksrätt, Lund 2003.

Reasons for concern

Some fears have been expressed that the use of fertilised eggs for research purposes is but a step towards a kind of "instrumentalization" of life. It has been maintained that the new regulations send a sign to society that human life may be used in its various stages of development as a means to create something which may serve the purpose of helping another human beings on its own.[33]

The use of DNA- analysis of the blood test from the Huddinge hospital by the police in connection with the investigations related to the suspected killer of Sweden's foreign minister, Anna Lindh, has given rise to a vivid debate in media. Notwithstanding the comprehension and the awareness among the population about the intense pressure under which the police performs its work for resolving the murder, severe criticism has been expressed with regard to the violation of the integrity of the person concerned.[34] The Social Board is, for example, concerned that the police's access to the register may have impaired the public's trust. According to the Act on Biobanks, there are no specifically enumerated exceptions for giving access to that kind of information with respect to criminal investigations. The blood tests of about 3 million Swedes are stored in the so called PKU register (biobank). As a result of the debate the Social Board has recently required a revision of the current legislation.[35]

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

International case law and concluding observation of international organs

Forty cases have been lodged, in total, against Sweden to the UN Committee Against Torture (CAT) in accordance with the requirements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[36] The Swedish Government has been criticised on nine separate occasions for violating the cardinal principle of international refugee law, the *non-refoulement* principle, in asylum cases where there is a risk for the person in question to be exposed to an irremediable situation of objective danger, *e.g.,* torture and/or inhuman and degrading treatment, outside its jurisdiction.[37]

During 2003 the UN Committee has considered the merits of a few cases against Sweden, among them Communication No 216/2002, Sweden, CAT/C/30/D/216/2002, 16th of May 2003. The complaint in question was, however, declared inadmissible. Another four cases were dealt with by the CAT in November 2003. Nevertheless, all of them, including the Hanan Attia- case (*i.e*. the wife of Ahmed Agiza, one of the two expelled Egyptians (see under concern)) were dismissed.[38]

During the 504th meeting between the Committee and the Swedish delegation dealing with the consideration of the fourth periodic report of Sweden, members of the CAT observed that the

[33] *L.Rohdin*, Svarslösa om kloning? NU 5/03, pp. 10-11.
[34] *S.Lisinski & I.Wandendal*, Utlämningen av blodprov utreds, DN 26 October 2003, p. 5; *B.Malmström*, Massiv kritik mot utlämning av blod, SvD 26 October 2003, p. 14; Uttagsrätten i blodbanken, SvD 29 October 2003, p. 4; *A.Haverdahl*, Fritt fram använda blodbank, SvD 29 October 2003, p. 8; *TT*, Nej till DNA från biobanker, DN 2 November 2003, p. 5; *B.Malmström*, Engqvist vill skärpa lagen för biobankerna, SvD 2 November 2003, p. 10.
[35] *U.Mattmar*, Blodprov lämnades ut för lättvindigt, DN 6 December 2003, p. 3; *A-.L. Haverdahl*, Vävnadsprov från biobank får inte lämnas till polisen, SvD 6 December 2003, p. 10.
[36] *A.Wigenmark*, Mänskliga rättigheter som handelsvara, in Laglöst Land, J.Flyghed & M.Hörnqvist (reds.), Stockholm 2003, note 16, p. 282.
[37] Skr. 2002/03:28, p. 19.
[38] *A.Wigenmark*, Olika bud om diplomatiska försäkringar - vem ska man lita?, MR-INFO, Frivilligorganisationernas fond för mänskliga rättigheter, Nr. 6, December 2003, pp. 1-2.

Swedish legislation does not contain a definition of torture in keeping with Article 1 of the Convention and this "could have implications for the preparations of statistics on torture".[39]

A delegetation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to Sweden from 27 January to 5th of February 2003. In its preliminary observations[40], the CPT delegation highlighted the following areas under review:

- Conditions of detention (police establishments)
- Prisons
- Psychiatric establishments
- Institutions for young persons (LVU) and
- Homes for drug addicts and other substance abusers (LVM).

As regards the formal safeguards, the delegation noted that five years after the CPT addressed this issue, persons deprived of their liberty by the police in Sweden, still have no formal right to inform a third party of their custody. The CPT, in addition, made the assessment that it is 'unlikely' for the deprived persons to meet with a lawyer before the first formal hearing. Urgent action is, therefore, in the view of the Committee required in order to bring Swedish practice into line with the European standards for the prevention of torture and inhuman or degrading treatment or punishment.[41]

In the course of its visit, the CPT delegation examined the existence of and operation of effective procedures for reviewing complaints against the police in the County of Västra Götaland. On the basis of a number of well-documented cases, the delegation established that some basic precepts for a criminal investigation into possible ill-treatment by law enforcement officials in order to be considered effectual, had not been observed. Not all reasonable steps have been taken, for example, to secure evidence concerning the incident, including eyewitness testimony and forensic evidence. Moreover, the delegation found that, in some cases, the allegations that investigations of possible police misconduct had not been conducted in a prompt and reasonably expeditious manner, were well-founded.

While the delegation was impressed by the professionalism of the health care staff at the visited prisons (*e.g. the Tidaholm Prison*), bearing in mind the prevalence of mental disorders among inmates, it recommended that the input from psychiatrists and psychologists "should be significantly augmented".[42] As regards the remand prisons visited, no allegations of ill-treatment of prisoners by the staff were heard. The CPT came to the same positive conclusions for the situation in the three mental health establishments visited. However, the staff shortages, especially in respect of psychiatrists and nurses at the *Sahlgrenska Psychiatric Clinic* were according to the delegation, a cause of concern.

On the issue of violence against women, the European Commission against Racism and Intolerance pointed out in its second report on Sweden that many women, particularly from South-East Asia, who have married Swedish citizens are particularly vulnerable due to the regulations on residence permits.[43] Such women feel unable to leave an abusive relationship as they would then risk losing their permission to reside in Sweden. Only after a two- year period of living as an established couple is it possible for a foreigner to apply for a permanent residence

[39] Summary record of the first part (public) of the 504th meeting: Sweden, 06/01/2003, CAT/C/SR.504, § 23.
[40] CPT/Inf(2003)27, Strasbourg , 12th of June 2003.
[41] Op. cit. p. 2.
[42] Op. cit., p. 4.
[43] ECRI, Second report on Sweden, CRI(2003)7, § 54, p. 19.

permit in Sweden. Racial violence and harassment is, furthermore, one of the issues, which in the opinion of ECRI, merits particular and urgent attention in Sweden.[44]

National legislation, regulation and case law

In order to fulfil the obligations laid down in the EU framework decision on combating terrorism that was adopted in June 2002, the Swedish Parliament (*the Riksdag*) adopted the Act on Criminal Responsibility for Terrorist Crimes (*Lag om straff för terroristbrott* (SFS 2003:148)), which entered into force on 1st July 2003. The wide definition of 'terrorist crimes' contained in this Act, taken together with the removal of the exception for non-expulsion for political crimes from the 1991 Act on Special Control of Aliens, might lead to a situation where greater number of aliens risk being expelled on the basis of considering them as a threat to the national security.

It has been predicted that the application of this legislation by the courts in a manner that is compatible with the rule of law, will be extremely difficult. The reasons behind this are multiple. The definitions of, *e.g*., the subjective requirements (intention) suffer from ambiguity, *i.e*. they do not provide "the clarity that is required by the principle of foreseeability".[45] Proving intention on the part of the perpetrator is a complicated and highly demanding task, especially in connection with acts of aiding, assisting or abetting a crime. A recent case in which the new Act on Terrorism was applied for the very first time illustrates the apparent difficulties related to the application of the new category of crime. The District Court in Stockholm (*Stockholms tingsrätt*) had to dismiss the charges of terrorism against a 37 year old person of Lebanese origin and it delivered a judgment on 17th of November 2003 implying that he was sentenced instead to ten months imprisonment for serious offence against the rules in the Weapons Act (*grovt vapenbrott*).[46] Some of the characteristics of the new law, as well as the manner in which the Swedish Parliament decided upon to legislate in this area have been vehemently criticized by NGOs as well as legal experts.[47]

The conclusions of the investigative Commission to review, *inter alia*, whether the current legal system enables the public authorities to prevent and combat terrorist acts in an appropriate way were published in 2003.[48] The Commission proposes, *inter alia*, that the Government and the Parliament give their explicit support to an interpretation of Chapter 10, Section 9, § 1 of the Instrument of Government (*Regeringsformen* (RF)), whereby the Government may deploy the Swedish Armed Forces or parts thereof to combat an armed attack (*e.g*. attacks of a terrorist nature) against Sweden, even when the attack does not emanate from a foreign state. This would, in the opinion of the Commission, reflect current international law, according to which the right to self-defence under Article 51 of the UN Charter also applies in the event of large-scale terrorist strikes.[49] Moreover, the Commission proposes that rules should be introduced into the Police Act (*Polislag* (SFS 1984:387)) concerning provocation, infiltration and the use of body microphones and positioning devices. In its opinion, it should be made possible to use such methods already at the surveillance stage, but only if it is apparent that the harm or the detriment that the measure involves is not disproportional to the purpose of the

[44] Op. cit., § 70, p. 23.
[45] *The Swedish NGO Foundation for Humabn Rights and The Swedish Helsinki Committee for Human Rights*, Alternative Report to « Comments by the Government of Sweden on the Concluding Observations of the Human Rights Committee » (ICCPR/CO/74/SWE), 4th of July, 2003, p. 7.
[46] The Security Police continues, however, its investigations on the charges of terrorism. *B.Malmström*, Cd-skivor bakom terrormisstanke, SvD 24 November 2003, p. 6.
[47] See, for example, The Swedish NGO Foundation for Human Rights and The Swedish Helsinki Committee for Human Rights, *Alternative Report to "Comments by the Government of Sweden on the Concluding Observations of the Human Rights Committee"*, Stockholm 4 July 2003, pp. 6-8; Amnesty International, Report 2003, on-line www.amnesty.se ; *G.Sörbring*, Anklagelser om terrorism föll i rätten, Experterna inte förvånade, DN, 25 October 2003, p. 5; *B.Malmström*, Tingsrätten avfärdar terrorbevis, SvD, 25 October 2003, p. 14.
[48] SOU 2003:32, *Vår beredskap efter den 11 september, Betänkande från 11 september-utredninge*n.
[49] Op. cit., p. 24.

measure. The preconditions for the employment of compulsory measures such as secret wire-tapping, secret telecommunications surveillance and secret camera surveillance are currently that they take place within a preliminary investigation of a criminal case, that they are directed against someone who is reasonably suspected of committing an offence of a certain degree of severity and that this is of extraordinary importance for the investigation. The above mentioned methods are covered by the Code of Judicial Procedure (*Rättegångsbalken* (SFS 142:740)) and the Compulsory Measures in Certain Criminal Cases (Special Provisions Act) (*Lag med särskilda bestämmelser om tvångsmedeli i vissa brottmål* (SFS 1952:98))

The wide range of statutory proposals to counteract terrorist offences and offences against the security of Sweden should, according to the Commission, enter into force on 1st of January 2004.[50]

Following the investigation initiated by the Parliamentary Ombudsman into the mass arrest at Hvitfeldska - school during the 2001 summit in Gothenburg, the chief police commissioner in charge of the operation was charged with "unlawful detention" and misconduct in public duty. His trial is due to start in January 2004.[51]

Reasons for concern

Firstly, there is still no independent monitoring body in existence for the inspection of patients' care placed in psychiatric establishments or in institutions for young persons. The same remarks are equally relevant for homes for drug addicts and other substance abusers.

Secondly, since 11 September 2001, 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.[52] The Swedish NGO community and a few representatives of civil society have continued to express their criticism during the year of 2003 with regard to Sweden's refusal of asylum for two Egyptians (Ahmed Agiza and Mohammed Alzery) and their subsequent deportation to Egypt on December 18, 2001.[53] The cases were considered as 'troublesome' and the conduct of the Swedish Government in this respect has been characterised as 'distressing'[54] because the unconditional ban on torture/risk for torture was substituted by guarantees on the part of Egypt's Government.

The criticism expressed by NGOs[55] with respect to the omission of a specific reference to the *non-refoulement* principle, *i.e.* that a person may never be expelled, extradited, deported or surrendered to a state where he/she risks persecution, the death penalty, torture or other degrading treatment or punishment in the draft bill on arrest warrant[56] is justified.

[50] Op. cit., p. 35.
[51] Information from AI - the Swedish Section.
[52] *A.Wigenmark*, The Impact of 11 September on Human Rights, The Swedish NGO Foundation for Human Rights, Biennial Report 2001-2002, Stockholm, May 2003, pp. 11-16 ; *P.Rosenblum, A.Wigenmark & R.Thayu*, Non Refoulement at Risk, Stockholm 2003 (unpublished paper), p. 2.
[53] See Alternative Report to "Comments by the Government of Sweden on the Concluding Observations of the Human Rights Committee" (ICCPR/CO/74/SWE), by *the Swedish NGO Foundation for Human Rights and the Swedish Helsinki Committee for Human Rights*, Stockholm 4th of July 2003, pp. 15-22. See also *O.Lönnaeus*, Misstänkt terrorist begärs häktad, Sydsvenskan, 24 October 2003, p. A6 ; *A.Wigenmark*, Mänskliga rättigheter som handelsvara, p. 164 ; *E.Abiri*, Asylrätten : ett hot mot rikets säkerhet ?, in Laglöst Land, J.Flyghed & M.Hörnqvist (reds.), Stockholm 2003, pp. 146-147.
[54] Alternative Report, op. cit., p. 2.
[55] Frivilligorganisationernas fond för mänskliga rättigheter och Svenska Helsingforskommittén för mänskliga rättigheter, Yttrande, *Promemorian Ds 2002 :62 « Lag om europeisk arresteringsorder och överlämnande för brott inom EU »,* 16 April, 2003, p. 6 ;*The Swedish NGO Foundation for Human Rights and The Swedish Helsinki Committee for Human Rights*, Alternative Report, *op. cit*., p. 11.
[56] Prop. 2003/04:7, *Lag om överlämnande från Sverige enligt en europeisk arresteringsorder*.

Torture is not an explicit crime according to the Swedish Penal Code. It is comprised within the crime of assault. Notwithstanding the fact that the right to physical integrity is protected in Sweden by the Constitution (*Regeringsformen* (RF), Chapter 2, Sections 2-4), CAT has paid attention to the shortcoming in the Swedish legislation in the context of torture (*i.e*. Swedish domestic law does not contain a definition of torture in keeping with Article 1 of the UN Convention against Torture), which apparently necessitates legislative activity. There is a need to expeditiously revise and adjust the existing legislation so that the use of statements obtained by methods of torture as evidence in legal proceedings is clearly established as illegal. This has not yet been the case.

Article 5. Prohibition of slavery and forced labour

International case law and concluding observation of international organs

Among the main subjects of concern for the European Commission against Racism and Intolerance in its second report on Sweden is the "continuing problem of trafficking in women from certain Eastern European countries for prostitution".[57]

National legislation, regulation and case law

Sweden has in recent years become a destination country for trafficking in persons. Current estimates indicate that between 200 and 500 women were victims of trafficking in Sweden during the previous year.[58] The countries of origin include Estonia, Lithuania and Russia, as well as Slovakia, Hungary, the Ukraine[59] and Rumania.[60]

The Swedish Parliament (*the Riksdag*) has approved the European Unions' Framework Decision combating the trafficking in human beings from 19th of July 2002 (2002/629/JHA), which the member States are expected to transpose by 1st of August 2004.

Prior to the acceptance of the Framework Decision, a few particular penal provisions for offences of that kind of criminal activity were introduced in the Swedish Penal Code (*e.g*. BrB Chapter 4, § 1(a), which entered into force on 1st July 2002.

The legislative changes have, however, been criticised by members of the Parliament for, among other things, the too restrictive definition of "trafficking" in humans, *i.e.* not covering all forms of trafficking.[61] The domestic law restricts the definition of trafficking to the purpose of prostitution or sexual exploitation. In other words, one of the greatest difficulties in combating trafficking is simply defining it broadly enough to cover all its forms and clearly enough to be useful. The Swedish Penal Code is in its wording at present not compatible with the requirements of, for example, Article 2 in the EU Framework Decision. Therefore, legal reform is still required in Sweden in order to fully comply with the above mentioned Framework Decision, which comprises, *inter alia*, criminalization of acts committed for the purpose of forced labour (*i.e*. the issue of the scope/extent of the criminalization is at hand). Legal reform is also needed with regards to the imposition of the penalty.

To ensure its harmonisation with international norms the Swedish legislator should, in addition, criminalise the phenomenon of intra-country trafficking. At present international border crossing is required. According to current proposals on changes in the Swedish legislation an

[57] ECRI, Second report on Sweden, CRI(2003)7, § 55, p. 19.
[58] Rikskriminalpolisen, *Handel med kvinnor*, Lägesrapport 5, rapport 2003:1, Dnr NSK 2003-01809, p. 29.
[59] *H.Hamrén*, Marinas resa till ett helvete, Amnesty Press, 03/03, p. 27.
[60] Ds 2003:45, p. 19.
[61] *H.Bargholtz*, Otillräcklig lag mot trafficking, SvD 12 January 2003, p. 31. See also Ds 2003:45, *Ett heltäckande straffansvar för människohandel, m.m*., pp. 85 and 98.

attempt to broaden the protection for all forms of trafficking is envisaged as well as the inclusion of sale of children in the notion "trafficking".[62]

The Government introduced its proposal for new provisions to be incorporated in the Aliens Act (*Utlänningslagen* (SFS 1989:529)) to the Parliament on 20th of November 2003, which are of relevance for the victims of trafficking.[63] It is suggested that people lured into Sweden and forced into sex slavery should be allowed to stay temporarily if they help track down the gangs behind the trade, *i.e*. they will bear witness in court against the perpetrators of the crime.[64] This is fully in accordance with the EU interior ministers' agreement in principle of 6th of November 2003. Several NGOs including the Swedish Red Cross have expressed the view that the victims of trafficking should be granted permanent residence permit on humanitarian grounds. The Swedish Save the Children (*Rädda Barnen*) has, in addition, pleaded for the right of trafficked children to receive permanent residence permit.[65] Of special importance are the progressive provisions, which shall guarantee the victims of trafficking access to health care and education during their stay in Sweden.

In order to meet the requirements of Directive 2002/90/EC, Chapter 10 of the Aliens Act, which contains a few provisions concerning the criminal liability of those who commit crimes that contravene this legislation shall be modified and the new provisions enforced as of October 2004.[66] A person who assists a foreigner to enter or pass through Sweden or another Schengen State illegally shall be sentenced for smuggling of human beings (*människosmuggling*) to imprisonment for at most six years.[67] Under 2003 about 100 suspect cases of smuggling of human beings were reported.[68]

On 18th June 2003 the Government submitted a Bill to the Parliament comprising a proposal for the ratification of the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children to the UN Convention against Trans-national Organized Crime of 15 December 2000, which covers a broad field of state obligations.[69] The legislator considered that the content of current Swedish law corresponds to the substantive provisions of the treaty, mentioned above, and therefore no special procedure is required for the incorporation/transformation of convention to become part of the national law of Sweden.[70]

According to several sources, the Government intends to ratify the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 25th of May 2000 and a Bill on the issue is expected to soon be presented before the Parliament.[71] On 25th of September 2003, the Government submitted a Bill to the Parliament proposing the approval of the EU Council Framework Decision on combating sexual exploitation of children, including exploitation in pornography.[72]

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[62] Ds 2003:45, *Ett heltäckande straffansvar för människohandel m.m*.
[63] Prop. 2003/04 :35, *Människosmuggling och tidsbegränsat uppehållstillstånd för målsägande och vittnen m.m*.
[64] Op. cit., p. 69.
[65] Op. cit., p. 69.
[66] Prop. 2003/04:35, p. 93 *et seq*.
[67] Op. cit., p. 59.
[68] Op. cit., p. 28.
[69] Prop. 2002/03:146, *Sveriges tillträde till Förenta nationernas konvention mot gränsöverskridande organiserad brottslighet*.
[70] Op. cit., pp. 1 and 26.
[71] Ds 2003:45, p. 78; prop. 2003/04: 12, *Sveriges antagande av rambeslut om åtgärder för att bekämpa sexuellt utnyttjande av barn och barnpornografi*, pp. 6-7 ; Prop. 2003/04 :35, *Människosmuggling och tidsbegränsat uppehållstillstånd för målsägande och vittnen m.m*., p. 39.
[72] Prop. 2003/04:12, *Sveriges antagande av rambeslut om åtgärder för att bekämpa sexuellt utnyttjande av barn och barnpornografi*.

More in depth judicial scrutiny of the pending legislation and the thereof following specific recommendations about necessary adjustments of the current Swedish legislation of relevance to the issue are expected to be presented before the Parliament later on. Some fears have, however, been expressed by academic researchers about the expected increase in the severity of the penalties of the current Swedish penalty system, *i.e.* the minimum and maximum penalty according to Article 5 of the Framework Decision is on substantially higher level then the case is at present in Sweden.[73]

The case-law of domestic courts:

With regard to domestic case-law some encouraging developments have taken place during 2003. A case[74] dealing with trafficking for sexual purposes, which was brought before the District Court in Gothenburg clarifies how the new anti-trafficking mechanisms are applied, *i.e*. the Penal Code, Chapter 4, § 1 (a) (*Lag om ändring i brottsbalken* (SFS 2002:436)). This is a welcome judicial precedent in the fight to eradicate trafficking in persons. It is thus the very first case where two persons were successfully prosecuted for trafficking in human being in Sweden.

One of the main questions which was raised during the trial related to the first criteria of the crime "trafficking in human being", namely whether the accused-Lora Stojko had tricked a 17-year-old girl, Malwina, by promises of work at a restaurant and forced her to leave Germany and go to Denmark where she was used for casual sexual relations in return for money. An almost identical question was also raised, *i.e.* whether Lora Stojko and Kosta Dupski have deceived Malwina with promises of employment to go to Sweden where she upon arrival was again forced into prostitution and in a situation of exploitation from which she had practically no chance to escape. Her passport, money and telephone were confiscated and she was encouraged to take narcotics in order to perform her duties. The District Court came to the conclusion that Lora Stojko, through her behaviour, had lured Malwina to first go to Denmark and then to Sweden for purposes of prostitution. This together with Malwina's forced participation in prostitution constituted trafficking in human being. On this basis the Court found Lora Stojko guilty of trafficking for sexual purposes in both cases and she was sentenced to four years of imprisonment. Kosta Dupski was only found guilty of trafficking in human being, since his main task had been restricted to transporting Malwina from Denmark to Sweden. He was sentenced to 2 years and 3 months imprisonment. To this court decision an expulsion order was added with a life long prohibition of entry into Sweden. The defendant was unsuccessful in his appeal against the conviction. The Appeal Court (*Hovrätten för västra Sverige*) took a more hard-line approach to the offence in question and rendered a judgment in December 2003, with the consequence that the length of the sentence was prolonged.[75]

Practice of national authorities

Sweden is internationally known for its commitment to combating prostitution and its work towards eliminating trafficking. During the country's chairmanship of the Nordic Council of Ministers in 2003 it was demonstrated once again that these matters has been given high priority in Sweden.[76] There is, thus, hope for great strides in the future.

[73] Lunds universitet, Juridiska fakulteten, Remiss: *Promemoria om Sveriges antagande av rambeslut om åtgärder för att bekämpa sexuellt utnyttjande av barn och barnprostitution*, Yttrande 27 June 2003, JÄ 1 385/03, p. 2.
[74] Case *No B 7477-03 Internationella åklagarkammaren v. Lora Stojko and Kosta Dupski, Göteborgs Tingsrätt,* The District Court in Gothenburg, Judgment of 15th of October 2003.
[75] *Skärpt straff för människohandel*, SvD 19 December 2003, p. 18.
[76] A National Plan of Action against trafficking was presented to the Parliament on 12th of June 2003. *H.Hamrén*, Lagen som ännu inte fungerar, Amnesty Press 03/03, p. 29.

Notwithstanding the complexity of fighting the reasons/demand for one of the most lucrative criminal enterprises, this is an important aspect of human trafficking, which needs further elucidation and appropriate response.

There is, however, hope for great advancement in the future. The Government announced its strategy against trafficking in human beings in international development cooperation on 30th of April 2003, which chiefly focuses on trafficking in women and children and concentrates on the worst forms of exploitation such as sexual exploitation, the exploitation of labour and hazardous child labour. The strategy testifies to great awareness and the priority measures are to contribute to: increased opportunities to earn income, primarily for young women; education for children in vulnerable situations and an efficient judiciary and extensive social services.

Reasons for concern

Trafficking is both a human rights issue (*e.g.* the right to life, liberty, the principle of non-discrimination) and an issue of organized crime. The emphasis has very much been on the criminal aspects of the trafficking in human beings as well as on a few of its segments such as prostitution, slavery and child labour. The prevention of the crime and the protection of the victims remain less developed.

Within the NGO community criticism has been expressed with regard to the application of the new provisions in the Penal Code on trafficking. In cases where the victim is under the age of eighteen there is no requirement to present evidence of coercion.[77] The problem is consequently that a great majority of the trafficked young women are in the age group of 19-21 years of age and the very strict rules on evidence, which is often hard to gather, especially if the victims have left the country, make the application of the new legislation difficult and inefficient.

Human rights violations are especially egregious when committed against children. ECPAT - Sweden (the Swedish branch of ECPAT - End Child Prostitution, Pornography and Trafficking in Children) with 23 NGO member organizations as well as individual members expressed its concerns in its comment to the third report on the UN Convention on the Rights of the Child by the Swedish Government[78], about the disposal of very limited resources by the police[79] and other relevant authorities for the fight against trafficking and abduction of children. At the Swedish National Police Board there were, according to the report, only two officers working against trafficking. One of them also deals with issues of child pornography crimes. In addition to that, there is one trafficking group within the Police Force situated in Gothenburg. In the view of ECPAT- Sweden, this is one of the reasons why the lack of knowledge is still prevalent and an increasing number of victims are trafficked to Sweden.[80]

Yet another disturbing fact is that despite several amendments made to penal provisions with the aim to reinforce protection of children and young people against different kinds of abuses, the current Swedish legislation on trafficking in persons, *i.e.* the Penal Code (BrB Chapter 4 § 1(a) *Lag om ändring i brottsbalken* (SFS 2002:436)) does not establish a strict penalty in cases of trafficking in children.

[77] *H.Hamrén*, Lagen som ännu inte fungerar, pp. 28-29.
[78] Sweden's third report to the Committee on the Rights of the Child, Regeringskansliet 2002.
[79] The Government has, however, recently allocated for its budget for 2004 increased funding to the police for the purpose of fighting trafficking in human beings. *O.Billger*, Regeringen satsar 30 miljoner mot människohandel, SvD 5 September 2003, p. 4; *L.Nylén*, Dags att slå till mot sexhandeln, Aftonbladet 18 November 2003.
[80] See NGO Monitoring, *Comments from ECPAT Sweden to the third Swedish Government report on the UN Convention on the Rights of the Child*, http://www.ecpatsweden.org/docs/rapport_030519.pdf , pp. 10-11.

Among the subject of serious concern are the alarming reports on child asylum-seekers who have disappeared from the refugee reception centres and who probably are being used for prostitution. According to estimates from the Swedish Migration Board, about 30 children were missing in 2003.[81]

A great proportion of the children who are victims of sexual abuses/crimes do not receive justice through the judicial system. There are thus very few convictions in cases of sexual abuse against minors and the majority of the offenders get acquitted by the courts due to a lack of evidence. It is estimated that during the last two years solely in 1 out of 10 cases the accused persons were found guilty. Even more shocking is the fact that some courts have motivated a lower penalty in cases of child abuse.[82] According to ECPAT-Sweden some of the problems in Sweden consist in the judges considering children's testimonies in the courts in the same way they consider the testimony of an adult, as well as the lack of training of the police officers on how to question a child victim of sexual abuse.[83]

Another area of concern is the application of the extra territorial legislation which was enforced in 1962. Only one individual has been convicted so far in Sweden for a sexual offence against a child committed abroad (in Thailand).

Furthermore, note should be made of the satisfactory legislation on possession of child pornography which has been introduced in Sweden and which came into force on 1st of January 1999. However, the legislation has not proven to be sufficient to meet the demands of combating the dissemination of child pornography, especially on the Internet. It has simply not produced the expected results showing that it is indeed a useful weapon in the fight of this crime. The number of reported cases involving child pornography for the year 2002 was 392. Preliminary statistic data for 2003 are even higher. According to ECPAT-Sweden the police force in Sweden in general lacks the special competence that is needed in the fight against child pornography. In order to determine whether a picture or a movie is to be considered as child pornographic, the police officers involved have to send the material to the Child Pornography Unit at the Swedish National Police Board. The assessment work seems to be a very time consuming task since it may take up to two years from the confiscation of the material until the case has been brought before the court. The courts then have the possibility of taking into consideration the time factor and may on this basis decide on a milder sentence.[84]

Legislative changes are, in addition, needed with respect to the criminalization of agents' unduly evocation of consent to adoption of children.

Finally, it should be mentioned that Sweden has not yet ratified the Convention on Cyber Crime (STE 185) of 23 of November 2001.

[81] Aftonbladet, Sexhandel med barn, 17 November 2003, pp. 16-17 ; *J.Ritzén*, Nytt förslag ska hindra smuggling med flyktingbarn, Aftonbladet 18 November 2003, p. 17.
[82] Barnombudsmannen, remissvar *Betänkandet Barnmisshandel- att förebygga och åtgärda* (SOU 2001:72) S2001/8007/ST, 31 January 2002.
[83] ECPAT Sweden, report, op. cit., pp. 9-10.
[84] ECPAT Sweden, report, op. cit., p. 8.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

International case law and concluding observation of international organs

The European Committee of Social Rights noted during its review of the Swedish report under the Revised European Social Charter in 2003, that there are no rules in Swedish legislation for the maximum length of detention on remand. In was noted, however, that there is an obligation to conduct pre-trial investigations involving minors promptly and a decision on whether or not to prosecute must be taken no later than six weeks after the charges have been brought against the person in question.[85]

National legislation, regulation and case law

At present, exceptional grounds are required for a child under the age of 16 to be detained in accordance with the 1991 Act of Special Controls of Aliens (*Lag om särskild utlänningskontroll* (SFS 1991:572)). The Commission of inquiry, which was appointed by the Government in April 2002 and which was given the task of conducting a review of the regulations on enforcement of refusal-of-entry and expulsion orders, presented its findings in March 2003. (SOU 2003:35, *Verkställighet vid oklar identitet*)

One of the Commission's principal proposals implies that some of the regulations contained in the 1991 Act of Special Control of Aliens should be amended in various ways in order to make them more consistent with the UN Convention on the Rights of the Child.

Firstly, in the view of the Commission, the age limit in the existing legislation for taking a child into detention should be raised to 18.[86] Furthermore, it is suggested that the relevant provisions of the 1991 Act of Special Control of Aliens be adjusted so that it shall not be possible in the future for children who are not Swedish citizens and who are under the age of 18 years to be placed in a correctional institution, remand centre or police arrest, unless there are exceptional grounds for doing so. According to the Commissions' proposals, yet another improvement of the current state of affairs may be achieved through the introduction of the same time limit for children who are held in detention on the basis of the 1991 Special Control of Aliens Act as is the case currently in situations who fall within the realm of application of the ordinary Aliens Act (*Utlänningslagen* (SFS 1989:529)).

Reasons for concern

One issue, which has received considerable attention by NGOs and the UNHCR, is the detention of asylum-seekers, especially of those under the age of 18 years.[87] The existing arrangements for the detention of children pending enforcement of refusal-of-entry or expulsion orders are clearly unsatisfactory. At present, there is no regulation of the length of time that a child taken into detention in accordance with the 1991 Act of Special Control of Aliens can be kept in detention.

Deprivation of liberty should be kept as short as possible. The Government has recently, *i.e.* on 6th of November 2003, submitted to the Parliament a Bill on a new Act on Infectious Dis-

[85] European Committee of Social Rights, Conclusions 2003(Sweden), p. 53, www.coe.int
[86] SOU 200:35, *Verkställighet vid oklar identitet m.m.*, p. 22.
[87] *G.Tamas*, Sluta låsa in de asylsökande barnen!, Barn 5-6/ 2003, p. 15; *R.Lööf*, Implementing International Human Rights Law on behalf of Asylum-Seekers and Refugees: The Record of the Nordics', (unpublished paper, on file with the author) p. 14.

eases (Prop. 2003/04:30, *Ny smittskyddslag m.m.*) to be enforced on 1st of July 2004.[88] The compulsory isolation of HIV carriers who failed to comply with certain statutory measures, irrespective of the reasons, which currently is permitted (*Smittskyddslagen* (SFS 1988:1472, § 13)) with the purpose to prevent the spread of AIDS, shall be upheld. According to the proposed provisions there is an apparent risk for the HIV carriers of being deprived of liberty for an indefinite period, although a right to periodical review is envisaged, *i.e.* the decision on isolation will be prolonged on a continuing basis by the respective County Administrative Court (*länsrätt*). In the proposal, reference has, however, been made to the requirement that there must be an immediate need for the implementation of compulsory measures, *i.e.* there is a situation where the spreading of infectious diseases constitutes danger to others and to the community.[89] Several reviewing instances (*remissinstanser*) have expressed concern about the proposed new legislation and they have objected to the idea of compulsory isolation of HIV carriers.[90]

Article 7. Respect for private and family life

International case law and concluding observation of international organs

The European Commission against Racism and Intolerance (ECRI) pointed out in its second report on Sweden that "the necessity and practical application of this law, *i.e.* the 1991 Special Control of Aliens Act (*Lag om särskild utlänningskontroll* (SFS 1991:572)) should be kept carefully under review by the authorities".[91] Among the reasons for the Commission's concern are the existing reports on the misuse of secret wiretapping. According to the Act, in question the Swedish police can, in certain cases, use secret wiretapping[92] and secret wire-surveillance[93] to eavesdrop on (exclusively) foreign citizens. It has been maintained that the purpose of the legislation is to prevent politically motivated (criminal) acts of violence, threats and compulsion. The Stockholm City Court decides if the law is applicable to the foreigner in question.

National legislation, regulation and case law

On 5th of June 2002, after a heated debate, the Swedish Parliament passed legislation making it possible for same-sex couples registered in a formal, legally recognised partnership to apply to become adoptive parents on the same conditions as those for heterosexual couples. The general impediment to such adoption has been in other words removed. Previously, registered partners could neither adopt children jointly nor individually. The law reform allows registered partners to adopt, *inter alia,* jointly. As a consequence of the above mentioned equalization of registered partners with spouses, Sweden denounced its ratification of the 1967 European Convention on the Adoption of Children with effect from 4th of January 2003. Nevertheless, marriage as such still remains the privilege of heterosexual couples in Sweden.[94]

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[88] See also SOU 2003:83, *Extraordinärt smittskydd.*
[89] Prop. 2003/04:30, *Ny smittskyddslag m.m*., p. 136.
[90] Prop. 2003/04:30, pp. 124 and 131. See also *L.Olsson*, Hård kritik mot isolering av sjuk utan tidsgräns, SvD 6 November 2003, p. 6; *L.Olsson*, Kontroversiell tvångsisolering kvar i förslag, SvD 14 November 2003, p. 12.
[91] ECRI, Second report on Sweden CRI(2003)7, § 44, p. 17.
[92] According to the Swedish Code of Procedures (*Rättegångsbalken*), Chapter 27, Section 18, secret wiretapping is secret interception of a communication (written or oral) between two or more individuals via telephone or fax, etc..
[93] Wire-surveillance has been defined in Chapter 27, Section 19 in the Swedish Code of Procedures (*Rättegångsbalken*) 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 these messages were conveyed. See *The Swedish NGO Foundation for Human Rights and The Swedish Helsinki Committee for Human Rights*, Alternative report, op. cit., p. 13; *A. Knutsson*, Åsiktsregistrering och telefonavlysning, SvJT 2003, pp. 375-382.
[94] *H.Ytterberg*, All human beings are equal, but some are more equal than others-equality in dignity without equality in rights?, in K.Boele & A.Fuchs (eds.), Legal Recognition of Same-Sex Couples in Europe, Antwerp 2003, p. 8.

The new provisions, *i.e.* the revised Chapter 3, Section 2 of the Registered Partnership Act of 1994 (*Registrerat Partnerskap* (SFS 2002:769)) took effect on 1st of February 2003. As in all cases of applications for adoption, there must be an individual and thorough assessment of the applicants' capacity to provide the prospective adoptive child with a beneficial environment for its upbringing.[95] The very first applications for adoptions were submitted to the local authorities by one lesbian couple living in the town of Umeå and by one gay couple living in Stockholm. The applicants received permission to adopt children in October 2003.[96]

A registered partner may, in addition, adopt his or her stepchild in Sweden, provided that the general conditions for adoption are fulfilled. No exceptions have been made in respect of children adopted from abroad.[97]

In addition, registered partners in Sweden and same-sex cohabitees can now exercise joint custody of a child in the capacity of specially appointed custodians. This may occur if: 1. one of the parents neglects to care for the child in his or her custody 2.the child is permanently cared for and brought up in a home other than that of the parents and it is deemed in the best interests of the child that it remains in that home and 3. the child's custodian (normally the child's parents or one of them) dies.[98]

For inter-country adoptions, the limitations and terms laid down by the children's countries of origin will apply. The Swedish rules on inter-country adoptions are nevertheless under consideration. A few proposals were submitted by an investigative Committee to the Government in the summer of 2003 and a new legislation is expected to be enforced as of 1st of January 2005.[99] In the Committees' view, there should be an open accounting procedure for costs, *i.e.* on principle not accepting more than actual costs within the framework of the adoption fee, and of striving for there to be no direct link between adoption and aid work. It is apparent from the report that there is an ambition for Sweden to lead the way as a nation in reducing the risks of trafficking in children in connection with inter-country adoption.

The situation of the unaccompanied children has attracted attention in several aspects. One of the major issues of concern is that at present the custodians for unaccompanied children only have authority within the realm of economic affairs. There have, therefore, been certain obscurities regarding the extent of the custodian's assignment. An investigative Committee has suggested that there should be a possibility for a chief guardian to appoint a custodian who can take the place of the caretaker as well as of the guardian of unaccompanied children.[100] (See for further comments the text under Article 18 in this report) This would secure that the custodian can act and make decisions in all matters, including housing, concerning the unaccompanied child. Currently, there are no clear rules with respect to when a child can apply for a residence permit itself. The Committee suggests that a child, who has reached the age of 15 years, should be allowed to file such an application. This is one of the proposals that have attracted criticism from, among others, the Swedish Red Cross. In its opinion, setting up an age limit at 15 for a child's application for asylum to be reviewed is not justified and is even contrary to the UN Convention on the Rights of the Child (Article 22). All children should be given the possibility of submitting an application. In the event the child is unable to do that, the custodian should be obliged to assist the child.[101]

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[95] Ministry of Justice, *Homosexual partnership and adoption*, Ju 03.03e, March 2003, p. 1.
[96] SvD, *Familjelängtan förverkligad*, 11 October 2003, p. 7.
[97] *M.Jänterä-Jareborg*, Registered Partnership in Private International Law: The Scandinavian Approach, in K.Boele & A.Fuchs (eds), p. 153.
[98] Ministry of Justice, *Homosexual partnership and adoption*, Ju 03.03e, March 2003, p. 2.
[99] SOU 2003:49, *Adoption –till vilket pris ? Betänkande av utredningen om internationella adoptioner*.
[100] SOU 2003:51, *God man för ensamkommande flyktingbarn. Delbetänkande av utredningen om förmyndare, godemän och förvaltare*, p. 14.
[101] Svenska Röda Korset, *Yttrande över god man för ensamkommande flyktingbarn* (SOU 2003:51), 7 October 2003, p. 2.

Currently, there is no specific provision on how to use the so called surplus information which has been submitted during a criminal investigation in Sweden. Up until now the prevailing point of view has been that it is permitted to use and present surplus information as evidence in judicial proceedings due to the principle of free shifting of evidence (*fri bevisföring*) in Swedish process law and the obligation of the police to investigate and prevent crimes.[102]

In a Ministry memorandum on surplus information in criminal investigations[103], which was released in March 2003, it has been proposed that surplus information shall be available as evidence in judicial proceedings on the condition that imprisonment for at least one year is prescribed for the crime in question and that it can be assumed that the court will not only fine the defendant.[104] In the view of the Council on Legislation (*Lagrådet*) the introduction of a specific regulation on the use of surplus information in Swedish law is required in order to comply with treaty obligations, such as for example, Article 8 of the European Convention on Human Rights.[105]

In a judgement of 1st of September 2003 the Swedish Supreme Court decided to approve the use of surplus information (information from tapped telephone conversations) which was invoked as evidence by the Prosecutor-General during the judicial proceedings in question.[106] The Court referred to the European Convention (Articles 6 and 8) and its case - law and ruled that the surplus information could be used, but with some caution since secret telephone tapping is a measure which constitutes an interference with the right to respect for private and family life as guaranteed in Article 8 §1 of the ECHR, it is only allowed under the circumstances mentioned in Article 8 §2. On the other hand, the Court arrived at the conclusion on the basis of the case- law of the European Court concerning the application of Article 6 (the right to a fair trial) that the question of what kind of investigation materials a national court may take into account during judicial proceedings is primarily a matter for the national legal system. It may even be lawful, in its view, to invoke such information that has been produced in a way incompatible with the European Convention.

One question discussed, as a result of the above judgment is, whether there is a real need to regulate the use of surplus information in a specific legislation or whether the judgement as such is sufficient as clarification of the current state of affairs in Sweden.[107]

The Government proposed new rules to the Parliament in May 2003 on when to appoint a solicitor (*offentligt ombud*) in cases concerning secret telephone tapping and secret surveillance with cameras. The solicitor's role should be primary to guard the integrity of the person(s) concerned. The appointed lawyer should have possibilities to appeal the decision. It is also proposed that it should be possible use secret telephone tapping and camera surveillance in more areas and under more circumstances than currently. The rules should enter into force on 1st of October 2004. [108]

A new regulation which entered into force on 1st of July 2003 forbids the social authorities (*socialtjänsten*) to collect personal information that of sensitive nature for the person involved (*Lag om ändring i lagen* (2001:454) *om behandling av personuppgifter inom socialtjänsten* (SFS 2003 :136)).[109] There are, however, several exceptions to this rule.

[102] Ds 2003:13, *Överskottsinformation*, p. 38; *T.Ahlstrand*, Till frågan om fri bevisprövning och bevisförbud, SvJT 2002, pp. 545-548.
[103] Ds 2003:13, *Överskottsinformation*.
[104] Op. cit., p. 11.
[105] Op. cit., p. 55. see also *G.Regner*, Användning av hemliga tvångsmedel, SvJT 2003, pp. 373-375.
[106] See *J.L, B.H, T.Z, R.H and O.N v. Riksåklagaren* (The Prosecutor-General), Högsta Domstolen (HD) (The Supreme Court), Judgment of 1 September 2003, Case B 2076-03.
[107] *O.Billger*, RÅ-kritik mot ny lag om buggning, SvD 27 September 2003, p. 12; *HH*, Remissinstanser positiva till "avlysningsspill", Advokaten, October 2003, p. 9.
[108] Prop. 2002/03:74, *Hemliga tvångsmedel – offentliga ombud och en mer ändamålsenlig reglering*.
[109] See § 7 (a).

Reasons for concern

Despite the scarce application of the 1991 Special Control of Aliens Act[110], the provisions of this particular act have been criticised by practicing lawyers and several NGOs because they arguably give the investigative authorities considerably greater powers than those offered by other Swedish legislation in this field, which may constitute discrimination of non-citizens.

NGOs have, in addition, conveyed demands that the possibility for redress for individuals that have been wrongly subjected to secret means of compulsion be introduced in Sweden.[111] This demand obviously becomes all the more important in the light of the new law on terrorism and the proposals for the use of surplus information as evidence in judicial proceedings, which comprise a risk for an increased number of encroachments, *i.e.* individuals other than the object of suspicion (*i.e.* innocent people) may be exposed to violations of their integrity.[112]

There are some dangers involved in the vague basis for the implementation of compulsory measures, which are proposed by the new Bill on Infectious Disease Act (prop. 2003/04:30, *Ny smittskyddslag m.m.*). Persons, who have been diagnosed as suffering from infectious disease, have to obey according to certain rules of behaviour, which might be in contradiction with the right to privacy. More seriously, the County Administrative Court can, under certain circumstances rule on compulsory medical examination despite that the person concerned opposes it.[113]

Concern has been expressed, and rightly so, with regard to the Swedish law reform on adoption which has created certain legal problems. There is, for example, currently a risk of some adoptions being considered as 'limping adoptions', since registered partners may adopt stepchildren even where the children were originally adopted from abroad. It has been pointed out that in such cases, the adoption will be considered legally valid in Sweden as the State of (second) adoption, whereas the child's State of origin and other States may refuse to recognise the second adoption.[114]

[110] See, *e.g*, Skr. 2002/03:3, *2002 års redogörelse för tillämpning av lagen (1991:572) om särskild utlänningskontroll*. According to the latest available report, Skr. 2003/04:46, *2003 års redogörelse för tillämpningen av lagen (1991:572) om särskild utlänningskontroll*, of 20 November 2003, the Act was used twice in 2003, p. 6.

[111] *The Swedish NGO Foundation for Human Rights and The Swedish Helsinki Committee for Human Rights*, Alternative report, op. cit., pp. 8, 13-14. An individual who has been exposed to secret measures is not informed of the intrusion of his/her private life. For crime fighting reasons he or she is not told in advance of the use of secret surveillance. According to the new law on terrorism, which is in force since 1 July 2003 and the 1991 Special Control of Aliens Act, the police can, under certain circumstances use secret wiretapping and secret wire-surveillance to eavesdrop on suspect foreign citizens. In other words, since 1 July 2003, the mere suspicion, based on the background of the individual, of committing any of the acts enumerated in the terrorist Act, is enough to use secret surveillance. The Government is, however, required to present each year a report to the Parliament detailing all of the electronic monitoring done during the previous year. The latest available report is from 20 November 2003, Skr. 2003/04:36, *Hemlig teleavlyssning, hemlig teleövervakning och hemlig kameraövervakning vid förundersökning i brottmål under år 2002*. The review is based on information supplied by the Prosecutor-General (*Riksåklagare*) and the National Police Board (*Rikspolisstyrelsen*). The Government considers the use of secret wire-surveillance as a valuable method in combating severe, organized crime.

[112] Uppsala Universitet, Juridiska fakulteten, Remissyttrande, *Promemorian Överskottsinformation (Ds 2003:13),* 27 August 2003, JURFAK 2003/43, p. 1. A Commission of inquiry has recently suggested that there is a need for improvements in respect with the regulation by law of the use of various methods of investigation by the Defence forces. SOU 2003:30, *Försvarets radioanstalt- en översyn*. See also SOU 2003:34, *Försvarets underrättelseverksamhet och säkerhetstjänst*.

[113] Prop. 2003/04:30, *Ny smittskyddslag m.m*., p. 2.

[114] *M.Jänterä-Jareborg*, p. 156.

Article 8. Protection of personal data

International case law and concluding observation of international organs

The European Court of Justice (ECJ):

Case C-101/01, *Bodil Lindqvist v. Division of the office of public prosecutor in Jönköping*, Preliminary ruling requested by the Göta Court of Appeal (*Göta hovrätt)*, Judgment of 6 November 2003. The case concerns the interpretation of the Data Protection Directive (95/46/EC).

Bodil Lindqvist worked as a leader for the candidates for confirmation within Alseda parish. While doing so she set up a homepage on the Internet where the members of the parish easily could gain the information they needed (*i.e*. information about her, her husband and sixteen colleagues within the parish). The information contained description of the work assignments and the spare time occupations of her colleagues. In some cases, the information included the family affairs of, phone numbers to and other personal data of her colleagues. Ms. Lindqvist did not inform her colleagues about the homepage and did not get their permission before setting it up. Neither did she ask for approval from the Swedish Data Protection authority (*Datainspektionen*).

Despite the fact that the homepage was removed shortly thereafter, legal action was brought against her based on § 49 (b-d) in the Act on Personal Information (*Personuppgiftslagen* (SFS 1998:204)). She was convicted and fined. Subsequently, Ms. Lindqvist appealed.
The Court of Appeal (*Göta hovrätt*) referred the following questions, among others, to the European Court of Justice:

- Is mentioning a person's name and phone number on a web site something that is regulated under the Data Protection Directive?
- Would the publishing of information of the type described above on a private web page be covered by any of the exemptions to data protection regulation under the Data Protection Directive?
- Is information about someone injuring her foot and hence working part time medical data — and therefore sensitive personal data under the Data Protection Directive?
- If someone in Sweden uses a server situated in Sweden to host their web page with personal data so that the web page is accessible to people in other countries, does that amount to a transfer of personal data to other countries under the Data Protection Directive?

After dealing with the substantive issues the European Court of Justice held that:

- Personal data means any information relating to an identified or identifiable natural person. It must, therefore, include the name, telephone number and information about the interests of the person in question.
- Publishing personal data on a web page involves processing the data by automatic means.
- In the view of the Court, it would constitute the processing of personal data under the Data Protection Directive to refer to people on a web page and to identify them by name or other means.
- The exception under the Data Protection Directive that allows the processing of personal data by a natural person in the course of a single household or other activity does not apply, where the processing of the personal data is on the Internet so as to

make the personal data accessible to an indefinite number of people. The Court concluded that Mrs Lindqvist's processing was not covered by any of the exceptions to the Data Protection Directive.

- The reference to the colleague, who had injured her foot, was considered data concerning health and, therefore, was sensitive personal data within the meaning of the Data Protection Directive. The term "data concerning health" must be given a wide interpretation so as to include information on all aspects of an individual's health, both physical and mental.
- If the Data Protection Directive were to be interpreted to mean that there was a transfer of data to a third country every time the personal data was loaded onto a web page, the member states would have to ban personal data being placed on the Internet even if the data emanated solely from one country, if it did not provide an adequate level of protection of personal data.
- The Court concluded that there was no transfer of personal data to another country outside the European Union where:
    - an individual in a member state loads personal data onto a web page;
    - the web page is stored by a host provider; and
    - the host provider is in the individual's own state or other member state of the European Union.
- The Court left open the question of whether the hosting provider would be treated as transferring the data, if and when someone from a state outside the European Union requested data from the web page concerned.

National legislation, regulation and case law

A new Act on Electronic Communications (*Lag om elektronisk kommunikation* (SFS 2003:389)) entered into force on 25th of July 2003.[115] This important legislative reform took place in order to make the domestic regulations in the relevant area of law compatible with the five EU Directives.[116] The purpose of the new legislation is to protect individuals against the violation of their personal integrity by processing of personal data.[117] If another statute, for example the new Act on Electronic Communications, contains provisions that may be found to deviate from the Personal Data Act (*Personuppgiftslagen* (SFS 1998:204)), the provisions of the latter shall apply.[118]

Personal data may, according to the main rule in Section 10 of the Personal Data Act, only be processed if the registered person has given his/her consent to the processing. However, there are some exceptions and personal data may, for example, be processed if necessary in order to perform a work task in conjunction with the exercise of official authority.[119]

According to Article 5.1 of Directive 2002/58/EC, Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications

[115] *L.Haglind & A.Norin*, Lagstiftning i riksdagen våren 2003, SvJT No. 7, 2003, p. 717. In addition, a few adjustments of the Act on Electronic Communications have recently been proposed : SOU 2003 :74, *Ökad effektivitet och rättssäkerhet*.

[116] Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (*Access Directive*), Directive 2002/20/EC on the authorisation of electronic communications networks and services (*Authorisation Directive*), Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (*Framework Directive*), Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (*Universal Service Directive*) and Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (*Directive on privacy and electronic communications*).

[117] Personal Data Act, Section 1. The Personal Data Act has been, however, amended as of 1st of January 2004. See *Lag om ändring i personuppgiftslagen* (1998:204) SFS 2003:466 and *Förordning om ändring I personuppgiftsförordningen* (1998:1191) SFS 2003:618.

[118] Personal Data Act, Section 2 and Act on Electronic Communications Chapter 6, Section 2.

[119] Personal Data Act, Section 10§ e.

network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned. According to the Government Bill, which deals with the new act, Article 5 of the Directive is of fundamental importance for the protection of privacy in the electronic communications sector.[120] The Article is implemented through Chapter 6 Section 17 of the Act on Electronic Communications. According to the Directive the prohibition of storage of communications and the related traffic data by persons other than the users or without their consent shall not prevent technical storage which is necessary for the conveyance of a communication.[121] This exemption is also implemented in the new Act.[122]

The storage of traffic data is, in addition, dealt with in Article 6 of the Directive and in Chapter 6 Sections 5 to 8 in the Act on Electronic Communications. The principal rule entails that traffic data relating to subscribers and users, processed and stored by the provider of a public communications network or publicly available electronic communications service, shall be erased or made anonymous when it is no longer required for the transmission of a communication. There are several exemptions from the prohibition of storing and processing traffic data. Both the Directive and the Swedish legislation contain provisions which permit the processing of traffic data when, for example, it is necessary for the purposes of subscriber billing and interconnection payments.[123]

The Act on Electronic Communications also contains provisions concerning the security of processed data.[124] The provider of a publicly available electronic communications service and the provider of the public communications network shall take appropriate measures to safeguard the security of processed data. According to the Government Bill the security of processed data comprises the security of personal data.[125]

The Data Inspection Board (*Datainspektionen*) is the supervisory authority in Sweden as regards the processing of personal data and it has commented upon the Act on Electronic Communications.[126] The Data Inspection Board has underlined that Article 4 of Directive 2002/58/EC, concerning security, is to be appraised in the light of Directive 95/46/EC.[127] The Data Inspection Board is, therefore, of the opinion that Chapter 6 Section 3 of the Act on Electronic Communications, which regulates the security, should contain a reference to the relevant provisions of the Personal Data Act.

The enquiry Commission which was given the assignment to survey the processing of personal data in activities under the legislation on aliens and citizenship presented its conclusions in 2003.[128] The Commission proposes the introduction of a new act – *The Personal Data of Aliens Act* (*Utlänningsdatalag*) with the overall purpose to protect individuals against undue intrusions into their personal integrity. The new Act shall apply to all wholly or partially computerized processing of personal data. Manual processing shall, in addition, be included in the provisions of the proposed legislation, if the personal data is included or is intended for inclusion in an organised collection of personal data which is accessible for searching or compilation according to specific criteria, *i.e.* a register.[129] Nevertheless, the proposed provisions reflect an approach of balancing the desire to guarantee efficient protection of the integ-

[120] Prop. 2002/03:110, *Lag om elektronisk kommunikation*, pp. 252-255.
[121] Directive 2002/58/EC Article 5.1 and § 22 of the preamble.
[122] Act on Electronic Communications Chapter 6, Section 17 § 2.
[123] Directive 2002/58/EC Article 6.2 and Act on Electronic Communications Chapter 6, Section 6.
[124] Directive 2002/58/EC Article 4 and Act on Electronic Communications Chapter 6, Sections 3-4.
[125] Prop. 2002/03:110, *Lag om elektronisk kommunikation*, pp. 250-252.
[126] Yttrande över förslag till ny lagstiftning om elektronisk kommunikation (SOU 2002:60)).
[127] Directive 2002/58/EC § 20 of the preamble.
[128] SOU 2003:40, *Utlänningsdatalag*.
[129] Op. cit., p. 7.

rity of individuals (sensitive personal data should only be subject to processing if *absolutely necessary*)[130] , with considerations taken on the basis of the interest of society, *i.e.* the ability of public authorities to use modern IT technology in the pursuit of their duties. With regard to the Swedish Migration Board's computerised register of fingerprints and photographs taken under the authority of the Aliens Act (*Utlänningslagen* (SFS 1989:529)), it is suggested that the purpose be defined more restrictively. The register shall only be permitted to contain certain (*i.e.* restricted) types of information.

Furthermore, the Commission considers it necessary to provide greater freedom in certain respects to transfer personal data to a country that is not a member of the EU or the EEA because of the international nature of the area of activity.[131]

Finally, it is suggested that statutory provisions should be introduced in the Aliens Ordinance (*Utlänningsförordningen* SFS (1989:547)) for the release of personal data to foreign authorities under the Schengen Convention's consultation system.[132]

The case-law of domestic courts:

In the context of protection of personal integrity under Swedish law the following cases decided by domestic courts are of relevance.

In the case of *Scania and Blekinge Court of Appeal* (Hovrätten över Skåne och Blekinge), *Regional Public Prosecution Office in Stockholm (*Åklagarmyndigheten i Stockholm) v. Lars Magnus Andersson and Lars Simon Olsson (Breach of the Personal Data Act (1998:204), etc. (Judgment of 11 November 2003, B 3113-02) the issue was raised of whether the defendants, by collecting and storing information about people in a register in their computers, had violated the Personal Data Act. According to the Court it has been established that the defendants had violated Section 13 of the Personal Data Act (prohibition to process personal data that reveals, *inter alia*, political opinion). The Court pointed, however, to the fact that the Personal Data Act does not apply to such processing of personal data that a natural person performs in the course of activities of a purely private nature (Section 6). Nor does Section 13 apply to such processing of personal data as occurs exclusively for journalistic purposes or artistic or literary expression (Section 7). Moreover, the investigation has shown that the defendants began processing personal data before the current Personal Data Act came into force. The former act, the Data Act, was therefore applicable. It was established that Olsson had given Andersson a CD containing a register with personal data concerning 1,068 persons. Olsson had thereby violated the Data Act (Sections 11 and 20). It was, however, not proven that the personal data that Andersson had collected and stored was part of a register, as defined by the Data Act. Andersson had therefore not violated the Data Act.

The case *Regional Public Prosecution Office* (*Åklagarmyndigheten in Stockholm, polismålsenheten) v. Kenneth Wiman,*[133] involved consideration of the issue of what sanctions should be imposed for committing a computer crime (computer encroachment) (*dataintrång*) and breach of duty (*i.e.* duty of confidentiality in relation to certain records). The Court established that the Swedish policeman Kenneth Wiman had collected and disclosed by handing over information (classified as secret) of considerable proportions about the names contained in a police register to the employer in question, without permission. In the view of the Court Wiman had through his actions seriously misused his special position of confidence in society as a policeman. The crime he committed was therefore considered as serious, but did nevertheless not amount to the presumption of a prison sentence. It had become clear during the

[130] SOU 2003:40, p. 25.
[131] Op. cit., pp. 27-28.
[132] SOU 2003:40, p. 30.
[133] Judgment of the Court of Appeal (*Svea hovrätt*) of 1st of September 2003, case B 10958-02.

proceedings that Wiman was, at least indirectly, forced to leave his work because of the mentioned actions. The sanction was restricted to a conditional sentence and fine (SEK 3 000).

Reasons for concern

In order to protect individual personal integrity, it is of outmost importance that no more data than necessary is accessible by a large number of persons in intra or inter-authority computer systems. It seems that current Swedish legislation does not guarantee sufficient protection against unnecessary access to personal data. In other words, authority to access some specific personal data should only be granted to those who are in need of it to be able to perform their professional duties.

There have been reasonable fears expressed in civil society that human genetic data, gathered through biological samples, have been used in a way that may pose a threat to the guarantees enshrined in Article 7 of the EU Charter.

Article 9. Right to marry and right to found a family

National legislation, regulation and case law

The new Cohabitatees Act (*Sambolag* (SFS 2003:376)) which entered into force on 1st of July 2003 replaced the 1988 Cohabitees (Joint Homes) Act. Whether the cohabitees are of the opposite sex or of the same sex is of no importance. The definition of the concept 'cohabitants' has been amended and thereby making it generally applicable. According to § 1 of the new Act two persons who live together on a permanent basis as a couple and who have a joint household[134] shall be considered as cohabitants. The Cohabitees Act applies only to cahabitee relationships in which neither of the cohabitants is married or a registered partner.

Moreover, the rules on when a cohabitee relationship should be considered as having ended, has been clarified. This is a welcome reform, which extends the legal protection of forms of joint households to other than those of heterosexual couples. The main purpose of the new legislation is to provide a minimum protection for the weaker party at the dissolution of the cohabiting relationship.[135] The main rule in a situation of division of property is that the value of the joint home and joint household goods shall be divided equally between the cohabitants. However, it has been pointed out that the provisions on property relations (certain types of property) leave scope for legal uncertainty.[136] The new legislation applies only to the cohabitants' joint home and their joint household goods. In addition, cohabitants have no right to inherit from one another, unless they have written a will making such a provision.[137] Neither do they have maintenance obligation towards one another. It is not possible for an unmarried cohabite couple to jointly adopt a child. On the other hand, there are a number of provisions under tax legislation and within social insurance that equate cohabitants with spouses/registered partners.

The Swedish Marriage Code (*Äktenskapsbalken* (SFS 1974:236)) prescribes 18 years of age in order for a person to be legally eligible for marriage. According to Chapter 2 § 1 of the Marriage Code a person under the age of eighteen may, however, acquire the permission from the County Administrative Board (*länsstyrelsen*) to enter into marriage. Although the conclu-

[134] The expression "joint household" means that the cohabitants share chores and expenses and thus cooperate in daily activities at home. It means furthermore that the cohabitants have joint financial affairs.
[135] See generally on the family law reforms *A.Agell*, Nordisk äktenskapsrätt, Nordiska Ministerrådet, 2003 (Nord 2003:2).
[136] *A.Wickström*, Replik : Missförstånd och feltolkningar om nya sambolagen. Advokaten, August Nr. 6, 2003, p. 21; *A.Arstam*, *Klargör eller förbättra lagtexten*, Advokaten, October 2003, p. 23.
[137] Ministry of Justice, Cohabitees and their joint home, Ju 03.08e, August 2003, pp. 1-2.

sion of marriage is viewed by the Swedish authorities/courts as a highly personal matter, decisions on dispensation from the minimum age requirement have seldom occurred.

Nevertheless, early/child marriages, which are often arranged/forced marriages involving girls who are not Swedish citizens, but who follow the laws of their native country, are currently legally recognised in Sweden. Apparently, there is an urgent need for legal change in this area. Therefore, the proposed changes in, *inter alia*, the Marriage Code (*Äktenskapsbalken*) Chapter 2 § 1 (impediments to marriage) as well as in relation to the Act on Certain International Legal Relations Concerning Marriage and Guardianship (SFS 1904:26) (*Lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*, SFS 1904:26))), which were presented by the Government on 13 of November 2003 (*Åtgärder mot barnäktenskap och tvångsäktenskap*)[138], are welcome. The statutory amendments are expected to be enforced in May 2004.[139] It remains, however, to be seen whether this deadline can be kept since the wording in some of the above mentioned proposals and the omission of other regulations considered as necessary have encountered resistance in the Council on Legislation (*Lagrådet*).[140]

The new legislation is intended to create a more effective tool to prevent child/forced marriages and to ensure better protection of minors in the matter of marriage.[141] A marriage which has been concluded outside Sweden, where one of the parties has not achieved majority, shall no longer be valid in Sweden. The age limit of 18 shall be imposed on all prospective spouses who wish to be married by a Swedish officiator and irrespective of citizenship. Only very special reasons (*särskilda skäl*) such as for example when the young girl is pregnant, must exist in order to grant dispensation from the age requirement.[142] The term "special reasons" does not comprise a reference as to religious or cultural traditions. The main reason put forward is that under-aged girls and boys generally have not reached the necessary maturity level in order to be able to independently take a stand-point on problems of a personal and economic kind, ensuing a durable life together.[143] This is seen as an important step towards elimination of 'honour' related violence as well as other acts of cruelty.

Moreover, it is suggested that a marriage which has been concluded abroad and is manifestly incompatible with the Swedish *ordre public* shall be rejected.[144] In other words, forced marriage or marriage which would not have been allowed on the basis of the Swedish impediment requirements shall not be legally recognised. In addition, it shall be easier to dissolve such marriages. Divorce shall be granted immediately.[145] The applicability of the Penal Law provisions with regard to child marriages and forced marriages will be considered, however, on another occasion.[146]

Notwithstanding the trend in Sweden to place registered partnership on the same footing as marriage, the institution of marriage continues to be exclusively granted to heterosexuals. This state of affairs was recently pertinently described by the Ombudsman against discrimination on the basis of sexual orientation (HomO), Hans Ytterberg, as follows: "marriage nowadays is used to maintain a hierarchy between heterosexuality, the norm, and homosexuality,

[138] The above mentioned proposals are to great extend based on the Ministry Memorandum Ds 2002:54, *Svenska och utländska äktenskap.*
[139] Lagrådremiss, *Åtgärder mot barnäktenskap och tvångsäktenskap*, p. 1.
[140] *R.Holender*, Lag mot barnäktenskap får kritik, SvD 5 December 2003, p. 6. Criticism has also been expressed by the Faculty of Law, Uppsala University, Remissyttrande, *Departementspromemorian Svenska och utländska äktenskap* (Ds 2002:54), JURFAK 2002/24, 20 January 2003, pp. 1-2.
[141] Op. cit. p.1; *TT*, Ny lag kan stoppa barnäktenskap, SvD 14 November 2003, p. 9.
[142] Lagrådremiss, *Åtgärder mot barnäktenskap och tvångsäktenskap*, pp. 19-20.
[143] Op. cit., p. 27.
[144] Op. cit., p. 23.
[145] Op. cit., pp. 25 and 29. It has been proposed that the new wording of Chapter 5 § 1 in the Marriage Code (*Äktenskapsbalken* (SFS 1994:1118)) shall enter into force on 1st of January 2004.
[146] Op. cit., p. 11.

the deviation".[147] The Ombudsman demanded on 26th of November 2003 the introduction of a gender neutral Marriage Act. In the proposal which was put forward to the Minister of Justice it is argued that: "Having two different laws- partnership for gays and lesbians and marriage for heterosexuals-is not justified, even when providing the same rights and legal responsibilities".[148]

Members of the Parliament (*the Riksdag*) representing the Left Party and the Social Democratic Party have on this background argued for a modification of the Swedish Marriage Code (*Äktenskapsbalken*). In their opinion, homosexual couples should have the same right to marry as heterosexual couples since there are no legal reasons for applying the right to marry exclusively in respect of heterosexual couples. The parties further argue that the Marriage Code should be neutral regarding sexual orientation and that the State shall work against discrimination.[149]

The Swedish Government has not yet presented any Government Bill on the question of same-sex marriages. Of some significance to be mentioned here is the fact that the Swedish Aliens Appeals Board (*Utlänningsnämnden*) recognises the principle of family unity and the right to family reunification both in respect of homosexual couples and heterosexual couples. The question of decisive importance is whether the couples have the intention to live in a cohabiting relationship or not. The sexual orientation of the couples is of no importance when applying the above mentioned principle.[150]

It is also interesting to note that the Swedish Government decided in 2003 to allow registration of same sex partnership at Swedish Embassies in Paris, Madrid and Lisbon.[151] Registration is only permitted between Swedish citizens and will have legal effect under Swedish law in Sweden. However, performance of the registration of same sex partnership in the Swedish Church continues to be hotly debated and it may be fair to say that the issue remains controversial.[152]

Article 10. Freedom of thought, conscience and religion

International case law and concluding observation of international organs

While the European Commission against Racism and Intolerance commended Sweden in its second report on Sweden in 2003 for recent legislative and policy measures to combat racism and discrimination it also noted on the increase in the number of islamophobic incidents in Sweden, including difficulties faced by women wearing the hijab in finding employment, as well as harassment in public places against immigrants, Jews and Roma as well as some telephone threats to mosques and public figures.[153]

National legislation, regulation and case law

[147] H.Ytterberg, *All human beings are equal, but some are more equal than others-equality in dignity without equality in rights?* p. 9.
[148] HomO, Press releases, Introduce a gender neutral Marriage Act, www.homo.se
[149] See for example: Motion till Riksdagen av Gudrun Schyman m.fl. 2001/02:L258, Helena Zakariasén m.fl. 2002/03:L276, Gudrun Schyman m.fl. 2002/03:L233 and Mikael Damberg m.fl. 2002/03:L282. Discussions in favour of gender neutral legislation on marriage have taken place also within the Liberal Party, *Ja - till homoäktenskap och euro*, NU/03, p. 18.
[150] Allan Grönwald, The Staff Unit of the Aliens Appeals Board.
[151] See *Registration of same sex partnership abroad*, www.manskligarattigheter.gov.se
[152] *K.Bergström*, Ingen kyrklig vigsel för homosexuella, NU 44/03, pp. 16-17.
[153] ECRI, Second report on Sweden, CRI(2003)7, § 56, p. 20.

The increased intolerance and negative attitudes towards immigrants in Sweden have proved a serious barrier to persons of immigrant origin seeking employment. The following case[154] is an example causing concern. A Muslim woman, wearing a headscarf *(chador)* applied for a job over the telephone and was informed about certain vacancies. At a personal meeting the next day, the company's representative made certain assertions related to the applicant's ethnical background, which made the applicant leave the meeting. The question was, therefore, raised of whether the company had discriminated the applicant on grounds of her ethnic origin and/or sex by making certain statements concerning her clothing and ethnical background. According to the Swedish Labour Court (*Arbetsdomstolen*), the employment proceedings were already completed when the meeting took place (another applicant had already been employed) and the law against ethnic discrimination, therefore, was no longer applicable. The CompanyDemÅplock was in consequence not found guilty of ethnic discrimination.

Practice of national authorities

The Swedish National Agency for Education (*Skolverket*) published on 24th of October 2003 a decision[155], which allows schools a fairly wide margin of appreciation when it comes to ban students from wearing burqa/niqab. The decision implies that schools may enforce bans, both for educational reasons and as part of general school rules. Even if it becomes evident that the burqa is worn for religious reasons the school's educational mandate should be given priority. In other words, the ban can be justified on the basis of the policy of maintaining religious neutrality in schools. The Agency emphasised, furthermore, that communication and interaction between teachers and students and between students themselves are fundamental to school activities. Communication constitutes in other words an important part of the educational process. In addition, the Agency argued that if the wearing of burqas entails the risk of disturbing order in schools (*e.g.* through quarrels among students), school leaders may ban students from wearing burqas in school by virtue of either general school rules or a decision on the case in question.

Finally, the Agency expressed the opinion that a ban without a discussion of values, equality and democratic obligations and rights is not to be recommended.

Article 11. Freedom of expression and of information

International case law and concluding observation of international organs

During the year under scrutiny the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed its concern about certain media that have reported in a manner which "only strengthens negative stereotypes", for example, with regard to the Roma minority. On the other hand, it found commendable the fact that the Government has funded journalists' training on diversity and that the Ombudsman against Ethnic Discrimination has pursued specific initiatives on Roma and media.[156]

[154] *The Ombudsman against Ethnic Discrimination v. DemÅplock i Göteborg Aktiebolag i Lindome*, Arbetsdomstolen *(The Swedish Labour Court)* Judgment of 10 September 2003, case No 63 (A-178-2002).
[155] Skolverket, flickor med burqa/niqab i skolan, Dnr 58-2003:2567. See for general information www.skolverket.se *A.Sjöblom*, Skolor får rätt att förbjuda burka, DN 24 October, p. 5.
[156] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Sweden, ACFC/INF/OP/I(2003)006, § 34, p. 10.

Article 12. Freedom of assembly and of association

International case law and concluding observation of international organs

The European Committee of Social Rights declared on 31st of March 2003 the complaint (No. 12/2002) against Sweden, which has been lodged by the Confederation of Swedish Enterprise (*Svenskt Näringsliv*) admissible. The Confederation is a national organisation of employers' organisations and represents more than 47,000 companies with a total of 1,450,000 employees.

The applicant alleged that the Swedish Government was in breach of Article 5 of the Revised European Social Charter since it has failed in its duty to protect the exercise of the right to organise (its negative aspect). The negative right to organise has been violated accordingly in two ways: firstly, pre-entry closed shop clauses continue to exist in collective agreements and secondly, non-unionised workers are forced to accept compulsory deductions, the so called "wage monitoring fees", from their wages at source for direct transfer to the relevant trade union.[157]

Reasons for concern

There is no protection afforded by the current Swedish legislation of the negative right of association.

Article 13. Freedom of the arts and sciences

No significant developments to be reported.

Article 14. Right to education

International case law and concluding observation of international organs

The European Commission against Racism and Intolerance (ECRI) included in its subjects of concern with regard to the implementation of right to education in Sweden the problems faced by children of immigrant origin in accessing education. The commission noted that several reports indicate that the drop-out rates for children of immigrant origin are higher than for other children and that children of immigrant origin are over-represented in special schools or special "observation" classes. Roma children seem to still be marginalised and very few of them complete secondary education.[158]

The Advisory Committee on the Framework Convention for the Protection of National Minorities urged Swedish authorities to continue to address, as a matter of priority, the problem of ethnic insults in schools, which seems to be of concern for a rather large percentage of children with foreign backgrounds.[159]

National legislation, regulation and case law

The Swedish educational and training system consists of compulsory school, upper secondary school, adult education and higher education.[160]

[157] Council of Europe, Complaint No. 12/2002, *The Confederation of Swedish Enterprise v. Sweden*, www.coe.int
[158] ECRE, Second report on Sweden, CRI(2003)7, §§ 46 and 61, pp. 17 and 21.
[159] Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/INF/OP/I(2003)006, § 37, p. 10.
[160] See the Swedish School System, Swedish Ministry of Education website www.utbildning.regeringen.se

The aims of the Government's education policy are to have a school for everyone, based on fundamental values and characterised by democratic ideals, to promote racial and gender equality and to prevent and counteract bullying, sexual harassment, violence, xenophobia and other expressions of a lack of respect. Under certain conditions, pupils are entitled to mother tongue tuition. As a result, more than 120 different languages are taught in Swedish schools.

As of 1st of March 2003 there are two national education agencies: the School Improvement Agency (SIA) and the National Agency for Education. One important task for SIA is to improve the educational conditions for pupils in segregated areas. In the appropriation directions for the National Agency for Education, the Government has instructed this authority to map racism, ethnic discrimination, sexual harassment, homophobia and gender–related harassment in schools in consultation with relevant authorities and organisations.

According to the Higher Education Act (*Högskolelagen* (SFS 1992:1434)), institutions of higher education should promote understanding of other countries and of international conditions in their activities. They shall also actively promote and widen the recruitment of students. In order to accelerate of the realisation of these aims, The Equal Treatment of Students at Universities Act (*Lag om ändring i lagen* (2001:1286) *om likabehandling av studenter i högskolan,* (SFS 2003:311) was enacted on 1st of July 2003 and The Law on Higher Education (Lag om ändring i högskolelagen (1992:1434) (SFS 2003:312)) was subsequently amended. According to Article 5 of the Act on Equal Treatment of Students at Universities, each institution of higher education shall annually prepare an action plan containing, among other things, a review of the measures that are required to promote the equal rights of students, irrespective of their sex, ethnic belonging, sexual orientation or disability and in order to prevent and preclude harassment. In late October 2003 the Swedish National Union of Students submitted a complaint to the Equal Opportinities Ombudsman (JämO) and the Ombudsman against Discrimination on the basis of sexual orientation (HomO) alleging 14 universities and similar institutions for violations of the above mentioned Act.[161]

Practice of national authorities

A new Authority for School Improvement was established on 2 of June 2003 with the aim of improving the conditions for education in segregated areas. It shall look for and spread good examples of innovative pedagogic methods and solutions regarding matters of the organization of mother tongue instruction. A final report on the activities shall be delivered in December 2005.[162]

Reasons for concern

There is still a need for the development of programmes and strategies to address in an effective way the problem of bullying and harassment in schools.

Despite some improvements there are, however, a few areas of concern with regard to the implementation of the provisions dealing with the right to education in the pupil's mother tongue. Thus, teaching in the Sámi languages is not always available outside the four most Northern municipalities in Sweden. In addition, shortcomings as regards teaching materials in South Sámi, Lule Sámi as well as in Meänkieli continue to exist. Although the Government has decided on a pilot project with bilingual education in grades 7 to 9, which started on 1st of August 2003, there are still no legal guarantees for persons belonging to national minorities other than Sámi to receive bilingual education during compulsory schooling.

[161] *14 anmälda högskolor får bakläxa* (brott mot likabehandlingslagen), www.sfs.se and www.homo.se ; *D.Hjalmarsson*, Vi anmäler 13 högskolor för lagbrott, DN 6 December 2003, p. 4.
[162] Comments of the Government of Sweden on the Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities, GVT/COM/INF/OP/I(2003)006, p. 2.

Although the establishment of specific classes for minority children, for example Roma children, has had the aim to provide additional support for the pupils concerned, there is an obvious risk of placing these children at a disadvantage and diminishing the prospects of an satisfactory implementation of Article 12 and the principle of intercultural dialogue as expressed in Article 6 of the Council of Europe Framework Convention for the Protection of National Minorities which Sweden joined in the year of 2000.

The right to education is also granted to children with special needs such as children with functional impairment. According to the Ombudsman for persons with disabilities' (*Handikappombudsmannen)* report which was presented to the Government[163] in 2003, there are several problems with the right to choose school for those children. The municipalities can on the basis of the School Act (*Skollagen* (SFS 1985:1100)) refuse a child to go to a specific school if it is not accessible to the child or if correct support cannot be given to the child in question. This may also happen with private schools. These schools may be denied state support for children with specific needs and they may therefore not have any possibilities to receive the child.

Moreover, the Children's Ombudsman (*Barnombudsmannen*) has expressed concern about the discrimination in schools of children with different foreign backgrounds. The Ombudsman suggests that the parliamentarian Committee with the task to propose a more overall legislation on discrimination, also include discrimination in schools.[164]

Article 15. Freedom to choose an occupation and right to engage in work

International case law and concluding observation of international organs

The European Commission against Racism and Intolerance (ECRI) has remarked in its report on Sweden in 2003 that persons of foreign extraction who do find employment frequently remain confined to low-pay and low status jobs, regardless of their level of qualifications or professional competence. There is, in other words, a risk of the emergence of an ethnically and socially segregated labour market.[165] ECRI notes moreover, that in the field of employment, particularly Roma women wearing traditional dress face difficulties in finding a job.[166]

The Advisory Committee on the Framework Convention for the Protection of National Minorities encouraged the Swedish Government to pursue 'decisively' its efforts to counter-act the discrimination faced by minorities, notably Roma, in such fields as housing and employment. The Committee found that the situation of Roma women "merits particular attention".[167]

The European Committee of Social Rights came to the conclusion during its consideration of the Swedish report in 2003 that the situation in Sweden as regards reasonable notice of termination of employment is not in conformity with Article 4 Section 4 of the Revised European Social Charter. The social partners in the painting and metal trade namely restrict the period of notice of termination of employment to one month for employees under the age of 30, irrespective of their length of service.[168] In the view of the Committee, the conditions for granting of temporary and permanent work permits in Sweden were too restrictive in order to be considered compatible with the spirit of Article 18 Section 3 of the European Social Charter.

[163] Handikappombudsmannens 9:e rapport till regeringen, *Skydda mot diskriminering*, May 2003, p. 18-19.
[164] Rapport från barnens myndighet, Barnombudsmannen 2003, *Vem bryr sig?*,p. 74–77.
[165] ECRI, Second report on Sweden, CRI(2003)7, §§ 48-49, p. 18.
[166] Op. cit., § 62, p. 21.
[167] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Sweden, ACFC/INF/OP/I(2003)006, pp. 2, 8, 16 and 17.
[168] The European Committee of Social Rights, Conclusions 2003 (Sweden), p. 14, www.coe.int

Permanent work permits are, for example, only granted to workers with exceptional qualifications and temporary permits are granted only for a specific job, with a specific employer.[169]

National legislation, regulation and case law

In March 2003, the Swedish Government submitted to the Parliament its proposal on a new legislation with the aim to strengthen the labour market policy.[170] According to the Bill, a number of measures will be taken to improve the situation of disadvantaged groups. During the period 1st of September 2003 – 31st of August 2005, persons born abroad who have special needs will be supported by specially trained employment officers in the process of job-seeking and during the first phase at a new place of employment. Skilled employees working under their qualification levels will be offered vocational training in fields where there is a labour shortage.

State funding continues to be provided on a regular basis to reinforce staff at employment offices in distressed urban areas that have a high percentage of persons born abroad in the population they serve. Additional funding has been earmarked for job counselling of new arrivals from abroad. The Government has allocated SEK 100 million per year during 2001–2003 to increase employment among persons born abroad.

A working group with representatives of the Swedish Government and the Confederation of Swedish Enterprise was established in January 2003.[171] The group will make proposals on how to draw on experiences from private business and how to improve the co-operation between the public and the private actors in order to enhance participation of persons born abroad in the Swedish labour market.

Practice of national authorities

As a consequence of the economic upswing and different Government initiatives the participation of persons born abroad on the labour market has increased significantly since 1997 according to the Government report to the Committee for the Elimination of Racial Discrimination.[172] During the same period unemployment has also decreased considerably for persons born abroad than for persons born in Sweden. The increased participation among persons born abroad has been particularly significant in the local and regional government.

However, in several aspects there is still a large difference in the labour market between persons born abroad and persons born in Sweden. There are variations in unemployment rates between different groups of persons born abroad depending on age, sex, education, country of origin and duration of stay in Sweden. Regional differences pertaining to job accessibility also play a vital roll. In general, persons from non-European countries have a relatively difficult situation in the labour market.

Increasing the employment rate, combating unemployment and ensuring equal rights and opportunities in the labour market for persons born abroad are given high political priority. General labour market policy has to be designed with the ethnic and cultural diversity in society as a point of departure. This general policy is complemented by various special efforts to enhance the integration of persons born abroad in the labour market.

[169] Op. cit., pp. 57-58.
[170] Prop. 2002/03:44, *Arbetsmarknadspolitiken förstärks*.
[171] Pressmeddelande från Näringsdepartementet, 29 November 2003.
[172] Sweden, Sixteenth periodic report, CERD/C/452/Add.4, 15 July 2003, p. 17.

Reasons for concern

The majority of employers have still to take specific steps to actively promote ethnic diversity in working life. The validation of qualifications obtained abroad continues to be problematic in Sweden. Some non-citizens are requested, without sufficient obvious justification, to pass additional tests to validate their vocational qualifications.

Yet another cause of concern is that asylum-seekers are granted only a minimum core of economic and social rights. Paid employment may play an important role in assisting asylum-seekers in participating in society and in maintaining their mental health. In Sweden asylum-seekers are in principle not allowed to seek and take paid work during the asylum procedure. There are, however, some exemptions, if for example the first instance decision will take more than four months to be delivered etc. Instead of considering the further extension of the right to work for asylum seekers, a Commission of enquiry has recently put forward the proposal implying that asylum-seekers, who fail to cooperate in establishing their identity, shall not enjoy the possibility of exemption from the obligation to have a work permit.[173]

The Swedish Red Cross has not supported the proposed change in law and practice by the Commission of inquiry, *i.e*. the application of sanctions to persons who withhold their identity documents during the processing of an asylum application, since currently no assessment on an individual basis is being carried out in cases of ¨refusal of entry as to whether a so called 'safe third country' is in reality safe for the person in question.[174]

Finally, the persistence of gender segregation in the labour market is worrisome.

Article 16. Freedom to conduct a business

National legislation, regulation and case law

One of the issues that has been vividly discussed in 2003 among activists involved with the rights for animals has concerned the question of whether certain fur businesses (mostly mink farms) should be permitted or not.[175] The argument has been put forward that the farms where the animals have been kept for production of furs do not fulfil the requirements according to the Swedish law on animal protection (§ 4) (*Djurskyddslagen* (SFS 1988:534)). There has also been an argument about the ethics in these kinds of business. A specially appointed parliamentarian Committee has come to the conclusion that it is not possible to forbid business due only to ethics.[176] The subject matter relates both to the right to property and the freedom to conduct a business *i.e*. two rights and freedoms that have gained protection in the Swedish Constitution.

The Committee also concluded that the business with minks needs to adapt better to what the law in question stipulates on, *e.g*. how the animals should be kept. According to the Committee, the business will have 5 years to adapt to the legal demands, otherwise they risk being closed down in 2010.

[173] SOU 2003:25, *Verkställighet vid oklar identitet m.m*., p. 21.
[174] Svenska Röda Korset, *Yttrande over Verkställighet vid oklar identitet m.m* (SOU 2003:25), 3 June 2003, p. 2.
[175] See for example www.djurensratt.se
[176] SOU 2003:86, *Djurens välfärd och pälsdjursnäringen* (The welfare of animals and fur business).

Article 17. Right to property

International case law and concluding observation of international organs

The Advisory Committee on the Framework Convention for the Protection of National Minorities expressed the opinion that: "There is a pressing need to find a balanced solution to, and improve legal certainty on, the issue of land rights in the areas inhabited traditionally by the Sámi, with the view to ensuring inter-ethnic harmony in the region and the protection of the culture and identity of persons belonging to this indigenous people".[177]

Judgements from the European Court of Human Rights:

During 2003 there have been two judgements against Sweden concerning the right to property according to Article 1 of the First Protocol to the European Convention on Human Rights.

The first case, *Allard v. Sweden*[178], concerns the application of the Act on Joint Ownership (*Lagen om samäganderätt* (SFS (1904:48)) and as from 1989, the Act on Administration of Certain Jointly Owned Agricultural Property (*Lagen om förvaltning av vissa samägda jordbruksfastigheter* (SFS (1989:31)).

The applicant owned a house on her mother's property which in turn, she owned together with her four siblings. After an application to the Building Board (*byggnadsnämnden*) the applicant was granted a permit for the erection of another, larger house which was done in 1988. As the other joint owners (except for the applicants mother) of the property disagreed to the new building, they instituted proceedings against the applicant in the District Court (*tingsrätten*) requesting that Ms. Allard be obliged to remove the house as it had been erected without their consent and that this was contrary to the 1904 Act. The Court decided that she had to remove the house, at the risk of having it demolished at her expense because there was no necessary consent of the joint owners. The Svea Court of Appeal (*Svea hovrätt*) upheld the judgement of the District Court. The applicant appealed to the Supreme Court (*Högsta dom stolen*) and asked it not to take any further action until the outcome of the division proceedings had been finished. These proceedings were instituted in 1990 by the applicant. The claim was rejected by the Supreme Court and it refused her leave to appeal. Following the Supreme Court's decision, several family members requested that the Enforcement Office (*kronofogdemyndigheten*) enforce the removal judgement. The Office ordered Ms. Allard to do so at the risk of having the house demolished. The time limit was set up to 16th of April 1996. On 14th of March 1996 on the Real Estate Court's (*fastighetsdomstolen*) request, the National Land Survey (*lantmäteriverket*) considered that the removal judgement did not prevent the creation of an individual plot according to the applicant's request. However the postponement of the removal judgement could not be upheld and therefore the house was demolished by a construction firm on 6th of June 1996 and was concluded ten days later. On 22 of November 1996 the Real Estate Court pronounced its judgement in the division proceedings. The applicant was awarded a plot where the now demolished house had been situated.

The European Court of Human Rights ruled in favour of the applicant. When discussing the principle of proportionality, the Court pointed out first that the applicant and her mother must have been aware that they risked certain legal consequences building the house without the joint owners' approval.[179] But the house was not illegally built as they had the building permit. Whose interest should be protected; the interest to maintain a functioning system of joint ownership, represented by the other joint owners, or the applicant's interest in retaining the

[177] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Sweden, ACFC/INF/OP/I(2003)006, p. 2.
[178] *Allard v. Sweden*, Eur.Ct.H.R., Judgement of 24 June 2003.
[179] Eur.Ct.H.R., Judgment, op. cit., §§ 54-61.

house? The Court noted that the Swedish Court of Appeal had decided on the postponement of the removal of the building before the time limit for the applicant had expired. The Enforcement Office also started to demolish the house before that date. The Supreme Court could further have awaited the division proceedings according to the Court, as the question of the removal of the house was clearly linked with the division issue. The European Court also stated that the interest of the other joint owners to have the applicant's house removed could not have been particularly great. That land was exclusively used by the applicant and her family. Therefore, taking into account all circumstances, the applicant had to bear an individual and excessive burden.

The *Allard* case clearly shows that it is not always the different laws as such, applied each of them separately and correctly, that can cause problems. The different authorities (courts) involved in a dispute must also take into account what practical *effects* their decision will have for the persons involved.

The second case, *Stockholms Försäkrings- och skadeståndsjuridik AB v. Sweden*[180], considered the application of the Bankruptcy Act (*Konkurslagen* (SFS 1987:62)) as to the obligation to pay bankruptcy costs. The applicant (a limited liability company) alleged that its rights under Article 1 of Protocol No. 1 to the European Convention had been breached as it was required to pay the receiver's fee for the administration of its bankruptcy, although the declaration of bankruptcy had been quashed as being erroneous.

The European Court found that the interference in the applicants' property constituted a deprivation in the public interest (contributing to efficient bankruptcy proceedings). The deprivation was, however, made pursuant to a clear and precise rule and therefore in accordance with law. When the Court discussed the proportionality of the interference it established that it was clear that the erroneous declaration of bankruptcy must be attributed to the assessment of the Swedish courts.[181] There was no indication that the applicant, by its actions, contributed to the fact that the company was declared bankrupt or to the ensuing bankruptcy costs. The obligation to pay the costs in question was, therefore, according to the Court unjustifiable. Even if it was a limited amount of money, the interference was not proportionate to the public interest in the case under review.

The European Court of Justice:

The ECJ (Fifth Chamber) delivered its judgment on the case *Försäkringsbolaget Skandia and Ola Ramstedt v. Riksskatteverket* (Case No C-422/O1) on 26 June 2003.

The case concerned occupational endowment pension insurance, *i.e*. whether the current Swedish tax rules, which favour occupational pension insurance, are to be considered as compatible with Article 49 EC.

The Court of Justice rejected the arguments put forward by the Swedish Government in justification of the tax rules, the application of which results in difference in tax treatment.

In the matter of occupational pension insurance, policies which are taken out by an employer paying the premiums on behalf of one of his employees, the Swedish legislation makes a distinction between pension insurance and endowment insurance. To be considered as pension insurance, a policy must, as a rule, be taken out with an insurer established in Sweden.

In terms of direct taxation the two types of insurance are subject to different rules on deduction with effects which may be less favourable for endowment insurance and thus for occupa-

[180] *Stockholms Försälrings- och skadeståndsjuridik AB v. Sweden*, Eur.Ct.H.R., Judgment of 16 September 2003.
[181] Eur.Ct.H.R., Judgment, op. cit., §§ 51-54.

tional pension insurance policies taken out with an insurer established in another Member State. Premiums paid by the employer under a pension insurance policy are immediately deductible when calculating his/her taxable income and the retirement benefits subsequently paid out are subject to income tax in their entirety in the hands of the retired employee. On the other hand, premiums paid by an employer under an endowment insurance policy are not deductible but the employer has a right to deduct the amounts he/she has undertaken contractually to pay to the employee. When received by the employee, the sums in question constitute taxable earned income.

Ola Ramstedt, a Swedish citizen resident in Sweden, was employed by the Swedish company, Skandia. Mr Ramstedt and Skandia agreed that part of Mr Ramstedt's pension was to be provided by Skandia taking out an occupational pension insurance policy with an insurance company established in another Member State. Mr Ramstedt and Skandia applied for an advance ruling from the Council for Advance Tax Rulings (*Skatterättsnämnden*) as to whether the insurance policy would be deemed to be pension insurance.The Council ruled that, in its view, the insurance policy should be considered as endowment insurance under the Swedish rules.

Mr Ramstedt and Skandia appealed against this advance ruling to the Supreme Administrative Court (*Regeringsrätten*). The Supreme Administrative Court referred on its turn a question to the Court of Justice on the compatibility of the Swedish legislation with the Community rules.

As a preliminary point the ECJ stated that the Treaty provisions relating to the freedom to provide services apply to the situation in question. The Community rules imply that services normally provided for remuneration are to be considered as constituting services. In fact, the premiums which Skandia pays are the consideration for the pension which will be paid to Mr Ramstedt when he retires. It is, therefore, irrelevant that Mr Ramstedt does not pay the premiums himself.

Moreover, the ECJ pointed out that tax rules such as those in force in Sweden restrict the freedom to provide services. Those rules are liable both to deter Swedish employers from taking out occupational pension insurance with institutions established in a Member State other than Sweden as well as to deter those institutions from offering their services on the Swedish market.

On this background the ECJ considered that the arguments put forward by the Swedish Government were not convincing.

As regards the need to ensure the fiscal cohesion of the national system, the Court underlined that there must be a direct connection between the deductibility of contributions and the liability to tax on sums payable by insurers in order for such a justification to be upheld. There is no such correlation in the Swedish system, as there is no compensatory measure to offset the disadvantage suffered by an employer who chooses a foreign insurer compared with an employer who takes out comparable insurance with a Swedish company.

The Court considered moreover that the effectiveness of fiscal controls can be ensured by measures which restrict the freedom to provide services to a lesser degree, for example, by relying on a 1977 Directive which provides for exchange of information on tax between the competent authorities of the Member States.

Finally, with respect to the need to preserve the tax base of the Member State, the Court emphasised that any tax advantage for providers of services resulting from the low taxation to which they are subject in the Member State of establishment cannot be used by another Member State to justify less favourable treatment in tax matters given to recipients of services established in the latter State. In other words, the need to prevent the reduction of tax revenue is not one of the grounds which would justify a restriction on the freedom to provide services.

Reasons for concern

Issues connected with the land rights and with the hunting and fishing rights for the Sámi population in Sweden, which amounts to approximately 15, 000-20, 000 persons, are still unresolved and thereby cause concern.

About 2, 500 Sámi people are engaged in reindeer herding. Despite the fact that public international law entitles them to call for special treatment with respect to their culture, there is still no domestic legislation that reflects the centrality of reindeer husbandry to their way of life. The ratification by the Swedish Government of the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries is still under preparation.

The issue of property rights involves the delicate relationship between competing industries in central Norrland-forestry, agriculture and reindeer breeding.

Article 18. Right to asylum

International case law and concluding observation of international organs

Sweden, like many other European countries has increasingly applied restrictive criteria for identifying those who are to benefit from refugee status and asylum. Therefore, it is not surprising that the European Commission against Racism and Intolerance (ECRI) recently urged the Swedish administrative authorities to ensure that "the apparent trend in Sweden towards a tightening-up of asylum policies does not lead to a weakening of the rights of asylum seekers to obtain a full and fair consideration of their application".[182]

National legislation, regulation and case law

Access to territory of the country of asylum is at the core of the refugee protection. It is hard to see how a person would have a real opportunity "to seek and to enjoy" asylum in other countries, if those countries deny him/her access to their territories. Carrier sanctions and other restrictive measures not only obstruct the right to asylum seekers to access territory, but they may have the effect of forcing illegal entry and reliance on criminal networks.

In order to comply with Directive 2001/51/EC the Swedish Government on 5th of December 2003 referred a legislative proposal, *Åtgärder för att klarlägga asylsökandes identitiet, m.m*. (Measures to clarify the identity of asylum seekers, etc) to the Council on Legislation (*Lagrådet*) for review. According to the proposal, carriers shall, for example, be obliged to ensure that a third-country national is in a possession of the travel documents (passports or other permit documents) required for entry into Sweden. The carrier will also be required to inspect that aliens have funds for their journey home. It is, in addition, envisaged to impose penalties on carriers that transport aliens who do not possess the necessary travel documents. Under the proposal, the maximum amount of the applicable financial charge shall be SEK 46, 000 (about 5, 000 Euro), for each alien. The proposal contains exemptions from the financial penalty in the above matters. This would be the case if the carrier can prove that they had reason to believe that the alien had the right to enter Sweden or if the penalty would appear 'clearly unreasonable' (*uppenbart oskäligt*).[183]

The "dramatic increase in the lack of documents among asylum seekers" has been mentioned as one of the reasons behind the Government's proposal. In 1996, 34 per cent of the asylum

[182] ECRI, Second Report on Sweden CRI(2003)7, § 40, p. 15.
[183] Lagrådremiss, *Åtgärder för att klarlägga asylsökandes identitet, m.m*., p. 49.

seekers lacked passports or other identity documents and by 2002 this figure had risen to 88 per cent.[184]

Moreover, the Government proposes that it should be possible to reduce the daily and housing allowance paid to an alien who has reached the age of 18 years if he or she impedes the residence permits investigation by not helping to clarify his or her identity. The main actors within the NGO community have strongly opposed the introduction of that kind of economic sanctions.[185]

The above mentioned proposals for, *inter alia*, the modification of the Aliens Act (*Utlänningslagen* (SFS 1989:529)) will at the earliest be presented before the Parliament in January 2004. The Swedish Parliament will then take a decision on the new legislation, which shall enter into force on 1st of July 2004. Nevertheless, it appears from the debate in Swedish media that it might be difficult to acquire the necessary support from the members of Parliament in order to adopt the proposal in question with its wording at present.[186]

There is a consensus that the refugee determination processing time in Sweden generally is too long. In order to shorten the handling times of assessment of asylum cases, the Government is for the time being preparing a proposal for modification of the provision of the Aliens Act dealing with the possibility for an asylum seeker to submit a new application.[187] In 2001, 5,370 new applications were dealt with and the preliminary estimate for 2003 is 12,000. The majority of the reviewing instances have expressed severe criticism with respect to the suggested changes in legislation since if adopted they would in practice imply restriction of the right to seek asylum.[188] According to statistical data from the Swedish Migration Board, about 20 per cent of the asylum – seekers obtain residence permits in the first instance and a further 10 per cent approximately do so in the second instance, after lodging an appeal and making a new application.[189]

The Swedish authorities have recognized the need for special care and protection for children and there is ongoing work on proposals of possible improvements to the existing legal framework concerning the reception of unaccompanied minors.[190] Municipalities are responsible for the care of such children. A couple of hundred asylum-seeking unaccompanied children arrive in Sweden each year. A great portion of the children came from Somalia.[191] For the period January-November 2003, 493 such children filed applications for resident permits. They are usually accommodated in group housing provided by the Migration Board. At such centres, the staff-personnel are on hand round the clock.

In the absence of parents, a trustee (*god man*) is appointed whose task is to safeguard the interests of the unaccompanied child in various ways. The specially appointed Commission of enquiry suggested recently that the trustee should have an obligation in the future to apply for

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[184] Id., pp. 15 and 74.
[185] Op. cit., p. 38.
[186] *E.Sidenbladh*, Sex partier kritiska mot flyktingpolitiken, SvD 4 December 2003, p. 10.
[187] *K.E.Lagerlöf*, Barbro Holmberg drar åt tumskruvarna, SvD 18 December 2003, p. 5.
[188] See, for example, Sveriges Domarförbund, Remissyttrande, 15 April 2003, Departementspromemoria om ny prövning av beslut om avvisning eller utvisning som vunnit laga kraft (UD2003/14872/MAP); Ny prövning av beslut om avvisning eller utvisning som vunnit laga kraft, Svenska Röda Korset remissvar (UD2003/14872/MAP), 16th of May 2003, p. 2.
E.Sidenbladh, Kritik mot förslag till ändrade asylregler, SvD 10 September 2003, p. 10 ; *L.Idling*, Regeringen vill ha tuffare asylregler, SvD 21 November 2003, p. 26.
[189] SOU 2003:25,*Verkställighet vid oklar identitet m.m*., p. 56 ; Lagrådremiss, *Åtgärder för att klarlägga asylsökandes identitet, m.m*., p. 16.
[190] Sveriges Riksdag, Pressmeddelande, *Sex partier överens om mottagandet av ensamkommande barn*, 3 December 2003. See also prop. 2003/04:1, Utgiftsområde 8 and Socialförsäkringsutskottets betänkande 2003/04:SfU2, Invandrare och flyktingar.
[191] Rikskriminalpolisen, *Handel med kvinnor*, Lägesrapport 5, p. 24. See in addition www.irinnews.org

asylum on behalf of the child, if the child is in need of that.[192] Today there are no specific rules with respect to the age at which a child may present an asylum-application. The Commission proposes an age limit of 15 years, which has been criticised by some of the reviewing instances. In their view, the right to seek asylum should not be restricted on the basis of any age requirement.[193]

Finally, mention should be made of the report, which was submitted to the Government in October 2003[194] by the investigative Committee having the mandate to propose the necessary legislative measures in connection with the incorporation in Sweden of Directive 2003/9/EC of 27th of January 2003. The aim of the proposed amendments in the existing legislation, *inter alia*, the Act on the Reception of Asylum-seekers (*Lag om mottagande av asylsökande* (SFS 1994:137)) is to bring about improvements within this area of law.

Practice of national authorities

In Sweden, Refugee Convention recognition rates are rather low. In 2002 (when the peak in numbers of asylum applications for at least the ten past years or so was reached) only 1.3 per cent of all asylum seekers, *i.e.* out of a total 33,016 persons, received this status.[195] The majority of the asylum-seekers receive residence permits for humanitarian reasons or because they have formed an intimate relationship with a person living in Sweden during the period of review of their application. This practice appears not to have changed during the year under scrutiny.[196] On the other hand, it is noteworthy that the Swedish authorities generously grant subsidiary protection.[197] In 1997, the Aliens Act (*Utlänningslagen* (SFS 1989:529)) (Chapter 3, Section 3) was amended as to include a possibility for individuals who have a well-founded fear of persecution on the basis of their sexual orientation or gender to receive residence permits in Sweden. This provision has, however, been rarely applied[198] and it offers inferior protection compared to the more favourable category of 1951 Convention refugee. The majority of the women who apply for asylum in Sweden on account of gender persecution or as victims of sexual violence, are granted protection on humanitarian grounds despite the fact that the international legal development has moved in favour of including persons persecuted on account of their sexual orientation or gender in the refugee concept. More regrettably is the fact that a large number of cases regarding trafficked women have been considered manifestly unfounded even where use of force has been alleged.[199]

In Sweden, there is no list of safe countries of origin, but at times it seems that the authorities channel asylum applicants into fast track asylum procedure on grounds of their origin in a "safe" country.

Another general remark would be that the current Swedish asylum-procedure is not yet fully adapted to deal with children irrespective of whether they come alone or as a part of a family.[200] Children's own grounds for seeking protection in Sweden are seldom investigated. Ac-

[192] SOU 2003:51, *Delbetänkandet God man för ensamkommande flyktingbarn*.
[193] Uppsala Universitet, Juridiska fakulteten, Remissyttrande, Delbetänkandet God man för ensamkommande flyktingbarn (SOU 2003:51), Dnr JURFAK 2003/57, 6 October 2003, p. 2.
[194] SOU 2003:89, *EG-rätten och mottagandet av asylsökande*.
[195] Skr. 2002/03:28, p. 17; *L.Truedsson*, Allt hårdare flyktingpolitik i EU, Amnesty Press 03/03, pp. 19-21.
[196] On-line http://www.migrationsverket.se/swedish/statistik/siffror.html
[197] *H.Sandesjö & G.Sommarin*, Kränkande påstående av vänsterpartiet, SvD 16 December 2003, p. 5.
[198] *B.Ohlsson*, Skydda kvinnor på flykt, SvD 14 October 2003, p. 5. See also Sveriges Riksdag, Snabbprotokoll 2003/04:42, Anf. 133, Erik Ullenhag, 4 December 2003, p. 1.
[199] *R.Lööf*, Implementing International Human Rights Law on behalf of Asylum-seekers and Refugees : The Record of the Nordics, unpublished manuscript (on file with the author), p. 21.
[200] The Government has, on the other hand, appointed an Commission of inquiry with the aim to propose improvements in the handling of asylum cases dealing with children. The legislative proposals are expected to be presented in June 2004.

cording to a recent survey presented by the Swedish Save the Children *(Rädda Barnen)*, this has been the case in only one out of five cases.[201]

Reasons for concern

The Swedish NGO community has expressed concern about the asylum- seekers' increased resort to smugglers in order to pay their way through to their destination.[202] Forcing carriers to control travel documents amounts not only to privatisation of state obligations but it ignores the acceptance in international refugee law that refugees cannot be expected to always have travel documents. In other words, the absence of identity documents should not lead to a weakening of the rights of the asylum- seekers to obtain a full and fair consideration of their application.

Various aspects of the practice of the Swedish authorities dealing with asylum cases have given rise to some criticism. Despite evidential material presented in a number of reports that Roma fall victim to racially motivated violence and police abuse, as well as of systematic racial discrimination in many societies[203], current Swedish administrative practice reveals that Roma have been regularly precluded from access to substantive asylum- procedure. Their applications for asylum have been considered "manifestly unfounded". Such rulings entail non-eligibility for asylum under Swedish law. The Swedish Section of Amnesty International has expressed its deep concern about the vulnerability of Roma as well as its criticism with regard to the Swedish authorities' taking into consideration the possibility of an internal alternative for flight while assessing asylum applications.[204] The organisation is also concerned about the increase in total numbers of asylum applications being regarded as "manifestly unfounded" during 2003 and that the individuals concerned were denied access to an appointed lawyer. In addition, criticism has been levelled in relation to removals (*i.e*. they were not halted) of rejected asylum-seekers pending a decision on their appeal against initial rejection.

Besides the problem of the overcrowded reception centres, especially designed for children, the European Commission against Racism and Intolerance commenting on the situation in Sweden stated that it maintained its concern about the reports of children who have disappeared from reception centres and being used in prostitution.[205]

Article 19. Protection in the event of removal, expulsion or extradition

International case law and concluding observation of international organs

Swedish practice contains incidents of asylum-seekers who allegedly have, against their will, been deported to countries completely unknown to them and to which they have no appreciable ties. One of the reasons for that may be found in the fact that some asylum-seekers have, following the rejection of their asylum-application refused to divulge their country of origin and the Swedish administrative authorities have made a wrongful assessment of their nationality. In the light of the above, the removal of persons, whose asylum application has been turned down against their will to countries unknown to them because of difficulties in

[201] *A.Engström*, Flyktingbarn mår allt sämre, SvD 25 September 2003, p. 14.
[202] Lagrådremiss, *Åtgärder för att klarlägga asylsökandes identitet, m.m*., p. 57.
[203] European Roma Rights Center, *The Human Rights Situation of Roma in the European Union*, 16 October 2003. For an interesting discussion on the growth of racism and xenophobia and its impact on refugee law see *B.Gorlick*, Refugee Protection in Troubled Times : Reflections on Institutional and Legal Developments at the Crossroads, in Problems of Protection : The UNCHR, Refugees, and Human Rights, N.Steiner, M.Gibney & G.Loescher (eds.), New York 2003.
[204] M.Seidlitz, AI, Stockholm, 18 October 2003. Swedish asylum practice has been criticsised by a number of commentators: *L-O. Franzén m.fl.*, Flyktinghyckleriet kan brytas, SvD 25 November 2003, p. 5 ; *E.Moberg*, Inte i vårt namn !, SvD 29 November 2003, p. 5; *Steen de Geer m.fl,* Fortsatt nej till Utlänningsnämnden, SvD 1 December 2003, p. 5.
[205] ECRI, Second Report on Sweden, CRI(2003)7, § 43, p. 16.

turned down against their will to countries unknown to them because of difficulties in establishing their nationality, was one of the subjects of criticism expressed by the European Commission against Racism and Intolerance (ECRI) in 2003.[206] In this context, ECRI also raised the point that in some cases it has been questioned whether the forced return of an asylum seeker to his or her country of origin or to a specific safe third country constitutes a violation of Sweden's obligations under Article 3 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.[207]

National legislation, regulation and case law

At present, the general rule in Sweden is that aliens refused entry shall return to their country of origin of their own accord. If the alien in question refuses to do so, a forced return to the country of origin may be necessary. A Parliamentary Commission has presented some legislative proposals with regard to the current regulations on enforcement of expulsion orders contained in the Swedish Aliens Act (*Utlänningslagen* (SFS 1989:529)).[208] It is suggested that the possibility of sending the alien to 'some other country' when enforcing a refusal of entry or expulsion order be eliminated in the future.[209] The new legislation shall enter into force on 1st of July 2004. At the same time, the Government recently submitted a proposal to the Council of Legislation (*Lagrådet*) [210] for review according to which new provisions shall be introduced in the Aliens Act to the effect that a refusal of entry or expulsion order shall specify the country to which the alien is to be sent. If there are special reasons, for example, in cases of double citizenship, more then one country may be mentioned in the decision of removal.

Reasons for concern

The European Roma Rights Center brought to international intention its findings for the year 2003, including its justified concern about Sweden being engaged in collective expulsions of Roma people. In its view this practice is "in violation of the explicit ban on collective expulsion of aliens provided under the European Convention on Human Rights".[211]

No legal changes have been undertaken during 2003 with reference to the European Committee of Social Rights' conclusions and recommendations of 2002, namely that the situation in Sweden cannot be judged as compatible with Article 19 Section 8 of the Revised European Social Charter, on the grounds that migrant workers who are citizens of States Parties to the treaty in question and against whom an expulsion order has been issued on account of their posing a threat to national security have no right of appeal to an independent body.[212]

According to the Swedish Aliens Act (*Utlänningslagen* (SFS 1989:529)) Chapter 7, Section 11, § 2, an asylum matter, which is judged to be a matter of public or national security shall not be adjudged by a court of law or other independent body, but the state's highest political body, *i.e*. the Government, shall take a decision. This decision cannot be appealed. This state of affairs has not only been considered by leading NGOs in Sweden as "highly inappropriate" but also as a "serious infringement" of the legal rights of the individual asylum-seeker, since insight in the matter is greatly restricted and the person in question will not have the opportunity to submit any reasons against expulsion.[213]

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[206] ECRI, Second Report on Sweden, CRI(2003)7, § 39, p. 15.
[207] ECRI, Second Report on Sweden, CRI(2003)7, § 39, p. 15.
[208] SOU 2003:25, *Verkställighet vid oklar identitet* m.m.
[209] Op. cit., p. 21.
[210] Lagrådremiss, *Åtgärder för att klarlägga asylsökandes identitet, m.m*., pp. 29-31.
[211] European Roma Rights Center : *The Human Rights Situation of Roma in the European Union*, 16 October 2003, p. 12.
[212] European Committee of Social Rights, Conclusions 2002 (Sweden), p. 17. See www.coe.int
[213] The Swedish NGO Foundation for Human Rights and The Swedish Helsinki Committee for Human Rights, Alternative Report to « Comments by the Government of Sweden on the Concluding Observations of the Human Rights Committee » (CCPR/CO/74/SWE), 4 July 2003, p. 16.

CHAPTER III : EQUALITY

Article 20. Equality before the law

International case law and concluding observation of international organs

The Advisory Committee on the Framework Convention for the Protection of National Minorities expressed its great satisfaction with the Swedish inclusive approach with regard to the application of the Framework Convention for the Protection of National Minorities, *i.e*. the treaty is being implemented in the same way for all persons belonging to the recognised national minorities regardless of whether or not they are Swedish citizens. In the view of the Committee this will certainly help to avoid any arbitrary or unjustified distinctions within the minorities in question.[214]

Reasons for concern

A large number of ethnic and linguistic groups living in Sweden are not considered to be covered by the Framework Convention for the Protection of National Minorities.

Article 21. Non-discrimination

International case law and concluding observation of international organs

The Rapporteur on the situation as regards fundamental rights in the European Union (2002), Mr Fodé Sylla, recommended Sweden to sign Protocol No 12 to the ECHR, which provides for a general prohibition of all forms of discrimination.[215]

In the second report on Sweden drawn up by the European Commission against Racism and Intolerance (ECRI) and which was made public on 15 April 2003, the Commission strongly urges Sweden to ratify Protocol No 12 to the ECHR and the ILO Convention No 169 on Indigenous and Tribal Peoples.[216] At the time of writing there are no indications that the Swedish Government plans to sign and/or ratify protocol No 12 to the ECHR.

The Swedish Government has, however, signed the Council of Europe Convention on Cybercrime in November 2001 as well as the additional protocol on criminalization of racist and xenophobic acts through the internet in January 2003.

With regard to common offences with a racist motive, ECRI stressed in its report that further efforts should be made to ensure that Swedish courts use to the "fullest extent" the possibility of taking the racist motive of offenders into account as an aggravating circumstance when sentencing.[217] Although ECRI welcomed the various strategies that have been adopted during the year of scrutiny, it noted that discrimination and racism within the prison system continues to be a problem.[218]

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[214] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Sweden, ACFC/INF/OP/I(2003)006, p. 6.
[215] EU Parliament, Report A5-0281/2003, 17th of July 2003, p. 16.
[216] Second report on Sweden, CRI(2003)7, p. 7. Sweden delivered its 15th and 16th periodic report in accordance with its obligations under CERD on 4th of January 2003. In § 48 of the report the Swedish Government affirms that it has « The ambition (is) to ratify ILO convention No. 169 as soon as possible ».
[217] ECRI, CRI(2003)7, § 20, p. 11.
[218] ECRI, op. cit., § 25, p. 12.

The Advisory Committee on the Framework Convention for the Protection of National Minorities noted in its opinions on the Swedish report[219] that the existing penal law provisions on ethnically motivated crime are not fully effective.[220]

On 12 November 2003 EU officials commended Sweden for "a good job of transposing EU law (on non-discrimination (author's addition)) into national legislation".[221]

National legislation, regulation and case law

A very comprehensive legal reform of significance for the realisation of the principle on equality before the law and non-discrimination has been carried out in Sweden during 2003. The Parliament adopted new legislation, which entered into force on 1st of July 2003, with the purpose to counteract discrimination on various grounds and in different fields of life, including goods/services, education services and housing. This was a necessary step in the implementation of the two EC Directives combating discrimination (the Council Directive 2000/43/EC of June 2000 and the Council Directive 2000/78/EC of 27th of November 2000).[222]

The new legislation or the so called "legislative package" comprises the following pieces of legislation: The Prohibition of Discrimination Act (*Lag om förbud mot diskriminering* (SFS 2003:307)); The Act on combating of discrimination in employment on the grounds of disability (*Lag om ändring i lagen* (1999:132) *om förbud mot diskriminering i arbetslivet av personer med funktionshinder* (SFS 2003:309)) and the Act on prohibition against discrimination in employment on the grounds of sexual orientation (*Lag om ändring i lagen* (1999:133) *om förbud mot diskriminering i arbetslivet på grund av sexuell läggning* (SFS 2003:310)). Some of the significant changes being introduced in the Prohibition of Discrimination Act relate to the expansion of the prohibited grounds of discrimination, *i.e*. 'religion or belief' (§ 1) is now an additional ground of prohibited discrimination as well as the introduction of four definitions of the notion 'discrimination' in § 3, namely, prohibition against direct discrimination, prohibition against indirect discrimination, prohibition against harassment and prohibition against an order or an instruction to discriminate. According to § 16 a person who violates the prohibition against discrimination and victimisation contained in the Prohibition of Discrimination Act shall pay damages.

Protection against discrimination in employment:

Legal changes combating discrimination in employment on the grounds of ethnic affiliation entered into force on 1st of July 2003 (*Lag om ändring i lagen* (1999:130) *om åtgärder mot etnisk diskriminering i arbetslivet* (SFS 2003:308)). The existing case- law, which is based on the application of the previous anti-discrimination provisions is a clear demonstration of its inadequacy to counter-act discrimination. The following case[223] delivered by the Swedish Labour Court (*Arbetsdomstolen*) is but only one example in support of the above statement.

The case dealt with the issue of a suspect direct discrimination of an employee (I.P.) on the basis of her ethnical affiliation. I.P. had several temporary employments at the social insurance office (*försäkringskassan*) as some ten other employees in similar positions of non-prolongation of the working contracts. While the ten employees were offered further employments, posts with conditional tenure or time limited posts, the applicant (I.P.) did not

[219] ACFC/INF/OP/I (2003)006, 25th of August 2003.
[220] Op. cit., § 23, p. 7.
[221] Jai in the News, European Commission, *Lutte contre la discrimination raciale*, 13 November 2003, p. 18.
[222] See the Government Bill, Prop. 2002/03:65, *Ett utvidgat skydd mot diskriminering,* which was submitted to the Parliament on 13th of March 2003, p. 1.
[223] *Diskrimineringsombudsmannen v. Försäkringsbolaget och Jämtlands läns allmänna Försäkringskassa*, Mål nr A 57/02, The Labour Court (*Arbetsdomstolen*), Judgment No. 55/03 of 18 June 2003.

receive any offers at all despite the fact that she was better skilled compared with some of the other employees. The Labour Court came to the conclusion that it has not been shown in the case under review that the reasons why I.P. was not offered further employment was indeed her ethnical origin. It seems that the judges relied to a great extent on the arguments presented by the employer, *i.e.* the reference to I.P.'s deficiency to co-operate with the other employees, among others not participating in the coffee breaks. According to the law, the burden of proof rests with the employer, who must explain the motives for the treatment. It is also the employer's duty to carry out targeted measures to actively support ethnic diversity in working life.

In light of the above, it is apparent that the amendments to the existing legislation on working life and education bring those Acts up to EC standard as regards the scope of the Acts[224] and hopefully making them an effective weapon in preventing and suppressing discrimination in working life.

The new legislation provides protection against discrimination on grounds of ethnic origin, religion or belief, sexual orientation and disability in the following areas: labour market programmes and employment offices, self-employment and access to carrying out business operations or a certain profession, membership of and involvement in an organisation of workers or employers, or any professional organisation, goods and services, including housing, social insurance and other benefits systems, healthcare or other medical services, the social services and unemployment insurance/benefits. A rule of proof with the following wording has been introduced in the new Prohibition of Discrimination Act: "If a person who feels that he/she has been discriminated against or exposed to reprisals shows that the circumstances give reason to presume that he or she has been discriminated against or exposed to reprisals, the respondent shall show that discrimination or reprisals have not occurred".[225]

Protection against racism and xenophobia:

The Fundamental Law on Freedom of Expression *(Yttrandefrihetsgrundlagen)* has been amended to improve the possibilities to take legal measures against racial agitation. The amendments were approved by the Parliament and came into force on 1st of January 2003. The new regulation applies to all current media such as radio, television and other similar transmissions, films, video-grams and other representations of moving pictures and recordings of sound, pictures and text. The authorities can now proceed against those responsible on the basis of unlawful content disseminated via the above media only where sanctioned by the Swedish Constitution and only in the manner and at the time prescribed in the Constitution. According to the Fundamental Law on Freedom of Expression (*Yttrandefrihetsgrundlagen*), legal proceedings must generally be initiated within six or twelve months from the day on which the material was disseminated. However, with regard to technical recordings, the periods of limitation prescribed in the Penal Code (BrB) will apply to offences on recordings, which lack certain information. It is expected that the amendment in question will improve the possibilities to combat "white power" music.[226] Sweden is one of the leading countries in the world as regards the production and distribution of "white power" music.

Chapter 16 Section 8 of the Penal Code (BrB) regarding agitation against a national or ethnic group prohibits public dissemination of racist statements or other expressions of racist attitudes or beliefs. Dissemination through an organisation or similar group is also punishable under law, as is dissemination within the organisation or the group. In this respect mention should be made of the Government Bill on Racial Agitation etc. (Prop. 2001/02:59, *Hets mot folkgrupp, m.m.*) aiming to increase the penalty for very serious crimes of racial agitation,

[224] Ministry of Justice, *Extended protection against discrimination*, Ju 03.12e, June 2003, p. 1.
[225] Ministry of Justice, op. cit., p. 2.
[226] The 15th and 15th periodic report presented by Sweden to CERD, CERD/C/452/Add.4, 15 July 2003, § 63.

such as extensive dissemination of racist material. The proposal, which introduced a special scale of penalties for aggravated cases of racial agitation and expanding the scope of the provisions on racial agitation so as also to include agitation alluding to sexual orientation has been approved by the Parliament and entered into force on 1st January 2003. This provision[227] rules that the penalty in such cases is imprisonment between six months and four years.

The case-law of domestic courts:

Here follows the summary of two recently decided cases where Chapter 16 Section 8 of the Penal Code (BrB) has been applied by Swedish courts of first instance (District courts) with regard to crimes of racial agitation.

In the first case - Local Public Prosecution Office in the town of Eskilstuna *(Åklagarkammaren i Eskilstuna)* v. Karl JOHAN Rejhnert Lindell - witnesses claimed to have seen a 16-year-old boy engraving a swastika on a table and wearing a necklace with a swastika medallion in school. Since the defendant denied the accusation and the witness in that instance was not sure of what he saw, the District Court did not find it proven that the defendant actually had engraved the swastika on the table. In the Court's view, however, the defendant's behaviour, *i.e.* the intentionally wearing of a necklace with a swastika medallion in school, had to be regarded as spreading a message, which expresses contempt for an ethnic group with allusion to race, skin colour, national or ethnic origin. The defendant was, therefore, found guilty of racial agitation. The sanction imposed comprised a fine of a considerable amount.[228]

In the second case -Local Public Prosecution Office in the town of Gävle *(Åklagarkammaren i Gävle)* v. Lars MICHAEL Kastemyr - a local policeman was patrolling in the city when he heard the defendant (a 17 years old boy) scream "Sieg Heil" and saw him do the Nazi salutation. According to the policeman there were other people around, who also witnessed the incident. The defendant claimed that he did not remember the incident, because he was too drunk at the time. According to the District Court it was proven that the defendant, by his behaviour, had expressed contempt for an ethnic group with allusion to race, skin colour, national or ethnic origin. Through the policeman's testimony it was shown that the defendant had spread his message of contempt, which, also, he must have realized. The defendant was therefore found guilty of racial agitation. The imposed sanction included the referral to care in accordance with the Social Services Act (*Socialtjänstelagen* (SFS 2001:453)) as well as payment of a fee to a fund especially designed for victims of crime.[229] One of the tasks of social services is to promote the favourable development of young persons. The social services, with their long experience and high competence in matters relating to work with young persons and their problems, are an important resource for counteracting criminal behaviour and are likelier to bring about improvements than the prison and probation system.

Practice of national authorities

Following Sweden's ratification of the Framework Convention for the Protection of National Minorities, five national minorities were acknowledged: the Sámi, who are also indigenous peoples, Swedish Finns, Tornedalers, Roma and Jews. It has been observed, however, that the possibility of accessing education in some of the five minority languages is not equal in the various municipalities and for the different languages in question.[230] In other words, further efforts should be made by the authorities to ensure that the entitlement to mother tongue in-

[227] See the Penal Code, (BrB) Chapter 16 Section 8.
[228] Eskilstuna tingsrätt (*The District Court of Eskilstuna*), Judgment of 11 November 2003, B nr 2066-03.
[229] Gävle Tingsrätt (*The District Court of Gävle),* Judgment of 3 October 2003, B nr 1721-03.
[230] ECRI, Second Report on Sweden, § 9, p. 8.

struction is guaranteed in practice, across all municipalities, for all pupils who request such instruction.

In May 2003 the Swedish Government instructed the authorities in the criminal justice system to develop strategies against discrimination. These strategies are intended to contribute to long-term, continuous and comprehensive work against discrimination in the criminal justice system. The strategies must include attitudes to and treatment of people who come into contact with the criminal justice system.[231]

Active measures by NGOs are essential to combat racism, xenophobia, homophobia and discrimination. In order to support and further develop the work of NGOs and to ensure continuity in their work, the Government has provided funding for the establishment of an independent "Centre against Racism and related Intolerance". The new Centre commenced its operations in September 2003.[232]

The Government has commissioned the Swedish Integration Board to monitor the situation of Muslims in Sweden after the events of 11th of September 2001. According to a report, published by the Board in June 2003, the majority of Muslims in Sweden experienced their situation a year after these events as very problematic and difficult.[233] They also felt that the references to Islam and Muslims in media had become increasingly negative.[234]

The Government has realised that this development must be countered by all possible means. First of all, general work against racism, xenophobia and discrimination, not least by the National Integration Board and the Office of the Ombudsman against Ethnic Discrimination, in combination with effective legislation, has an effect also on islamophobia.

A permanent national centre called the Living History Forum was established as a public authority on 1st of June 2003. Its permanent assignment is to promote work, discussion and reflection on democracy, tolerance and human rights, based on a perspective from the Holocaust. The Forum has currently on-going projects that relate directly to children and youth. These include a study of the occurrence of xenophobic, islamophobic and anti-semitic crimes and propaganda being spread in schools.[235] ECRI welcomed in its report on Sweden the establishment of the permanent Forum for Living History.[236]

Reasons for concern

Although Sweden has become a society in which persons from many cultures and backgrounds live, problems of racism, xenophobia and intolerance persist. Despite the instructions from the Prosecutor - General to prosecutors to give priority to the crime of unlawful discrimination, very few cases are currently taken into court and the number of convictions that are obtained are even less.[237]

The NGO community as well as representatives from the civil society at large have, on numerous occasions, voiced concern about the non-sufficient application of, for example, Chap-

[231] The 15th and 16th periodic report submitted by Sweden in accordance with Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, CERD/C/452/Add.4, § 21, p. 5.
[232] Integrationsverket, *Nytt nationellt centrum mot racism*, KortNytt, October 2003, p. 3. See also www.sverigemotrasism.se
[233] Sweden's 15th and 16th periodic report submitted to CERD, op. cit., § 38, p. 8.
[234] *Samtal med svenska muslimer- situationen för svenska muslimer efter terroristattacken i USA den 11 september 2001*, Integrationsverkets rapportserie 2003:03.
[235] The 15th and 16th periodic reports submitted by Sweden in accordance with Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination, op. cit., §§ 122-123, pp. 21- 22.
[236] ECRI, Second Report on Sweden, § 37, p. 15.
[237] *O.Billger*, Endast ett fall av 177 misstänkta hatbrott till åtal, SvD 6 December 2003, p. 6.

ter 16 Section 8 of the Penal Code (BrB) which tackles racially motivated crimes.[238] The so called "hate crimes" are defined as crimes with racist, xenophobic or homophobic motives. This concern should be taken seriously, particularly in the absence in Sweden currently of a legislation outlawing organizations, which promote or incite racial hatred. Racist organisations do exist in the country[239] and this state of affairs is in the view of the Swedish Helsinki Committee for Human Rights incompatible with the requirements of the UN Convention against Racial Discrimination.[240]

Finally, another issue of concern is the fact that many employers do not live up to the requirements of the law. They simply do not fulfil their duties to take active measures to end discrimination at the work place. This statement can be supported by the recently published statistics on the increasing number (preliminary about 11 per cent increase for the year of 2003) of complaints that have been submitted to the Equal Opportunities Ombudsman concerning discrimination on, among other things, ethnic grounds in the workplace.[241]

Article 22. Cultural, religious and linguistic diversity

International case law and concluding observation of international organs

The Advisory Committee on the Framework Convention for the Protection of National Minorities referred in its opinion on the implementation of the Convention in Sweden to the fact that Roma and other national minorities in the past have been subjected to assimilation against their will and that there is still a need to "pursue and expand positive measures to support and promote the languages, traditions and other elements of the identity of persons belonging to the national minorities".[242]

Furthermore, the Committee encouraged the Swedish Government to clarify with urgency and to improve the legal situation with regard to the issue of land rights and the use of territory in general in the traditional areas of the Sámi, since reindeer herding, fishing and hunting are of central relevance to the protection of their culture and identity as indigenous peoples.[243]

Practice of national authorities

According to the following official statement, the aim of "the Swedish Sámi policy is a thriving Sámi culture based on ecologically sustainable reindeer husbandry and other Sámi industry as well as greater Sámi self-determination".[244] During the period 2001-2004 the Government offices are running a national information campaign intended to increase knowledge and understanding of the Sámi culture. There are a number of projects on local and regional level intended to prevent discrimination and cultural antagonism.

[238] Svenska Helsingforskommittén för Mänskliga Rättigheter, *Hatets språk-om gränsen mellan hatpropaganda och yttrandefrihet*, Stockholm 2003, pp. 79-100; *O.Billger*, Hets mot folkgrupp leder sällan till åtal, JK ska pröva fler tryckfrihetsbrott i domstol efter kritik, SvD 10 November 2003, p. 9; *P.Carlberg*, Rasistiska brott blir inte färre, SvD 6 December 2003, p. 8. For general information, see www.bra.se
[239] ECRI, Second Report on Sweden, § 21, p. 11.
[240] Svenska Helsingforskommittén, *Hatets språk-om gränsen mellan hatpropaganda och yttrandefrihet*, P.Bratt, R.Hårdh and K.Göransson, Stockholm 7 November 2003.
[241] *O.Billger,* DO vässar klorna efter tilltagande diskriminering, Företag som inte vidtar aktiva åtgärder får böta, SvD 14 December 2003, p. 6.
[242] Advisory Committee on the Framework Convention for the Protection on National Minorities, Opinion on Sweden, ACFC/INF/OP/I(2003)006, § 29, p. 9.
[243] Op. cit. , §§ 30-32 and 35, p. 9.
[244] Ministry of Justice, *The Swedish Human Rights National Action Plan*, Ju 03.09e, June 2003, p. 3.

Reasons for concern

Although Sweden today is a country characterised by ethnic and cultural diversity, not all ethnic groups who in recent times have immigrated to Sweden, are regarded as national minorities. These groups are consequently outside the scope of the protection of the Framework Convention for the Protection of National Minorities.

Article 23. Equality between men and women

International case law and concluding observation of international organs

The Swedish Government ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 24th of April 2003 and it entered into force in Sweden on 24th of July 2003.[245]

The Advisory Committee on the Framework Convention for the protection of National Minorities welcomed the fact that gender equality is considered a priority in Sweden in the allocation of support for organisations of minorities.[246]

National legislation, regulation and case law

With regard to the professional integration of women in Sweden some positive steps have been taken during the year under review.[247] An investigative Commission was appointed by the Government with the task of mapping the proportion of women in leading positions in different branches and in different counties as well as to identify the tendencies in the appointment of women to chiefs' positions. Its conclusions were presented in March 2003.[248] Some of the statistics contained in the report are nevertheless disturbing. A total of 500 organizations have been included in the survey. It appears from the presented material that 87 per cent of the organizations have boards dominated by men, *i.e.* more then 60 per cent of the board members are men. The report shows that 42 per cent of the organizations have no women at all on their boards.[249] On average, women make up only 17.1 per cent of the boards despite representing nearly 40 per cent of the workforce. In the private sector the reality is even more distressing. Thus, only 12.6 per cent of the members of the governing bodies and having the position of management posts were women.[250] The low representation of women persists in the higher echelons of the foreign services and in the judiciary.

Women are, in addition, under-represented on the executive boards of the main trade unions, although the average gender distribution among members is balanced. The work on the preparation of specific proposals on measures, which should be adopted by the Parliament, is however, on-going. The preparedness, which the Swedish Government has shown to introduce a quota system for the election of women to sit on the boards of companies, enterprise, *etc*., continues, however, to be a controversial issue in Sweden.[251]

[245] Prop. 2002/03:19, *Konventionen mot kvinnodiskriminering och frågan om ett individuellt klagomålsförfarande*.
[246] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Sweden, ACFC/INF/OP/I(2003)006, § 28, p. 8.
[247] A Government Bill has been submitted to the Parliament on, among other things, the obligation to regularly survey the gender distribution in the boards of various organizations and companies. See prop. 2002/03:56, *Redovisning av könsfördelningen i företagsledningar*. The new law is expected to enter into force on 1st of January 2004.
[248] SOU 2003:16, *Mansdominans i förändring, om ledningsgrupper och styrelser*.
[249] Op. cit., p. 270.
[250] SOU 2003:16, p. 318.
[251] See *M.Sundén*, Svensk Näringsliv skeptisk till lagstadgad kvotering, SvD 5 November 2003, p. 17.

The Swedish Equal Opportunities Ombudsman (JämO) has recently initiated a project "Women on the Top" to help the recruitment of women in higher positions.[252]

Reasons for concern

Despite various efforts to bring about change, men continue to dominate leading positions in large organizations, especially in the private sector. Segregation on the labour market is still very marked in Sweden. Women occupy a majority share of local public service jobs and a minority share of central government jobs. It would be fair to conclude that structural and systematic discrimination of women persists in Sweden.[253] Looking at the overall attitude to the issue in society, it appears as if support for change and resistance to change have both increased.[254]

In addition, there is no even representation of men and women at the university level in Sweden. Currently, only 14 per cent of all professors at Swedish universities are women. On the other hand, this data reflects a trend towards an increased proportion of women in the mentioned positions, compared to figures from 1995 when only 8 per cent of the professors were women.[255]

Moreover, despite some improvements achieved during 2003, there are still considerable wage differentials based on gender, in the private as well as in the public sectors. This is an observation valid for all levels in the working places.[256] A woman's income is in average 80 per cent of that of a man which means that the wage gap between women and men has not narrowed during the past years.

Women continue, moreover, to be sexually harassed at work and are generally given fewer opportunities in their jobs.[257]

Article 24. The rights of the child

National legislation, regulation and case law

A Ministry Memorandum (Ds 2003:5, *Stärkt rättsskydd för barn i gränsöverskridande fall*), which was presented by the Government in 2003 contains a proposal for revision of the relevant Swedish legislation as regards the implementation of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and the Hague Convention on the Civil Aspects of Child Abduction (the Hague Convention) to be enacted on 1st of January 2004.

According to the summary of the memorandum, the overall aim of the legislative reform is "to further safeguard the welfare of the child in cross border cases and to enhance the efficiency of the decision making process".[258] It is suggested, in addition, that the Swedish international private law rules on jurisdiction in custodial matters be changed in order to restrict them primarily to cases where the child is domiciled in Sweden. At present, Swedish courts have jurisdiction also in cases where illegal abduction to Sweden has occurred, which appar-

[252] *JÄMO jobbar för fler kvinnor i toppen*, Jusektidningen, 10/03, December 2003, p. 6.
[253] See The Equal Opportunities Ombudsman (JämO), Claes Borgström's speech delivered at a conference organized by Kvinna till Kvinna in Dubrovnik in August 2003, p. 2.
http://www.jamombud.se/nyhetspresscent/jamostalvidkvin.asp
[254] *A.Danielsson*, För ytligt babbel om jämlikhet, SvD Näringsliv 27 November 2003, p. 10; SOU 2003:16, p. 273.
[255] The Report *Karriär genom befordran och rekrytering*, Högskoleverkets rapportserie 2003:3.
[256] *C.Bodin*, Kvinnliga generaldirektörer har lägre lön, SvD 31 October 2003, p. 19.
[257] *C.Borgström*, op. cit., p. 2.
[258] Ds 2003:5, p. 11.

ently can be used by a party seeking to obstruct the proper implementation of the Hague Convention.[259]

Moreover, according to the new provisions, applications for return orders, recognition or enforcement shall be reviewed by the courts of first instance (District Courts- *tingsrätter*), as a general rule, within a fixed six-week period. This means that the current procedural rules will be tightened in the future. The right of appeal shall, furthermore, be restricted in order to accelerate the expedition of the matter in the interest of the child concerned.

Finally, new provisions are proposed, which would enable Swedish courts on certain conditions to endorse undertakings made by the parties and to issue mirror orders in order to facilitate the voluntary compliance and the non-contested return of the child to its place of domicile.

In November 2001 the Parliament appointed an investigative Commission with the task to present proposals on children's right to an environment that is secure and safe. In 2003 the Commission proposed that a national delegation for children's right to a secure and safe environment should be established with a mandate of three years.[260]

According to a legislative proposal[261] the Social Welfare Board (*socialnämnden*) should be able to investigate if there are reasons to apply for a change in the custody of a child, taken into care of foster-parents, if the child has been under custody for more than three years. The purpose of this proposal is to give the child continuity in relations and a family for life. The Children's Ombudsman has welcomed this proposal.[262]

Reasons for concern

ECRI noted in its report on Sweden that the problem of *de facto* segregation in education, as a result of *de facto* housing segregation, implies that children of immigrant origin are at risk of being marginalised in the school setting.[263] This is indeed a serious problem, bearing in mind that it is among young people that racist groups and ideologies find an audience.

Children as a group have special difficulties in safeguarding their own rights. Therefore, Article 12 of the UN Convention on the Rights of the Child, according to which a child has the right to be heard, is of utmost importance. Likewise the Swedish Service Act (*Socialtjänstelagen* (SFS 2001:453)) has since 1st of January 1988 included a provision to the effect that children are entitled to a hearing in all matters affecting them. In addition, rules on the right of children to express themselves freely in judicial proceedings involving custody or access were introduced in 1996. Despite this, there is a continuing ignorance of the children's right to be heard. The Children's Ombudsman has taken the view that the position of children in legal proceedings should be strengthened by, *e.g.* requiring that the proceedings be conducted by persons who have the appropriate skills for that task, *i.e.* they have specific experience and expertise of children.[264] Moreover, the existing legislation does not contain any rules on the right of the child being a party to legal proceedings to receive all relevant information on the case, including information about the possible consequences/effects of his/her wishes and decision. Furthermore, children who wish to express themselves on issues concerning themselves and who have attained a certain age of majority are able to do so presently only to a limited extent. The current legislation does not ensure that all children who wish to express themselves are given a realistic opportunity to be heard as a mandatory part of, for example,

[259] Op. cit., p. 12.
[260] See SOU 2003:19, *Barns rätt till säkra och utvecklande miljöer – framtida huvudman*.
[261] Prop. 2002/03:53, *Stärkt skydd för barn i utsatta situationer*.
[262] See Rapport från barnens myndigheter, Barnombudsmannen 2003, *Vem bryr sig*?, p. 89.
[263] ECRI, Second Report on Sweden, CRI(2003)7, § 37, p. 14.
[264] *L.Nyberg*, Stärk barnets röst i rättsprocessen, Domkretsen, nr 2/2003, pp. 24-25.

the social welfare investigation. In the 2003 Annual Review of the Children's Ombudsman one may discern deep concern about children's possibilities to be heard, *e.g.* in schools and in society as such.[265] The report to which the Ombudsman refers -"The right to be heard" *(Rätten att komma till tals)*[266] and which was conducted by the same office, shows that almost 30 per cent of the children who participated in the survey were dissatisfied with their possibility to exercise influence in the decision-making on issues affecting them.

Remarkable and alarming is the content of a very recent publication by the Swedish Save the Children (*Rädda Barnen*), which reveals that the proportion of children living in poverty in Sweden is increasing.[267]

Article 25. The rights of the elderly

National legislation, regulation and case law

In 2003 the Financial Support to the Elderly Act entered into force, which introduces a new form of financial support for persons aged 65 or over and who have no pension at all or whose pension is insufficient (*i.e.* the so called "guarantee pension"). This legislative change introduces a guarantee for a certain minimum pension rate. The assistance shall be thus individually needs-tested.

In October 2003 a special investigative Committee presented its impressive 603 pages report (SOU 2003:91, *Äldrepolitik för framtiden*, *100 steg till trygghet och utveckling med en åldrande befolkning*) which contains a great number of very constructive proposals on how to increase the chances of elderly people to live a life in dignity in Sweden.

Article 26. Integration of persons with disabilities

National legislation, regulation and case law

To start with, mention should be made of the fact that in the Swedish legislation, the notion "functional impairment" is used, which covers permanent physical, mental or intelligence-related limitations of the ability to work, resulting from an accident or illness or existing since birth, rather than the expression "disability".

Sweden is presently actively involved in the work of the UN on a convention reinforcing protection of the rights which people with disabilities already have under existing conventions.

With regard to the protection from discrimination in access to education and during education at university level, there was no specific clause of relevance to persons with disability until 1st July 2003 when the amended Act on Higher Education *(Lag om ändring i högskolelagen (1992:1434), (SFS* 2003:312)) and the Act on Equal Treatment of Students *(Lag om ändring i lagen (2001:1286) om likabehandling av studenter i högskolan (S*FS 2003:311)) entered into force. In addition, there are some pending proposals for the improvement of educational material for persons with disabilities.[268]

As from 1st of January 2003, the minimum age limit for the award of permanent disability pension and disability benefit has been raised from the age of 16 to 19 years of age. In addi-

[265] See Barnombudsmannen 2003, op. cit., p. 17–19.
[266] The purpose of the "Right to be Heard" project is to survey the level of children's satisfaction with their lives in various countries. See www.bo.se
[267] Rädda Barnen, *Barnfattigdomen i Sverige*, Årsrapport 2003.
[268] SOU 2003:15, *Utredningen av läromedel för funktionshindrade*.

tion, the upper age limit for the award of caring allowances for children with functional impairment has been raised from 16 to 19.[269] The motivation behind the reform is that social developments have rendered a 16-year age limit for caring allowance outmoded.

Practice of national authorities

As a direct result of the National Action Plan for Disability Policy (prop. 1999/2000:79, *Nationell handlingsplan för handikappolitiken*) a decree stating that the different authorities should be accessible for all citizens was prepared (SFS 2001:526) and enacted. The Government has ordered the office of the Disability Ombudsman (*Handikappombudsmannen*) to present guidelines on how the public administration could implement the decree.[270]

The National Plan envisages a number of measures to be taken by the year 2005 at the latest. Priority has been given to the realisation of the aim that the disability perspective shall permeate all sectors of society, *i.e*. the authorities shall ensure that their premises, activities and information are accessible to persons with disabilities. Moreover, public transportation services shall be fully accessible to persons with functional impairment by 2010. The aim is for everyone in 2010, whatever their functional impairment, to be able to visit among other things, social insurance offices, museums, public authorities and public places as all other citizens.[271] In other words, there should be no stairs preventing wheelchair access. The Parliament reviews on annual basis the progress achieved in the implementation of the plan.[272]

For the first time in 2003 the Government Appropriation Directions contained goals and requests on how to fulfil the ideas of responsibility in different areas. Various authorities, representing different sectors in society, are responsible for their area of concern and are to implement to disability policy according to the Government National Action Plan from 2000. The National Board of Health and Welfare (*Socialstyrelsen*) plays a central role. The Disability Ombudsman demands better concretion as to when and how to fulfil these goals in his report from May 2003.[273]

Reasons for concern

Despite longstanding tradition of disability policy, persons with functional impairment currently represent 11 per cent of the unemployed population in Sweden.[274] In other words, there is a need for more effective measures in order to create genuine equality of opportunities in the open labour market for persons with functional impairment.

The Office of the Disability Ombudsman *(Handikappombudsmannen)* in his report from 2003 welcomed the new legislation against discrimination. At the same time concern has been expressed about the fact that lack of access has not been included as a discrimination issue.[275] In other words, society must be made accessible to persons with functional impairment. This is an issue which has been the cause for most of the complaints brought to the Disability Ombudsman. Criticism has recently been expressed in Swedish media as regards the restricted accessibility of children with functional impairment to playing grounds.[276] The Government has, however, appointed a parliamentary Committee with the task of considering whether the existing protection for people with functional impairment from disadvantage on account of

[269] See the report presented by the Swedish Government to the European Committee of Social Rights, which is currently under review, RAP/RCha/SW/II(202), p. 68.
[270] Handikappombudsmannens 9:e rapport till regeringen, *Skydda mot diskriminering*, May 2003, p. 40.
[271] Government Office of Sweden, *Disability Policy in Sweden*, Stockholm 2003, p. 1.
[272] Skr. 2002/03:25, *Uppföljning av den Nationella handlingsplanen för handikappolitiken*.
[273] Handikappombudsmannens 9:e rapport till regeringen, *Skydda mot diskriminering,* May 2003, pp. 59-63.
[274] European Committee of Social Rights, Conclusions 2003, Sweden, p. 42.
[275] Handikappombudsmannens 9:e rapport till regeringen, op. cit., p. 75.
[276] *H.Ahlgren*, Alla barn ska ha rätt att leka, Aftonbladet 18 November 2003, p. 23.

inadequate accessibility should be extended from working life and high education to other areas of society. The Committee is to report its findings no later than 1st of January 2005.[277]

CHAPTER IV : SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

National legislation, regulation and case law

A parliamentarian Committee has proposed new legislation to be enacted in 2004 in accordance with the EU Directive on the so called Societas Europea (SE –company). The workers' right to influence according to EU-law would be thereby better guaranteed.

The starting point for the reform has been that the Directive shall be implemented in such a way as to follow the traditions of the Swedish labour market as far as possible, and especially the Swedish tradition within the area of consultation with workers.[278] A specially designed body shall be established with the aim to negotiate with the companies on arrangements for employee involvement.

Article 28. Right of collective bargaining and action

Reasons for concern

It seems reasonable to raise the question of whether the current situation in Sweden can be considered as compatible with the requirements of Article 6 Section 4 of the Revised European Social Charter when taking into account that only trade unions have the right to call a strike and in addition that the National Mediation Office may impose fines for failure to observe notice rules and postponement orders, the amount of which is excessive.

Article 29. Right of access to placement services

No significant developments to be reported.

Article 30. Protection in the event of unjustified dismissal

No significant developments to be reported.

Article 31. Fair and just working conditions

National legislation, regulation and case law

A parliamentarian Committee has proposed a few changes in the legislation regarding paid leave. The primary purpose of the amendments is to facilitate the situation of smaller companies.[279]

[277] Ministry of Justice, *Extended protection against discrimination*, Ju 03.12e, June 2003, p. 3.
[278] SOU 2003:64*, Arbetstagarinflytande i Europabolag. Betänkande från utredningen om arbetsinflytande i europabolag*, p. 21.
[279] See SOU 2003:54, *Semesterlagen och övriga ledighetslagar – översyn och förenklingar*.

Article 32. Prohibition of child labour and protection of young people at work

National legislation, regulation and case law

According to Section 9 of the Ordinance 1996:1, Minors at Work (AFS 1996:1) minors, who are still subject to compulsory education, may take up "light work". The work shall be harmless and simple. Nevertheless, it has been rightly questioned as to whether the notion of "light work" in reality excludes work that could deprive children of the full benefit of their education.[280]

Reasons for concern

The current legal state of affairs with regard to some circumstance of employment of children in Sweden may not be judged as compatible with Article 7 Section 3 of the Revised European Social Charter. In other words, the legislation does not guarantee an adequate vacation period during the summer holiday.

Article 33. Family and professional life

No significant developments to be reported.

Article 34. Social security and social assistance

Practice of national authorities

Sweden has a generous system of parental insurance. The National Board of Social Security has under the year of scrutiny run several advertising and information campaigns in order to emphasise the importance of both parents claiming the parental benefit. Written material has been distributed to all fathers highlighting the significance of early and close contact between father and child.

All parents are invited to information meetings about the parental insurance scheme before having their child. The father of a new-born child is entitled to 10 days temporary parental benefit on the birth of his child. Almost all fathers make use of these days.[281]

Reasons for concern

The current social security legislation in Sweden is apparently incompatible with Article 20 of the Revised European Social Charter, since it involves indirect discrimination against women working part-time. Thus, female workers as part-time workers, who work fewer hours than the required minimum, are not covered by unemployment insurance.

Article 35. Health care

International case law and concluding observation of international organs

The European Committee of Social Rights expressed its concern about the reports, which indicate a rapid increase in the maternal mortality rate during the review of the Swedish report under the Revised European Social Charter in 2003. The Committee requested Sweden sub-

[280] European Committee of Social Rights, Conclusions 2002, p. 15, www.esc.coe.int
[281] Ministry of Health and Social Affairs, *Fact Sheet no. 14*, September 2003, p. 2.

sequently to provide information on the reasons for this negative development as well as to update the figures in this respect.[282]

National legislation, regulation and case law

In 2003 the inquiry Committee which had been appointed with a wide remit in relation to the reception of asylum-seekers presented a number of proposals dealing with necessary amendments of the current Swedish legislation in order to make it compatible with the Directive 2003/9/EC. The Migration Board shall, among other things, be obliged to inform all asylum-seekers about the Swedish health care system and their rights in this respect.[283]
Practice of national authorities

The Swedish Parliament has decided to provide extra funding for the period 2001-2004 in order to increase the efficiency of primary care, elderly care and psychiatry.

Reasons for concern

There is still no legal guarantee in Sweden for the regular/compulsory medical examination of young workers. Such examinations take place only if the employer deems it necessary or on the requests of the Work Environment Inspectorate.

Article 36. Access to services of general economic interest

No significant developments to be reported.

Article 37. Environmental protection

International case law and concluding observation of international organs

Although Sweden consistently makes efforts to comply with its obligations under EC/EU law, it has actually faced difficulties to comply properly with the requirements of some regulations dealing with environmental protection.

The European Commission has sent Sweden a Reasoned Opinion, *i.e.* the second stage of infringement procedure under Article 226 of the EC Treaty, because Swedish legislation does not contain any adequate provision for the assessment of several categories of projects. This concerns, *inter alia*, certain projects related to agriculture, the extractive industry, the energy industry and production and processing of metals.[284] The Swedish Government has indicated an intention to change the legislation in question, but these amendments have yet to be communicated.

During the period under review, Sweden has published its first national report under the Joint Convention on the safety of spent fuel management and the safety of radioactive waste management.[285]

[282] European Committee of Social Rights, Conclusions, Sweden (2003), p. 31, www.coe.int
[283] SOU 2003:89, *EG-rätten och mottagandet av asylsökande*, pp. 50-51.
[284] European Commission, *Commission acts against UK, Sweden and Ireland for non-compliance with Environmental Impact Assessment Directive*, IP/03/502, Brussels, 7 April 2003, p. 1. The Head of the Legal Department at the Ministry of Justice, Mr O.Abrahamsson has recently expressed his dissatisfaction with the quality of the current Swedish legislation on environmental protection. See *Kvaliteten på lagstiftningen får inte sjunka mer*, Advokaten, November 2003, p. 17.
[285] Ministry of the Environment, Ds 2003:20, *Swedish implementation of the obligations of the Joint Convention*.

National legislation, regulation and case law

In December 2002 the Government submitted a written communication to the Parliament about its environmental goal in consumer protection policy.[286] Three new goals were identified in the above document. Firstly, it should be profitable and simple to act in accordance with, for the environment, a positive result. Secondly, a number of concrete examples on how to change behaviour in order to achieve better environment should be presented. Thirdly, the environmental labelling, eco and fair trade labels (*miljömärkning)* should be made more widespread.

In June 2000 the Government established a national Committee with the task to further develop the implementation of the documents adopted at two UN conferences (Agenda 21 and Habitat). In its report, which was presented in 2003, the Committee made 12 proposals.[287] It suggested, among other things, that a national forum should be created independent from the Government; that the Government should stimulate regional and local projects and that research in different area should be stimulated through various institutions.

In May 2003 the Government introduced an Eco-efficient Society Bill (prop. 2002/03:117, *Ett samhälle med giftfria och resurssnåla kretslopp*) in which it set out its environmental quality objectives and action strategies. A waste policy for a non-toxic, resource-saving environmental life cycle is envisaged.[288] One of the aims of this reform is to further strengthen certain structures that have been decided earlier. The waste handling should, in other words, be a question of infrastructure and not only an environmental problem that has to be solved. Also the responsibilities of the municipalities have been further clarified.

Article 38. Consumer protection

National legislation, regulation and case law

In Sweden, consumer policy has for a long time been considered as a matter for public concern. In order to implement the Directive 2001/95/EC from the 3 of December 2001 a parliamentarian Committee proposed in 2003 a few changes in Swedish legislation on product safety.[289] In view of the Committee the introduction of a completely new Act on product safety is needed. An important proposal concerns the obligation to supply products or services that are safe (a general safety demand).

On the 22 May 2003 a Government Bill about financial advice to consumers was submitted to the Parliament for adoption.[290] The proposed Act, which is expected to enter into force on 1 July 2004, is apparently in favour of the consumer and it will be valid for advice on assets in different financial instruments such as shares etc. The adviser should, according to the proposed legislation, have a certain competence and should also document the occasion of the advice.

[286] Skr. 2002/03:31,*Utvärdering av miljömålet i konsumentpolitiken.* (Evaluation of the environmental quality objectives in consumer protection).
[287] See SOU 2003:31, *En hållbar framtid i sikte. Slutbetänkande från Nationalkommittén för Agenda 21 och Habitat*.
[288] Prop. 2002/03:117, *Ett samhälle med giftfria och resurssnåla kretslopp*.
[289] See SOU 2003:82, *Säkra protdukter*.
[290] Prop. 2002/03:133*, Lag om finansiell rådgivning till konsumenter*.

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

No significant developments to be reported.

Article 40. Right to vote and to stand as a candidate at municipal elections

International case law and concluding observation of international organs

In its second report on the situation in Sweden the European Commission against Racism and Intolerance (ECRI) noted that voting and standing for election is very low among persons of immigrant origin. Moreover, non-citizens are under-represented in civil society organizations such as the trade unions.[291]

Article 41. Right to good administration

No significant developments to be reported.

Article 42. Right of access to documents

No significant developments to be reported.

Article 43. Ombudsman

Having an Ombudsman to safeguard one's rights began as a Swedish phenomenon. Today Sweden has five separate offices of "rights Ombudsmen".

Legislative adjustments, designed to improve the efficiency and to expand the tasks of the anti-discrimination ombudsmen were introduced in 2003. The ombudsmen have, in consequence, been given more powers to act in cases of discrimination.

The new legislation (*Lag om ändring i lagen* (1999:131) *om Ombudsmannen mot etnisk diskriminering* (SFS 2003:313)) entails a substantial extension of the field of supervision of the Office of the Ombudsman against Ethnic Discrimination (DO).[292] Up to now, areas such as services and goods (including housing), social protection and social benefits and education in general have not been included in the mandate of the Ombudsman. Funding to the DO has increased by SEK 6 million from 2001 and the budget for the year 2003 amounts to approximately SEK 16 million.[293]

The Swedish Disability Ombudsman has the power to examine cases where persons have been discriminated against on grounds of disability. His/her mandate has been made more

[291] CRI(2003)7, § 78, p. 26.
[292] See, in addition, *Förordning om ändring i förordningen* (1988 :895) *med instruktion för Ombudsmannen mot etnisk diskriminering* (SFS 2003 :318)). The new rules entered into force on 1st of July 2003.
[293] The 15th and 16th periodic reports submitted by Sweden in accordance with Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination, CERD/C/452/Add.4, § 24, p. 6.

comprehensive since 1st of July 2003[294] (*Lag om ändring i lagen* (1994:749) *om Handikappombudsmannen* (SFS 2003:314)).[295]

Article 44. Right to petition

On 1st of January 2003 the new Act on Group Proceedings (*Lag om grupprättegång* (SFS 2002:599)) took effect. According to this Act, a group action can be brought by a plaintiff as a representative of several individuals with legal effects for all of them, although all individuals are not formally parties to the case.

A group action can now be instituted as a "private group action", an "organisation group action" or a "public group action". Group action suits are intended to complement conventional legal proceedings. A group action may, therefore, only be heard by the court if certain special preconditions for proceedings are satisfied.[296]

On the basis of the new legislation which extended the protection against discrimination, it is presently possible, in specific circumstances, to bring a group action on the grounds of alleged discrimination. This is, of course, a welcome development.

Article 45. Freedom of movement and of residence

National legislation, regulation and case law

A Commission of inquiry presented its findings and recommendations in October 2003, including proposals for amendments in the current Swedish Aliens Act and the Aliens Ordinance, in order to make them more compatible with the Dublin- rules on, *inter alia*, the issuing of EU laissez passer etc.[297]

Another Commission of inquiry recommended that Sweden should continue to take a "proactive role in the EU on the issue of introducing a possibility of biometric control of visas issued".[298] It supported, in addition, the proposal to appoint a special commissioner to look over border control issues.

A Government Bill on the upcoming enlargement of the EU, including issues of freedom of movement for the citizens of the 10 countries that are now waiting to join the Union, was submitted to the Parliament on 30th of October 2003.[299] The proposal was subsequently approved on 17th of December 2003.

Article 46. Diplomatic and consular protection

No significant developments to be reported.

[294] See *Lag om ändring i lagen* (1994:749) *om Handikappombudsmannen* (SFS 2003:314).
[295] See, in addition, *Förordning om ändring i förordningen* (1999:170) *med instruktion för Ombudsmannen mot diskriminering på grund av sexuell läggning* (HomO).
[296] The 15th and 16th periodic reports, op. cit., § 28, p. 6.
[297] SOU 2003:89, *EG-rätten och mottagande av asylsökande*, pp. 63-68.
[298] SOU 2003:25, *Verkställighet vid oklar identitet m.m.*, p. 27.
[299] Prop. 2003/04:25, *Europeiska unionens utvidgning 2004*, pp. 19-29.

CHAPTER VI : JUSTICE

Article 47. Right to an effective remedy and to a fair trial

International case law and concluding observation of international organs

Article 6 is the provision of the European Convention on Human Rights most frequently invoked by applicants against Sweden in Strasbourg. The following issues have been problematic for Sweden: access to court regarding civil rights and obligations, the meaning of criminal charge, the requirements of impartial/independent courts, public hearings and the principle of equality of arms.

Judgement from the European Court of Human Rights:

The European Court of Human Rights tried one case[300] against Sweden in 2003 concerning a complaint under Articles 6 and 13 of the European Convention of Human Rights. Sweden was found guilty for having breached Article 13 of the Convention, which guarantees the right of an effective remedy but not Article 6 (the right to a fair hearing). The case clearly demonstrates the dynamic nature of the ECHR.

The Court of Human Rights addressed the question of the available possibilities to a victim of a human rights violation (the right of property) to seek and be awarded damages by the State in question (*i.e.* Sweden). The applicant asserted that the Chancellor of Justice (*Justitiekanslern*) or the courts would not have provided a remedy and were, therefore, not to be considered as "effective" in accordance with the requirements of the Convention.

The Swedish Government argued that the applicant could have claimed compensation from the State under the Tort Liability Act, either by petitioning the Chancellor of Justice or by bringing a civil action in the courts. It was pointed out, furthermore, that the applicant could have relied on the Convention as it forms part of the Swedish legislation.

The European Court of Human Rights commented that the applicant had invoked before it that the application of the Bankruptcy Act had been unreasonable and had involved a violation of his property rights. His appeal was namely dismissed by the Court of Appeal without an examination of the merits. As to the existing possibility to claim damages under the Tort Liability Act, the European Court first reiterated that it dismissed the Government's preliminary objection about the exhaustion of domestic remedies as it would not have constituted any effective remedy since the domestic court had not done any wrong according to law, incurring liability for the State. For the same reason the European Court considered that the possibilities asserted by the Government could not have been capable of providing relief and it, therefore, came to the conclusion that Sweden was in breach with its obligations under Article 13 of the ECHR.[301]

National legislation, regulation and case law

A parliamentarian Committee recently proposed several changes in the relevant legislation for the fight against criminality.[302] One of the main purposes of the proposed reform is to achieve increased legal security during the investigation of crimes. This shall be done, among other things, through the legal regulation of the methods to be used in combating criminality.

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[300] *Stockholms Försäkrings- och skadeståndsjuridik AB v. Sweden*, Eur.Ct.H.R. Judgement of 16 September 2003. The case is also referred to under Article 17 (the right to property) in this report.
[301] Op. cit., §§ 68-71.
[302] SOU 2003:74, *Ökad effektivitet och rättssäkerhet i brottsbekämpningen* (Better efficiency and legal security in the fight against criminality).

The case-law of domestic courts:

One of the objectives of Article 6(1) of the ECHR is to protect the individual from living in uncertainty during long periods of time, *i.e*., justice should be administered without delay. This implies, among other things, that the period of time after the commission of a crime and until the final determination of a criminal case has taken place, should be kept to a minimum.

After assessing the length of the proceedings in a case where the suspect of an offence was charged in 1994 and the judgment of the first instance court (the District Court-*tingsrätt*) was delivered in 2001, as well as having regard the case- law of the European Court[303], the Supreme Court (*Högsta domstolen*) came to the conclusion that the unreasonable length of the proceedings in question constituted a violation of the defendant's right to a fair trial within a reasonable time. In the view of the Court, the circumstances of the case under consideration prompted the decision to compensate C.R. in the way of reducing his sentence (imprisonment) to half of the time, which the severity of the committed crimes would otherwise have justified.[304]

The second case,[305] which was also reviewed by the Swedish Supreme Court, involved the issue of whether the judges in the Court of Appeal were obliged to take a decision on the payment of damages to the defendant for alleged breaches of Article 6 of the European Convention on Human Rights. The defendant claimed that he was a victim of a violation of Article 6 since the Court did not allow him to invoke certain evidence during the judicial proceedings concerning him. The European Court took the view that it was still an open question of whether, according to Swedish law, there is a right to damages to be paid by the State in cases of violation of the European Convention, independently of fault or neglect. In the present case, however, the claim was not directed towards the Swedish Government but towards individual employees. According to the Court there could be no liability for such employees to pay damages based directly on the European Convention.

Article 48. Presumption of innocence and right of defence

International case law and concluding observation of international organs

Judgement from the European Court of Human Rights:

The European Court of Human Rights tried one case[306] against Sweden in 2003 concerning the right to have access to a Finnish-speaking public defence council (*i.e*. an issue falling under Article 6 (1) and (3 c and e) of the European Convention of Human Rights. The case concerned the application of the Code of Judicial Procedure (*Rättegångsbalken)*. The European Court, among other things, found that the applicant was not handicapped to the extent that he could not communicate at all with his appointed defence lawyer. Further, interpretation between Finnish and Swedish was arranged at both court hearings. The European Court also noted the applicant's contention that he would have paid a private Finnish spoken lawyer. However, he did not inform the courts of his willingness. There was neither any indication that the courts would have refused him this change of lawyer. All together, the criminal proceedings against the applicant were regarded as fair and in according with the requirements of

[303] The Court made reference to the *Kudla v Polen* case (Appl. 30210/96, Eur.Ct.H.R., Judgment of 26 October 2000), which deals with the right to effective remedy as well as to the *Pietiläinen v Finland* case (Eur.Ct.H.R., Judgment of 5th of November 2002,§ 44).
[304] Högsta Domstolen (*The Supreme Court*, *The Prosecutor-General v. C. R.)*, Riksåklagaren v. C.R.: Mål nr B 2100-02, Judgment of 14th of October 2003.
[305] Högsta Domstolen (*The Supreme Court, A O v. A-C P and others)*, Kärande AO Svarande A-C P m.fl., Mål nr T 3040-03, Judgment of 10th of November 2003.
[306] *Lagerblom v. Sweden*, Eur.Ct.H.R., Judgement of 14th of January 2003.

Article 6 of the ECHR. In other words, the European Court of Human Rights found no violation of the European Convention.[307]

Article 49. Principles of legality and proportionality of criminal offences and penalties

No significant developments to be reported

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No significant developments to be reported

[307] Op. cit., §§ 48-64.