

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
*RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS
FONDAMENTAUX*

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN SWEDEN IN 2004

submitted to the Network by Professor **Maja ERIKSSON***

on 3 January 2005

Reference: CFR-CDF/SE/2004



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon the request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union.

* This report was prepared with the assistance of O.Asplund.

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Le Réseau UE d'Experts indépendants en matière de droits fondamentaux a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), 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), M. Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moyse (Luxembourg), 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), Pavel Sturma (Rép. tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par O. De Schutter, assisté par V. Verbruggen.

Les documents du Réseau peuvent être consultés via :

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The EU Network of Independent Experts on Fundamental Rights has been set up by the European Commission (DG Justice, Freedom and Security), 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), M. Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moyse (Luxembourg), 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), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by O. De Schutter, with the assistance of V. Verbruggen.

The documents of the Network may be consulted on :

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TABLE OF CONTENTS

CHAPTER I : DIGNITY	13
ARTICLE 1. HUMAN DIGNITY	13
Legislative initiatives, national case law and practices of national authorities	13
ARTICLE 2. RIGHT TO LIFE	13
<i>Euthanasia (active and passive, assisted suicide)</i>	13
Legislative initiatives, national case law and practices of national authorities	13
<i>Domestic violence (especially as exercised against women)</i>	13
Legislative initiatives, national case law and practices of national authorities	13
Positive aspects.....	14
Good practices	14
Reasons for concern	15
<i>Other relevant developments</i>	16
Reasons for concern	16
ARTICLE 3. RIGHT TO THE INTEGRITY OF THE PERSON.....	16
<i>Breaches of the right to the integrity of the person (general)</i>	16
Legislative initiatives, national case law and practices of national authorities	16
Reasons for concern	17
ARTICLE 4. PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	17
<i>Conditions of detention and external supervision of the places of detention</i>	17
Penal institutions	17
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	17
Positive aspects.....	18
Reasons for concern	18
Institutions for the detention of persons with a mental disability	19
Centres for the detention of foreigners	19
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	19
Positive aspects.....	19
Reasons for concern	20
<i>Fight against the impunity of persons guilty of acts of torture (Convention against torture (1984), Article 5)</i>	21
Reasons for concern	21
<i>Protection of the child against ill-treatments</i>	21
Legislative initiatives, national case law and practices of national authorities	21
Positive aspects.....	21
Good practices	22
Reasons for concern	22
ARTICLE 5. PROHIBITION OF SLAVERY AND FORCED LABOUR.....	23
<i>Trafficking in human beings (in particular for sexual exploitation purposes)</i>	23
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	23
Legislative initiatives, national case law and practices of national authorities	23
Positive aspects.....	24
Good practices	24
Reasons for concern	24
<i>Protection of the child (fight against child labour – especially with purposes of sexual exploitation or child pornography - and fight against the sexual tourism involving children)</i>	25
Legislative initiatives, national case law and practices of national authorities	25
Positive aspects.....	26
Reasons for concern	26
CHAPTER II : FREEDOMS.....	28

ARTICLE 6. RIGHT TO LIBERTY AND SECURITY.....	28
<i>Other relevant developments</i>	28
Legislative initiatives, national case law and practices of national authorities	28
The Court of Appeals , Case B 1846-04, Judgment of 23 November 2004	29
ARTICLE 7. RESPECT FOR PRIVATE AND FAMILY LIFE	29
Private life	29
<i>Criminal investigations and the use of special or particular methods of inquiry or research</i>	29
Legislative initiatives, national case law and practices of national authorities	29
Reasons for concern	30
<i>Intelligence and security services</i>	30
Legislative initiatives, national case law and practices of national authorities	30
<i>Controls imposed on potential candidates in employment (in particular security checks with regard to applicants for “sensitive positions”)</i>	31
Reasons for concern	31
<i>Voluntary termination of pregnancy</i>	31
Positive aspects.....	31
Family life	32
<i>Removal of a child from the family</i>	32
Reasons for concern	32
ARTICLE 8. PROTECTION OF PERSONAL DATA	32
<i>Independent control authority (evolution of its powers, competences)</i>	32
Positive aspects.....	32
<i>Protection of personal data (in general, right of access to data, to have them rectified and right to a remedy)</i>	32
Legislative initiatives, national case law and practices of national authorities	32
Positive aspects.....	35
<i>Protection of the private life of the worker and the prospective worker</i>	35
Legislative initiatives, national case law and practices of national authorities	35
<i>Protection of the private life of the insured person and the person seeking an insurance</i>	35
Legislative initiatives, national case law and practices of national authorities	35
<i>Protection of the private life in the processing of medical data</i>	36
Legislative initiatives, national case law and practices of national authorities	36
<i>Other relevant developments</i>	36
Legislative initiatives, national case law and practices of national authorities	36
ARTICLE 9. RIGHT TO MARRY AND RIGHT TO FOUND A FAMILY	37
<i>Marriage</i>	37
Legislative initiatives, national case law and practices of national authorities	37
Reasons for concern	38
<i>Legal recognition of same-sex partnerships</i>	38
Legislative initiatives, national case law and practices of national authorities	38
<i>Control of marriages suspect of being simulated</i>	39
Legislative initiatives, national case law and practices of national authorities	39
<i>Other relevant developments</i>	40
Legislative initiatives, national case law and practices of national authorities	40
ARTICLE 10. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION	40
<i>Other relevant developments</i>	40
Legislative initiatives, national case law and practices of national authorities	40
ARTICLE 11. FREEDOM OF EXPRESSION AND OF INFORMATION.....	41
<i>Freedom of expression and information (in general)</i>	41
Good practices	41
Reasons for concern	41
<i>Other relevant developments</i>	41
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	41
ARTICLE 12. FREEDOM OF ASSEMBLY AND OF ASSOCIATION	42

<i>Freedom of peaceful assembly</i>	42
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	42
Reasons for concern	42
<i>Freedom of political association</i>	42
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	42
Reasons for concern	43
ARTICLE 13. FREEDOM OF THE ARTS AND SCIENCES	43
<i>Freedom of the arts</i>	43
Positive aspects	43
Reasons for concern	43
<i>Freedom of research</i>	43
Legislative initiatives, national case law and practices of national authorities	43
<i>Other relevant developments</i>	45
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	45
ARTICLE 14. RIGHT TO EDUCATION	45
<i>Access to education</i>	45
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	45
Legislative initiatives, national case law and practices of national authorities	45
Positive aspects	46
Reasons for concern	46
ARTICLE 15. FREEDOM TO CHOOSE AN OCCUPATION AND RIGHT TO ENGAGE IN WORK	47
<i>The right for nationals from other member States to seek an employment, to establish himself or to provide services</i>	47
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	47
Legislative initiatives, national case law and practices of national authorities	48
Good practices	48
Reasons for concern	48
<i>The prohibition of any form of discrimination in the access to employment</i>	48
Reasons for concern	48
<i>Other relevant developments</i>	49
Reasons for concern	49
ARTICLE 16. FREEDOM TO CONDUCT A BUSINESS	49
<i>Other relevant developments</i>	49
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	49
The European Court of Justice (ECJ), Case C-116/04 Commission of the European Communities v. Kingdom of Sweden, Judgment of 18 November 2004	49
ARTICLE 17. RIGHT TO PROPERTY	50
<i>The right to property and the restrictions to this right</i>	50
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	50
Legislative initiatives, national case law and practices of national authorities	50
Positive aspects	51
Reasons for concern	51
ARTICLE 18. RIGHT TO ASYLUM	52
<i>Asylum proceedings</i>	52
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	52
Legislative initiatives, national case law and practices of national authorities	52
Positive aspects	53
<i>Recognition of the status of refugee</i>	53
Legislative initiatives, national case law and practices of national authorities	53
Reasons for concern	55

<i>Unaccompanied minors seeking asylum</i>	56
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	56
Legislative initiatives, national case law and practices of national authorities	56
Positive aspects.....	56
Good practices.....	57
Reasons for concern	57
<i>Other relevant developments</i>	58
Good practices.....	58
ARTICLE 19. PROTECTION IN THE EVENT OF REMOVAL, EXPULSION OR EXTRADITION.....	58
<i>Prohibition of removals of foreigners to countries where they face a real and serious risk of being killed or being subjected to torture or to cruel, inhuman and degrading treatments</i>	58
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	58
Legislative initiatives, national case law and practices of national authorities	59
Positive aspects.....	59
Good practices.....	60
Reasons for concern	60
<i>Legal remedies and procedural guarantees regarding the removal of foreigners</i>	60
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	60
Legislative initiatives, national case law and practices of national authorities	61
Reasons for concern	61
CHAPTER III : EQUALITY	62
ARTICLE 20. EQUALITY BEFORE THE LAW	62
<i>Equality before the law</i>	62
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	62
ARTICLE 21. NON-DISCRIMINATION	62
<i>Protection against discrimination</i>	62
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	62
Legislative initiatives, national case law and practices of national authorities	63
Reasons for concern	63
<i>Fight against incitement to racial, ethnic, national or religious discrimination</i>	65
Good practices.....	65
Reasons for concern	65
<i>Remedies available to the victims of discrimination</i>	66
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	66
<i>Protection of Gypsies / Roms</i>	66
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	66
Positive aspects.....	66
Reasons for concern	66
ARTICLE 22. CULTURAL, RELIGIOUS AND LINGUISTIC DIVERSITY	67
<i>Protection of linguistic minorities</i>	67
Reasons for concern	67
ARTICLE 23. EQUALITY BETWEEN MAN AND WOMEN	67
<i>Gender discrimination in work and employment</i>	67
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	67
Legislative initiatives, national case law and practices of national authorities	67
Good practices.....	68
Reasons for concern	68
ARTICLE 24. THE RIGHTS OF THE CHILD.....	69

<i>Possibility for the child to be heard, to act and to be represented in judicial proceedings</i>	69
Positive aspects.....	69
Reasons for concern	69
<i>Alternatives to the removal from the family</i>	71
Reasons for concern	71
<i>Juvenile offenders</i>	71
Reasons for concern	71
<i>Other relevant developments</i>	71
Legislative initiatives, national case law and practices of national authorities	71
Positive aspects.....	72
Good practices	72
Reasons for concern	72
ARTICLE 25. THE RIGHTS OF THE ELDERLY	72
<i>The possibility for the elderly to stay in their usual life environment</i>	72
Legislative initiatives, national case law and practices of national authorities	72
Reasons for concern	73
ARTICLE 26. INTEGRATION OF PERSONS WITH DISABILITIES	73
<i>Protection against discrimination on the grounds of health or disability</i>	73
Legislative initiatives, national case law and practices of national authorities	73
Reasons for concern	73
CHAPTER IV : SOLIDARITY	75
ARTICLE 27. WORKERS' RIGHT TO INFORMATION AND CONSULTATION WITHIN THE UNDERTAKING	75
<i>Workers' information on the economic and financial situation of the undertaking</i>	75
Legislative initiatives, national case law and practices of national authorities	75
ARTICLE 28. RIGHT OF COLLECTIVE BARGAINING AND ACTION.....	76
<i>The right of collective action (right to strike) and the freedom of enterprise or the right to property</i>	76
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	76
ARTICLE 29. RIGHT OF ACCESS TO PLACEMENT SERVICES.....	76
ARTICLE 30. PROTECTION IN THE EVENT OF UNJUSTIFIED DISMISSAL	76
ARTICLE 31. FAIR AND JUST WORKING CONDITIONS	76
ARTICLE 32. PROHIBITION OF CHILD LABOUR AND PROTECTION OF YOUNG PEOPLE AT WORK.....	77
<i>Protection of minors at work</i>	77
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	77
ARTICLE 33. FAMILY AND PROFESSIONAL LIFE	77
ARTICLE 34. SOCIAL SECURITY AND SOCIAL ASSISTANCE	78
<i>Social assistance and fight against social exclusion (in general)</i>	78
Legislative initiatives, national case law and practices of national authorities	78
Reasons for concern	78
<i>Other relevant developments</i>	78
Legislative initiatives, national case law and practices of national authorities	78
ARTICLE 35. HEALTH CARE	79
<i>Access to health care</i>	79
Legislative initiatives, national case law and practices of national authorities	79
Positive aspects.....	79
Reasons for concern	80
ARTICLE 36. ACCESS TO SERVICES OF GENERAL ECONOMIC INTEREST.....	80
ARTICLE 37. ENVIRONMENTAL PROTECTION.....	80
<i>Right to a healthy environment</i>	80
Legislative initiatives, national case law and practices of national authorities	80
Positive aspects.....	81

Reasons for concern	82
<i>Other relevant developments</i>	82
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	82
Abstract:	82
ARTICLE 38. CONSUMER PROTECTION	83
<i>Other relevant developments</i>	83
Legislative initiatives, national case law and practices of national authorities	83
CHAPTER V : CITIZEN'S RIGHTS	85
ARTICLE 39. RIGHT TO VOTE AND TO STAND AS A CANDIDATE AT ELECTIONS TO THE EUROPEAN PARLIAMENT.....	85
<i>Right to vote and to stand as a candidate at elections to the European Parliament</i>	85
Good practices	85
Reasons for concern	85
ARTICLE 40. RIGHT TO VOTE AND TO STAND AS A CANDIDATE AT MUNICIPAL ELECTIONS..	85
<i>Participation of foreigners in public life at local level</i>	85
Legislative initiatives, national case law and practices of national authorities	85
Positive aspects.....	86
Good practices	86
Reasons for concern	86
<i>Right to vote and to stand as a candidate at municipal elections for third country nationals</i>	86
Reasons for concern	86
<i>Other relevant developments</i>	86
Legislative initiatives, national case law and practices of national authorities	86
ARTICLE 41. RIGHT TO GOOD ADMINISTRATION	87
ARTICLE 42. RIGHT OF ACCESS TO DOCUMENTS.....	87
ARTICLE 43. OMBUDSMAN	87
ARTICLE 44. RIGHT TO PETITION	87
ARTICLE 45. FREEDOM OF MOVEMENT AND OF RESIDENCE.....	87
ARTICLE 46. DIPLOMATIC AND CONSULAR PROTECTION	87
CHAPTER VI : JUSTICE	88
ARTICLE 47. RIGHT TO AN EFFECTIVE REMEDY AND TO A FAIR TRIAL.....	88
<i>Access to a court</i>	88
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up	88
Legislative initiatives, national case law and practices of national authorities	90
Positive aspects.....	91
Reasons for concern	91
<i>Independence and impartiality</i>	92
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	92
European Court of Human Rights:	92
1. The Case of AB Kurt Kellerman v. Sweden, Application No. 41579/98, Judgment of 26 October 2004.	92
<i>Reasonable delay in judicial proceedings</i>	93
International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up.....	93
European Court of Human Rights:	93
<i>Other relevant developments</i>	94
Legislative initiatives, national case law and practices of national authorities	94
The case-law of domestic courts:	95
ARTICLE 48. PRESUMPTION OF INNOCENCE AND RIGHTS OF DEFENCE.....	95
ARTICLE 49. PRINCIPLES OF LEGALITY AND PROPORTIONALITY OF CRIMINAL OFFENCES AND PENALTIES.....	95

ARTICLE 50. RIGHT NOT TO BE TRIED OR PUNISHED TWICE IN CRIMINAL PROCEEDINGS FOR THE SAME CRIMINAL OFFENCE.....	95
APPENDIX: CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (O.J. C-364 OF 18.12.2000).....	97

CHAPTER I : DIGNITY

Article 1. Human Dignity

Legislative initiatives, national case law and practices of national authorities

In its final report, SOU 2004:20, *Genetik, integritet och etik*, the Committee of enquiry that has been set up by the Swedish Parliament with the aim to review existing legislation and to propose new regulations, if needed, within the area of genetic diagnosis, gene therapy and cloning, made a special point in its deliberations by emphasising that “with respect to both medical treatment and medical research where genetic is involved, a number of questions arise concerning, among other things, the risk that human dignity and the conditions governing the life of an individual might become depersonalised”.¹

Article 2. Right to life

Euthanasia (active and passive, assisted suicide)

Legislative initiatives, national case law and practices of national authorities

Euthanasia is still a crime under Swedish law. There has been no discussion in the legislature to revise the current provisions on this subject matter.

Domestic violence (especially as exercised against women)

Legislative initiatives, national case law and practices of national authorities

In November 2004, a Bill (Prop. 2004/05:45, *En ny sexualbrottslagstiftning*) which indicates forthcoming important reforms of the relevant provisions on sexual crimes in the Penal Code (*Brottsbalken* (BrB)) was presented to the Swedish Parliament.

Currently, the provision on rape does not mention the concept of consent as an independent element of rape. By requiring that the victim of rape manifests her/his non-consent or resistance to the perpetrator/s², the coercive element of the crime is being disregarded. According to current proposals for a new Bill on sexual crimes, the definition of the crime “rape” should be expanded, *i.e.* the focus on the coercion requirement has been somewhat relaxed. Sexual violence against a person who is intoxicated or in a situation of a similar incapacitation shall be classified as rape in the future. Today perpetrators of intercourse with a person in such a position are regularly convicted of the crime of sexual abuse rather than rape.

The drafting process of the above mentioned Bill has taken considerable time.³ Nevertheless, it has been closely and vigorously followed by Swedish media, which has reported on the various opinions⁴ as to how to improve the protection against sexual crimes. According to official statements, consideration has been taken of the harsh criticism that has been expressed

¹ SOU 2004 :20, p. 37.

² *S. Wennberg*, Våldtäkt-med eller mot kvinnans vilja ? Juridisk Tidskrift vid Stockholms Universitet, Årgång 16, 2004-05, Nr. 1, pp. 113-133 ; *J.Niemi-Kiesiläinen*, The Reform of Sex Crime Law and the Gender-Neutral Subject, in *Nordic Equality at a Crossroads, Feminist Legal Studies Coping with Difference*, E.-M. Svensson *et al.* (eds.), Aldershot 2004, pp. 167-195.

³ See Amnesty (the Swedish Section of Amnesty International), *Mäns våld mot kvinnor i nära relationer*, Stockholm, April 2004, p. 19.

⁴ See *e.g.*, *T.Bodström*, Lejonhufvuds förslag är omöjliga, SvD 10-07-04, p. 5 ; *M.Leijonhufvud & Chr. Diesen*, Lagen ändras förr eller senare, Bodström, SvD 17-07-04, p. 5 ; *S.Nilsson & B.Brink*, Svagt gehör för kritik mot nya sexlagen, SvD 17-06-04, p. 11.

by the Council on Legislation (*Lagrådet*)⁵ as well as well-established academic scholars and lawyers with respect to the wording of the crime elements of rape in the Bill. As a consequence some amendments relating to the ‘consent’ prerequisite in the provision on rape were made in the *travaux préparatoires*.⁶ This should open up the possibility for a more modern interpretation of the term by the Swedish courts.⁷ On the other hand, critics of the legal reform continue to express their view that despite some improvements, *i.e.* enhancing the respect for the bodily integrity and self-determination of women, the changes were not sufficient to make Swedish law compatible with the current case law of the European Court of Human Rights on the particular issue of consent with respect to rape (*e.g. M.C. vs. Bulgaria*, Application No. 39272/98, Judgment of 4 December 2003).⁸

The proposed Bill on sexual crimes establishes, furthermore, that a gang rape shall be considered as an aggravated rape which is not the case today.⁹ The new legislation is expected to be enacted on 1st of April 2005.¹⁰

Positive aspects

The National Centre for Battered and Raped Women (*Rikskvinnocentrum*) has engaged in methods development, research and support for women who are victims of violence. There is a proposal to turn the Centre into a national institute for disseminating knowledge and developing methods for combating violence against women.¹¹

Good practices

The Chief State Prosecutor has planned and carried out a series of seminars during 2004 with the aim to gain more in-depth knowledge about the reasons for the low number of cases of violence against women being processed by the judiciary.¹²

The Government has allocated additional means (SEK 700.000) to the National Board of Health and Welfare (*Socialstyrelsen*) to follow up on the measures that have been adopted by

⁵ *Justitiedepartementet*, En ny sexualbrottslagstiftning, Lagrådsremiss, 17 juni 2004, www.regeringen.se

⁶ Preparatory works enjoy a very important role in the Swedish legal system. Thus, « the attitude towards written law and legislative preparatory works is very obedient. » Whenever there is a question in law regarding how an Act of Parliament should be interpreted, the preparatory works are always the first source to be consulted. If the law’s proposition or a Government Official Report (SOU) states that a provision should be interpreted in a certain way, then this interpretation is considered to be final. See *E.-M. Svensson et al.*, Introduction : Nordic Feminist Legal Studies at a Crossroads, in *Nordic Equality at a Crossroads*, Aldershot 2004, p. 11 ; *H.Eklund*, Rättsbildning i en ny miljö-hur har domstolarnas roll och betydelse förändrats ? *Svensk Juristtidning (SvJT)*, Årgång 89, 2004, p. 210.

⁷ Mention should be made here of the case that was decided by the Swedish Supreme Court (*Högsta domstolen*) on 4 May 2004 (mål B 4646-03). The Court stressed that absence of consent is only an essential circumstance when deciding on a situation as to whether the criminal act under review constitutes rape or not. The case law of the Supreme Court on this subject matter has been criticised by well-known and respected legal scholars such as Professors Madeleine Leijonhufvud and Christian Diesen, *Sexbrottens moment* 22, SvD 5-07-04, p. 4.

⁸ *ÅP*, Båda måste vilja, *Aftonbladet*, 11 November 2004, p. 2. In the view of major parties in opposition in the Parliament the issue of « consent » needs further considerations. *TT*, Centerpartiet vill lagstifta om samtycke vid sex, SvD 4-12-04, p. 17.

⁹ *Regeringskansliet*, Pressmeddelande, Den sexuella integriteten stärks i ny sexualbrottslag, 11 November 2004, p. 1.

¹⁰ *Viktigare lagar & förordningar inför årskiftet 2004/2005*, 21 december 2004, www.riksdagen.se

¹¹ *Regeringskansliet*, *Justitiedepartementet*, Regeringens insatser för ungdomar som riskerar hedersrelaterad våld, Ju 04.17, November 2004, p. 3.

¹² *Amnesty*, *Mäns våld mot kvinnor i nära relationer*, Stockholm, April 2004, p. 38.

the county administrative boards in order to combat violence against women and especially “honour” related violence.

Reasons for concern

Severe criticism has been expressed on different occasions by several actors in civil society with regard to the insufficient implementation of the provisions combating violence against women (the so-called *kvinnofridslagen*, i.e. the Penal Code (BrB 4:4a, 2st.))¹³ as well as with regard to the shortage of measures to fight violence against women.¹⁴

There are, in other words, reasons for concern with regard to the persistence of violence against women in Sweden and especially domestic violence. During 2004 the Swedish Section of Amnesty International has published two comprehensive reports on the issue of violence against women. The first one with the title *Mäns våld mot kvinnor i nära relationer* (Men’s violence against women in close relations)¹⁵ focuses on violence against women in the private sphere, i.e. domestic violence. The report reveals that there is an increase in reported cases of sexual violence, including cases of rape.¹⁶ The study indicates moreover that victims of rape often are unwilling to report the crime due to social attitudes¹⁷ and lack of confidence in law enforcement responses. In a few cases which were processed by Swedish courts in 2003, the sexual behaviour of the victims of rape was scrutinized. Very few of the reported cases of rape have proceeded to prosecution and the percentage of convicted men guilty of sexual violence against women is very low.¹⁸

Most disturbingly, however, are the statistics showing that each year about 20 to 40 women in Sweden have been subjected to violence with a deadly outcome and about 16 women have been murdered by men with whom they have had close relation.¹⁹ The Amnesty report on men’s violence against women in close relations pays attention to women who are particularly vulnerable to violence because of their disabilities, ethnicity and sexual orientation.²⁰ There is an apparent need for urgent measures to be adopted and active steps to be taken by the Swedish public authorities to eradicate violence against women and to improve the living situation of the victims. In this respect, the second report which has been prepared by the Swedish Section of Amnesty International in 2004 contains a number of important proposals on how the Swedish municipalities (their number in total is 289) should proceed to fight men’s violence against women.²¹

Despite the fact that according to the law (*Socialtjänstlagen* (SFS 2001:453, Chapter 5, § 11)), the responsibility for services, help and protection of women who have been exposed to

¹³T.Brandel, Åklagare struntar i kvinnofridslagen, Aftonbladet, 11-11-04, p. 19 ; O.Byström, TT, Regeringen får kritik om kvinnofrid, SvD 20-11-04, p. 12.

¹⁴These views were expressed during a hearing with representatives for civil society, NGOs and various public authorities in connection with the preparation of the present report. The Swedish NGO Foundation for Human Rights, Stockholm 19 November 2004. See also D.Kjellberg, Dåligt skydd för slagna kvinnor, Frågan prioriteras inte i kommunerna, SvD 25-11-04, p. 13.

¹⁵Amnesty, Mäns våld mot kvinnor i nära relationer, En sammanställning om situationen i Sverige, Stockholm, April 2004, www.2.amnesty.se

¹⁶ See *The National Council for Crime Prevention*, (BRÅ), Pressmeddelande från Brottsförebyggande rådet, Våldsbrotten ökar, stöldbrotten minskar, in Advokaten, Nr. 1/2004, p. 8; C. Reimegård, Antalet anmälningar om kvinnovåld ökar, SvD 20-04-04, p. 8.

¹⁷Amnesty, Mäns våld, pp. 35-36.

¹⁸ Amnesty, Mäns våld, op. cit., pp. 40 and 50; E.Ekselius, Våldtäktfall tas upp igen, SvD 10-10-04, p.9.

¹⁹ Amnesty, Mäns våld, op. cit., p. 23.

²⁰ Amnesty, Mäns våld., op. cit., p. 29.

²¹Amnesty, « Har ej prioriterat frågan », En undersökning om svenska kommuners arbete för att bekämpa mäns våld mot kvinnor, Stockholm, November 2004, www.2.amnesty.se

violence is invested in the local municipalities, the above mentioned study carried out by Amnesty discloses a reality which gives rise to deep concern. For example, the majority of the local authorities simply rely on the work done by the voluntary organisations such as women's emergency centres and their contribution to the economy of the centres varies greatly.²² The quality of the service will, in other words, depend upon in which part of the country the victim of violence resides.

Almost half of the municipalities do not offer safe havens such as emergency centres to victims of violence.²³ Notwithstanding the official prognosis that approximately 150 to 300 girls and women might need safe shelter in Sweden during 2004, there are plans to set up room for only 60 new places in such housing. However, the number of needed places in reality corresponds to twice that number.²⁴

Finally, criticism has been voiced with respect to the poor application of the Act that restricts visiting rights for perpetrators of acts of violence against women (*Lagen om besöksförbud*, (SFS 2003:484)).

Other relevant developments

Reasons for concern

The number of suicides is relatively high in Sweden. The preliminary statistics from the National Board of Health and Welfare for the previous year indicate an increase in numbers. According to a study carried out by D.Wasserman, suicides were the utter consequence of diminished mental health.²⁵

Article 3. Right to the integrity of the person

Breaches of the right to the integrity of the person (general)

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny, the special Committee of inquiry entrusted with the task of considering and submitting proposals with respect to certain issues including genetic diagnosis, gene therapy and cloning presented its proposals for legislative changes /amendments to enter into force on 1st of July 2005. (Swedish Government Official Report Series - SOU 2004:20, *Genetik, integritet och etik, Slutbetänkande av Kommittén om genetisk integritet*.)²⁶

The Committee has put forward a proposal on the introduction of a new law on genetic integrity regulating that no individual may stipulate as a condition for entering into an agreement, that another party should undergo a genetic examination or submit genetic information. Nevertheless, if the information is requested or to be used for medical purposes, for scientific or genealogical research or in order to obtain evidence for legal proceedings, the prohibition shall not apply.²⁷ In addition, a few exceptions are foreseen in cases where genetic information is sought or used by a relative or someone close to the person concerned, provided the latter has given his or her consent to this.

²² Amnesty, op. cit., p. 16 ; *D.Kjellberg*, Dålig skydd för slagna kvinnor, SvD 25-11-04, p. 13.

²³ *C.Reimegård*, op.cit., p. 8.

²⁴ *E.Sidenblad*, Stor brist på skyddad boende för kvinnor, SvD 1-04-04, p. 7.

²⁵ *S. Rosén*, Självmoden har ökat i Sverige, SvD 11-09-04, p. 15.

²⁶ For a more detailed discussion of relevant issues within this area of law see *H.Lidgard* (ed.), *Protecting and Transferring Biotech Inventions*, Studentlitteratur, Lund 2004.

²⁷ SOU 2004:20, pp. 38-39.

The Committee also suggested that the new law on genetic integrity should comprise a regulation that a request for a genetic examination that is not medically motivated is to have no legal effect when required by a custodian of a child.²⁸

Reasons for concern

The current provisions dealing with the issue of breaches of the right to integrity of the person do not foresee any possibilities for reparations.²⁹

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

Conditions of detention and external supervision of the places of detention

Penal institutions

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr. Alvaro Gil-Robles, the Commissioner for Human Rights within the Council of Europe carried out a visit to Sweden from 21 to 23 April 2004. In connection with his visit to the *Kronobergs* remand and detention centre, which is the largest detention centre in Sweden with 360 places, and bearing in mind that a large number of the inmates are in bad health conditions, he expressed a deep concern about the unsatisfactory arrangements for outdoor facilities.

Moreover, in his view the frequency and the excessive use of restrictions should be considered as a serious problem. In some regions such as e.g. Gothenburg (*Göteborg*), approximately 70-75 percent of the remand prisoners are detained with restrictions. The maximum restrictions entail isolation for 23 hours a day whereby all correspondence, phone calls and communication with anyone other than their lawyers and prison staff is prohibited.

The longest period a person has had in isolation, i.e. under the above mentioned conditions, in this particular detention centre was three years.³⁰ In the course of his visit, the Commissioner was informed by the Parliamentary Ombudsman (*Justitieombudsmannen* (JO)) that some prisons and detention facilities continue to face problems of overcrowding. This has resulted in the accommodation in sections meant for isolated detainees of persons for whom restrictions have not been authorized.³¹

In his report from 25 February 2004, the EU Rapporteur Maurizio Turco (Committee on Citizens' Freedoms and Rights, Justice and Home Affairs) referred to Sweden among the other eight EU Member States which have signed but not yet ratified the Optional Protocol to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.³²

²⁸ Op. cit., p. 41.

²⁹ *K.Thelin*, Bara vid samtycke, SvD 15-12-04, p. 4.

³⁰ CoE, *Office of the Commissioner for Human Rights*, Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his visit to Sweden 21-23 April 2004, CommDH(2004)13, Strasbourg, 8 July 2004, p. 5.

³¹ Op.cit., p. 6.

³² *European Parliament*, Report with a proposal for a European Parliament recommendation to the Council on the rights of prisoners in the European Union (2003/2188(INI)), 25 February 2004, A5-0094/2004, p. 7.

With regard to the situation of persons deprived of their liberty in the European Union, the report comprises “an alarming picture”. Sweden is among the cited countries with overcrowded prisons (107.5 prison population per 100 places available). Mr Turco is also “extremely worried” about death and suicide rates. The referred figures concerning Sweden were 22.2 deaths (mortality rates per 10 000 prisoners), 7.4. suicides in prison (suicide rates per 10 000 prisoners).³³

Positive aspects

According to the Prime Minister of Sweden, Mr Göran Persson, the shortage of places in prisons/detention centres will be eliminated during the year of 2005 by building new accommodation and individualisation will, in addition, increase.³⁴ Today one of the consequences of the overcrowding is that detainees who have been sentenced to prison and are to begin serving their sentence often have to endure unacceptably long periods in detention centres while waiting for prison places to become available.³⁵

Reasons for concern

There is still no properly independent monitoring body in existence to investigate police misconduct. In other words, the investigative process continues to show characteristics of being insufficiently transparent and still very few cases of suspected police brutality have been brought before the courts. On the other hand, the Commissioner for Human Rights within the Council of Europe was informed by the State Secretary during his visit to Sweden in April 2004 that a Committee of Inquiry is about to be set up to provide a proposal for a separate and independent authority. The authority will strive to ensure the impartiality of the internal investigative structure, i.e. which is entrusted with the mandate to investigate complaints relating to the conduct of the police.³⁶

The Children’s Ombudsman has expressed concern about the placement of children who are suspected of serious crimes in pre-trial detention in prison facilities that are clearly unsuitable for children. Worrisome is also the fact that the number of these children has drastically increased.³⁷

The proposal prepared by the Ministry of Justice for the ratification of the Additional Protocol to the UN Convention against Torture by Sweden reflects hesitance as to the need to establish a national, independent body with the mandate to visit persons deprived of their liberty in order to prevent torture. The Swedish Red Cross, among others, has expressed its concern on this issue.³⁸

³³ Op. cit., p. 11.

³⁴ Statement of Government Policy presented by the Prime Minister, Mr Göran Persson to the Swedish Parliament (*Riksdag*) on Tuesday, 14 September 2004, p. 12.

³⁵ *Justitieombudsmannens ämbetsberättelse*, Avgiven vid riksmötet 2004/05, redogörelse 2004/05 :JO1, p. 497.

³⁶ CoE, *Office of the Human Rights Commissioner*, CommDH(2004)13, op. cit., p. 7.

³⁷ *Barnombudsmannen (BO)*, Observations by the Children’s Ombudsman of Sweden with regard to the discussion on the Third Periodic Report by the Government of Sweden to the UN Committee on the Rights of the Child, October 2004, § 28, p. 7.

³⁸ Svenska Röda Korset, Remiss Ju2004/5083/KRIM, Promemoria om svensk godkännande av tilläggsprotokol till FN :s konvention mot tortyr m.m., Stockholm, September 2004.

Institutions for the detention of persons with a mental disability

Swedish media has during the period under scrutiny extensively reported³⁹ about cases of persons with mental disorder/mental disability being placed in ordinary jails after conviction for crime, which is clearly in contradiction with the Council of Europe's Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorders as well as the UN Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners.

Centres for the detention of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Commissioner for Human Rights within the Council of Europe noted during his visit in the restriction section of the *Kronoberg's* remand and detention centre in April 2004 that one person was detained on remand solely for entering Sweden with false identity documents.⁴⁰ The Commissioner also made the observation that the use of detention of asylum-seekers has increased during recent years. Asylum-seekers can be detained in the facilities of the Swedish Migration Board, as *e.g.* in the *Märsta* asylum centre in Stockholm, if their identity is unknown, or prior to expulsion, especially where there is a risk of absconding. However, the Commissioner referred to the UNHCR's guidelines on detention of asylum-seekers, which recall that Article 31 of the Geneva Convention exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, "provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".⁴¹

Detention of asylum seekers and the lack of maximum time of detention for asylum seekers is a general concern expressed by the UNHCR on several occasions.⁴²

Positive aspects

The Swedish Ministry of Justice announced in September 2004 that additional resources will be allocated to the Swedish Prison and Probation Services with the aim to "boost its ability to reduce cases of re-offending".⁴³ Furthermore, approximately 800 more places will be created for people in institutional care.⁴⁴ It is believed that this will put the Services in a better position to cope with the high number of prisoners and the new demands on its activities.

According to the Ministry of Justice, the development of the Swedish penal law "has over the years aimed at reducing the use of shorter prison sentences. Much work has been carried out

³⁹ *O.Billger et al*, Sverige låser in utvecklingsstörda, SvD 9-11-04, pp. 6-7 ; Utvecklingsstörd och inlåst, avsljödandet upprör Amnesty, SvD 10-11-04, p. 6 ; *O.Billger & H.Ennart*, Utvecklingsstörda inlåsta utan hjälp, SvD 11-11-04, pp. 14-15 ; *A.-L.Krook & J.Dahl*, Välj ett bättre straff, SvD 11-11-04, p. 5 ; *A.-L. Haverdahl*, Han brinner för de svaga, SvD 13-11-04, p. 21.

⁴⁰ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 6.

⁴¹ *Op. cit.*, p. 8.

⁴² *R.Löf & B.Gorlick*, Implementing International Human Rights Law on Behalf of Asylum Seekers and Refugees : The Records of the Nordic Countries, Stockholm 2004, pp. 15 and 16 (forthcoming), www.unhcr.ch--publications--new issues in refugee research.

⁴³ *The Government Offices of Sweden*, Press release, Major investments in the legal system, Ministry of Justice, 20 September 2004, www.sweden.gov.se, p. 1.

⁴⁴ Fokus, 800 nya platser ;men krisen är över först om fyra år, Advokaten, September 2004, p. 6.

to find alternatives that do not entail deprivation of a person's liberty, e.g. community service".⁴⁵

Reasons for concern

Despite the above mentioned recent initiatives to improve the situation in Swedish prisons, the substantial increase in the number of custodial sentences (short as well as long⁴⁶) which have been passed by courts in 2004 and which are the cause for the shortage of space in prisons, continues to be worrisome.⁴⁷ According to available statistics the number of persons in prison and custody (first half of the year 2004) increased by six per cent compared with data for the same period of the year 2003.⁴⁸

According to Swedish law, prisoners shall be treated with respect for their human dignity and with understanding for the special difficulties connected with their stay in prison. Reality, as reported by Swedish media, however, shows that the law has not been implemented properly.⁴⁹

The Parliamentary Ombudsman (*Justitiekansler*, (JK)), Göran Lambertz has expressed concern about a few cases of innocent persons being sentenced to imprisonment in Sweden.⁵⁰

With the exception for minors, current Swedish legislation does not provide for a time limit for the detention of asylum seekers who do not possess identity documents or prior to their expulsion. Even though the justification for a continuous detention must be reviewed by the courts at regular intervals and the duration of detention in practice rarely exceeds five months, the current state of affairs is worrisome especially if one recalls that about 80 per cent of the asylum seekers today have an unknown identity. Therefore, the Commissioner for Human Rights within the Council of Europe in connection with his visit to Sweden in April 2004 recommended that the Swedish authorities should consider the use of alternative means of ensuring the whereabouts of persons prior to deportation seems concise.⁵¹

Another reason for concern is that occasionally asylum seekers have been detained in the same facilities, i.e. regular jails, together with criminal offenders. Finally, the poor regime and the excessive use of restrictions in some remand prisons in Sweden raises cause for concern.⁵²

⁴⁵ *Ministry of Justice*, Fact Sheet, Information about the Swedish prison and probation service, Ju 04.01, January 2004, p. 1.

⁴⁶ As of 3 December 2004, 127 persons were sentenced to lifetime imprisonment in Sweden. See generally : www.kvv.se

⁴⁷ *B.Brink*, Sprängfyllda häkten får kritik, SvD 2-03-04, p. 6 ; *B.Brink*, Överbelagda häkten förbjuds, SvD 3-03-04, p. 10 ; *S.Nilsson*, Kritisk häkteschef överväger att avgå, SvD 30-03-04, p. 9 ; *O.Billger*, Överfulla häkten kan bli fängelser, SvD 10-08-04, p. 6 ; Advokaten, Inga reformer för att minska platsbristen, Juni 2004, p. 19 ; Advokaten, Allt fler mål till domstolarna. liksom hos åklagarna, September 2004, p. 7. See also HH, Platsbrist i kriminalvården, Advokaten, September 2004, p. 7.

⁴⁸ Advokaten, Allt fler mål, op. cit., p. 7. During November 2004 only 2016 places were available for the 2078 persons who were deprived of their liberty. *O.Billger*, Landets häkten överfulla, SvD 28-12-04, p. 16.

⁴⁹ Pehrson vittnar om kris på fängelserna, NU 12/04, pp. 6-7 ; TT, Häktade har inga mänskliga villkor, SvD 24-04-04, p. 14 ; *O.Billger*, Hårdare klimat på fängelserna, SvD 23-10-04, p. 6.

⁵⁰ TT, JK hävdar att oskyldiga fängslats, SvD 26-11-04, p. 20. For the activities of the Ombudsman see www.justitiekanslern.se

⁵¹ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, pp. 7 and 18.

⁵² *Amnesty International*, Report 2004, Sweden, <http://web.amnesty.org> ; AI, *Amnestys Årsrapport 2004*, <http://www.2.amnesty.se>

Fight against the impunity of persons guilty of acts of torture (Convention against torture (1984), Article 5)

Reasons for concern

At the time of writing Sweden has not yet convened an expert panel with international participation to carry out the investigation of the allegations that the two Egyptian men (Ahmed Agiza and Mohammed Al-Zary) who were expelled from Sweden to Egypt in December 2001 on an airplane leased by the U.S. Government were mistreated and possibly tortured by agents of each country. Evidence was included in a TV Programme "Kalla Fakta" that the two men were physically abused by the Swedish police prior to being placed on the air-plane.⁵³

Torture is not an explicit crime according to the Penal Code (*Brottsbalken* (BrB) currently in force in Sweden. Instead torture is comprised within the crime of assault. In this sense domestic law can not be considered as compatible with the requirements of Article 1 of the UN Convention against Torture.

Protection of the child against ill-treatments

Legislative initiatives, national case law and practices of national authorities

In November 2004 the Ministry of Justice published a fact sheet on the comprehensive efforts made by the Government at all levels to address the issue of honour related violence against young people.⁵⁴

The national strategy for the implementation of the UN Convention on the Rights of the Child has, in addition, been updated (skr. 2003/04:47).

In 2004 the County Administrative Boards (*länsstyrelser*) are to present a review on the extent of violence in the name of honour in Sweden.⁵⁵

Positive aspects

In April 2004 a Government appointed expert submitted a proposal to the Minister of Education suggesting that the Children's Ombudsman (*Barnombudsmannen*) be given the power to address individual complaints by children regarding bullying at school and to act as a solicitor for the child in cases of bullying where the child has decided to bring a claim for damages against the school.⁵⁶ The inquiry proposes, in addition, the introduction of a new legislation which can make it easier for children to win compensation for maltreatment in schools.⁵⁷

⁵³ M.Zetterström, Chockerande nonchalans av statsministern, SvD 17-12-04, p. 5; P.Björkman, Varför muntliga beslut och inga dokument? SvD 20-12-04, p. 5.

⁵⁴ Regeringskansliet, Justitiedepartementet, faktablad : Regeringens insatser för ungdomar som riskerar hedersrelaterat våld, Ju 04.17, November 2004. See also www.kvinnofrid.se

⁵⁵ Amnesty, Mäns våld., op. cit., p. 31.

⁵⁶ *Barnombudsmannen* (BO), Observations by the Children's Ombudsman of Sweden with regard to the discussion on the Third Periodic Report by the Government of Sweden to the UN Committee on the Rights of the Child, October 2004, § 6, p. 2.

⁵⁷ SOU 2004 :50, *Skolans ansvar för kränkning av elever*. Some of the reviewing instances such as the Children's Ombudsman (BO) have expressed satisfaction with the results and proposals of the investigation, others have expressed criticism and scepticism. See, e.g. B.Malmström, Nytt förslag mot mobbning sågas, Lärare kommer inte att våga ingripa mot bråk menar Lärarförbundet, SvD 24 October 2004, p. 6 ; DN Debatt, Mobbade barn är rättslösa, www.dn.se ; L.Nyberg, Skärp elevers rättsskydd, 4 November 2004, www.bo.se

In 2004 the National Board of Health and Welfare (*Socialstyrelsen*) introduced guidelines for the compulsory reporting of abuse and neglect of children by the concerned municipal and State authorities.

The National Institute of Public Health which has been commissioned to report on its assignment on education parents with the aim to improve the situation for girls and young women at risk of honour-related threats or violence is expected to present its findings and conclusions at the end of 2004.

Good practices

The National Agency for School Improvement has elaborated concrete manuals for school staff on how to deal with girls and boys at risk of honour-related threats or violence.⁵⁸

In spring 2004 Sweden arranged a European Conference on honour related violence within a global perspective: mitigation and prevention in Europe.⁵⁹

The Swedish Government has initiated and hosted in Stockholm from 7 to 8 December 2004 a well-attended international conference on combating patriarchal violence against women with the focus on violence in the name of honour. Among the aims of the Conference mention should be made of the desire to put emphasise on the importance of women's rights for combating and preventing patriarchal violence against women and girls as well as to create the possibility for exchanging experience and promoting cross-border dialogue and joint working.⁶⁰

Reasons for concern

According to statistics presented by the National Board for Crime Prevention (BRÅ) the reported violence against young children (children aged seven to fourteen) has continued to grow.⁶¹ The statistics include a number of cases related to girls from patriarchal families and who have been subjected to violence or threats from their relatives. Save the Children Sweden (*Rädda Barnen*) has been alarmed by the fact that only ten per cent of the reported cases of sexual abuse resulted in charges being brought before courts, i.e. very few of the cases of sexually related crimes against children ever result in criminal proceedings.⁶² There is even a discernable tendency of decreasing proportion of cases in which action is brought against an alleged offender.

Save the Children Sweden has, furthermore, expressed its concern about the increased numbers of incidents related to bullying and maltreatment of school pupils in Sweden (including the increasing use of sexualised language) and especially the weakness of legal

⁵⁸ CERD/C/452/Add.4.

⁵⁹ *Stiftelsen Kvinnoforum*, Pressmeddelande : Sverige tar ledningen för samarbete mot hedersrelaterad våld i Europa, 4 October 2004, www.kvinnoforum.se

⁶⁰ *The Government Offices of Sweden*, Press release, International conference on combating patriarchal violence against women, 19 November 2004.

⁶¹ See www.bra.se/extra/statistics . Also the number of suspected cases of child abuse reported to the police is steadily increasing. See *Barnombudsmannen (BO)*, Observations, October 2004, § 21, p. 5 ; *F.Gunér*, Anmälda brott mot barn ökar, SvD 14-01-2004, p. 11. The number of rape cases being processed against increased to 466 during the previous year. See, in addition, Amnesty, *Mäns våld mot kvinnor i nära relationer*, Stockholm, april 2004, p. 23.

⁶² Save the Children, Sweden's Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 55; *Barnombudsmannen (BO)*, Observations, op. cit., § 22, p. 6.

sanctions against that kind of behaviour.⁶³ There is, in other words, a need to expand the legal liability for municipalities to pay damages to pupils for harmful treatment caused by bullying if the authority in charge has not been able to effectively prevent bullying. According to the Children's Ombudsman's observations children with disabilities are more exposed to bullying at school than other children.⁶⁴

According to statistics presented by the National Institute for Working Life 14 per cent of the girls and 9 per cent of the boys in upper-secondary schools have been physically molested by a teacher or other members of the school staff.⁶⁵ Of relevance to this issue is also the fact that the existing Work Environment Law omits a child rights perspective and needs therefore to be reformed.

Article 5. Prohibition of slavery and forced labour

Trafficking in human beings (in particular for sexual exploitation purposes)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Despite the discernable trends towards positive developments in Sweden with regard to the development of various measures to deal with the victims of trafficking, the assistance provided to them was considered by the Human Rights Commissioner within the Council of Europe during his visit to Sweden in April 2004 insufficient. In his view the absence of an authority with established responsibility for such victims' situation, undermines the assistance and protection efforts.⁶⁶ The Commissioner encouraged, in addition, the Swedish authorities to pay more attention to the specific needs of children victims of trafficking as well as to strengthen the protection of victims of trafficking by increasing their access to residence permits.⁶⁷

Legislative initiatives, national case law and practices of national authorities

On 1st of July 2004 a new law entered into force which extends the criminal liability for exploitation, *inter alia*, for forced labour and removal of organs.⁶⁸ In addition, the definition of "trafficking in human beings" has been expanded to comprise intra-country trafficking. These welcomed changes in Swedish legislation have had the effect of broadening the protection for all forms of trafficking. Moreover, the legal changes constitute important steps towards the increased harmonisation of Swedish law with the existing international norms within this legal area.

⁶³ Save the Children, Sweden's Third Report, op. cit., pp. 12 and 46. A great number of attempts made by children victims of bullying to initiate court proceedings and to receive damages for the alleged failure of the responsible authorities, *i.e.* the municipality in question, to prevent bullying at school, have so far been to a large extent unsuccessful. *Barnombudsmannen (BO)*, Observations, op. cit., § 29, p. 7 ; *B.Malmström*, Mobbade får dålig hjälp, SvD 6-09-2004, p. 9.

⁶⁴ *Barnombudsmannen (BO)*, Observations, October 2004, § 30, p. 7.

⁶⁵ Save the Children, Sweden's Third Report, op. cit., p. 47.

⁶⁶ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 17.

⁶⁷ Op. cit., p. 18.

⁶⁸ See Prop. 2003/4:111, *Ett utvidgat straffansvar för människohandel*. See also Advokaten, August 2004, p. 9.

Positive aspects

The Government has begun with the preparations for the drafting of a National Plan for combating prostitution and trafficking in human beings⁶⁹, especially women and children. It is estimated that this year between 400 and 600 women and children in Sweden have fall prey to this modern form of slavery. The National Plan is expected to be presented before the Parliament in 2005.

As of 1st of October 2004 victims of trafficking may apply for a temporary residence permit in Sweden.⁷⁰ Moreover, from that date on the Government will be responsible for the compensation to the local municipalities for their expenses in connection with their taking care of the victims of trafficking.

On 1st of July 2004 Sweden ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Trans-national Organized Crime.⁷¹

Good practices

The Swedish film, *Lilya 4-ever*, which is based on a true story of a 16-year old Russian girl becoming trafficked into Sweden and exploited in prostitution, has received a overwhelmingly positive review for its awareness-raising effect in society about the destiny of a victim of trafficking. The film has been used on many occasions not only by governmental authorities, including social workers but also by many NGOs as well as schools as basis for information and discussions.⁷²

On the initiative of Sweden the Nordic Baltic Task Force against Trafficking in Human Beings was established with the purpose to serve as an umbrella organisation for coordination and facilitation of the efforts to combat human trafficking in the Nordic and Baltic countries. During 2004 Sweden initiated within the task force a co- operational pilot project for the safe return and reintegration of the victims of trafficking in human beings for sexual purposes. The project is intended to be used as a best-practices model in the region. This capacity building project is expected to commence in 2005.⁷³

Mention should be also made of another project of significance named “Europe” which was set up with the aim to promote, among other things, closer cooperation between the police forces in Sweden and the police forces in the Baltic countries.⁷⁴

Reasons for concern

Despite the increase in numbers of trafficked persons for sexual purposes, solely two persons have been successfully prosecuted for this crime.⁷⁵

⁶⁹ See, e.g., *E.-M. Byberg*, Krafttag mot människohandel, NU 15/04, pp. 10-11; *C.Waldén*, Samordning ger bättre hjälp mot människohandel, SvD 30-03-04, p. 4.

⁷⁰ See SOU 2004 :71, p. 108 ; Advokaten, August 2004, p. 9.

⁷¹ See the Ministry memorandum, Ds. 2004:38, *Sveriges tillträde till FN:s tilläggsprotokoll mot människosmuggling*.

⁷² See SOU 2004 :71, *Sexuell exploatering av barn i Sverige* (Sexual exploitation of children in Sweden), p. 42.

⁷³ *The Government Offices of Sweden*, Press release, New measures to combat human trafficking, 26 August 2004, www.sweden.gov.se

⁷⁴ *B.Brink*, Polisen ökar insatserna mot trafficking, SvD 2-02-04, p. 12.

⁷⁵ See Report on the situation of fundamental rights in Sweden in 2003, p. 23 www.cpdr.ucl.ac.be/cridho; *E.Tures*, Människohandel ökar kraftigt, SvD 24-12-04, p. 12.

Protection of the child (fight against child labour – especially with purposes of sexual exploitation or child pornography - and fight against the sexual tourism involving children)

Legislative initiatives, national case law and practices of national authorities

In November 2004 the Government submitted to Sweden's Parliament a Bill (Prop. 2004/05:45, *En ny sexualbrottslagstiftning*)⁷⁶ containing proposals for necessary changes and amendments to be made into the current Penal Code (*Brottsbalken*(BrB). The Bill undoubtedly conveys, *inter alia*, enhanced protection against sexual exploitation of children.

Here follows a short reference to some of the proposals:

- the penalty for buying sexual services of children will be sharpened,
- the protection of children and young people against sexual exploitation such as posing will be strengthened,
- the time barring by limitation (*preskriptionstiden*) for sexual offences against children will be expanded, *i.e.* it shall begin when the child has reached 18 years of age and
- the maximum penalty for serious child pornography crime will be expanded from the current four to six years imprisonment.

The legislative changes were expected to enter into force on 1st of April 2005.

The investigative Committee, which was given the task to make an inventory of and compile knowledge about sexual exploitation of children, presented its final report: SOU 2004:71, *Sexuell exploatering av barn i Sverige* (Sexual exploitation of children in Sweden) in June 2004.

To start with, the Committee pointed out that the number of children exposed to sexual exploitation in Sweden is considerable and that young people who have sold sexual services have had many problems, being expressed in various ways such as sexualised behaviour, alcohol and drug abuse, criminality and mental illness.⁷⁷ Moreover, the Committee found it remarkable that the results of a survey, which has mapped out the extent of selling sex among the pupils in the third year of the upper secondary school, disclose such a high degree of acceptance among young people of the fact that people sell sex or take part in pornographic situations. The study has also shown that boys with an immigrant background were overrepresented among the ones who have sold sex for payment.⁷⁸ Over 80 per cent of the boys and 65 per cent of the girls covered by the study were under the age of 15. According to the Committees' findings the most vulnerably young people were the ones who are in institutional care and the Committee came to the conclusion that "there is reason to assume that many of them have been exposed to sexual exploitation".⁷⁹

With regard to investigations, measures and treatment of the issue of sexual abuse of children by the social services and other public authorities, the Committee is bothered by the fact that sexual exploitation has been given "attention relatively recently and experience and knowledge is largely non-existent".⁸⁰ The Committee stressed, therefore, the need for increased knowledge about the phenomenon in personal and in family counselling as well as in institutional care.

⁷⁶ See *Regeringskansliet*, Pressmeddelande, Den sexuella integriteten stärks i ny sexualbrottslag, 11 November 2004, www.regeringen.se and www.lagrummet.gov.se

⁷⁷ SOU 2004 :71, p. 29.

⁷⁸ Op. cit., p. 32.

⁷⁹ SOU 2004 :71, p. 35.

⁸⁰ SOU 2004 :71, op. cit., p. 34. Swedish media has also paid attention to the existing problems with regard to the treatment in specialised institutions of children victims of sexual exploitation. The treatment has mainly been designed in accordance with the identified needs of boys and which turned out not to be of great help for the successful treatment of girls. *A.Hernadi*, *Sexutnyttjade får dålig hjälp*, SvD 16-11-04, p. 9.

Furthermore, the Committee draws attention to a special problem related to child pornography on the Internet, namely that the pictures/films never disappear. The violation of the child's integrity thus never ends. One should also bear in mind that there is a connection between child pornography offences and sexual abuse.

Finally, the Committee makes a presentation of several important proposals for legislative changes and changes in practice as follows:

- that the Government should consider how caching of child pornographic pictures in temporary files shall be criminalised;
- the Government should consider the need of reviewing the costs for delivering IP numbers and the issue of saving log files to facilitate police investigatory work with crime concerning sexual exploitation of children⁸¹;
- that judges and lay assessors of cases concerning physical and sexual abuse and sexual exploitation should have special qualifications for the task;
- that the Government should consider whether the law (*lag om registreringskontroll*, (SFS 2000:873)) concerning the testing by reference the criminal record of personnel in pre-schools, schools and school-age child care should cover more professional groups as for example certain doctors⁸², personnel at institutions for children and young people, contact persons in social service and guardian *ad litem*.

The Swedish Chief State Prosecutor (*Riksåklagaren*) has recently proposed the introduction of a new section into the Penal Code (*Brottsbalken* (BrB), Section 6, 10 §) with the purpose to criminalise chat on the Internet by men who seek sexual contacts with young people.⁸³

Positive aspects

The Government's recent proposals that has been submitted to the Parliament and which comprises a few amendments of the current Penal Code with a view to enhance the protection of children from sexual exploitation and abuse (Prop. 2004/05:45, *En ny sexualbrottslagstiftning*) should be viewed as a welcome initiative. These changes in legislation undoubtedly send an important message to society. Accordingly, the regulations in the current Penal Code that are related to the issue of "dual criminality" for extra-territorial jurisdiction for some serious criminal acts against children, which has constituted an obstacle in the fight against sexual exploitation of children, shall be modified.⁸⁴

Reasons for concern

The Swedish Children's Ombudsman has expressed concern about some existing deficiencies in the Penal Code (*Brottsbalken* (BrB)), i.e. the current definition of child pornography does not offer sufficient protection for children.⁸⁵

Furthermore, by putting emphasis on a person who is not sexually developed, the Swedish definition of child pornography can not be considered as being compatible with the

⁸¹ Swedish media reported on this issue in connection with a seminar on the existing legislation within this area and its shortcomings. *A.Hernadi*, Krav på att tandlös barnporrslag skärps, SvD 18-11-04, p. 8.

⁸²This proposal has gained actuality bearing in mind the very recent case decided by a Court of Appeals and dealing with the rape of an 13 years old patient at the Astrid Lindgren childrens hospital. *M.Lutteman*, Fyra år för våldtäkt på 13-åring, SvD 26-11-04, p. 6.

⁸³*B.Brink*, Chat med yngre kan bli olaglig, SvD 26-11-04, p. 6. See generally on the relevant activities of the Chief State Prosecutor Office www.aklagare.se

⁸⁴*Barnombudsmannen (BO)*, Observations, October 2004, § 8, p. 3. See *H.Karlén*, Luckor i Bodströms sexuallagstiftning, Pressmeddelande 16-06-2004, www.ecpatSweden.org

⁸⁵ *Barnombudsmannen (BO)*, Observations, October 2004, § 23, p. 6.

corresponding definition of “child pornography” in the European Convention on Cyber-crime, which has been signed by Sweden in November 2001 but not yet ratified.

The Children’s Ombudsman is also concerned by the easy access to pornographic materials on the web and that the replies to questionnaires prepared by the office show that 47 per cent of the boys aged 15 to 18 and who replied considered pornographic material to be a source of information about love and sex. The corresponding figure for girls was 5 per cent.⁸⁶ Therefore, it is not surprising that concern has been expressed about the insufficient means to counteract the increase in pornography crimes.⁸⁷

Another area of concern relates to the fact that the possession of pornography where an adult person dress out as or otherwise try to appear as a child is not yet criminalised in Sweden.

There are no treatment programmes directly targeting persons who were sentenced for child pornography offences.

Sweden has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography even though the Government signed the treaty in 2000.

⁸⁶ Op. cit., § 35, p. 8.

⁸⁷ *K.Bergström*, Barnpornografilagen bör ses över, NU 14/04, pp. 8-9; *C.Wahldén*, Åklagarna gör ett dåligt jobb, SvD 16-05-04, p. 7; *A.Engström*, Ökat skydd föreslås för offer för barnporr, SvD 22-06-04, p. 7.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The occurrence of serious forms of threats and violence in Sweden towards witnesses and their relatives and the absence in the national legal systems of relevant rules regarding the work of the police with respect to protection of persons subject to serious threats has initiated the appointment of an inquiry Committee with the assignment to formulate a national programme for the protection of witnesses and others, and to submit proposals on matters related to such a programme. In January 2004 the Committee published its deliberations and proposals for a new legislation (*i.e.* a special Act on personal security shall be enacted on 1st of January 2005) in the government report SOU 2004:1, *Ett nationellt program om personsäkerhet, Slutbetänkande av Personsäkerhetsutredningen*.

According to the Committee threats and violence against employees within the public legal services and other exposed groups constitute a “major impediment to the work in combating crime” as well as to the efficient administration of justice.⁸⁸ The new rules are intended to be applied in the first instance with regard to witnesses who participate in preliminary investigations or trials concerning serious or organised criminality, and closely related persons. Nevertheless, the term ‘witnesses’ refers to the aggrieved party and witnesses, but also to suspects and the accused. Swedish experience reveals that it is with regard to the latter group that more complicated protection issues and measures arise.⁸⁹

Since the protection of threatened persons is mainly a police issue, the main responsibility for the realisation of the national programme on personal security will be placed upon the police. However, some limited responsibility has also been envisaged for the prison and probation service. The adoption of the proposed national programme and the special act on personal security would be an improvement of the current situation where security measures vary throughout the country. Through the introduction of uniform provisions concerning protective measures the work of the police will be coordinated nationally.

Moreover, the inquiry Committee puts forward a proposal comprising the introduction of new provisions into the Secrecy Act (*sekretesslagen* (SFS 1980:100)) in order to ensure that the work with the personal security programme will function appropriately.⁹⁰

Bearing in mind that a person who is subjected to serious threats is not only exposed to human suffering but is also often adversely affected by financial problems, the inquiry Committee proposes the introduction of so-called personal security compensation to be paid by the Government. Furthermore, it should be possible according to the proposals of the Committee to pay personal security compensation to other persons who are at risk of being exposed to criminality directed at their life, health, liberty or freedom, provided there are extraordinary reasons.⁹¹

The case-law of domestic courts:

⁸⁸ SOU 2004 :1, p. 21.

⁸⁹ Op. cit., p. 22.

⁹⁰ SOU 2004:1, p. 25.

⁹¹ Op. cit., p. 25.

The Court of Appeals, Case B 1846-04, Judgment of 23 November 2004

Abstract: The former District Police Commissioner in the city of Gothenburg, Håkan Jaldung, was acquitted by the Court of Appeals of charges surrounding his actions at the EU-summit in Gothenburg in June 2001. Jaldung was previously acquitted by the District Court on 20 February 2004. He was charged with the unlawful deprivation of liberty /detention of 650 people at the Hvitfeldtska gymnasium (high-school) or alternatively-and on the second count- gross misuse of office or misuse of office.

The appeal was brought by the Parliamentary Ombudsman (JO) Claes Eklundh. His senior prosecutor, Hans Lindberg, claimed that Jaldung didn't merely cordon off an area, but in doing so deliberately and unlawfully confined hundreds of people. He also claimed that Jaldung took the unlawful step of ordering the arrest of 454 people remaining in the school later in the day. The Ombudsman's prosecutor alleged that the District Police Commissioner had with no basis in law confined and then arrested a large number of individuals, many of them young, who happened to be in the school mentioned above.

Jaldung cited paragraph 23 of the Police Act in his defence and claimed that the security situation and the risk of violence against people and property justified his actions. Nevertheless, in the view of the Court the fact that those inside the cordoned off area could not leave that area without having to submit to a body search implies according to this court that they were detained against their will.

Despite the above mentioned circumstances the Court of Appeals still supported Jaldung's actions by stating that Jaldung's acting is in line with the meaning of paragraph 23 of the Police Act concerning cordoning and evacuation procedures. The Court ruled subsequently that the detention has not been unlawful.⁹²

This case is of great significance for the question of whether the powers entrusted to the police for the prevention of crime also include the kind of measures being adopted as mentioned above.⁹³

Article 7. Respect for private and family life

Private life

Criminal investigations and the use of special or particular methods of inquiry or research

Legislative initiatives, national case law and practices of national authorities

The Swedish Government appointed in September 2004 some 77 solicitors (*offentliga ombud*) to be enrolled in cases concerning secret telephone tapping and secret surveillance with cameras. The appointed solicitors were 51 attorneys and 26 retired judges.⁹⁴ Their role will primarily consist in the guarding of the integrity of the persons concerned. The new rules which also allow for the increased use of secret telephone tapping and camera surveillance entered into force on 1st of October 2004. During the previous year there were altogether 631 decisions taken of relevance to this issue.

⁹² The court's decision has met mixed reactions in Swedish media. *M.Abrahamsson*, Jaldung visste vad han gjorde, SvD 24-11-04, p. 4 ; *E.Sidenbladh*, Jaldung friad av hovrätten, SvD 24-11-04, p. 11 ; *E.Sidenbladh*, Friad Jaldung kritisk till hur JO har agerat, SvD 21-12-04, p. 15.

⁹³ *Justitieombudsmannens ämbetsberättelse*, Avgiven vid riksmötet 2004/05, Redogörelse 2004/05 :JO1, p. 487.

⁹⁴ HH, 77 offentliga ombud vid hemlig avlyssning utsedda av regeringen, Advokaten, September 2004, p. 8.

A few representatives for the newly elected solicitors have expressed criticism with regard to the enacted reform, since in their view the system with involving solicitors as the counter part of the prosecutor in cases of secret surveillance can and already had been used as an argument for the extension of the powers of the police.⁹⁵

In the spring of 2004 a parliamentary inquiry was set up with the task to review the relevant peaces of legislation with regard to the protection of private life in Sweden, including issues of secret surveillance.⁹⁶

Reasons for concern

The Swedish Bar Association has on several occasions expressed its concerns about the new legislation on the use of secret surveillance, which allows its application in cases when there is a 'supposing' that the range of the punishment of the criminal act in question will exceed two years of imprisonment.⁹⁷

The Swedish Helsinki Committee for Human Rights has criticized the establishment of a public council in court decisions regarding secret surveillance "since it does not offer any real improvement for the right to private life for the individual. The council will only have to rely on information from the police and prosecutor and there is still no possibility of redress for surveillance that was uncalled for."⁹⁸

Moreover, the current legislation does not guarantee that the individual in question shall be informed about the surveillance once it has been concluded.

Intelligence and security services

Legislative initiatives, national case law and practices of national authorities

The special investigator who has been commissioned by the Government to evaluate the current system for personal protection for the central government in Sweden presented his report SOU 2004:108, *Personskyddet för den centrala statsledningen*, in October 2004. The report contains also an examination of how the system of personal protection was applied in connection with the murder of the Minister for Foreign Affairs Anna Lindh. The investigator stressed already at the beginning of the report that he has tried "to strike a reasonable balance between the demands of secrecy and the interest of openness".⁹⁹

According to the existing rules it is the Swedish Security Service that has the main responsibility for the personal protection of members of the central government (*i.e.* the Head of State, the Parliament (*Riksdag*), including the Speaker and the Members of the Parliament, the Cabinet and its members and State Secretaries belonging to the central government). In the view of the investigator the protected category should be extended as to include also the leaders of the parties represented in the Parliament (*Riksdag*) even if they are not its members. With regard to the question that rose after the murder of Prime Minister Olof Palme whether it should be compulsory for certain members of the central government to have personal

⁹⁵ See *e.g.* the statement made by attorney Percy Bratt, HH, *op.cit.*, p. 8.

⁹⁶ Nyheter, Skydd för privatlivet ses över, Advokaten, Maj 2004, p. 7.

⁹⁷ HH, ...samtidigt ökar polisens möjligheter att övervaka, Advokaten, September 2004, p. 9. Swedish media has reported on the on-going debate on this issue. *O.Billger*, Ny Säpochef öppen för mer alysning, SvD 23-01-04, p. 8 ; *O.Billger*, Avlysning blir lättare för Säpo, SvD 11-05-04, p. 6 ; TT, Utredning vill ha fler avlysningar, SvD 30-06-04, p. 9 ; Ledare, Storebror rycker fram, SvD 30-11-04, p. 4.

⁹⁸ International Helsinki Federation for Human Rights, 2004 Annual Report - Sweden, p. 4, www.ihf-hr.org

⁹⁹ SOU 2004 :108, p. 23.

protection, the investigator shared the views of previous inquiries that the individual for whom the protective measures are being considered must personally have the final say.¹⁰⁰

The investigator pointed, moreover, specifically to a shortcoming in the current tactical threat assessment system for being updated every six months unless special circumstances motivate a review of the threat picture. He proposed that the threat assessment should no longer be carried out by the counter-terrorism unit, but it should be transferred to a new unit on its own. In addition, the investigator proposed that a separate assessment should always be made of the tactical threat picture for the Head of State, the Prime Minister, other ministers, the Speaker in the Parliament and the party leaders.¹⁰¹

Furthermore, the investigator proposed that the Government Offices should supply the Swedish Security Service with information on issues viewed as controversial by the public.

With respect to the criticisms of the lack of personal protection provided for Anna Lindh by the Swedish Security Service, the investigator stated as follows: "I have not been able to afterwards investigate what actually took place at the events covered by the criticism. I can, however, conclude that these events seem to have been perceived in different ways."¹⁰²

Finally, the investigator pointed out that the Swedish Security Service needs to make a substantial increase in its bodyguard force.

Controls imposed on potential candidates in employment (in particular security checks with regard to applicants for "sensitive positions")

Reasons for concern

The Swedish Police Department has expressed concern about the increase in 2004 of the number of requests made by employers with the purpose of receiving data that has been stored in the register on convictions and disqualifications of individuals.¹⁰³

Voluntary termination of pregnancy

Positive aspects

The Government has appointed an inquiry with the assignment to review the possibilities for and the consequences of the introduction of new legal provisions, preferably in the Abortion Act (*abortlagen* (SFS 1974:595)) enabling women who are not domiciled in Sweden and who are not applying for asylum in Sweden to undergo abortion in the country. It is, however, presupposed that the women themselves will pay for that kind of medical treatment.¹⁰⁴

The above mentioned proposals were presented to the Government on 5 December 2004. A corresponding Bill on this subject matter shall be submitted to the Parliament within a year.

¹⁰⁰ Op. cit., p. 24.

¹⁰¹ SOU 2004 :108, p. 29.

¹⁰² Op. cit., p. 28.

¹⁰³ C.Ekéus, rikspolisstyrelsen, Arbetsgivare missbrukar straffregister, 11-10-04, www.polisen.se

¹⁰⁴ Utländska kvinnors rätt att få abort i Sverige, Dir. 2003 :134, 23-10-2003. Of relevance to this issue is the memorandum that has been prepared within the Ministry of Health and Social Affairs, U.Åhs, Abortlagstiftningen i Europa-en sammanställning, Stockholm, 7-10-04.

Family life

Removal of a child from the family

Reasons for concern

A study conducted by the Swedish National Audit Office reveals that an increasing number of children taken into public care in Sweden have been placed in institutions rather than in foster homes.¹⁰⁵ Even more disturbing is the tendency showing that the proportion of children with a foreign background who are subject to measures under the Social Services Act, *i.e.* who are taken into public care, is expanding.

In addition, the Swedish Section of Save the Children like the Swedish Parliamentary Auditors as well as the CPT, has expressed serious concerns about the National Board of Institutional Care being a self-regulating institution, *i.e.* it supervises its own specially approved homes for children in foster care and its activities are not organisationally and financially separate from its operations.¹⁰⁶

Article 8. Protection of personal data

Independent control authority (evolution of its powers, competences)

Positive aspects

The Data Inspection Board (*Datainspektionen*) is a public, supervisory authority in Sweden as regards the processing of personal data. Its main task is “to protect the individual’s privacy in the information society without unnecessarily preventing or complicating the use of new technology”.¹⁰⁷ According to the proposed amendments of the Personal Data Act contained in the government report SOU 2004:6, *Översyn av personuppgiftslagen* (SFS 1998:204), the Board will have the task of ensuring that the rules were applied in a correct way.

The Inquiry Commission has put forward a welcome proposal to amend the current Personal Data Act to include provisions setting out in what cases and how appeals can be lodged against the decisions of the public authority under that legislation. In addition, special regulations on how to appeal decisions of the courts is expected to be inserted in the special data protection acts that regulate the processing of personal data by the courts.

Protection of personal data (in general, right of access to data, to have them rectified and right to a remedy)

Legislative initiatives, national case law and practices of national authorities

In 2004 the Personal Data Act Inquiry Commission which was given the assignment to review the Personal Data Protection Act (*Personuppgiftslagen* (SFS 1998:204)) presented its final report SOU 2004:6, entitled *Översyn av personuppgiftslagen, Betänkande av Personuppgiftslagsutredningen*”.

¹⁰⁵ Save the Children, Sweden’s Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 29.

¹⁰⁶ Op. cit., p. 30. The vast majority of children in foster care are placed in family homes. Other forms of foster care comprise foster institutions (*hem för vård eller boende*) or special approved homes (*särskilda ungdomshem*) run by the National Board of Institutional Care. The family homes are supervised by the municipal authorities, the foster institutions are supervised by the municipalities and by the County Administrative Boards. *Barnombudsmannen (BO)*, Observations, October 2004, § 25, p. 6.

¹⁰⁷ See <http://www.datainspektionen.se>

After undertaking an analysis of recent developments in this area, including the reasoning of the ECJ in the case of *Bodil Lindqvist v. Division of the office of public prosecutor in Jönköping* (Case C-101/01)¹⁰⁸ the Commission came to the conclusion that despite the existing EC directive on personal data, it should be possible to replace current regulations on the handling of personal data with regulations against misuse of personal data, *i.e.* if the processing of personal data involves an improper intrusion on personal integrity. In consequence the Commission proposed some exemptions from the handling regulations in the current legislation for the processing of personal data, *inter alia*, with respect “to everyday processing like the production of running text in word processing software, the publication of running text on the Internet, the use of sound and image recordings and email correspondence on condition that the material is not intended for inclusion in a database with a personal data-related structure such as an electronic system for handling business”.¹⁰⁹ The Commission emphasised, however, that if the database has a personal data-related structure, in which personal data are specifically identified as such, the handling regulations must continue to be applied.¹¹⁰ Thus, the new regulation will be of significance only for automatic processing with the aid of computers.

In its explanatory comments to the proposed legislation the inquiry Commission referred to the following guide-lines:

- “Do not process personal data for improper purposes, such as persecuting or disgracing an individual.
- Do not collect a large amount of information about one individual without acceptable reasons.
- Rectify personal data that turn out to be incorrect or misleading.
- Do not slander or insult anyone else.
- Do not violate an obligation to keep information secret.”¹¹¹

Currently, an individual can be sentenced to a fine or to prison for contravening the 1998 Personal Data Act purposely or through negligence in four listed instances. The Commission of inquiry proposed that only acts committed through gross negligence should be criminal offences in addition to intentional acts.

The 1998 Personal Data Act does not contain at present a corresponding provision with regard to permissible derogations under the EC directive, *i.e.* exemptions that are permitted when this is necessary to safeguard the fulfilment of certain specified important public and government functions or to safeguard the protection of the rights and freedoms of individuals. The Commission of inquiry considered it therefore necessary that adjustments to the EC directive should be undertaken. The proposed amendments are expected to enter into force at earliest on 1st of July 2005.

The Commission of inquiry, which has been appointed by the Government and given the task to undertake a general review of the Swedish Official Secrets Act (*sekretesslagen* (SFS 1980:100)) as well as to review the application of the right to access to public records in the light of the new situation that has arisen in a modern society using IT, presented its final report SOU 2004:75, *Insyn och sekretess – i statliga företag och i internationellt samarbete*, Slutbetänkande av Offentlighets- och sekretesskommittén, in June 2004.

¹⁰⁸ For a detailed comment on the significance of the so-called “*Swedish Communion Instructor*” case see the Report on the situation of fundamental rights in Sweden in 2003, pp. 31-32, www.cpdf.ucl.ac.be/cridho.

¹⁰⁹ SOU 2004:6, p. 363.

¹¹⁰ See *R.Petersson & K.Reinholdsson*, *Personuppgiftslagen i praktiken*, Stockholm 2004.

¹¹¹ SOU 2004:6, p. 364.

Some of the important proposals made by the Commission relate to the issue of strengthening the protection concerning the freedom of information with respect to employees in those municipal companies where the principle of the right to access to public records applies but also the clarification of the regulations in the Swedish Official Secrets Act (*sekretesslagen*) concerning secrecy in foreign matters. The legislative changes were expected to be enforced on 1st of July 2006.

With regard to the first issue the Commission proposed that the regulations in the Freedom of the Press Act (*tryckfrihetsförordningen*, i.e. relevant parts of the Swedish Constitution) concerning the right to see public records shall also apply to the records of limited companies, economic associations, trading companies and foundations in which the state has a legally decisive influence.¹¹² Thus, when the Official Secrets Act (*sekretesslagen*) is being applied, such companies are to be placed in the same category as authorities. On the other hand, the principle of public access to official records shall apply only to state-owned companies that are Swedish legal entities. The principle of public access to official records shall not apply to a state-owned company whose shares were listed on a Swedish or foreign stock exchange. Depending on the activity concerned, the Government shall be allowed to grant a dispensation from the application of the principle of public access to official records, if there is a particular reason to do so.

One of the consequences of the above mentioned proposal would be that what constitutes the public domain in municipal and state-owned companies will be expanded and in the future it will be viewed in a uniform manner. According to the Commission the significance of the envisaged reform correlates the fact that “openness increases confidence in public institutions and makes corruption and the misuse of power more difficult”.¹¹³

With regard to the second issue, the Commission proposed that the existing four regulations dealing with secrecy for information about individual’s personal or financial circumstances be replaced by a new one to the effect that secrecy for individuals should apply “to inform about individuals’ financial or personal circumstances that is at the disposal of an authority due to Sweden’s membership of the European Union or due to any other agreement approved of by the Swedish Parliament with another state or an international organisation, if revealing this information would conflict with the agreement”.¹¹⁴ This does not mean that the substance of already existing regulations is going to be changed but it means that the new provision will make the legislation more comprehensible. From the latter wording, it is more apparent that secrecy can be a direct consequence of EC directives or EC regulations.

Finally, the Commission proposed additional provisions to be included in the Official Secrets Act to the effect that if an authority rejects a request to view a public document, on the basis of what is stipulated in an international agreement, the authority should be obliged to clarify specifically what agreement is meant and what regulations in the agreement is applicable.¹¹⁵

During the period under scrutiny a few Bills of relevance to the subject matter have been presented before the Parliament.

According to the first Bill (Prop. 2003/04:74, *Fortsatt giltighet av 1952 års tvångsmedelslag och lagen om hemlig kameraövervakning*) the validity of the law on secret camera surveillance shall be prolonged.

The second Bill (Prop. 2003/04:93, *Några frågor om sekretess, m.m.*) deals with a few issues on secrecy.

¹¹² SOU 2004 :75, p. 25.

¹¹³ SOU 2004 :75, p. 26.

¹¹⁴ Op. cit., p. 31.

¹¹⁵ SOU 2004 :75, p. 34.

In addition, mention should be made of the government report on the issue of public control of the revenues of political parties as well as election candidates (SOU 2004:22, *Allmänhetens insyn i partiers och valkandidaters intäkter*).

The Ministry memorandum on fingerprint database (Ds. 2004:35, *Genetiska fingeravtryck*) has faced criticism by some of the official bodies that have been consulted, *i.e.* the reviewing instances, who stressed the importance of having well-argued reasons for the imposition of restrictions on privacy matters.¹¹⁶ Also the debate in media reveals concern for such attempts to expand the possibility for control over society as a whole by the police forces by overturning privacy protection.¹¹⁷

Positive aspects

According to the proposal contained in the government report SOU 2004:6, *Översyn av personuppgiftslagen* (SFS 1988:204) a new provision shall be introduced in the Personal Data Act having the implication that anyone who breaks the rules for protection from misuse of personal data may have to pay damages to the registered person in question.

Protection of the private life of the worker and the prospective worker

Legislative initiatives, national case law and practices of national authorities

The inquiry Committee on genetic diagnosis and gene therapy has proposed that it should be forbidden for employers or prospective employers in Sweden to enquire after or use genetic information.¹¹⁸

Protection of the private life of the insured person and the person seeking an insurance

Legislative initiatives, national case law and practices of national authorities

The parliamentary Committee entrusted with the mandate to review a number of issues concerning, *inter alia*, genetic diagnosis and gene therapy presented its final report SOU 2004:20, *Genetik, integritet och etik*, which contains a few deliberations of relevance to the subject matter dealing with insurance policies.

In the Committee's view "A basic principle of constitutional regulation should be that insurance companies, as is principally prescribed in current agreements between the insurance industry and the state, may only enquire after and use genetic information with respect to risky personal insurance policies involving very large sums of money", *i.e.* when the sum payable exceeds the amounts of 30 Swedish standard base for a one off-payment and four base amounts per year for regular payments.¹¹⁹ Insurance companies shall, in addition, be entitled to enquire after and use genetic information if it is needed for control purposes when an insurance claim has been made.

Finally, the Committee has put forward the proposal concerning the introduction of a new provision in the Swedish Insurance Act (*försäkringsrörelselagen* (SFS 1982:713)) which

¹¹⁶See, for example, Uppsala Universitet, Juridiska fakultetsnämnden, Justitiedepartementets promemoria Genetiska fingeravtryck (Ds 2004 :35), Remissyttrande, 11-10-04.

¹¹⁷ TT, Fler kan hamna i DNA-register, SvD 14-01-04, p. 13, *J.Taubert*, Inga resurser för fler DNA-tester, Riksåklagaren tillbakavisar regeringens krav på utökning, SvD 5-11-04, p. 6 ; *A.Careborg*, Krav att alla ska DNA-registreras, SvD 28-11-04, p. 13.

¹¹⁸ SOU 2004:20, *Genetik, integritet och etik*, p. 37.

¹¹⁹ SOU 2004:20, p. 38.

would entail that an individual's circumstances with respect to an insurance company may not be revealed without authorization to do so.¹²⁰

Protection of the private life in the processing of medical data

Legislative initiatives, national case law and practices of national authorities

In Sweden, information concerning the health and medical status of individuals is subject to strict secrecy and confidentiality. This applies also with respect to information concerning the genetic status of an individual. Nevertheless, the inquiry Committee on genetic diagnosis has taken the stand-point that "a basic principle must be that genetic information is an individual's private matter and that whether or not they have given their consent, there must be very important reasons for it to be researched into or used for any purposes other than medical ones".¹²¹

The investigator who has been commissioned by the Swedish Government to evaluate the system for personal protection for the central government in Sweden proposed in his report SOU 2004 :108, *Personskyddet för den centrala statsledningen* (Betänkande av personskyddsutredningen), that the Governmental Regulation on Forensic Psychiatric examinations (*förordning om rättspsykiatrisk undersökning* (SFS 1991:1413)) should be amended in a way that it will be permitted to release a forensic psychiatric examination when requested by a police authority and when this is needed for the personal protection of a member of the central government.¹²² The consequence of this proposal, if adopted, would be that secrecy for forensic psychiatric examinations can be broken for the above mentioned reasons.

The investigator found it also appropriate for the sake of personal protection of members of the central government that the Swedish Security Service should be able to obtain information from the health and medical services when this information is decisive for the threat assessment. In other words, the Act on the Exercise of Health- and Medical Professions (*lag om yrkesverksamhet på hälso- och sjukvårdens område* (SFS 1998:531)) should be amended so that the break of professional secrecy for staff in both public and private employment be made permissible if the release of the information is requested by a police authority in a particular case.¹²³

In addition to that, the investigator proposed that the regulations on the execution of prison sentences and the execution of probation sentences (*förordning om kriminalvård i anstalt*, (SFS 1974:258) and *förordning om verkställighet av frivårdspåföljder* (SFS 1998:642)) were amended to require the prison and probation authorities to release to the Swedish Security Service information about the personal circumstances of a convicted person when the information is needed for the personal protection of members of the central government.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The case-law of domestic courts:

The Court of Appeals, Case RH2004:40, Judgment of 28 May 2004

¹²⁰ SOU 2004:20, p. 39.

¹²¹ SOU 2004:20, p. 37.

¹²² SOU 2004 :108, p. 32.

¹²³ Op. cit., p. 32.

Abstract: S.J, together with K.H. and C.B. were accused of breaking into a computer and sexually harassing a young woman during December 2002. They had unlawfully gained access to her website on Lunarstorm (www.lunarstorm.se) and changed her “profile” on the website by replacing her “20 questions” that describe the user to the rest of the web-community with sexually insulting answers. They also wrote messages with sexually insulting content on her guestbook and sent e-mails in her name with insulting content to others, including her boyfriend.

The District Court (*tingsrätten*) in Kalmar found S.J. guilty of unauthorized computer access and sexual harassment in accordance with the Penal Code (BrB) provisions 4:9 c § and 6:7 3 st.).

Thereafter, the Court of Appeals convicted S.J. for unauthorized computer access. Regarding sexual harassment, the Court stated that the action has to contain a sexual insult that is intended to humiliate the plaintiff. With regard to that the Court established that the crime has been committed on the internet, which is accessed by a large number of people and therefore has a large impact. Moreover, the fact that the crime was directed to a young woman, makes it obvious that the intent of the accused person was to humiliate. The Court of Appeals therefore found S.J. guilty of sexual harassment.

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

Marriage

Legislative initiatives, national case law and practices of national authorities

Important and welcome changes in the Marriage Code (*Äktenskapsbalken*) Chapter 2 §1 (impediments to marriage) as well as in the Act on Certain International Legal Relations Concerning Marriage and Guardianship (*Lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap* (SFS 1904:26)) entered into force in Sweden on 1st of May 2004.

The amended legislation makes it more difficult for a person under the age of eighteen to enter into marriage. Cases of early/child marriages, which were often arranged/forced and involved girls who were not Swedish citizens, but who followed the domestic laws of their native country were previously legally recognized in Sweden.¹²⁴

According to the new provision, a marriage which has been concluded outside of Sweden, where one of the parties has not achieved majority, shall no longer be valid in Sweden. The age limit of 18 years of age shall be imposed on all prospective spouses who wish to be married by a Swedish officiator and irrespective of citizenship. Only when very special reasons (*särskilda skäl*) exist, such as for example when the young girl is pregnant, may a dispensation from the age requirement be granted with regard to conclusion of marriage. The main argument put forward for the above mentioned legislative changes is related to the maturity level necessary in order for the prospective spouses to be able to independently take a stand-point on problems of a personal and economic nature, and thereby ensuring a durable marital relationship. According to the *travaux préparatoires* the term “special reasons” does not comprise any reference as to religious or cultural tradition. This has been considered in

¹²⁴A.Schlyter, Rätten att själv få välja, Studentlitteratur, Lund 2004, pp. 35-43. Recently, an 17 years old girl was taken into public care on the basis of the Care of Young Persons Act (LVU) after it became obvious for the authorities that her father was subjecting her to violent acts because of her refusal to marry the man appointed by the family during a vacation in Algeria. *U.Danné*, Flicka satt inlåst i fyra år, Misshandlades av pappan för att hon inte ville gifta sig, SvD 15-09-04, p. 14.

the general debate on the legal reform as an important step towards the elimination of 'honour' related violence as well as other acts of cruelty. Thus, involuntary marriages may result in the sexual abuse of the person who opposes it and thereby comprising a risk of servitude.

Moreover, a marriage which has been concluded abroad and has been judged as manifestly incompatible with the Swedish *ordre public*, shall be rejected. In other words, forced marriage or a marriage which would not have been allowed on the basis of the Swedish impediment requirements, shall not be any longer legally recognised. The same is also valid in situations when a marriage has been entered into without the necessary approval of the County Administrative Board (*länsstyrelsen*) in question. In addition, the new legislation makes it easier to dissolve such marriages and divorce may be granted immediately. The amendments also envisage that the public prosecutor may initiate proceedings for the dissolution of marriages entered into under the above mentioned circumstances.

The Swedish Government in August 2004 decided to appoint a special investigator to make proposals on how residence permit investigations with regard to Swedish citizens who marry someone from another country or who are cohabiting can be made more efficient for couples.¹²⁵ Currently, the processing time for these types of applications at Sweden's missions abroad and at the Swedish Migration Board is too long. The investigator is expected to present proposals for measures to reduce the processing time as well as to submit proposals for any statutory amendments considered necessary.

Reasons for concern

Notwithstanding the positive aspects of the newly enforced legislation on impediments to marriage in the Marriage Code, these changes are not sufficient. The Penal Code (*Brottsbalken* (BrB)) must also be adapted with regard to the criminalisation of child/forced marriages. No legal changes have been undertaken during 2004 in this regard. The result is that Swedish authorities are not empowered to interfere in situations when children who are Swedish citizens have been brought abroad by their relatives under the pretext of going on vacation but where the real purpose is to arrange a marriage. As of May 2004 the Swedish police had knowledge of eight such cases.¹²⁶

Legal recognition of same-sex partnerships

Legislative initiatives, national case law and practices of national authorities

The Swedish Government has not yet presented any Bill on the issue of same-sex marriages. Despite the fact that since 1995, when the law on Registered Partnership entered into force in Sweden, and as many as 2 800 persons have taken advantage of the legal possibility of registering their partnership, performance of the registration of same-sex partnership in the Swedish Church (Lutheran) continues to be hotly debated in Sweden and it is fair to say that the issue remains controversial.¹²⁷

¹²⁵ *The Government Offices of Sweden*, Press releas, Special investigator appointed to reduce the time married couples have to wait for residence permits, 19 August 2004, www.sweden.gov.se

¹²⁶ *C. Wahldén*, Lag utan verkan mot tvångsgifte, SvD 4-05-04, p. 6.

¹²⁷ Homoäktenskap hotar fria kyrkor, DN 9-01-04, p. A2; *M. Abrahamsson*, Tänk över kärnfamiljens fördelar innan, SvD 4-01-04, p. 4; *E.Sidenbladh*, Religiös samling mot homovigsel, SvD 10-01-04, p. 4; *A.Bonde m. fl.*, Guds ordning är man och kvinna, SvD 10-02-04, p. 5; Vi säger nej till könsneutrala äktenskap, Västerås Tidning, 11-01-04, p. 4; *A.Bonde m.fl.*, Hammars moraliska nollvision, SvD 30-01-04, p. 5; *A.Lagercrantz*, Homovigsel vidgar kärleken, SvD 25-01-04, p. 18; *L.Hultkvist*, Äktenskapet till för släktets fortbestånd, NU 4/04, p. 19; *U.Danné*, Intensiv debatt om könsneutrala vigslar, SvD 9-09-04, p. 12; *K.V.Olsson*, Sexualitet i centrum på kyrkomöte, SvD 15-09-04, p. 14.

In April 2004 the Swedish Parliament instructed the Government to appoint a parliamentary commission of enquiry to carry out an independent and unbiased investigation into the question of gender-neutral marriage legislation. In the view of the Committee on Civil Law “the attitude of society towards homosexuals and homosexual relationships has changed radically during recent years. This is also supported in opinion surveys that have recently been conducted”.¹²⁸ Nevertheless, prior to the above referred decision, the Parliament’s Judicial Council (*laguskott*) received approximately 40 000 signatures of people protesting the then on-going examination of this subject matter and contesting the idea that same-sex marriages should be legally equivalent to heterosexual marriages in Sweden.¹²⁹

Control of marriages suspect of being simulated

Legislative initiatives, national case law and practices of national authorities

Fictitious marriages are part of the problematic areas in today’s Europe, including Sweden. Many women and girls who have married Swedish citizens are particularly vulnerable due to the regulations on residence permits. They 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 permit in Sweden.¹³⁰

The Government decided on 19 August 2004 to appoint a special investigator with the task to propose necessary statutory amendments with the view to make residence permits investigations more efficient, i.e. to reduce the waiting time for such permits for couples who are married or cohabiting. According to a press release from the Government Offices in Sweden “If there is suspicion that a relationship is not serious, that it is a marriage or relationship of convenience, a residence permit will not be granted, neither if there is suspicion that either of the parties in the relationship will be subjected to violence or other serious forms of abuse”.¹³¹ On the other hand, the investigative Committee on the reform of the Aliens Act did not suggest a deviation of the current practice in its final report submitted in 2004.¹³²

Nevertheless, whether the terms of the proposed investigation as mentioned above, *i.e.* that the mere suspicion of a simulated marriage should be sufficient for the refusal of a residence permit in Sweden, is compatible with the current regulations within the European Union is doubtful. According to Article 16 §2 (b) of the Council Directive 2003/86/EC, Member States may reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member’s residence permits, where there is enough evidence to show that “the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State”.

¹²⁸ *The Swedish Parliament*, The Riksdag at Work, Press release, The Committee on Civil Law proposes an enquiry into gender-neutral legislation, 13 April 2004, p. 1, www.riksdagen.se See also the report of the Committee on Civil Law 2003/04 :LU22.

¹²⁹ *L.Olsson*, Rekordprotest mot ny vigsellag, SvD 8-09-04, p. 6 ; Protester mot homovigslar, Metro, 9-09-04, p. 2; *M.B.Blomkvist et al*, 40 000 röster för diskriminering, SvD 11-09-04, p. 5.

¹³⁰ *M.Darvishpour*, Kämpa för invandrarflickor, SvD 16-03-04, p. 5.

¹³¹ *The Government Offices of Sweden*, Press release, Special investigator appointed to reduce the time married couples have to wait for residence permit, 19 August 2004, www.sweden.gov.se

¹³² SOU 2004:74, *Utlänningslagstiftningen i ett domstolsperspektiv*, pp. 258-260.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Swedish Government has recently presented a proposal for new legislation with the aim to provide lesbian women access to artificial insemination (*i.e.* the Ministry memorandum "Parenthood for homosexuals through assisted insemination", Ds. 2004:19, *Föräldraskap vid assisterad befruktning för homosexuella*).

According to the new rules, both women living as a couple shall be legally recognised as the child's parents. Some of the political parties represented in the Swedish Parliament have contested this proposal.¹³³ A few of the consulted official bodies (reviewing instances) have, in addition, pointed out the complexity of a situation where both parents of a child are mothers. Criticism has been expressed with respect to shortcomings in the proposal with regard to the regulations on the legal protection of the interests of the child in a consistent manner.¹³⁴

Article 10. Freedom of thought, conscience and religion

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The case-law of domestic courts:

The District Court in Kalmar, (*Kalmar tingsrätt*), Case B 57-04, Judgment of 29 June 2004

Abstract: Åke Green, a Swedish reverend held a sermon in Borgholm on July 20 2003. The headline for the sermon was "Is homosexuality an instinct or are the evil forces playing a game with humans?" The defendant claimed that his statements were protected under the provisions of freedom of speech and freedom of religion, both fundamental human rights in the European Convention (Articles 9 and 10) as well as constitutionally protected in Sweden.

The District Court in Kalmar argued that pastor Green had violated the constitutional protection from being exposed to agitation against an ethnic group, by expressing obvious disrespect of individuals on the grounds of their sexual orientation. In the view of the District Court it was obvious that the aim of his sermon was to disdain homosexuals as a group. The Court also stated that the right of homosexuals to be protected against offences is more important, than pastor Green's right to make his offensive statements in the name of religion (*i.e.* his right to freedom of speech).¹³⁵

The Court held, furthermore, that Mr Green had shown contempt against the homosexual community and that it was not possible for individuals to "hide behind Bible quotes" in order to express a view that was contrary to Swedish law. The Court ruled that the pastor had "attacked" homosexuals by expounding specific Biblical verses. Mr Green was, therefore, found guilty of "persecution of a national group" and sentenced to one month in prison.

Åke Green has, however, appealed the above mentioned decision to the Court of Appeals.

¹³³ *A.-L. Haverdahl*, Lesbiska kvinnors rätt som föräldrar ska stärkas, SvD 14-04-04, p. 6.

¹³⁴ Uppsala Universitet, Juridiska fakultetsnämnden, Remissyttrande, Departementspromemorian *Föräldraskap vid assisterad befruktning för homosexuella* (Ds. 2004 :19), 16-08-04, p. 2.

¹³⁵ This case has attracted considerable attention in Swedish media as well as internationally, especially within the U.S.

Article 11. Freedom of expression and of information

Freedom of expression and information (in general)

Good practices

One should mention here that the Swedish Government has initiated and introduced 15 minutes daily Sámi TV news broadcast in the national broadcast in cooperation with NRK and the publication of a monthly journal *Àrran*.¹³⁶

Reasons for concern

The Swedish Section of Save the Children has expressed concern about young people who have not committed criminal acts but have been logged in a special police inquiry register on the basis of their participation in the much publicised protest during the European Union summit in Malmö and Gothenburg (*Göteborg*)¹³⁷ and their details have not yet been deleted. These records are in the opinion of the organisation “a form of registration of political expression”.¹³⁸

A number of well-established Swedish NGOs have recently reported that racist propaganda is widely spread in Sweden by magazines, Internet and White Power music. Sweden is one of the world’s leading countries in the production and distribution of white power music.¹³⁹ In the view of a considerable number of NGOs, Swedish media “should be more careful in giving attention to racist parties”.¹⁴⁰

The Swedish Helsinki Committee for Human Rights has expressed its concern about the too low number of cases of agitation against a population group as a constitutional crime being brought before the courts. Another shortcoming in the Swedish legal system that has been identified by the Committee is the fact that currently the main interpreter of what constitutes hate propaganda in Sweden and the sole prosecutor in such matters is the government-appointed Chancellor of Justice.¹⁴¹

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Court of Justice (ECJ), Judgment of 18 November 2004
(Action brought on 25 February 2004 by the Commission of the European Communities against the Kingdom of Sweden, Case C-91/04, 2004/C 94/59)¹⁴²

Abstract: The Commission claimed that the Court should first and foremost declare that, by failing to adopt, or to communicate to the Commission, the laws, regulations and administrative provisions necessary to implement Directive 2001/29/EC (1) of 17 April 2004 on the harmonisation of certain aspects of copyright and related rights in the information society, Sweden has failed to fulfil its obligations under that Directive. According to Article 13.1 in the Directive Member states were obliged to put into force those laws and regulations

¹³⁶ Sámi Rádio, www.svt.se

¹³⁷ See E.U. Network of independent experts on fundamental rights (CFR-CDF), Report on the Situation of Fundamental Rights in Sweden 2003, p. 20, www.cpdr.ucl.ac.be/cridho

¹³⁸ Save the Children, Sweden’s Third Report to the UN Committee on the Rights of the Child, p. 26.

¹³⁹ *Swedish Helsinki Committee for Human Rights*, 2003 Annual Report, Stockholm 2004, p. 6.

¹⁴⁰ *UN Association of Sweden*, Alternative Report, op. cit., p. 3.

¹⁴¹ *Swedish Helsinki Committee for Human Rights*, 2003 Annual Report, op. cit., pp. 6 and 9.

¹⁴² *Europarättslig tidskrift*, No 3, 2004, Årgång 7, p. 501.

necessary to fulfil the obligations in the directive before 22 December 2002. They were to immediately inform the Commission about this.

The Swedish Government admitted that it had not taken necessary actions to fulfil its obligation but stated that laws were being adopted in order to incorporate the directive in question. The Court did not find these actions sufficient and concluded, therefore, that Sweden has violated its obligations.

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights came to the conclusion with regard to Sweden's commitments to Article 5 (the right to organise) of the Revised European Social Charter that the current situation where pre-entry shops remain allowed, is not in conformity with the relevant provision of the Charter.¹⁴³

Reasons for concern

A great number of Swedish NGOs expressed their concern in 2004 about the approach of the Swedish police towards Nazi-demonstrations as not being unified. They pointed out that different districts have different policies when allowing demonstrations and other kinds of manifestations. As a result thereof Nazi demonstrations have been concentrated to some districts where a permit can be easily obtained.¹⁴⁴

Freedom of political association

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In March 2004 during the review of the Swedish periodic rapport with respect to the implementation of the Convention on the Elimination of Racial Discrimination, the CERD-Committee drew the attention of the Swedish delegation to its General Recommendation XV. According to its interpretation all provisions of Article 4 of the Convention are of a mandatory character, "including declaring illegal and prohibiting all organizations promoting and inciting racial discrimination, as well as recognizing participation in such organizations as an offence punishable by law".

The Committee recommended that Sweden should reconsider its position on this particular subject matter and adopt the necessary legislation in order to ensure full compliance with Article 4(b) of the Convention.¹⁴⁵

¹⁴³European Committee of Social Rights, European Social Charter (Revised), Conclusions 2004, Sweden, Chapter 7, www.coe.int. See in addition Complaint No. 12/2002.

¹⁴⁴UN Nations Association of Sweden, Alternative Report to the CERD-Committee, February 2004, op. cit., p. 7.

¹⁴⁵ Concluding observations of the Committee on the Elimination of Racial Discrimination : Sweden, 10/05/2004, CERD/C/64/CO/8, 10 May 2004, § 10. Since Sweden has not entered a reservation against Article 4(b) of the Convention, legally the Government is bound to respect and implement this provision. *R.Löf & B.Gorlick*, op. cit., p. 22.

Reasons for concern

Despite the existence of a number of racist organisations in Sweden, and despite the observations made in this connection by international human rights bodies on several occasions, there is still no general prohibition against their existence or the participation in such an organisation.¹⁴⁶ This would be according to the Swedish Government incompatible with the freedom of association as guaranteed in the Instrument of Government (Constitution), Chapter 2, Section 1. The official view continues to be that by criminalizing racial agitation against a national or ethnic group, a racist organisation will be punished for its racist actions, but not for its existence. However, mention should be made of the fact that in Sweden organisations are not obliged to register.

Recently, the representatives of about 100 Swedish NGOs stressed the need for a national discussion on this matter including the adoption of a legislation which declares illegal and which prohibits all organizations promoting and inciting racial discrimination as well as recognizing participation in such organizations as an offence punishable by law.¹⁴⁷

Article 13. Freedom of the arts and sciencesFreedom of the arts*Positive aspects*

The museum education initiative for regional museums will be made permanent and free entry will be introduced at 16 more state museums.¹⁴⁸

Reasons for concern

The situation of an unequal distribution of access to culture and forms of cultural expression throughout the country still persists.

Freedom of research*Legislative initiatives, national case law and practices of national authorities*

The specially appointed Committee of inquiry emphasized in its final report SOU 2004:20, *Genetic, integritet och etik*, with respect to the issue of gene therapy on body cells that it is ethically acceptable and permissible to carry out the therapy in Sweden and that “until more experience of the method has been acquired, there is no reason to propose any special regulation of the issue”.¹⁴⁹

The Committee also proposed that it should no longer be forbidden to carry out experiments in the course of research for the purpose of developing methods to achieve genetic effects that can be inherited. Therefore, the Committee suggested that the current prohibition in Section 2 of the Act concerning measures taken for research purposes and treatment involving the use of fertilised human eggs (*lag om åtgärder i forsknings- och behandlingssyfte med befruktade ägg från människa* (SFS 1991:115)) should be removed.¹⁵⁰

¹⁴⁶ K. Hedlund Thulin, *Lika i värde*, p. 231 ; G. Melander, *Sverige och internationella konventioner*, *Nordic Journal of Human Rights*, No. 2 :2004, p. 170.

¹⁴⁷ *UN Association of Sweden*, *Alternative Report to the CERD-Committee with respect to Sweden's commitments according to the ICERD*, February 2004, p. 19.

¹⁴⁸ *Statement of Government Policy*, 14 September 2004, op. cit., p. 6.

¹⁴⁹ SOU 2004:20, p. 45.

¹⁵⁰ Op. cit., p. 46.

With regard to prenatal diagnosis, the Committee believed that information about examinations for more specific purposes should be preliminary offered to those risk-groups that have particular reasons for considering the examination in question.

Fertilised human eggs may be used to develop methods for treating serious and yet incurable diseases. Researchers will also be permitted to try to create stem cells that can develop into tissue or new organs for people who are ill by using somatic nucleus transference. The procedure implies that nucleus of an unfertilised egg is removed and replaced with the nucleus of a somatic cell from another human being. On 23 November 2004, the Committee on Health and Welfare approved the Government's proposal on stem cell research.¹⁵¹ This type of research and research on fertilised human eggs must first be approved in an ethical assessment.

The Committee of inquiry on issues related to genetic diagnoses proposed in the above mentioned report (SOU 2004:20) that the current guidelines with respect to pre-implantation genetic diagnosis (PGD) for the diagnosis of serious hereditary diseases should be amended so that this method "may only be used in the case of couples who carry the trait for a specific, serious monogenic or chromosomal hereditary disease that entails a high risk of having a child with a genetic disease or injury".¹⁵² However, in the view of the Committee PGD should not be developed into a routine procedure, but its use should be limited to clearly defined research projects that are preceded by an ethical evaluation by a body that deals with ethical matters pertaining research.

Since there is no general prohibition to conduct research through the production of fertilised eggs for the above mentioned purposes, the Committee of inquiry took the stand-point that the Swedish Government should express its reservation with respect to article 18.2 of the Council of Europe's Convention on Human Rights and Biomedicine, the purport of which is that the creation of human embryos for research purposes is prohibited.¹⁵³ The other proposals were considered as compatible with the provisions of the Convention.

During 2004 an Governmental Bill, which contains provisions with regard to the research on fertilised eggs and the transference of somatic cell nuclei (Prop. 2003/04:148, *Stamcellsforskning*) was submitted to the Swedish Parliament for adoption. According to the new law cloning with the aim of creating new life is to be unequivocally forbidden both in research and in other contexts. The Bill prescribes furthermore the imposition of legal sanctions in cases of violations of this prohibition.

Research on fertilised eggs as well as transference of somatic cell nuclei shall be permitted, albeit subject to the conditions stipulated in the modified Act on measures taken with fertilised eggs from humans for the purpose of research treatment (*Lag om åtgärder i forsknings- eller behandlingssyfte med befruktade ägg från människa* (SFS 1991:115)). In other words, research related to therapeutic cloning or nucleus transference, which is the scientific term for cloning, has been considered as an ethically acceptable and legal technology in Sweden.

According to the proposals the legislative changes will come into force on 1st of April 2005.

¹⁵¹However, the Christian Democrats, who are in opposition at the Parliament, wish to ban both the production of fertilised human eggs for research purposes and somatic nucleus transference. Neither do they wish to permit the donation of eggs for research purposes. *Sveriges Riksdag*, The Riksdag at Work, Press release, 23 November 2004, go-ahead for continued stem cell research, p. 1. See also The Committee on Health and Welfare Report 2004/05:SoU7.

¹⁵² SOU 2004 :20, p. 44.

¹⁵³ SOU 2004:20, *Genetik, integritet och etik*, p. 47.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Court of Justice (ECJ), Case C-518/03, (2004/C 47/31)¹⁵⁴

Abstract: An action against the Government of Sweden was brought before the Court of Justice of the European Communities on 9 December 2003 by the Commission of the European Communities. The Commission claimed that the Court should declare that, by failing to adopt, or to communicate to the Commission, the laws, regulations and administrative provisions necessary to implement Directive 98/44/EC (1) of the European Parliament and the Council of 6 July 1998 on the legal protection of biotechnological inventions, Sweden has failed to fulfil its obligations under that Directive.

Article 14. Right to education

Access to education

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During his visit to Sweden in April 2004 the Council of Europe's Human Rights Commissioner made notice of the reports revealing that there is a shortage of teaching personnel and that the number of schools offering instruction in the Sámi language is insufficient. Currently, there are six Sámi schools in Sweden.¹⁵⁵ However, the long distances place obstacles for many children to access these schools.¹⁵⁶

While the CERD-Committee welcomed in 2004 the Equal Treatment of Students in Higher Education Act, which contains prohibitions of direct and indirect ethnic discrimination against students and applicants in the field of higher education, it also observed "that the Act is reportedly not being implemented with respect to some Swedish universities".¹⁵⁷

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny a Bill, containing a number of proposals on how to increase the quality of education on the upper secondary level was presented before the Parliament (Prop. 2003/04:140, *Kunskap och kvalitet – elva steg för utvecklingen av gymnasieskolan*).¹⁵⁸

An inquiry Committee entrusted with the task to investigate, *inter alia*, what kind of measures could prove efficient to increase knowledge about the significance of integration in a multicultural society, presented its report- SOU 2004:33, *Kunskap för integration. Om makt i skola och utbildning i mångfaldens Sverige*- in 2004.

The inquiry Commission on Higher Education Admission that was set up on 27 March 2003 to review the existing regulatory system and to submit proposals for new rules governing admission to undergraduate education presented its findings in February 2004 in the report SOU 2004:29, *Tre vägar till den öppna högskolan*, Betänkande av Tillträdesutredningen (Three routes into the open higher education).

¹⁵⁴ Europarättslig tidskrift, No 3, 2004, Årgång 7, p. 304.

¹⁵⁵ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 16.

¹⁵⁶ See *Barnombudsmannen (BO)*, Observations, October 2004, § 36, p. 9.

¹⁵⁷ CERD/C/64/CO/8, 10 May 2004, § 9.

¹⁵⁸ See also, *L. Werner*, *Gymnasieskolans regelbok*, Stockholm 2004.

Under the proposal, three routs – to a certain extent equal- will lead students into higher education: grades, tests and local selection criteria determined by the university/university college. About 30 per cent of the places should normally be allocated based on grades, at least 30 per cent based on the university aptitude test and at least 10 per cent on the locally determined selection criteria. With respect to the local selection criteria the Commission suggests that universities and university colleges should be given the possibility to base selection on:

- Special selection tests other than the national university aptitude test,
- knowledge, work experience or other experience that is especially important for the programme being applied for or especially valuable as regards the vocational area towards which the programme is oriented, or
- an other factual circumstance relevant to the programme.¹⁵⁹

The Commission also underlined that there should be a link between the locally determined selection criteria and the recruitment goals established by the Government. The main objective of the proposed reform is to facilitate the recruitment of students with various backgrounds to higher education.

A special investigator is to submit proposals for measures to counteract discrimination on the grounds of ethnic origin, religious or other beliefs, or other offensive behaviour within the state school system and childcare system. The investigator will also consider the issue of whether other educational activities should be covered by the proposed measures.¹⁶⁰

Some municipalities have established specific classes for Roma children. Even when that kind of initiatives have been undertaken to provide additional support for the pupils concerned, there is a great risk that classes devoted to one national minority as such might place these children at disadvantage. There is, in other words, a risk of being marginalised in the school setting.

Positive aspects

According to the speech delivered by the Swedish Prime Minister in September 2004, “the initiative to put 15 000 new teachers and other adults in schools will be carried out” in 2005. In addition, “clear improvements will be made for pupils taking individual programmes in upper secondary school”.¹⁶¹

The inquiry Commission on Higher Education Admission has put forward a proposal to the Government to introduce a new provision in the Higher Education Ordinance (*Högskoleförordningen* (SFS 1993:100)) enabling a university/university college’s rejection of a student’s application to defer or interrupt his/her studies to be appealed to a higher instance.¹⁶² Currently, such a possibility does not exist in Sweden.

Reasons for concern

The Centre for Business and Policy Studies has carried out a few research projects which show that education policies in Sweden have failed to guarantee good standards of Swedish language and mathematics to second-generation immigrants of non-European origin.¹⁶³ One reason for this state of affairs could be the tendency towards the increase in immigrant

¹⁵⁹ SOU 2004 :29, p. 43.

¹⁶⁰ Human Rights in Sweden, Combating Islamophobia, www.manskligarattigheter.gov.se

¹⁶¹ Statement of Government Policy, 14 September 2004, p. 6.

¹⁶² SOU 2004 :29, p. 44.

¹⁶³ Save the Children, Sweden’s Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 15.

densities in certain living areas with already high immigrant population which not only leads to segregation but also imposes increased burden on schools with regard to funding requirements for language training.

Also Save the Children Sweden has expressed concern about the existing problems associated with grades attained by pupils with a foreign background. About 21 per cent of these pupils leave schools with incomplete grades.¹⁶⁴ The problems of low school attendance and high drop outs among Roma children have the effect that many Roma children do not complete their secondary educations.¹⁶⁵

The Children's Ombudsman has shown concern about the fact that children whose parents have not applied for asylum on behalf of the children, or whose applications for asylum or resident permit have been rejected, do not have the same right to education as other children within the jurisdiction of Sweden.¹⁶⁶

Furthermore, despite the existing demand amongst persons belonging to national minorities to receive bilingual education, legal guarantees exist so far only with regard to the Sámi language. The Sámi Language Act applies solely to the most northern part of the traditional Sámi territory and thereby excluding from its scope the distinct South Sámi dialects.

Also the right of Sámi children to receive education in their own language has been obscured in practice due to the insufficient resources being allocated to that end.

In addition, municipalities are under certain conditions, obliged to provide education of any mother-tongue as a subject if it is requested by at least five pupils or, as regards Sámi, Meänkeli and Romani Chib, by one or more pupils. The above mentioned obligation is conditioned on the availability of teachers and in practice it has turned out that it has had negative impact on the scope of the legal guarantee. Moreover, the volume of the mother-tongue education is generally quite limited, *i.e.* it comprises one to two hours per week. Swedish NGOs have also pointed out that during recent years only about 52 per cent of the pupils entitled to a mother-tongue teachings have participated in these classes.¹⁶⁷

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

The right for nationals from other member States to seek an employment, to establish himself or to provide services

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In its concluding observations/comments on the Swedish 15th and 16th periodic reports under the UN Convention on the Elimination of Racial Discrimination the Committee on the Elimination of Racial Discrimination (CERD) expressed its satisfaction with the fact that “integration policies to counteract the social exclusion experienced by some persons born abroad are a priority” in Sweden. At the same time the Committee emphasised its concern about “the persistence of discriminatory attitudes faced by persons of immigrant origin in certain areas, such as the labour market”.¹⁶⁸

¹⁶⁴ Op. cit., p. 41.

¹⁶⁵ Save the Children, Sweden's Third Report, p. 44. See also CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 14.

¹⁶⁶ *Barnombudsmannen (BO)*, Observations, October 2004, § 34, p. 8.

¹⁶⁷ *UN Association of Sweden*, Alternative Report to the CERD-Committee, p. 22.

¹⁶⁸ CERD/C/64/CO/8, 12 March 2004, § 16.

The European Committee of Social Rights noted in its conclusions in 2004 with regard to Article 1 (the right to work) of the revised European Social Charter that “the situation in Sweden is in conformity with Article 1§1”.¹⁶⁹

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny a number of Bills have been submitted to the Parliament. The first one proposed Sweden’s ratification of the ILO Convention and recommendation with respect to the protection of employees within the agriculture sector (Prop. 2003/04:56, *ILO:s konvention och rekommendation om arbetarskydd i lantbruket m.m.*). The second Bill related to the implementation of the EC Working Directive (Prop. 2003/04:180, *Tydligare genomförande av EG:s arbetsdirektiv i.e.* Prop. 2003/04:140, *Kunskap och kvalitet – elva steg för utvecklingen av gymnasieskolan*). The third Bill was aimed at enhancing the workers’ influence within European companies (Prop. 2003/04:122, *Arbetstagarinflytande i europabolag*). Finally, the fourth Bill (Prop. 2003/04:62, *Avgift till den kompletterande arbetslöshetskassan*) envisaged some charges for the complementary unemployment benefit fund.

Good practices

The Swedish Police Department has been in recent years and especially during the period under scrutiny successful to recruit students with foreign background to the Swedish National Police Academy.¹⁷⁰

Reasons for concern

There are no special mechanisms with the purpose of guaranteeing the representation of minorities in the Swedish Legislative and Executive and it would be fair to say that the rate of employees with a foreign background within these branches is very low. Swedish NGOs have recently and rightly so put forward criticism with respect to the poor ethnic representation within the administration of justice in Sweden.¹⁷¹

The prohibition of any form of discrimination in the access to employment

Reasons for concern

In Sweden, the open unemployment rate during 2004 was 5, 6 per cent.¹⁷² In several aspects there is still a large difference in the labour market between persons born abroad and people with Swedish background depending on age, gender and education, country of origin and duration of stay in Sweden.¹⁷³ Regional differences pertaining to job accessibility also play a vital role.

The Swedish NGO community has, in addition to the CERD-Committee’s criticism, expressed concern about the persistence of discrimination on the grounds of ethnic origin on

¹⁶⁹European Committee of Social Rights, European Social Charter (Revised), Conclusions 2004, Sweden, Chapter 7, www.coe.int

¹⁷⁰ Rikspolisstyrelsen, www.rikspolisstyrelsen.polisen.se

¹⁷¹ *UN Association of Sweden*, Alternative Report to the CERD-Committee, op. cit., p. 7.

¹⁷² *The Government Offices of Sweden*, Press release, The budget for 2005 : a commitment to more jobs and increased welfare, 20 September 2004, p. 1, www.sweden.gov.se; *J. Jakobsson*, NU, Vi behöver arbeta mer, 25 August 2004, p. 5. According to statistics presented in Swedish media, the open unemployment was 4, 9 per cent and the total 7, 8 per cent as of 10 November 2004. SvD, Näringsliv, 10-11-04, p. 1.

¹⁷³ *The Government Offices of Sweden*, The budget for 2005, op. cit., p. 1.

the Swedish labour market.¹⁷⁴ Media reports have similarly indicated persistent discriminatory patterns.¹⁷⁵ Especially people of African and Asian origin encounter difficulties in finding a job in Sweden.¹⁷⁶ According to statistics the risk of having to face unemployment increases by 33 per cent for youth born in Sweden if one of the parents was born abroad. These figures are even higher for youth who immigrated to Sweden before reaching school age.¹⁷⁷

The number of complaints concerning labour market discrimination filed at the office of the Ombudsman against Ethnic Discrimination (DO) is continuously on the increase.¹⁷⁸ It is apparent from the above said that the majority of employers have still to take specific steps to actively promote ethnic diversity in working life.

Moreover, persons with a foreign background who do find employment remain confined to low-pay, low status jobs and they have more often than Swedes temporary employments, regardless of their level of qualifications or professional competence. One of the obstacles in this respect is the difficulty posed by the current system in translating foreign degrees into Swedish standards. In addition, recent studies have reviewed that those who remained self-employed had a lower income than the corresponding group of entrepreneurs of native Swedes.¹⁷⁹

Other relevant developments

Reasons for concern

The discrimination in employment against immigrant, refugee and minority women, especially the Roma women, remains in Sweden. Effective measures to address the marginalisation of people belonging to these groups are still needed.

Article 16. Freedom to conduct a business

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Court of Justice (ECJ), Case C-116/04 *Commission of the European Communities v. Kingdom of Sweden*, Judgment of 18 November 2004

Abstract: In March 2001 the EC Directive regarding reconstruction and liquidation of insurance companies was adopted. The Member States were obliged to no later than April 2003 pass necessary laws and regulations in compliance with it. In autumn 2003 the Commission found that Sweden had not fulfilled this obligation and gave the Swedish Government a time limit of two months in order to do so. When no action was taken the Commission brought a case against the Government of Sweden to the European Court of Justice.

¹⁷⁴ Save the Children, Sweden's Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 15.

¹⁷⁵ *M. Abrahamsson*, Verklig respekt, SvD 28-01-04, p. 4 ; *O. Billger*, Fler invandrare utan jobb, SvD 28-01-04, p. 12 ; *O. Billger*, Tufft för invandrare få jobb i Sverige, SvD 14-03-04, p. 10 ; *J. Leijonhufvud*, Sverige uselt på mångfald, SvD, Näringsliv 6-10-04, p. 16. See, in addition, SOU 2004 :21, *Invandrarna, arbetsmarknaden och välfärdsstaten*.

¹⁷⁶ *O. Billger*, Svårast få jobb för invandrare från Afrika och Asien, SvD 15-03-04, p. 10.

¹⁷⁷ *UN Association of Sweden*, Alternative Report to the CERD-Committee, February 2004, pp. 20-21.

¹⁷⁸ See www.do.se "Statistic".

¹⁷⁹ *UN Association of Sweden*, Alternative Report to the CERD-Committee, *op. cit.*, p. 21.

The Swedish Government admitted that it had not taken necessary actions to fulfil its obligation but stated that laws were being enacted in order to incorporate the directive. The Court did not find these actions sufficient and therefore came to the conclusion that the Government of Sweden has breached its obligations.

Article 17. Right to property

The right to property and the restrictions to this right

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

As a result of his visit to Sweden in April 2004, the Council of Europe's Human Rights Commissioner recommended Sweden to "speed up the efforts relating to the resolution of the land rights of the Sámi, and their influence on land use in traditional Sámi areas; support programmes aimed at increasing women's participation in decision-making processes; allocate further resources for instruction in the Sámi language".¹⁸⁰

In 2004 the CERD-Committee directed serious criticism towards Sweden's policy of constantly refusing the Sámi people's rights to land, waters and natural resources and that the land rights remain unresolved.¹⁸¹

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny two Bills were submitted to the Parliament; the first one dealing with the issue of temporary confiscation of property in order to prevent traffic offences (Prop. 2003/04:159, *Tillfälligt omhändertagande av egendom för att förhindra trafiknykterhetsbrott*)¹⁸² and the second Bill related to the issue of who should be the bearer of a right to establish means for electronic communications (Prop. 2003/04:136, *Ledningsrätt för elektroniska kommunikationsnät*).

The case-law of domestic courts:

The Supreme Court (*Högsta domstolen*), Mål nr Ö 956-03, *C.S. v. Vodafone Sverige Aktiebolag*), Judgment of 7 June 2004¹⁸³

Abstract: Vodafone, which is a joint-stock company (*aktiebolag*), applied for and acquired the right to use property for the construction of a telecommunication tower on C.S.'s property. C.S. claimed that the law (*ledningsrättslagen* (SFS 1973:1144)) was not applicable due to the fact that Vodafone did not connect the tower with a physical cable as the law required; instead they used a so called radio link. Since the law only mentioned four different kinds of physical cables, C.S. claimed Vodafone therefore had no right to build the tower. The Court found no contextual support for a non-tangible cable, nor did it find any support for that in the preparatory works. The Court subsequently stated that according to Article 1, Protocol No. 1 to the European Convention on Human Rights no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

¹⁸⁰ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 18.

¹⁸¹ CERD/C/64/CO/8, 10 May 2004, § 12 ; *Indigenous Peoples' Centre for Documentation*, Research and Information, doCip, May/June 2004, p. 8. See also Press Release from the Sámi Parliament in Sweden, 24 March 2004, www.sametinget.se

¹⁸² See also the Ministry memorandum Ds. 2004:24, *Effektivare regler om förverkande av fordon vid trafikbrottslighet*.

¹⁸³ Rättsbanken, R3 M :HD Lnr :36.

The Court arrived at the conclusion that even though there might be practical reasons for allowing a non-tangible cable, the law should not be interpreted more extensively as is prescribed in the European Convention for Human Rights. In sum, the right of Vodafone to use the property of the applicant was, therefore, annulled.

Positive aspects

In September 2004 the Government presented its budget proposal for the year 2005. Among the positive features one can discern the envisaged abolishment of inheritance and gift tax.¹⁸⁴ Of relevance to this proposal is the Bill (Prop. 2004/05:25, *Slopåd arvsskatt och gåvoskatt*) on the same issue that has been submitted to the Parliament in 2004.¹⁸⁵ One of the reasons behind this reform has been the ambition to facilitate the transition from one generation to the next in family businesses.¹⁸⁶

Reasons for concern

Despite the centrality to the Sámi peoples of the issue of accession to the ILO No 169 Convention on Indigenous and Tribal Peoples Rights, Sweden has not yet ratified this treaty. This state of affairs has been described as “symptomatic for Sweden’s attitude towards Sámi issues”.¹⁸⁷

The Sámi have through history supported themselves by hunting, fishing and reindeer herding. These activities have also been a part of the culture and religion of the Sámi peoples. Apparently, the possibility to stay on a certain territory is of essential importance to indigenous peoples. If they are deprived of that, their existence as well as identity might be threatened.

Notwithstanding the establishment in 2002 of the so-called Boundary Commission with the task to formulate proposals for the definition of the boundaries for the Sámi traditional reindeer herding territories by the end of December 2004, the issue related to the Sámi land rights continues to be unresolved, i.e. the legal uncertainty on that issue remains.¹⁸⁸ A governmental policy that acknowledges the Sámi peoples’ right to their traditional land is still missing. The Government holds accordingly the stand-point that all land, which is not owned privately, as well as natural resources in the Sámi territories are the property of the state.¹⁸⁹

The Sámi Parliament contributes since its establishment in 1993 to the participation of the individuals concerned. However, since it omits a mandate to decide on matters concerning among other things, the land rights it is apparent that the status and the role of the Sámi Parliament needs to be further developed, i.e. to increase its independence in relation to the state.¹⁹⁰ One should pay attention in this connection to the Council of the Sámi (*Samerådet*) statement according to which the Swedish Government and the public authorities have “neglected to involve the Sámi parties in relevant decision-making processes regarding traditional Sámi land and resources”.¹⁹¹

¹⁸⁴ Budgetpropositionen för 2005, Prop. 2004/05 :1, 20 September 2004.

¹⁸⁵ See *Lag* (SFS 2004 :48) *om ändringar i lagen* (SFS 1941:416) *om arvsskatt och gåvoskatt*.

¹⁸⁶ *The Government Offices of Sweden*, Press release, The budget for 2005 : a commitment to more jobs and increased welfare, 20 September 2004, p. 2, www.sweden.gov.se

¹⁸⁷ *Samerådet*, Utsjoki, 19 February 2004, Dnr.3/2004, Ark.902, p. 12.

¹⁸⁸ The 18th Sámi Conference in Honningsvåg (12 October 2004) approved recently a comprehensive Declaration, which will form the basis for the Nordic Saami Council’s work over the next four years. Notably, the Declaration proclaims the inalienable historic right of the indigenous Sámi in Finland, Norway, Russia and Sweden to own their own land. See www.norden.org

¹⁸⁹ *Samerådet*, op. cit., p. 6.

¹⁹⁰ *B.Lundell*, *Sametinget*, *Nordic Journal of Human Rights*, Vol. 22, No. 2:2004, pp. 171-172.

¹⁹¹ *Samerådet*, op. cit., p. 15.

Although the Sámi continued using the courts as channels through which to secure their claims to traditional lands, their complaints fell on deaf ears.

Article 18. Right to asylum

Asylum proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During his visit in Sweden in April 2004, the Council of Europe's Commissioner for Human Rights welcomed the proposals made by the Swedish Parliament to introduce the possibility of appealing asylum and deportation decisions before courts and he subsequently encouraged the adoption of the necessary legal reform for that purpose. In the light of the evolving circumstances the Commissioner also considered it important to maintain the possibility to have an asylum claim re-examined.¹⁹²

Legislative initiatives, national case law and practices of national authorities

The Government in November 2004 appointed a special investigator with the task to prepare and propose measures towards the establishment of the new system for appeals of the Migration Boards' decisions and procedures in matters involving asylum applications.¹⁹³ The Government submitted a draft Bill to the Council on Legislation (*Lagrådet*) proposing the replacement of the Aliens Appeals Board with a procedure permitting appeals to county administrative courts. Such a reform was considered necessary in order to increase the legal safeguards, *i.e.* to enhance the transparency of the process as well as to create an adversarial procedure with increased possibilities for oral hearings. The Council on Legislation, however, rejected the proposals mainly because it considered that because of the wording of the current Aliens Act its proper application in the regular court system would be difficult.

For the purpose mentioned above, the Committee of Inquiry presented its proposals for adapting the current aliens legislation in June 2004 - SOU 2004:74, *Utlänningslagstiftningen i ett domstolsperspektiv*- (Swedish Government Official Report 2004:74, The Aliens Legislation in a Court Perspective).¹⁹⁴ The main purpose of the work of the Committee has consisted in the clarification of the provisions of the Aliens Act as well as to find ways to better adjust the processing of cases by the Swedish Migration Board so that there are sufficient guarantees for the examination of aliens cases to be "legally secure, uniform and predictable" in the event of modified arrangements for appeals and legal procedures.¹⁹⁵

On the basis of the above mentioned report and Government decisions, the Minister for Migration and Asylum Policy has undertaken some necessary preparations at the Swedish Migration Board and the Aliens Appeals Board, which will be carried out in 2005. It is expected that the reform of the appeals procedure will be implemented no later than 1st of

¹⁹² CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, § 30, § 26.

¹⁹³ Regeringskansliet, Pressmeddelande, 11 november 2004, Sten Heckscher förbereder avvecklingen av Utlänningsnämnden.

¹⁹⁴ For critical remarks made by judges with respect to the proposals contained in the Government report see: *Domarkritik mot ny utlänningslag*, *Jusektidningen* 7/04, p. 6. See also the position taken by the Children's Ombudsman on the proposed content of the Aliens Act: *Betänkandet Utlänningslagstiftningen i ett domstolsperspektiv* (SOU 2004:74), www.rb.se

¹⁹⁵ *The Government Offices of Sweden*, Press release, Invitation to press conference on review of aliens legislation, 18 June 2004, <http://www.sweden.gov.se>

January 2006.¹⁹⁶ Thus, instead of the current Aliens Appeals Board, which is an administrative agency and which constitutes the final decision-making body with respect to asylum applications, the decisions of the Migration Board are envisaged in the future to become subject to appeal before judicial instances, *i.e.* before the county administrative courts and administrative courts of appeal.

The Governments' proposal¹⁹⁷ to abolish the provision contained in the Aliens Act, which guarantees a possibility for an asylum applicant to submit a 'new application' was rejected by the Committee on Social Insurance on the 23 November 2004.¹⁹⁸ The Committee on Social Insurance believed that it is not feasible to abolish the possibility to re-apply for residence permits, considering the inadequacies that exist in the asylum application process. This is not a surprising outcome bearing in mind that the majority of the consulted official bodies were critical to such a proposal, which would in practice imply restriction of the right to seek asylum. The Aliens Appeals Board will continue to process re-applications for residence permits. The reason behind the proposal were the marked increase in the number of re-applications which has led to long processing time. According to the Social Democrats "the possibility to process applications for the second time can also give applicants a false sense of security".¹⁹⁹

Positive aspects

Overall, there seems to be a consensus that the processing time of the refugee determination of the Swedish Migration Board generally is too long and it has, therefore, often been criticised in Swedish media.²⁰⁰ Thus, many asylum seekers live under a great deal of pressure during lengthy periods of time often resulting in mental anguish for the individual concerned. In order to reduce the extended handling time of the assessment of asylum applications, the Government has provided the Swedish Migration Board with an extra SEK 20 million and the Aliens Appeals Board with an extra SEK 25 million. In addition, the public counsels will be provided with SEK 60 million.

Recognition of the status of refugee

Legislative initiatives, national case law and practices of national authorities

In order to guarantee the implementation of EC Directive 2001/51/EC, the Swedish Government submitted a Bill on measures to clarify the identity of asylum seekers etc. (Prop. 2003/04:50, *Åtgärder för att klarlägga asylsökandens identitet, m.m.*) to the Parliament in November 2004.

The proposal that carriers shall be obliged to ensure that a third-country national is in possession of the travel documents (passport or other permit documents) for entry in Sweden has faced severe criticism by major NGOs in Sweden.²⁰¹ The increase in the lack of

¹⁹⁶ *The Government Offices of Sweden*, Press release, Shorter waiting times and greater legal security, 20 September 2004, <http://www.gov.se>

¹⁹⁷ Prop. 2003/04:59, *Prövning av verkställighetshinder i utlänningsärenden* (Government Bill 2003/04:59, Determination of Impediments to Enforcement in Aliens Matters).

¹⁹⁸ *Sveriges Riksdag*, The Riksdag at Work, Press release, No to the Government's proposal to abolish the possibility of re-applying for residence permits, 23 November 2004, p. 1, www.riksdagen.se; TT, Inget förbud mot flera asylsökningar, SvD 24-11-04, p. 14. See also Committee on Social Insurance Report 2004/05 :SfU3, Assessment of obstacles to dealing with matters relating to aliens.

¹⁹⁹ *Sveriges Riksdag*, The Riksdag at Work, op. cit., p. 1.

²⁰⁰ See, for example, *J.Taubert*, Försenade asylärenden blev en miljard dyrare, SvD 19-11-04, p. 10.

²⁰¹ *Förslaget om privata « flyktingpolis » bör prövas i EG-domstolen*, Amnesty, Caritas, Flyktinggruppernas och Asylkommittéernas Riksråd (FARR), Rådgivningsbyrå för flyktingar och asylsökande, Rädda Barnen och Svenska Röda Korset.

documents among asylum seekers has been mentioned as one of the reasons behind this proposal. A special investigator has been appointed by the Government with the assignment to review the number of asylum seekers without any identity documents and whether there is a need for the introduction of provisions on temporary residence permits for that category of applicants (*Kommittédirektiv, Tidsbegränsad uppehållstillstånd för dokumentlösa asylsökande*, Dir. 2004:20, 26 februari 2004).

According to the above mentioned Bill on measures to clarify the identity of asylum seekers the carrier will also be required to inspect that aliens have funds for their journey home. It is envisaged to impose penalties on carriers that transport aliens who do not possess the necessary travel documents. According to the Bill, the maximum amount of the applicable financial penalty shall be SEK 46, 000 (approximately 5, 000 Euros).

The Bill, moreover, contains a proposal for changes in the current law on reception of asylum seekers (*lag om mottagande av asylsökande m.fl.* (SFS 1994 : 137)) which will enable the reduction of the daily and housing allowance paid to an alien who has reached the age of 18 years if he /she impedes the residence permits investigation by not helping to clarify his/her identity.

The new legislation is expected to enter into force on 1st of July 2004.

Despite the fact that the international legal development has moved in favour of including persons persecuted on account of their gender in the refugee concept as defined in the 1951 Geneva Convention on the Status of Refugees, the majority of women who apply for asylum in Sweden on account of gender persecution or as victims of sexual violence, have been granted protection on humanitarian grounds (Chapter 3, Section 3, first paragraph of the Aliens Act (*Utlänningslagen* (SFS 1989:529))).²⁰² Some encouraging events have, however, taken place within the legislature.

The special expert appointed by the Government with the task to undertake a review of the current Aliens Act and to make recommendations as to the legislative changes necessary to permit individuals who have a well-founded fear of being persecuted on account of their gender or sexual orientation to be regarded as refugees under the 1951 Geneva Convention, presented a few welcome proposals in March 2004.²⁰³ Notwithstanding the variety of remarks on how to improve the content and wording of the proposed new provision on asylum protection in a more stylistically consistent manner, the vast majority of the consulted official bodies have in general approved the conclusions and recommendations of the inquiry.²⁰⁴ If adopted, the modification of the Aliens Act will introduce the long-awaited possibility for gender-related claims within the Swedish legislation.

The inquiry, furthermore, recommends that the provision in the Aliens Act according to which residence permits can be granted on humanitarian grounds to individuals who face a risk of gender-related persecution, but who for various reasons do not meet the criteria for refugee status, should continue to be valid.²⁰⁵ Yet, the Committee of inquiry entrusted with the

²⁰² The Migration Board continues to issue decisions on expulsion of young women who have applied for asylum in Sweden despite the apparent risk of being stoned to death for reasons of « adultery ». TT, Utvisad riskerar bli stenad, SvD 5 September 2004, p. 6.

²⁰³ SOU 2004:31, *Flyktingskap och könsrelaterad förföljelse, Betänkande av utredningen om förföljelse på grund av kön eller sexuell läggning* (Swedish Government Official Reports 2004 :31, Refugee Status and Gender-related Persecution).

²⁰⁴ See, e.g. Swedish Red Cross, Yttrande över betänkandet "Flyktingskap och könsrelaterad förföljelse" SOU 2004:31, 7 juni 2004. For a few remarks that are of relevance to the substance of the proposed provision see Rädde Barnen, Betänkandet Flyktingskap och könsrelaterad förföljelse (SOU 2004:31), 2 juli 2004, www.rb.se and Kvinna till Kvinna (KtK), Pressmeddelande, Rätt till asyl för utsatta för sexualiserat våld!10-08-04.

²⁰⁵ SOU 2004:31, p. 133.

task to review the Aliens Act in the context of judicial proceedings, came to the conclusion that the introduction of a specific definition of the phrase “humanitarian grounds” referring explicitly to the grounds of gender-related persecution was not necessary.²⁰⁶

Mention should be also made of the Government decision from 16 September 2004 to set up an inquiry Committee for the purpose of reviewing the current alien’s legislation and if necessary receiving proposals on how to modify it in order to implement EC Directive 8043/04 ASILE 23. (*Kommittédirektiv, Skyddsgrunder och rättigheter för flyktingar och alternativt skyddsbehövande*, Dir. 2004:114)

Sweden has increasingly applied restrictive criteria for identifying those to benefit from refugee status and the recognition rates on the basis of the 1951 Refugee Convention continue to be extremely low. Preliminary statistics for the period under scrutiny indicates that between 1-1.2 per cent out of 21, 465 applications were granted asylum.²⁰⁷ 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. On the other hand, it is noteworthy that the Swedish authorities generously grant subsidiary protection.²⁰⁸

Reasons for concern

As a general remark women seeking refugee status on gender-related grounds were only granted subsidiary protection status in Sweden²⁰⁹ and too often their applications for protection from persecution were rejected by the administrative authorities. Despite the recognition in the previously cited report by the expert inquiry on refugee status and gender-related persecution (SOU 2004:31) acknowledging the risk of being exposed to female genital mutilation (FGM) as a persecutory measure which may give rise to a claim for refugee status, Swedish administrative practice has not yet changed in this direction.²¹⁰

There has been an alarming allegation by a resigned officer handling applications for asylum that among the staff reviewing asylum applications at the Migration Board, those who deliver their assessment decisions swiftly were granted promotions and that this approach might have had the effect of ignoring individual circumstances during the examination of asylum claims.²¹¹ The cases referred to were simply matched in relation to existing leading decisions.

²⁰⁶ SOU 2004:74, *Utlänningslagstiftningen i ett domstolsperspektiv*, p. 216.

²⁰⁷ On-line <http://www.migrationsverket.se>

²⁰⁸ *R.Löf & B.Gorlick*, Implementing International Human Rights Law on Behalf of Asylum Seekers and Refugees : The Record of the Nordic Countries, p. 36 (forthcoming). See www.unhcr.ch--go to ‘Publication’, ‘New Issues in Refugee Research’.

²⁰⁹ Op. cit., p. 32.

²¹⁰ See, for example, the decision delivered by the Aliens Appeals Board (*Utlänningsnämnden*), UN 04/10902 from 1 July 2004. The case-law of the second and final instance in asylum cases, *i.e.* the Aliens Appeals Board can be found on www.un.se.

In addition, Swedish media has paid attention to other cases of gender-related persecution which has not been considered as a ground for receiving protection in Sweden. *O.Billger et al*, *Asylhanteringen kritiserar hårt av Amnesty*, SvD 27-05-04, p. 6 ; *A. Goldman et al*, *Låt Sultana stanna i Sverige*, SvD 18-11-04, p. 5.

²¹¹ Amnesty, *Kritiska handläggare, « Pinnhets » drabbar asylsökande*, Amnesty Press 04/04, p. 9.

Unaccompanied minors seeking asylum

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During his visit in Sweden in April 2004, the Council of Europe's Human Rights Commissioner expressed his deep concern (in his words he was "shocked") about the considerable number of unaccompanied children who had disappeared from the special centres where they were accommodated, run by the Migration Board.²¹² It is feared that some of these children have been exploited sexually by traffickers and paedophiles.

The Commissioner noted that there have been certain deficiencies in the handling of the disappearance of the children, *e.g.* there have been unjustified delays in alarming the police about the incidents in question. The Commissioner, therefore, recommended that in order to prevent disappearances the competence of the legal custodians of unaccompanied foreign children should be extended in order to "ensure tighter control by institutions accommodating these children".²¹³

Legislative initiatives, national case law and practices of national authorities

The parliamentary expert Committee on Aliens Legislation, which was set up in 2003 to overhaul the substantive rules of the Aliens Act, presented its conclusions and proposals in June 2004. The Committee was granted with the assignment to propose improvements in the handling of asylum cases dealing with, *inter alia*, the applications of children. The Committee's proposals included the introduction of a new provision in the Aliens Act granting residence permits on humanitarian grounds for children.²¹⁴ According to the Children's Ombudsman, this proposal would, if adopted, make it easier for children than for adults in a similar situation to acquire a residence permit on humanitarian grounds in Sweden.²¹⁵

Children may have their individual grounds for asylum. However, the current Swedish asylum-procedure is not yet fully adapted to deal with children irrespective of whether they come alone or as members of a family. Children's own grounds for seeking protection in Sweden are still seldom investigated. An investigation made by the Save the Children Sweden shows that in two regions only 13 out of 66 cases handled by the Migration Board was the child questioned about her/his reasons for claiming asylum. Nine of the cases were assessed in detail. Many of the grounds given by the children were related to harassment/bullying on account of their religion or ethnic origin. The Centre for Children and Young People in Crises has, in addition, observed that the number of children who have witnessed torture, imprisonment and other human rights violations in their home countries is increasing. All of the applications based on the grounds mentioned above were, however, rejected.²¹⁶ Currently, there are no available statistics as to how many children were granted asylum on individual grounds.

Positive aspects

The County Councils (*landsting*) and the Government have signed a new agreement to cover the increasing costs that health and medical care for asylum seekers cause the county

²¹² CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 10.

²¹³ *Op. cit.*, p. 18.

²¹⁴ SOU 2004:74, *Utlänningslagstiftningen i ett domstolsperspektiv, Betänkande av kommittén för översyn av utlänningslagstiftningen*.

²¹⁵ *Barnombudsmannen (BO)*, Observations, October 2004, § 32, p. 8.

²¹⁶ Save the Children, Sweden's Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 24.

councils. SEK 20 million will be added to enable municipalities to conduct social assessments of unaccompanied minors.²¹⁷

The Government intends to present a Bill before the Parliament before the end of the year 2004 and thereby proposing that the legal custodian should be granted the power to take decisions in all matters concerning the unaccompanied child, including the child's accommodation. Today, the legal custodian has a very limited competence with respect to matters concerning the personal relations of the child. In other words, he/she cannot decide to restrict the child's movements out of the institution/migrant centres.

Good practices

Representatives for civil society have often referred to the project in the northern part of Sweden, the town of Skellefteå, as a good example for a group housing (*Origo*) accommodating 17 asylum seeking children and provided by the local municipality in the past year. Besides a holistic approach towards the treatment of these children, many of whom have considerable problems, the staff-members are on hand round the clock at the centre.

Reasons for concern

During the period under scrutiny, Swedish administrative praxis dealing with asylum applications has continued to be subject to harsh criticism, especially in matters concerning children.²¹⁸ Studies made so far suggest that the introductory provisions of the Aliens Act concerning the child's best interests and the rule concerning the hearing of children in the course of asylum proceedings have had limited-if any-impact on the practical application of the law.²¹⁹ In the words of one Swedish legal scholar: "Children are not the real focus of the process. This can be gleaned by the limited bases for understanding persecution and the grounds for it-an understanding that often ignores the experiences, needs and rights of children".²²⁰

The situation of the unaccompanied children has attracted attention in other aspects as well. As already mentioned previously, one of the major issues of concern is related to the present situation where the custodians for unaccompanied children only have authority within the realm of economic affairs. Therefore, certain obscurities regarding the extent of the custodian's assignment remain.

Moreover, the uncertainties in the division of responsibilities between different authorities have led to the disappearance of unaccompanied children from centres run by the Migration Board. As of April 2004, ten children remained unaccounted for.²²¹ There have been some indications that children who have disappeared from the reception centres have been forced into prostitution.²²²

²¹⁷ *The Government and the Government Offices*, Press release, Shorter waiting times and greater legal security, 20 September 2004, <http://www.sweden.gov.se>, p. 2.

²¹⁸ *E.Nilsson*, A child perspective in the Swedish asylum process. Rhetoric and practice (forthcoming) and *K.Halvorsen*, Asylum Decisions on Child Applicants. Report on 4-Country Pilot Project, Stavanger 2004. See also *A.Engström*, Fåre asylsökande barn får stanna, SvD 14-01-04, p. 10.

²¹⁹ *E.Norström*, I väntan på asyl. Retorik och praktik i svensk flyktingpolitik, Boréa, Umeå 2004.

²²⁰ *E.Nilsson*, op. cit., p. 12.

²²¹ *Barnombudsmannen (BO)*, Observations, October 2004, § 32, p. 8.

²²² *C.Wahldén*, Flyktingbarn förs till Sverige för prostitution, SvD 21-02-04, p. 6. See also the statement made by the Children's Ombudsman, Annika Åhnberg, Barn har det inte bra i Sverige, NU 19/04, p. 6.

Other relevant developments

Good practices

As an example of good practice, mention should be made here of the *Söderköping Cross-Border Process* which was initiated by Sweden with the aim to enhance sub-regional and regional co-operation in the areas of asylum and migration. This includes working together (*i.e.* all partners of the process, the Swedish Migration Board, UNHCR, IOM and the European Commission) to achieve more effective border and migration management, improved awareness and most importantly knowledge of international and national refugee legislation. The activities of the process are co-ordinated by the Cross-Border Co-operation Process Secretariat with its basis in Kiev.

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

Prohibition of removals of foreigners to countries where they face a real and serious risk of being killed or being subjected to torture or to cruel, inhuman and degrading treatments.

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During his visit in Sweden in April 2004 the Council of Europe's Commissioner for Human Rights discussed with the Minister for Asylum Matters the well-known case of the swift and forcible expulsion on 18 December 2001 of two Egyptian men Ahmed Hussein Mustafa Kamil Agiza and Mohammed Suleiman Ibrahim Al-Zary who had claimed persecution in their home country and who had sought asylum upon their arrival in Sweden.²²³ Despite that both men risked to face grave human rights violations on their return and the fact that they had been sentenced in absentia to prison in Egypt on the grounds of terrorism-related offences by a military court, the Swedish decision was based partly on diplomatic assurances²²⁴ of fair treatment from the Egyptian authorities.

In the view of the Commissioner the case in question illustrates "the inability to contest asylum and expulsion decisions taken directly by the government on grounds of national security without applicants having access to the information on which such decisions are based, nor any possibility to appeal against such a decision" as well as the weakness inherent in the practice of diplomatic assurances.²²⁵ He emphasised how important it is in such cases,

²²³ According to critics the decision for expulsion was based on several incorrect pieces of information and it was, moreover, carried out in a very remarkable manner by a special jet plane from Bromma airport in Stockholm. See *H.Samuelsson/TT*, Aftonbladet, Specialkommando från USA tog hand om avvisade i Sverige, 13-09-04 ; *O.Billger*, USA skötte svensk utlämning, SvD 18-05-04, p. 8 ; *Human Rights Watch*, Swedish TV4 Kalla Fakta Program : « The Broken Promise », 17th May 2004, <http://hrw.org> ; *Human Rights Watch*, Sweden : Call for Full and Fair Asylum Determination, Letter to Swedish Government on Behalf of Hanan Attia, 17 December 2003, <http://hrw.org> ; *Human Rights Watch*, Sweden Implicated in Egypt's Abuse of Suspected Militant, Egypt Violated Diplomatic Promises of Fair Trial and No Torture for Terrorism Suspect, May 5, 2004, <http://hrw.org> ; *Amnesty International*, Public Statement, AI Index :EUR 42/001/2004 (Public), Sweden : Concerns over the treatment of deported Egyptians, News Service No : 137, 28 May 2004, <http://web.amnesty.org> ; *O.Billger & B.Malmström*, Fallet fick inte nå domstol, SvD 17-12-04, p. 7.

²²⁴The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment emphasised in September 2004 in his report to the UN GA that the reliance on assurances, sought by the sending country from the receiving country, that transferred suspects will not be subjected to torture or cruel, inhuman or degrading treatment or punishment, is increasingly undermining the principle of non-refoulement. UN Doc. A/59/324, 1 September 2004, § 30, p. 9.

²²⁵ For a similar criticism see also *Amnesty International*, Media Briefing, AI Index : POL 10/017/2004, 26 May 2004, *Amnesty International Report 2004*, <http://web.amnesty.org> ; *Amnesty Årsrapport 2004*, <http://www.2.amnesty.se> ; *AI, Sweden* : Further Information on Forcible Return/risk of Torture or Ill-

where the risk of torture and ill-treatment is elevated that the proceedings are surrounded by appropriate legal safeguards. Otherwise, there is high probability that the acting is in conflict with the guarantees of Articles 3, 6 and 13 of the ECHR.²²⁶

In late March 2004, more than two years after Agiza's return, the Egyptian authorities ordered a retrial. However, this was done before a military tribunal where fair trial standards were not respected. Both men have submitted claims before international human rights bodies.²²⁷ The case of Agiza (Communication no. 233/2003) was declared admissible by a decision taken by the UN Committee against Torture (CAT) on 1st of June 2004. However, the Committee decided at its 33rd session at the end of November 2004 to postpone its deliberations and final decision on the subject matter for some time.²²⁸

Of significance is also that the HRC has requested a follow up report on the above mentioned case from the Government, which was presented in 2003. At the time of writing the Committee continues to purport the case.²²⁹

Legislative initiatives, national case law and practices of national authorities

Swedish practice contains a high number, which is steadily increasing, of incidents of foreigners who have been convicted for crimes and who have been deported against their will to their home countries. On the other hand, the opinion seems to prevail that this is in harmony with the 2002 European Convention which deals with relevant issues.²³⁰

Positive aspects

During the summer of 2004 the Swedish Parliamentary Ombudsman (*Justitieombudsmannen*(JO)) took the initiative to conduct an inquiry with respect to the lawfulness of the measures conducted by the Security Police (*SÄPO*) in connection with the expulsion of the two Egyptian men Agiza and Al-Zary.

Also taking into consideration the criticism voiced by a great number of NGOs²³¹ and other representatives for the civil society in Sweden as well as abroad, the Swedish Government called for an impartial and independent investigation with international involvement into the situation of the two men after their deportation to Egypt in May 2004.²³² The political parties

treatment : Hanan Attia and her five children, PUBLIC AI Index :EUR 42/002/2004, 18 June 2004 ; *Human Rights Watch*, Diplomatic Assurances and their use in Europe, <http://hrw.org/reports/2004/un0404/5htm> ; *A.Sällfors*, Avvisning av asylsökande i kampen mot terrorismen, Nordic Journal of Human Rights, No. 2 :2004, pp. 176-177.

On the other hand, Amnesty International welcomed the decision taken by the Swedish authorities in June 2004 to grant residence permit on humanitarian grounds to the wife of Mr. Agiza and their five children.

²²⁶ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 9.

²²⁷ Al-Zary's attorney Mr. Kjell Jönsson referred the case (Appl. No 10786/04) to the ECHR which was, however, rejected on formal grounds on 26 October 2004.

²²⁸ See *R.Hårdh, A.Wigenmark, C.Söderbergh & A.Klum*, Sverige kränker och ljuger, SvD 1-12-04, p. 5 ; *P.Wästberg et. al.*, Ge Hanan Attia upprättelse ! SvD 23-12-04, p. 5.

²²⁹ International Helsinki Federation for Human Rights, 2004 Annual Report - Sweden, p. 9. www.ihf-hr.org

²³⁰ TT, Fler dömda skickas hem mot sin vilja, SvD 12 June 2004, p. 15.

²³¹ The Swedish Helsinki Committee for Human Rights has considered the decision on expulsion of the two Egyptian men as a violation of the principle of non-refoulement, whereby a person may not be deported to a state where he/she may face the death penalty. See Annual Report 2003, Stockholm 2004, p. 10.

²³² *K.Hedlund Thulin*, Lika i värde och rättigheter, Om mänskliga rättigheter, Stockholm 2004, p. 239 ; *A.Bengtsson*, Avvisning till Egypten utreds, SvD 21-05-04, p. 8 ; *E.Sidenblad*, JO fortsätter att

in opposition at the Parliament requested a special meeting at the Advisory Council on Foreign Affairs (*utrikesnämnden*) which took place on 22 December 2004.²³³

Good practices

The Swedish Migration Board has organised training seminars for cases handling officers and decision-makers on human rights standards in cases of rejected asylum seekers with the participation of representatives of the UNHCR, the Office of the High Commissioner for Human Rights and Swedish NGOs.²³⁴

Reasons for concern

Evidence has been presented that the two expelled Egyptian men (Agiza and Al-Zary) were mistreated and tortured during the trip from Stockholm to Egypt.²³⁵ It is unfortunate that the Swedish Government has not yet taken the opportunity to admit that the expulsion in question was contrary to existing international law standards.²³⁶

Legal remedies and procedural guarantees regarding the removal of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In 2004 the European Committee of Social Rights found the situation in Sweden not compatible with Article 19§8 of the Revised European Social Charter on the grounds that migrant workers who are citizens of States parties to the Charter 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. Currently, persons who are subjected to an expulsion order on the above mentioned grounds are entitled to appeal against such decisions to the Swedish Government, which may review or cancel the order of expulsion. In the view of the Committee this form of appeal cannot be considered as the recourse to an independent body as required under the European Social Charter (European Social Charter (Revised)).²³⁷

During its review of the Swedish report in 2004, the CERD-Committee made the following statement: “While acknowledging the State party’s national security concerns, the Committee reminds the State party of the need to balance those concerns with its human rights obligations.” With reference to its statement on terrorism and human rights from 8 March 2002 the Committee invited the Swedish Government to reconsider the 1991 Act on Special Control of Aliens (*Lag om särskild utlänningskontroll* (SFS 1991:572)), which allows the Government to expel a foreigner if this is deemed necessary to the security of the country or if there are reasons to suspect that he or she will commit or participate in crimes involving violence, threats or coercion for political purposes, without the possibility of appealing against such a decisions.²³⁸

granska avvisningar, SvD 21-08-04, p. 8 ; *G.von Hall*, Egypten säger nej till utredning, SvD 21-08-04, p. 8 ; *D.Nilsson*, Avvisade egyptier kan bli KU-sak, SvD 19-05-04, p. 15.

²³³ *E.Sidenbladh*, Oppositionen kräver svar om utvisade egyptier, SvD 11-12-04, p. 21; *O.Billger & F.Mellgren*, Egyptenavvisning fall för utrikesnämnden, SvD 15-12-04, p. 10; *G.Hägglund & H.Gustafsson*, Rätt åsidosatt även i Sverige, SvD 15-12-04, p. 5; *B.Malmström*, Oppositionen misstror Persson, SvD 23-12-04, p. 9.

²³⁴ *R.Löf & B.Gorlick*, op. cit., p. 9.

²³⁵ Op. cit., p. 5, note 11.

²³⁶ *O.Billger*, Misstankar om tortyr av egyptier granskas, Avvisningen stred mot folkrätten hävdar Amnesty, SvD, 22-05-04, p. 15.

²³⁷ See www.coe.int, *European Committee of Social Rights*, Conclusions 2004, Sweden, Chapter 7.

²³⁸ CERD, Concluding observations, CERD/C/64/CO/8, op. cit., § 15.

The Council of Europe's Commissioner for Human Rights recommended Sweden in his report following his visit to Sweden in April 2004 to "adopt the necessary legislative and policy changes in order to ensure that the rights contained in Articles 3 and 13 of the European Convention are respected in relation to asylum-seekers who are considered to raise concerns of national security".²³⁹

Legislative initiatives, national case law and practices of national authorities

The Government has proposed in a Ministry memorandum the introduction of oral hearings in cases of expulsion or extradition.²⁴⁰

Reasons for concern

According to Chapter 7, Section 11, § 2 of the Aliens Act (*utlänningslagen* (SFS 1989:529)), an asylum matter, which has been deemed to be a matter of public or national security cannot be adjudged by a court or other independent body, but shall be decided upon by the Government, *i.e.* the state's highest political body. This decision cannot be appealed. It is apparent that this state of affairs constitutes a serious infringement of the rights of the concerned asylum-seeker who will be denied the possibility of submitting any reasons against his/her expulsion.

²³⁹ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 18.

²⁴⁰ Utrikesdepartementet, Enheten för migration och asylnpolitik, Promemorian « *Verkställighetsärenden och muntlig förhandling i en ny instans- och processordning i utlänningsärenden* ».

CHAPTER III : EQUALITY

Article 20. Equality before the law

Equality before the law

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

According to the Swedish Legal Aid Act all persons domiciled in Sweden, whatever their nationality, have the right to legal aid. Non-Swedish citizens who are not domiciled in the country may receive legal aid, only when international conventions and bilateral agreements have been concluded. Thus, migrant workers who are citizens of some countries risk of being treated less favourable than nationals with respect to legal proceedings. Bearing these circumstances in mind, the European Committee of Social Rights pointed out in its conclusions regarding the Swedish report in 2004 that Article 19 §7 (equality regarding legal proceedings) of the Revised European Social Charter “obliges states parties to secure the same treatment for nationals of other states parties as for their own nationals, independently of any international agreement”.²⁴¹ In other words, the above mentioned provision requires only lawful presence within the state’s territory and not domicile. The Committee concluded, therefore, that the imposition in the Swedish legislation of a domicile requirement for the acquisition of legal aid can not be judged as compatible with the European Social Charter.

Article 21. Non-discrimination

Protection against discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights came to the conclusion in 2004 during the review of the Swedish report that the situation in Sweden was not in conformity with Article 20 of the Revised European Social Charter on the grounds that the content of the domestic legislation on employment insurance implies an indirect discrimination against women working part-time.²⁴²

Registration of individuals on ethnic, religious or linguistic grounds is not allowed in Sweden. The officially given reasons for that are historical as well as considerations with regard to the integrity of the persons concerned.²⁴³ In other words, the Swedish authorities do not collect official statistical data on the ethnic breakdown of the population and thus estimates concerning the number of persons belonging to each national minority are imprecise.

Nevertheless, the CERD-Committee recommended recently that Sweden should provide an estimate of the demographic composition of the population in the subsequent report under the Convention on the Elimination of Racial Discrimination.²⁴⁴ Reliable data is, thus, of importance when evaluating the situation of minority groups and the success of policies and measures designed to improve their situation in different areas in Sweden.

²⁴¹European Social Charter (Revised), European Committee of Social Rights, Conclusions 2004, Sweden, Chapter 7. See www.coe.int

²⁴²European Social Charter (Revised), European Committee of Social Rights, Conclusions 2004, Sweden, Chapter 7. See www.coe.int

²⁴³ CERD/C/452/Add.4, §§ 7 and 52.

²⁴⁴ CERD/C/64/CO/8, 10 May 2004, § 7.

Legislative initiatives, national case law and practices of national authorities

The inquiry Committee established by the Government with the assignment to make proposals on the implementation of EC law (the Equal Treatment Directive, the Social Security Directive and the Self-Employment Directive) within Swedish legislation relating to the issue of discrimination based on the grounds of sex, presented its deliberations and proposals in the preliminary report- SOU 2004:55, *Ett utvidgat skydd mot könsdiskriminering* (Delbetänkande av Diskrimineringskommittén) - in May 2004.

(See also the information under Article 23 of the present report)

According to the Committees' proposals, the rules of the Prohibition of Discrimination Act, which deal with the supervision mechanisms will be amended so that the Equal Opportunities Ombudsman (*JämO*) shall be given extended power to ensure compliance with the legislation in question as well as to bring cases of discrimination on the grounds of sex to court, something which other Ombudsmen already do regarding cases relevant to their respective area of protection.

The Committee of inquiry also proposed some changes in the Equal Treatment of Students at Universities Act (*lag om likabehandling av studenter i högskolan* (SFS 2001: 1286)). The introduction of an exemption from the discrimination prohibition for a so-called "special interest" is envisaged, *i.e.* for positive special treatment owing to sex. In the view of the Committee "the prohibition against direct discrimination should not apply if the treatment represents a step in the effort to promote equal opportunities for higher education studies irrespective of sex".²⁴⁵

The legislative changes are expected to be enforced on 1st of July 2005.

In addition, the following two government reports, which shall serve as a basis for the preparation of new legislation relevant for the issue of non-discrimination, should be mentioned here. The first one focuses on the importance of engaging Swedish society in issues dealing with plurality and integration, especially in the political context (SOU 2004:49, *Engagemang, mångfald och integration. Om möjligheter och hinder för politisk jämlikhet*). The second report - SOU 2004:98, *För oss tillsammans. Om utbildning och utvecklingsstörning*- contains deliberations on measures that need to be adopted and which should be conducive to increasing knowledge in society about mental retardation and integration issues.

The Government decided on 22 April 2004 to appoint an inquiry Committee with the task to identify, *inter alia*, the occurrence in Sweden of structural discrimination on the grounds of ethnicity or religion and in case there is evidence for that to analyse the mechanisms behind it. (*Kommittédirektiv, Makt, integration och strukturell diskriminering*, Dir. 2004:54). The deliberations and conclusions shall be presented no later than 30 June 2006.

Reasons for concern

According to reports in Swedish media the restrictive 'entry policies' to restaurants and clubs, which obviously counteract changes in discriminatory attitudes towards foreigners and in addition constitute an obstacle for achieving better results with regard to integration, seem not only to continue to be upheld but even are on the increase.²⁴⁶ In late December 2004 the

²⁴⁵ SOU 2004 :55, p. 27.

²⁴⁶ A.Careborg, *Diskrimineringen ökar på krogarna*, SvD 6-07-04, p. 4.

Ombudsman against Ethnic Discrimination (DO) brought to court one case dealing with an entry refusal in a Night Club in Malmö on the grounds of ethnicity.²⁴⁷

The Swedish NGO Save the Children (*Rädda Barnen*) has recently expressed concern about the increased social exclusion, discrimination and racism in Sweden, which in the opinion of the organisation mainly stems from a lack of political will and long-term financial planning.²⁴⁸

A very recent publication by the National Council for Crime Prevention (BRÅ), which is an agency under the Swedish Ministry of Justice, shows a relatively high percentage of open intolerance among school children towards various minorities in Sweden.²⁴⁹

The Roma occupy a highly vulnerable position in Sweden and persons belonging to this minority group are exposed to severe discrimination especially with regard to housing.²⁵⁰ This applies also to education, the labour market and health care. The Roma encounter, in addition, great difficulties as to their possibility of participating in the community on the same terms as the majority of the population.²⁵¹

On this background major Swedish NGOs have taken the stand-point that “the profound problem of Sweden in terms of racism and xenophobia is due to the hidden structural and institutional discrimination within the Swedish system. Sweden might therefore be considered as a segregated country”.²⁵²

Finally, in the view of a great number of Swedish NGOs the present structure of autonomous municipalities encompasses risks of “installing decision-makers lacking integration ambitions at the local level”.²⁵³

Sweden has not shown the willingness to accommodate and promote Sámi interests- either as a minority group and/or as indigenous peoples and it is therefore not surprising that they still feel discriminated against in several areas of societal life as is obvious of the commentaries under other articles in the present report.²⁵⁴

Sweden has yet to sign or ratify Optional Protocol No 12 to the ECHR which establishes a general prohibition against all forms of discrimination.

²⁴⁷ *F.Mellgren*, Etnisk diskriminering till rätten, SvD 24-12-04, p. 6. It is, however, remarkable that only 6 per cent of the victims of discrimination on the basis of their ethnicity take an action. *J.Amin*, Endast 6 procent av de utsatta anmäler etnisk diskriminering, DN.Debatt, 12-12-04, p. 6.

²⁴⁸ Save the Children, Sweden’s Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 8.

²⁴⁹ *J.Ring & S.Morgentau*, Intolerans. Antisemitiska, homofobiska, islamofobiska och invandrarfientliga tendenser bland unga, Stockholm 2004, www.bra.se. The report can be ordered at levandehistoria@strd.se See also *M.Noori*, Stävja den växande intoleransen, NU 46/04, p. 20.

²⁵⁰ *K.Hedlund Thulin*, Lika i värde, p. 235.

²⁵¹ Dialog och delaktighet krävs för att minska diskriminering, www.do.se; See also www.do.se Statistics. A study performed by Statistics Sweden (SCB 2003) shows that immigrants have a lower employment rate than native Swedes.

²⁵² *UN Association of Sweden*, Alternative Report to the CERD-Committee with respect to Sweden’s commitments according to the ICERD, February 2004, p. 5. See also Strukturell rasism i Sverige, 25 February 2004, www.fn.se; *A.Gabelic*, Persson förskönar integrationspolitiken, DN, 25-02-04, p. 4; *G.von Hall*, Sverige får FN-kritik för rasism, SvD 13-03-04, p. 22.

²⁵³ *UN Association of Sweden*, Alternative Report to the CERD-Committee, op. cit., p. 3.

²⁵⁴ *K.Bergström*, Samer en bortglömd minoritet, NU 7/04, pp. 12-13.

Fight against incitement to racial, ethnic, national or religious discrimination

Good practices

Political parties with xenophobic agendas have been successful during the last years in the local elections. In order to support the fight against such tendencies the Swedish Ministry for Integration (*Integrationsverket*) has allocated SEK 100 000 to the association of municipalities (*Kommunförbundet*) with the aim, among other things, to carry out a study presenting the successful methods to counteract non-democratic parties.²⁵⁵

The Centre against Racism, which was established in Stockholm in March 2004 organised a well-visited inter-disciplinary conference against racism and discrimination on the grounds of ethnicity.²⁵⁶

During the Human Rights Days, which took place in Stockholm from 16th to 17th of November 2004, the Centre for Living History organised a seminar focusing on the issue of discrimination of Roma, homosexual, bisexual and trans-persons.

Reasons for concern

A survey presented by the Swedish Section of Save the Children shows that visible racism has occurred in more than one fifth of all upper-secondary schools under examination. Also the National Agency for Education has observed that about a third of the interviewed pupils maintain that neo-Nazi graffiti were common in their school. Others bear witness of neo-Nazi emblems being worn and white-power music being played.²⁵⁷ In other words, racism has become in recent years more mainstreamed in Sweden. Special concern causes the fact that racist organisations recruit prospective members from the age of 13 to 14 as well as that school staff uses ethnically derogatory language.²⁵⁸

Notwithstanding the efforts on the part of the Swedish Government to combat hate crimes, the number of reported offences recorded by the police as agitation against a national or ethnic group is continuing to increase.²⁵⁹ Concerns have been, therefore, expressed on several occasions that the relevant domestic criminal law provisions have not been applied effectively and to a sufficient extent.²⁶⁰

Also the Swedish Helsinki Committee for Human Rights has pointed out and rightly so that the Swedish legislation prohibiting discrimination and racial agitation is not sufficient in the fight against currently existing practices.²⁶¹

²⁵⁵ Integrationsverket, KortNytt, Projektbidrag till Svenska Kommunförbundet, Februari 2004, p. 2.

²⁵⁶ Integrationsverket, KortNytt, Konferens mot rasism och etnisk diskriminering, Mars 2004, p. 4.

²⁵⁷ Save the Children, Sweden's Third Report, op. cit., p. 45.

²⁵⁸ Op. cit., pp. 11, 20 and 46.

²⁵⁹ P. Carlberg, Antalet anmälda hatbrott ökar, SvD 10-02-04, p. 11 ; TT, Hatbrotten har ökat i Sverige, SvD 25-06-04, p. 8 ; M. Gners, Unga homosexuella utsatta, SvD 28-07-04, p. 6 ; U. Danné, Fler kvinnor begår hatbrott, SvD 23-07-04, p. 6 ; J. Taubert, Hedersvåld mot homosexuella, SvD 24-09-04, p. 6. For general remarks see H. Strömberg & H.-G. Axberger, Yttrandefrihetsrätt, Lund 2004.

²⁶⁰ See e.g. CERD/C/64/CO/8, § 8 ; Swedish Helsinki Committee for Human Rights, 2003 Annual Report, Stockholm 2004, p. 6.

²⁶¹ Swedish Helsinki Committee for Human Rights, Information brochure 2004, p. 6. See also www.shc.se

Remedies available to the victims of discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The CERD-Committee recommended Sweden in May 2004 during its review of the Government's report "to disseminate widely information on the domestic remedies available against acts of racial discrimination, and on the individual complaints procedures under Article 14 of the Convention", which has been accepted by Sweden.²⁶²

Protection of Gypsies / Roms

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Representatives of the Council of Roma Issues in Sweden informed the Council of Europe's Human Rights Commissioner during his visit to Sweden in April 2004 about the continuation of discriminatory practices as well as prejudices towards the Roma in their daily lives regarding access to employment, education, housing and various social and health services. Bearing that in mind the Commissioner welcomed the measures that have been undertaken by the Swedish Government during the year under scrutiny to prevent and counteract discrimination of Roma in Sweden, including the funds that have been allocated to the Ombudsman against Ethnic Discrimination for additional work in this area during 2004.²⁶³

Positive aspects

The Ombudsman against Ethnic Discrimination (DO) proposed that the Government should implement more efficient strategies, including positive measures (affirmative action in terms of the Convention on the Elimination of Racial Discrimination) in order to successfully combat the persisting discrimination of the Roma minority in Sweden.²⁶⁴ In December 2004 the Ombudsman referred to court his very first case dealing with the entry refusal for Roma people to a Swimming- pool establishment in the city of Eskilstuna.²⁶⁵

Reasons for concern

A recent report with the title "Discrimination of Roma in Sweden" (*Diskriminering av romer i Sverige*)²⁶⁶ was submitted on 15 March 2004 by the Swedish Office of the Ombudsman against Ethnic Discrimination (DO) to the Government. Among the issues raised in the report was the current situation where Roma continue to be victims of prejudice in Sweden and that a large part of the Roma community faces difficulties in areas such as housing. According to several Swedish NGOs discrimination of the Roma on the housing market has more than doubled during the last ten years.²⁶⁷

²⁶² CERD/C/64/CO/8, § 18.

²⁶³ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 14.

²⁶⁴ *K.Hedlund Thulin*, *Lika i värde*, p. 235 ; *S.Nilsson*, DO vill särbehandla romer positivt, SvD 17-03-04, p. 6 ; MR-INFO, Frivilligorganisationernas fond för mänskliga rättigheter, nr 1-2004, p. 3.

²⁶⁵ TT, *Diskriminering av romer prövas*, SvD 14-12-04, p. 13.

²⁶⁶ See *L.Lindgren*, *Dialog och delaktighet krävs för att minska diskriminering*, <http://www.do.se>

²⁶⁷ *UN Association of Sweden*, *Alternative Report to the CERD-Committee*, op. cit., p. 11; *Romerna diskrimineras*, www.varbostad.se.

Article 22. Cultural, religious and linguistic diversity

Protection of linguistic minorities

Reasons for concern

According to Save the Children Sweden, there is an obvious need for expanding access to native language training in Sweden.²⁶⁸ In other words, the Government has not yet provided sufficient grants for native language studies as well as Swedish and other languages so that exclusion is prevented due to practical obstacles or inadequate information.

Article 23. Equality between man and women

Gender discrimination in work and employment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

As a general comment mentioned should be made of relevant statistics which have been presented in the 2004 UNDP's Human Development Report. On the basis of various indicators, Sweden has been ranked as the world's leading country with regard to gender equality achievements. Almost half (45.5 per cent) of the Swedish Parliament is composed of women as members. Nevertheless, compared with other 151 countries, Sweden occupies only 24th place with regard to the percentage related to women in leading positions (*i.e.* women still occupy only 30 percent of the chief positions).²⁶⁹

Legislative initiatives, national case law and practices of national authorities

In May 2004 the especially appointed inquiry Committee with the assignment to make an assessment as to whether further measures were necessary or appropriate having regard the EC Directives on sex discrimination, published its deliberations and proposals in the preliminary report SOU 2004:55, *Ett utvidgat skydd mot könsdiskriminering* (Delbetänkande av Diskrimineringskommittén).

Among the proposed legal reforms of relevance to the issue at hand one should mention first and foremost the amendments to be made in the Equal Opportunities Act (*jämställdhetslagen* (SFS 1991:433)). The Committee proposed that the scope of application of the discrimination prohibitions should be extended in a way so that they expressly cover working conditions.²⁷⁰ The new provisions shall also cover practical work experience, *e.g.* on-the-job-training, vocational guidance and other training for promotion that is provided by an employer for employees. This means that the discrimination prohibition in relation to practical work experience and the prohibition against victimisation will be extended also with regard to the personal scope.

Moreover, in accordance with the Committees' proposals, it should be possible to adjust or declare invalid discriminatory rules of procedure or similar internal provisions at a workplace.²⁷¹

In addition, a new specific provision on the burden of proof will be introduced, which means that anyone who considers to have been discriminated against or have been exposed to

²⁶⁸ Save the Children, Sweden's Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 16.

²⁶⁹ UNDP, Human Development Report - 2004, pp. 221-223.

²⁷⁰ SOU 2004 :55, p. 26.

²⁷¹ Op. cit., p. 29.

victimisation adduces facts that give cause to assume that he or she has been discriminated against, it will be the employer who has to prove that discrimination or victimisation did not occur.²⁷²

The Committee, furthermore, proposed that amendments should be made to the existing definitions of direct and indirect discrimination contained in the Equal Opportunities Act (*jämställdhetslagen* (SFS 1991:433)). New provisions should be, thus, introduced in the above mentioned legislation with the aim to expressly prohibit discrimination in the form of harassment owing to sex, *i.e.* “conduct that violates a job applicant’s or an employee’s dignity and which is related to sex” and sexual harassment, *i.e.* “conduct of a sexual nature that violates a job applicant’s or an employee’s dignity”.

The introduction of an express prohibition against sex discrimination in the form of instructions to discriminate is envisaged among the proposed legislative changes.²⁷³ This is a welcome initiative bearing in mind that currently in Sweden there is a higher level of protection against discrimination on the grounds of ethnicity, religion or other religious faith, disability and sexual orientation²⁷⁴ than that which applies for discrimination on the grounds of sex. Corresponding amendments were proposed with regard to the content of the Prohibition of Discrimination Act (*lagen om förbud mot diskriminering* (SFS 2003:307)), *i.e.* the provisions will be changed to the effect that sex will be added as a new ground for discrimination in the definitions of direct discrimination, indirect discrimination and harassment.²⁷⁵

The proposed legislative amendments are expected to enter into force on 1st of July 2005. In other words, there are good prospects that the changes in the EC Equal Treatment Directive will be implemented within the prescribed time (that is no later than 5 October 2005).

Good practices

Encouraging is the fact that the number of women employed by the police forces increased in 2004.²⁷⁶

Reasons for concern

As already mentioned, Sweden is often ranked as the country that has come furthest in terms of achieving equality between men and women. For the last ten years Sweden has had, for example, a gender-balanced government. Notwithstanding the fact that more and more initiatives are surfacing in the area of gender equality, there is still a significant wage gap between women and men²⁷⁷, both in private and public sectors. On average women are lower paid than men. The average difference between women’s and men’s wages has been estimated to 25 per cent.²⁷⁸ Neither has the wage span for identical work narrowed during the

²⁷² Op. cit., p. 26.

²⁷³ SOU 2004 :55, p. 25.

²⁷⁴ Mention should also be made of the Bill that has been presented before the Parliament aimed at improving the protection against discrimination on the basis of sexual orientation within the social area- Prop. 2004/05:22, *Diskriminering inom det sociala området på grund av sexuell läggning*. Of relevance to this issue is the Ministry memorandum- Ds. 2004:20, *Diskriminering inom det sociala området på grund av sexuell läggning*.

²⁷⁵ SOU 2004 :55, p. 28.

²⁷⁶ Rikspolisstyrelsen, www.rikspolisstyrelsen.polisen.se

²⁷⁷ K.Hedlund Thulin, *Lika i värde och rättigheter, Om mänskliga rättigheter*, Stockholm 2004, p. 66.

²⁷⁸ *Factsheet-Wage differences*, www.jamombud.se Preliminary statistics from the SCB for the year 2004 indicate that the wage span between men and women is on increase. F.Forsell, *De tjänar bäst*, Expressen 10-10-04, p. 22.

year of 2004. Worrying is, in addition, the persistence of gender segregation in the labour market.²⁷⁹

Article 24. The rights of the child

Possibility for the child to be heard, to act and to be represented in judicial proceedings

Positive aspects

In response to several reports warning about children who during the asylum process have shown acute stress reactions and general resignation syndromes by cutting themselves off from the outside world, i.e. they stop speaking and moving and must be tube-fed, the Government appointed on 3 September 2004 Mrs. Marie Hessle as the special coordinator for initiatives concerning apathy-stricken child asylum-seekers. About 150 cases of asylum seeking children in such a situation are known.²⁸⁰ The assignment of the coordinator is “to gauge and analyse the scope of the problem and to both gather and spread information”.²⁸¹ Mrs. Hessle will also be required to present proposals on an on-going basis for measures that can be taken in the asylum process. The Children’s Ombudsman has welcomed this initiative.²⁸²

The Minister for Migration and Asylum Policy promised, in addition, that such cases will be given top priority to keep the time for the processing of the asylum application as short as possible.²⁸³

Reasons for concern

There is a need to improve children’s abilities to take part in legal proceedings that concern them personally. Current Swedish legislation does not give any priority to the child’s procedural rights as, for example, the children’s right to information and representation in family law cases. The results of a scientific research of relevance, which has been carried out at the Faculty of Law, University of Uppsala and which were presented in 2004, indicate that the youngest children have experienced great difficulties in putting their views on custody, residence and access in proceedings as well as in getting the Swedish courts to respect their views, i.e. taking explicitly the children’s views into account in their judgments and decisions.²⁸⁴ Even though it seems that older children have had more satisfactory possibility of making their views heard, there were evident deficiencies related to all age categories. In cases of older children, it has been common that the required information during the proceedings only has been provided by other people than the child itself.

The Children’s Ombudsman has expressed similar concern about the content of the current Swedish Parental Code, which uses the narrow term “will of the child” instead of the more inclusive term “views” of the child as the UN Convention on the Rights of the Child does.

²⁷⁹See the Swedish Government Official Reports Series, SOU 2004:43, *Den könsuppdelade arbetsmarknaden*; M.Abrahamsson, Jämställdhetspolitiken, Ha inte dåligt samvete i onödan, SvD 7-11-04, p. 4.

²⁸⁰A.Bengtsson, Liggande barn går före i kö, SvD 24-05-04, p. 7 ;E.Sidenbladh, Asylbesked till apatiska flyktingbarn snabbas på, SvD 3-09-04, p. 19; A.Rogeman, Apatiskt barn får stanna i Sverige, SvD 12-06-04, p. 15.

²⁸¹*The Government Offices of Sweden*, Press release, Government appoints Marie Hessle to coordinate initiative for apathy-stricken child asylum-seekers, 3 September 2004, Ministry for Foreign Affairs, www.sweden.gov.se

²⁸²*Barnombudsmannen (BO)*, Observations, October 2004, § 33, p. 8. See also, Apatiska flyktingbarn går före i kön, Barn No. 4/04, p. 12 and www.rb.se .

²⁸³E.Sidenbladh, Asylbesked till apatiska flyktingbarn snabbas på, SvD 3-09-2004, p. 19.

²⁸⁴L.Dahlstrand, Barns deltagande i familjerättsliga processer, Uppsala 2004, pp. 310-314.

She has pointed out that the first mentioned phrase implies that the child should express a preference for one of several alternatives, while the second wording implies that the child expresses any of his or her thoughts that are of relevance to the matter that is to be decided upon. Moreover, according to the Ombudsman today's praxis falls short of ensuring the child access to an adult person, who is neutral to a conflict when the parents of the child were in dispute in a custody case, and who can assist the child to express his or her own views.²⁸⁵

Moreover, a study that has been undertaken by the Children's Ombudsman shows that only 18 per cent of the County Administrative Court's judgments, i.e. cases dealing with issues of custody, living arrangements and access, comprised an autonomous and individual assessment of the child's best interest.²⁸⁶ Even more alarming is the fact that in less than one third of the cases related to custody, residence and contact issues where one of the parties had reported the occurrence of physical violence against a member of the family, the court records showed that such a risk assessment has been made.²⁸⁷

Both Save the Children Sweden and the Children's Ombudsman have stressed on several occasions that the police, prosecutors, judges, lawyers and others who represent a child victim of sexual abuse during a judicial process have insufficient and inadequate child expertise/knowledge necessary to enable them to deal with these children, e.g. in listening to them.²⁸⁸

The Children's Ombudsman in Sweden has a dual role, i.e. the office comprises the role of an ombudsman for children and young people as well as being a government agency. Some Swedish NGOs, among them the Swedish Save the Children, have expressed strong criticism as to the Government remaining as the responsible authority. In their view this is not compatible with the 1991 Paris Principles and therefore they suggest that the Swedish legislation should be changed in the way that the Children's Ombudsman is given independent status as well as being appointed by the Swedish Parliament and not by the Government.²⁸⁹

In addition, regional differences still persist in Sweden in the handling of children's rights. A study carried out by Save the Children reveals that there is a divergence in children's economic vulnerability, i.e. in living standards, depending on the municipality they live in.²⁹⁰ The existing relevant legislation in Sweden does not preclude discrimination against children in all areas of society such as e.g. schools. There is no adequate protection with regard to the right of education of children with disabilities who are restricted in their choice of school.²⁹¹

The Swedish NGO community has expressed concern about immigrant children hiding from the authorities out of fear for being sent back to their countries of origin and who basically have no guaranteed rights in Sweden. They are, for example, not attending school classes. Neither are there any pre-school activities and no school child care has been offered to them. This situation has been considered as being incompatible with Sweden's international

²⁸⁵ *Barnombudsmannen (BO)*, Observations by the Children's Ombudsman of Sweden with regard to the discussion on the Third Periodic Report by the Government of Sweden to the UN Committee on the Rights of the Child, October 2004, § 18, p. 5.

²⁸⁶ Save the Children, Sweden's Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 22.

²⁸⁷ *Barnombudsmannen (BO)*, Observations, October 2004, op. cit., § 19, p. 5.

²⁸⁸ Save the Children, Sweden's Third Report, op. cit., p. 32 ; *Barnombudsmannen (BO)*, Observations, October 2004, § 27, p. 7.

²⁸⁹ Save the Children, Sweden's Third Report, p. 10.

²⁹⁰ Save the Children, Sweden's Third Report, op. cit., p. 11.

²⁹¹ Op. cit., p. 19.

commitments such as the UN Convention on the Rights of the Child and the 2003/9/EC Directive on the lowest standards regarding asylum-seekers.²⁹²

Finally, mention should be made of the fact that Sweden has neither signed nor ratified the new European Convention on Contact concerning Children.

In addition, Sweden has yet to ratify the 1996 European Convention on the Exercise of Children's Rights.

Alternatives to the removal from the family

Reasons for concern

According to a report prepared by the Swedish National Council for Crime Prevention (BRÅ), the National Board of Health and Welfare and the National Board for Institutional Care approximately 62 per cent of the young people sentenced to care in secure accommodations have had a family background where both parents were born outside Sweden. Moreover, the largest group came from segregated suburbs.²⁹³

Juvenile offenders

Reasons for concern

Some of the conclusions based on recent research that has been carried out by the National Council for Crime Prevention (BRÅ) reveal that juvenile offenders often do not understand the events during the proceedings in court and therefore they feel that they have not been able to give expression to their views as they would have liked to.²⁹⁴

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

A Bill which was submitted to the Parliament (Prop. 2003/04:131, *Internationella adoptionsfrågor*) dealing with issues of international adoptions signifies that the conditions under which international adoptions of children may take place are to be more clearly regulated. An improvement of the current state of affairs will also be achieved through the transformation of the Swedish National Board of Inter-country Adoptions (NIA) into a new public authority. This and other changes are envisaged with the purpose to intensify the supervision of adoption organisations and thereby to counteract the sale of children.

During the period under scrutiny a Bill (Prop. 2003/04:113, *Stärkt barnperspektiv i mål om utvisning på grund av brott*) aiming to safeguard the child's right to have access to both parents in situations of possible deportation on the basis of criminal offence, committed by one of the parents, was submitted to the Swedish Parliament.

A Ministry memorandum (Ds. 2004:41, *Ekonomiskt utsatta barn*) was prepared and presented in 2004 containing deliberations and recommendations for further measures that are of relevance for the improvement of the situation of economically vulnerable children.

The 1980 Hague Convention on the Civil Aspects of International Child Abduction was enforced in Sweden on 1st of June 1989. In 2004 a number of states became part to the

²⁹² UN Association of Sweden, Alternative Report to the CERD-Committee, p. 12.

²⁹³ Save the Children, Sweden's Third Report, p. 16.

²⁹⁴ Barnombudsmannen (BO), Observations, October 2004, op. cit., § 27, p. 7.

Convention and Sweden acknowledged the accessions of Guatemala, Lithuania, Malta, Sri Lanka and Thailand. The Swedish acceptance is reflected in the legal act: *Tillkännagivande* (2004:636) *i fråga om konventionen den 25 oktober 1980 (Haag) om de civila aspekterna på internationella bortföranden av barn.*

Positive aspects

In September 2004 the Government proposed a number of measures, including recreational activities for children who are at risk of resorting to criminal behaviour or drug abuse, with the aim to improve the conditions for young persons and to reduce the negative impact of the austerity measures of the 1990s.

Good practices

In 2004 the Government adopted a revised National Strategy for the implementation of the UN Convention on the Rights of the Child, which further develops methods for the active participation of children in society and the integration of the Convention in the work of public authorities. Most importantly, the Strategy introduces a child perspective in the budget process.

Reasons for concern

Alarming is the content of a report presented by the Swedish Save the Children (*Rädda Barnen*), which reveals that the proportion of children living in poverty in Sweden has increased during 2004. Moreover, children with foreign background are exposed to four times higher risk than Swedish children to grow up in poverty.²⁹⁵ Thus, difference in the economic situation between children with Swedish parents and children having parents with a foreign background has rapidly escalated.

The Children's Ombudsman has expressed concern about the absence of focus on the rights of the child, *i.e.* their right to receive care, rather than putting focus on adults who wish to have children, as is the case with the current and the proposed amendments in the legislation related to adoption of children.²⁹⁶

Article 25. The rights of the elderly

The possibility for the elderly to stay in their usual life environment

Legislative initiatives, national case law and practices of national authorities

Of relevance to be mentioned here are some of the conclusions of an Inquiry Committee with respect to the proposed changes in the system of establishing rents (SOU 2004:91, *Reformerad hyressättning*). The Committee's task was to address the question of, *inter alia*, whether there should be a possibility to have different rents in the same building for existing tenants and those who have just moved in. The opinion has been expressed that the rent for an apartment can be too high or too low in relation to the apartment's utility value, depending on how attractively situated the apartment is. In certain parts of Sweden this has had the effect that the structure of rents within the framework of the collective negotiations concerning rents for apartments in the public sector has changed. In such cases, the utility value for certain apartments has sometimes been raised drastically.²⁹⁷ On the other hand, the utility value for others has remained the same or it even has been reduced.

²⁹⁵ *Rädda Barnen*, Barnfattigdomen i Sverige, Årsrapport 2004.

²⁹⁶ *Barnombudsmannen (BO)*, Observations, October 2004, § 10, p. 3.

²⁹⁷ SOU 2004 :91, p. 19.

The Committee proposed in the above mentioned report the introduction of regulations that will make it possible for negotiated agreements, e.g. that tenants are given a rent rebate during a transitional period when the utility value has risen, to be valid when they are reached. Moreover, in the view of the Committee there is an apparent need for a protective legislation for existing tenants.

According to the Prime Minister, Mr Göran Persson, the housing supplement for the least well-off pensioners will be raised in 2005.²⁹⁸

Reasons for concern

Several municipalities have applied strict rules for elderly people who want to be accommodated in special housing. There is a fear that the limited places would force people who otherwise would qualify for that to stay at their current housing.²⁹⁹

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Legislative initiatives, national case law and practices of national authorities

A Bill dealing with legal requirements on documentation and report obligations with respect to services to be delivered to persons with functional impairments and aiming to enhance these persons' legal security was put forward to the Swedish Parliament in 2004 (Prop. 2004/05:39, *Kvalitet, dokumentation och anmälningsplikt i lagen (1993:387) om stöd och service till vissa funktionshindrade (LSS), m.m.*)

On 8th of November 2004 the special Inquiry that has been appointed with the assignment to review the implementation of some provisions (Section 23) of the Act concerning Support and Service for Persons with Certain Functional Impairments and Assistive Devices (LSS) presented its final conclusions and recommendations in a report-SOU 2004:103, *LSS-särskilt personlig stöd m.m.* Since the application of the above mentioned Act has been considered unsatisfactory, the clarification of the responsibility of municipalities to provide for health and medical care for persons living in housing providing special services for children and young people and in housing providing special services or other specially adapted housing for adults is but a welcome initiative.

In a speech delivered on 14 September 2004, the Prime Minister, Mr Göran Persson referred to an awaited proposal for the reorganisation of already existing agencies with the aim to strengthen the disability policy in Sweden.³⁰⁰

Reasons for concern

A joint study which was carried out by the Swedish National Association for Disabled Children and Young People and the Swedish Section of Save the Children revealed that municipalities and county councils did not implement adequately all decisions concerning their legal obligations to provide support to children with disabilities.³⁰¹ The decisions to allocate support and services to disabled children include provisions of a personal assistant, stand-in contact person, home help etc. There are, for example, several documented cases in

²⁹⁸ Statement of Government Policy, 14 September 2004, op. cit., p. 5.

²⁹⁹ www.varbostad.se, November 2004, Att bo kvar får inte bli tvång.

³⁰⁰ Statement of Government Policy, September 2004, op. cit., p. 5.

³⁰¹ Save the Children, Sweden's Third Report, pp. 13 and 35.

which pupils with disabilities have been denied school places because the school premises were not made accessible for them.³⁰²

The Children's Ombudsman has observed that the Government and the municipalities need to intensify their efforts in order to be able to remove the existing obstacles for the full participation in society that were faced by children with disabilities and "to give these children the preconditions for independence and self-reliance".³⁰³ One might add here that certain limitations on the right of children with disabilities to enjoy their leisure and play time, including full participation in cultural and artistic activities were remaining.

An additional source for concern is the fact that certain decisions of local authorities (a municipality or a county council) still cannot be appealed to the courts. Moreover, there is no access to appeal in situations when the above mentioned authorities refuse to follow a court ruling obliging them to provide support to a child, as for example, technical aid. There is an apparent need to develop monitoring mechanisms with regard to municipalities' responsibilities towards children with disabilities.

Despite the fact that the relevant Swedish legislation concerning the rights of persons with disability/functional impairments relies on the fundamental principle of the equal value of all human beings, accessibility in society, such as movie theatres, shopping centres, some regular housing, schools etc., has not yet fully been guaranteed for this group of people.³⁰⁴

³⁰² Op.cit., p. 19.

³⁰³ *Barnombudsmannen (BO)*, Observations, October 2004, op. cit., § 30, p. 7.

³⁰⁴ *C.Reimegård*, Ingen förbättring för handikappade, SvD 19-05-04, p. 14; TT, Myndigheter inte byggda för handikappade, SvD 18-11-04, p. 10.

CHAPTER IV : SOLIDARITY

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

Workers' information on the economic and financial situation of the undertaking

Legislative initiatives, national case law and practices of national authorities

The date for transposition into Swedish national law of Directive 2002/14/EC is 23 March 2005. In order to comply with the Directive a Swedish inquiry Commission published its final report- SOU 2004:85, *Genomförande av direktivet om information och samråd* - comprising several proposals for amendments of the existing relevant legislation, among others, the Swedish Co-Determination in the Workplace Act (MBL) (*Lag om medbestämmande i arbetslivet* (SFS 1976:580)).

The Directive contains certain possibilities to derogate from it. On this basis the inquiry Commission abstained from making a proposal for the introduction of threshold provisions or other specific provisions into Swedish law for crews on vessels plying the high seas. The Commission motivated this by simply stating that “such rules would not be compatible with Swedish tradition in this area”.³⁰⁵

According to the Swedish system at present, workplaces whose employees are not members of an employees' organisation bound by a collective agreement will not in all the cases as prescribed by the above mentioned Directive have an employees' representative who can receive information and carry on consultation as required. Therefore, the inquiry Commission recommended that the Co-Determination in the Workplace Act (MBL) should be amended in order to ensure that the information and consultation obligations were observed at all Swedish workplaces where there are employees' organisations.³⁰⁶ In other words, Section 19 of MBL needs to be extended to also include employees' organisations at workplaces that have not entered into collective agreements. This would imply that employers will be obliged to continuously keep all employees' organisations concerned informed about the manner in which the business is developing in respect of production and finance as well as with regard to the guidelines for staff policy.

Furthermore, currently representatives of employees' organisations that have not entered into collective agreements are only protected by the provisions guaranteeing the right of association as set out in MBL and, in addition, by the special provisions on leave. In order to ensure that the requirements of the Directive were fulfilled for these employees' representatives also, the inquiry Commission proposed a necessary amendment of MBL.³⁰⁷

To sum up, in the view of the inquiry Commission “the increased duty to provide information which we propose can from the employee's perspective prevent risks to employment and for employers means a better basis for decisions prior to restructuring”.³⁰⁸

³⁰⁵ SOU 2004 :85, p. 20.

³⁰⁶ SOU 2004 :85, p. 20.

³⁰⁷ Op. cit., p. 22.

³⁰⁸ Op. cit., p. 22.

Article 28. Right of collective bargaining and action

The right of collective action (right to strike) and the freedom of enterprise or the right to property

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During 2004 the European Committee of Social Rights found the situation in Sweden not being in conformity with the requirements of Article 6 §4 of the Revised European Social Charter on the grounds that the National Mediation Office may impose excessive fines (*varselavgift*) for failure by a party to give requisite notice of collective action. In the view of the Committee the amount of the fines that can be imposed were to be considered disproportionate. Moreover, action in violation of a postponement order may entail liability ranging from at least 300 000 SEK (approximately 33 000 Euros) up to a maximum of one million SEK (approximately 108 000 Euros). The fines imposed on the trade unions concerned are decided by a district court at the request of the National Mediation Office.

Of importance to be mentioned here is also that the Committee of Social Rights re-examined during the review of the Swedish report its conclusions from 2002 which concerned the implementation of Article 6 §4 of the Social Charter. Swedish practice was then considered incompatible with the mentioned provision because strikes could only be called by those entitled to the parties to collective agreements. Now, in 2004 the Committee decided that “the reference to “workers” in Article 6 §4 of the Charter relates to those who are entitled to take part in collective action but says nothing about those empowered to call a strike.” According to the latter interpretation of this provision, states were not required to grant any group of workers authority to call a strike. In other words, states have the option of deciding which groups shall have this right and they may thus restrict the right to call strikes to trade unions. The Committee emphasized, however, that “such restrictions are only compatible with Article 6 § 4 if there is complete freedom to form trade unions and the process is not subjected to excessive formalities that would impede the rapid decisions that strike action sometimes requires”. According to the Committee these conditions have been observed in Sweden since figures have shown a high rate of trade union membership.³⁰⁹

Article 29. Right of access to placement services

No significant development to be reported

Article 30. Protection in the event of unjustified dismissal

No significant development to be reported

Article 31. Fair and just working conditions

No significant development to be reported

³⁰⁹European Committee of Social Rights, European Social Charter (Revised) Conclusions 2004, Sweden, Chapter 7, www.coe.int

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

Protection of minors at work

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

According to Ordinance 1996:1, Minors at Work (*Arbetskyddsstyrelsens föreskrifter, Minderåriga* (AFS 1996:1)) the standard minimum age in Sweden for admission to potentially hazardous work is 18 years. Section 5(2)b of the same Ordinance permits, however, a derogation from the rules prohibiting minors from undertaking work that is considered dangerous and unhealthy under the condition that the minor has completed his or her compulsory schooling, he or she has attained the age of 16 years and in addition he or she has completed the vocational training for the task in question.

In 2004 the European Committee of Social Rights came to the conclusion during its review of the information provided in the Swedish report that the above mentioned Swedish legislation can not be considered as being in conformity with Article 7 §2 of the Revised European Social Charter. In its view “the Revised Charter only allows exceptions to the rules that minors below 18 years of age may not be employed in activities that are dangerous to be made in the context of education and training.”³¹⁰

Moreover, the Committee recalled that the current legal state of affairs in Sweden in the light of the daily and weekly working time for minors can not be judged as being compatible with Article 7 §3 of the Social Charter on the grounds that “the mandatory rest period during school holidays for children still subjected to compulsory education is not equal to half the holiday period and it is therefore not sufficient to ensure that they benefit from such education.”³¹¹ In other words, Swedish legislation does not guarantee an adequate vacation period for young people during their summer holidays.

The European Committee of Social Rights expressed its concern about the absence in Swedish legislation of a guarantee for the regular/compulsory medical examination of young workers in the occupations concerned. Such examinations take place only if the employer deems it necessary or on the request of the Work Environment Inspectorate. On this background the Committee concluded that the situation in Sweden is not in conformity with Article 7 §9 of the Revised European Social Charter.³¹²

Article 33. Family and professional life

No significant developments to be reported

³¹⁰European Social Charter (Revised), European Committee of Social Rights, Conclusions 2004, Sweden, Chapter 7, www.coe.int . For a similar criticism see *Barnombudsmannen*, Yttrande angående ILO:2003 års rapportering om tillämpning av ratificerade ILO-konventioner (7/2003), 2003-09-01, www.bo.se

³¹¹ European Committee of Social Rights, Conclusions 2004, op.cit.

³¹²European Social Charter (Revised), European Committee of Social Rights, Conclusions 2004, Sweden, Chapter 7. See www.coe.int .

Article 34. Social security and social assistance

Social assistance and fight against social exclusion (in general)

Legislative initiatives, national case law and practices of national authorities

In 2004 two new legal acts dealing with the issue of social security entered into force. The first act is based on an international, multilateral agreement between Sweden and the Nordic countries, *i.e.* (*Lag (2004:114) om nordisk konvention som social trygghet* (SFS 2004:114)) and the second one is based on a bilateral agreement between Sweden and Luxemburg, *i.e.* (*Lag (2004:491) om konvention mellan Sverige och Luxemburg om social trygghet* (SFS 2004:491)).³¹³ In, addition, a Bill was submitted to the Swedish Parliament with the aim to update an earlier agreement concluded between Sweden and the U.S. within the area of social security (Prop. 2004/05:16, *Konvention mellan Sverige och Amerikas förenta stater om social trygghet*).

Furthermore, new legislation has been proposed on a few issues dealing with social security scheme, *i.e.* (Prop. 2003/04:96, *Vissa socialförsäkringsfrågor*) and the adaptation of the current administration of social security schemes to the newly established authority with responsibility within this area, *i.e.* (Prop. 2003/04:152, *Anpassningar med anledning av en ny statlig myndighet för socialförsäkringens administration*).

Mention should be made also of the Ministry memorandum (Ds. 2004:5, *Rätt nivå på socialbidraget. Är det lönsamt att inte arbeta?*) which contains a discussion of the current level of the social security allowances as well as some proposals for legal changes based on incentives that make aspirations to work more attractive than living on allowances.

Nowadays, the various forms of pension rights in Sweden resemble one another to a great extent and they are comparable with other forms of savings. Some legal scholars have argued that there is a need to introduce changes in the current legislation on that subject matter in the sense of having pension rights shared in the event of divorce.³¹⁴

Reasons for concern

Despite various integration policies that have been undertaken by the Government with the aim to counteract the exclusion experienced by persons born abroad, it is apparent that they have not proven as being successful altogether. Long-term programmes comprising effective measures to bring about a more positive development in segregated areas are still missing.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Recently, the Swedish Government proposed in a Bill on the compensation for the housing of asylum-seekers (Prop. 2004/05:28, *Bostadsersättning för asylsökande*) the abolishment of housing allowances for asylum seekers who prefer to make their own housing arrangements rather than to live in refugee residential centres provided by the Swedish Migration Board. According to the Minister for Migration and Asylum one of the main reasons behind the proposed changes in legislation relates to the overcrowding of some living areas and the

³¹³ See also the Bill, Prop. 2003/04:98, *Konvention mellan Sverige och Luxemburg om social trygghet*.

³¹⁴ *M.Brattström, Makars pensionsrättigheter*, Uppsala 2004.

thereby connected social problems for many asylum seekers.³¹⁵ At present approximately half of all asylum seekers in Sweden live in housing which they have chosen by themselves. If adopted, the new legislation shall enter into force on 1st of March 2005.

Article 35. Health care

Access to health care

Legislative initiatives, national case law and practices of national authorities

As already mentioned under Article 21 in the present report, protection against discrimination on the grounds of sexual preference will apply from 1st of January 2005 within the social services, social insurance, unemployment benefit societies and health care. The Government's proposal, Government Bill- Prop. 2004/05:22, *Diskriminering inom det sociala området på grund av sexuell läggning* - was endorsed by all the political parties represented in the Committee on the Labour Market except for the Christian Democrats who wished to await the conclusions of the inquiry Committee on Discrimination and to ensure that the future legislation will be as unified and coherent as possible for various types of discrimination.³¹⁶

Various kinds of extraordinary protective measures when there is a risk for infectious diseases were the subject of deliberations in a Bill put forward to Sweden's Parliament in 2004 (Prop. 2003/04:158, *Extraordinära smittskyddsåtgärder*).

With reference to the content of a Bill that has been submitted to the Parliament it seems that the retailing monopoly for alcohol will be defended in Sweden (Prop. 2003/04:161, *Alkoholpolitiska frågor*).

A Ministry memorandum which will form the basis for future legislation contained proposals on measures to be taken with regard to drug addicted persons, especially those who use injections. (Ds. 2004:6, *Sprutbytesverksamhet för injektionsmissbrukare*).

According to the Prime Minister, the current Public Procurement Act will be reviewed with the aim to improve the system of local government equalisation. In his view "hospitals must be run without private profit-making interests and no publicly financed health care should give precedence to patients with private insurance."³¹⁷ An improvement of the current situation has been envisaged, *i.e.* a national health guarantee will be introduced in 2005 for all types of treatment.³¹⁸

Positive aspects

The Government decided on 25 November 2004 to increase the financial compensation to the county councils for their health care expenses in connection with the treatment of asylum-seekers. The decision will come into force on 1st of January 2005. Under the same agreement child psychiatric treatment will now also include care for parents when this is considered necessary for the health of the child.

³¹⁵The Government Offices of Sweden, Ministry for Foreign Affairs, Press release, 28 October 2004, www.sweden.gov.se.

³¹⁶See The Committee on the Labour Market Report 2004/05 :AU2, The Riksdag at Work, Press release, Discrimination on the grounds of sexual preference to be banned in the social services sector, 12 November 2004, www.riksdagen.se

³¹⁷Statement of Government Policy presented by the Prime Minister, Mr Göran Persson, to the Swedish Riksdag on Tuesday, 14 September 2004, p. 5.

³¹⁸Op. cit., p. 5.

Moreover, from that date on all new arrivals must be offered medical examinations or health interviews as soon as they obtain housing in the area of the county council in concern and, in addition, after they have been registered by the Swedish Migration Board.³¹⁹

Reasons for concern

A study carried out by the Swedish National Board of Health and Welfare shows that the recent legal reform, which has had the aim of strengthening the right of every child to health and medical care, has not yet been implemented adequately with regard to asylum seeking children, quota refugees as well as children seeking to join relatives in Sweden.³²⁰ One of the reasons behind this practice could be the lack of routines and follow-up systems within the health care system.

The Children's Ombudsman has voiced criticism, and rightly so, with respect to the existing system for guaranteeing the exercise of the right to health care of children, *i.e.* the right to health care for the children who have applied for asylum or residence permit or whose parents/relatives have applied on their behalf as well as children in hiding is covered by agreements between the Government and the county councils and not by law. This means that children, who have not applied for asylum or residence permit are in practice outside the scope of the guarantees with respect to the right to health care.³²¹

Moreover, according to the National Agency for Education, during the past years the proportion of children who experience stress in school (*i.e.* in secondary and upper-secondary school) has become larger.³²² The cutbacks in school health care remain, therefore, a concern. The Children's Ombudsman has recently expressed regrets about the significant differences that remain in different parts of the country with regard to the implementation of social, cultural and economic rights of children.³²³ Apparently there is a need for governmental action, *inter alia*, with the aim to establish standard criteria for the quality of basic services for children such as *e.g.* school health care.

The Children's Ombudsman is, in addition, worried about the variations in the physical health of children between different social groups. Statistics show that there is a 60 per cent higher frequency of health problems among children living in economically disadvantaged families than children living in rich families.³²⁴

Article 36. Access to services of general economic interest

No significant developments to be reported

Article 37. Environmental protection

Right to a healthy environment

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny a number of Bills relevant for the protection of the environment have been presented to Sweden's Parliament. These are as follows: the Bill

³¹⁹*The Government Offices of Sweden*, Press release, Increased compensation for health care of asylum-seekers, 25 November 2004, www.sweden.gov.se

³²⁰Save the Children, Sweden's Third Report to the UN Committee on the Rights of the Child, Stockholm 2004, p. 11.

³²¹ *Barnombudsmannen (BO)*, Observations, October 2004, *op. cit.*, § 34, p. 8.

³²² Save the Children, Sweden's Third Report, *op. cit.*, p. 37.

³²³ *Barnombudsmannen (BO)*, Observations, October 2004, *op. cit.*, §15, p. 4.

³²⁴ *Op.cit.*, § 16, p. 4.

dealing with the quality of petrol (Prop. 2004/05:9, *Kvaliteten på bensin och dieselbränslen*; Prop. 2003/04:124), the Bill related to the Swedish policy on whales (Prop. 2003/04:116, *En hållbar svensk politik i fråga om valar*) and the Bill on the administration of water supply (Prop. 2003/04:57, *Vattendistrikt och vattenmiljöförvaltning*).

Furthermore, in December 2003 the Swedish Government issued its Bill (Prop. 2003/04:31, *Riktlinjer för genomförandet av EG:s direktiv om ett system för handel med utsläppsrätter för växthusgaser*) on the principles of implementation of the Community Trading Directive (Directive 2003/87/EC) and on 15 April 2004 the Government presented its Bill on trading in emission allowances (Prop. 2003/04:132, *Handel med utsläppsrätter I*). The last mentioned Bill introduced a new Act on emissions of carbon dioxide, containing certain regulations on permits for carbon dioxide emissions and allocation of emission allowances.

In April 2004 a Commission of inquiry presented its interim report with the title "Trading for a better climate" (SOU 2004:62, *Handla för bättre klimat, handel med utsläppsrätter 2005-2007, m.m.*, Delbetänkande av FlexMex2-utredningen). The main purpose of the report has been to put forward a comprehensive statute to introduce the European Union emission-allowance trading scheme. An introductory provision of the proposed statute makes it clear that the reference to GHGs (*emissions of greenhouse gases*) shall apply only to carbon dioxide for the period between the years 2005-2007. The Commission underlined that "to permit the quantity of carbon dioxide emissions to be reconciled, after a financial year, with the number of allowances granted, it is essential for the emissions to be reported correctly".³²⁵ The Trading Directive contains, therefore, certain requirements that operators should monitor their emissions and after the end of every calendar year report to the public agency concerned. In Sweden the responsible agency in such matters will be the National Environmental Protection Agency.³²⁶

The new and complete Swedish Emission Allowance Trading Act is expected to be enforced on 1st of January 2005.³²⁷

During 2004 a Ministry memorandum, Ds. 2004:29, *Århuskonventionen*, proposed the ratification of the UN Convention, the so-called Economic Commission for Europe, which was adopted in Århus (Denmark) on 25 June 1998.

The Committee of enquiry established by the Government with the aim to identify some of the features that should characterise education for sustainable development presented its report - SOU 2004:104, *Att lära för hållbar utveckling*, (To learn for sustainable development) in 2004. By taking into account several studies on which the report was based the Committee arrived at the conclusion that "girls appear to be more motivated and better prepared to contribute to sustainable development than boys. Girls express a greater desire to influence their education, they know more about democracy and human rights, have a greater capacity for holistic thinking, are more tolerant and abuse others to a lesser degree".³²⁸

Positive aspects

The Zurich Cantonal Bank (ZKB) published its rating report on the social and sustainable environmental performance of the OECD countries in November 2004. The inquiry has been

³²⁵ SOU 2004 :62, p. 31.

³²⁶ See also the new Act and the Ordinance on emissions of carbon dioxide (*Lag om utsläpp av koldioxid*, (SFS 2004 :656)) and *Förordning om utsläpp av koldioxid* (SFS 2004 :657)).

³²⁷ See *M.Croneborg*, 600 företag kan sälja sina utsläpp, EuropaPosten, No. 8/2004, p. 10.

³²⁸ SOU 2004 :104, p. 5.

based on country ratings on 20 social and 20 environmental indicators. Accordingly, Sweden occupies the leading place and received an environmental score of 9, 5 on a 1 to 10 scale.³²⁹

Moreover, according to the Prime Minister, Mr Göran Persson, persistent substances that are harmful to health and the environment will be phased out in 2005. In addition, the rate of remediation of contaminated land will increase and SEK 1.7 billion will be invested in safeguarding biodiversity.³³⁰

Reasons for concern

Not enough attention has been paid during 2004 to the issue of expansion of the protected marine areas as well as to the need to introduce effective measures for the long-term protection of the marine environment.

The fact that the envisaged regulations relating to the emission-allowance trading scheme shall apply only to carbon dioxide for the years 2005-2007 as well as that the trade only relates to certain branches, *i.e.* excluding among other things motor traffic, has been criticised by Swedish experts.³³¹

The reports in Swedish media about increase in emissions are worrisome.³³²

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Court of Justice (ECJ), Judgment of 30 March 2004 in the Case C-201/03

(Failure of a Member State to fulfil obligations - Disposal of waste oils - Failure to transpose Directive 75/439/EEC)

Abstract:

By application lodged at the Court Registry on 13 May 2003, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the necessary measures under Article 3(1) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Council Directive 87/101/EEC of 22 December 1986 to ensure that priority is given to the processing of waste oils by regeneration where technical, economic and organisational constraints so allow, Sweden has failed to fulfil its obligations under that directive.

As it took the view that Article 3(1) of Directive 75/439 had not been transposed into Swedish law within the prescribed period, the Commission brought infringement proceedings against Sweden. Having called upon the latter to submit its observations, the Commission sent it a reasoned opinion on 21 March 2002 inviting the Swedish Government to take the necessary measures to comply with that opinion within two months of its notification. As the information provided by the Swedish authorities disclosed that the directive in question had not been transposed, the Commission decided to bring this action.

³²⁹ *Regeringskansliet*, Miljödepartementet, Pressmeddelande, Sverige bäst på hållbar utveckling, 9 November 2004, www.regeringen.se

³³⁰ *Statement of Government Policy*, 14 September 2004, *op. cit.*, p. 14.

³³¹ TT, Kritik mot handel med utsläppsrätt, SvD 18-11-04, p. 10.

³³² *S.Baltschefsky & O.Billger*, Ökade utsläpp kan ge höjd skatt, SvD 29-11-04, p. 6. See also www.naturvardsverket.se

While it did not deny that the directive had not been transposed, the Swedish Government claimed that the failure to do so resulted from the consideration being given by the competent authorities to the appropriate procedures for ensuring that priority was given to the disposal of waste oils by regeneration.

The European Court of Justice emphasised that it consistently has held that a Member State cannot rely on provisions, practices or circumstances in its own legal order to justify failure to implement a directive within the prescribed period. In those circumstances, the Commission's application was held to be well founded.

The Court came to the conclusion that by failing to adopt the necessary measures under Article 3(1) of Directive 75/439 to ensure that priority is given to the processing of waste oils by regeneration where technical, economic and organisational constraints so allow, Sweden has failed to fulfil its obligations under that directive.

Article 38. Consumer protection

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The inquiry Committee appointed by the Government with the task to analyse the differences in substance that exist between the Swedish Competition Act (*konkurrenslagen* (SFS 1993:20)) and Community law, presented its interim report SOU 2004:10, *Rätten till skadestånd enligt konkurrenslagen, Delbetänkande av utredningen om en modernisering av konkurrensreglerna*, in January 2004.

Currently, under the Swedish Competition Act (*konkurrenslagen*) only consumers who are the contracting parties with the company liable to pay damages are entitled to damages. In other words, some unspecified circles of consumers who are indirectly affected by prohibited restrictions are not entitled to damages. In the view of the Committee such differences in consumer's rights to receive compensation for loss appear unwarranted and it, therefore, proposed that the restriction to contracting parties should also be removed as regards consumers.³³³ In consequence, the present provision concerning damages in the Competition Act shall be amended in such a way so that it would be clear that people other than companies or contracting parties are entitled to compensation for losses suffered through an infringement of the prohibitions contained in the Act.

Moreover, following the rulings of the ECJ in the *Courage v. Crehan* case, the new rules on damages shall be made applicable to infringements of Articles 81 and 82 of the EC Treaty and they are expected to be enforced on 1 April 2005.

The Committee has, in addition, expressed doubts with regard to the compatibility of the present Swedish system with Community law since the right to damages lapses unless action has been brought within five years of the date when the damage arose. In this respect the Committee proposed that the period of limitation be expanded to ten years, which is also considered as the general period of limitation under the Act on Limitation, (*preskriptionslagen* (SFS 1981:130)).³³⁴

³³³ SOU 2004:10, p. 21.

³³⁴ Op. cit., p. 22.

The Committee proposed, furthermore, that within the realms of competition law a new institution for civil proceedings should be introduced based on the model of the institution of infringement investigation in intellectual property law.

Finally, the Committee forwarded a few arguments in favour for the expansion of the powers of the already existing Competition Authority. After authorisation by a court this authority shall be thus given express powers to carry out investigations in homes and other places used by board members and employees of the company that is the subject of inquiry concerning infringement of the prohibitions in the Competition Act or Articles 81 and 82 of the EC Treaty.³³⁵

³³⁵ SOU 2004:10, p. 24.

CHAPTER V : CITIZEN'S RIGHTS

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

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

Good practices

Prior to the European Parliament elections in 2004, the Swedish Government launched a special democracy campaign with the objective of stimulating a higher turnout at the elections. The whole of SEK 12 million were allocated for this purpose.³³⁶ Several municipalities trained “democracy ambassadors” who conducted outreach activities with the aim to spread information to local residents, associations and networks about the election, the actual voting procedure and who is entitled to vote etc.

The Swedish National Agency for School Improvement and the National Board for Youth Affairs were involved in specially designed activities targeting first-time voters aged 18-23. The intention of the campaign was, among other things, to encourage young people to vote in the 2004 European Parliament elections as well as to awaken their interest in the opportunities for young EU citizens to participate in and influence the shape of EU policies.

An analysis of the voters' participation was carried out by Statistics Sweden in co-operation with the University in Gothenburg (*Göteborg*). The results are expected to be published in spring 2005.

Reasons for concern

The preliminary results of participation in the elections for the European Parliament that have been published in Swedish media show that Sweden was probably one of the few E.U. members having such a “disastrous” low percentage of the population participating (approximately 37,2 per cent). This is in fact the lowest participation percentage ever known for an election that has taken place in Sweden.³³⁷

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

Participation of foreigners in public life at local level

Legislative initiatives, national case law and practices of national authorities

In a directive from July 2004³³⁸ the Government called for the establishment of an inquiry committee with the aim to review several parts of the Constitution (*Regeringsformen* (RF)). According to the instructions its work should focus on how to further strengthen democracy and the citizens' confidence in it as well as to raise participation in the elections. It should also review the referendum-institute in Swedish law.

³³⁶ Ministry of Justice, The Government's democracy campaign prior to the European Parliament elections in 2004, Ju 04.08e, September 2004, p. 1.

³³⁷ C.Axelsson & L.Olsson, Partier vill inte ha fler EU-val, SvD 15-06-04, p. 6.

³³⁸ Dir. 2004:96, *En samlad översyn av regeringsformen*.

Positive aspects

A Committee of inquiry appointed by the Government and entrusted with the task to analyse the distribution of power and influence, including political participation, in different areas of society, is expected to present its findings and conclusions at the end of the year 2004.

Good practices

Non-Swedish citizens who have resided in Sweden for at least 36 months are entitled to stand for elections in local elections. A special authority, the Election Authority, has been instructed to initiate awareness-raising activities about elections and guaranteeing that citizens entitled to vote receive information about elections in the language they are familiar with.³³⁹

Reasons for concern

Although the number of elected candidates born abroad has greatly increased, non-Swedish citizens are still underrepresented in relation to their proportion of the total population in the country.

Right to vote and to stand as a candidate at municipal elections for third country nationals*Reasons for concern*

Recent statistics reveal that persons with foreign background (third country nationals) participate to a lesser degree in political processes, including general elections, than persons born in Sweden.³⁴⁰

The Roma minority is not yet sufficiently represented in the political institutions on the national as well as on the local levels in Sweden.³⁴¹

Other relevant developments*Legislative initiatives, national case law and practices of national authorities*

An by the Government especially appointed Committee of inquiry with the aim to propose necessary changes in the current Act on Elections (*vallagen* (SFS 1997:157)) so that the electors' confidence in the election system be strengthened, presented its deliberations in the final report "SOU 2004:111, *Ny vallag*" in November 2004.

Firstly, one aspect of the envisaged legislative reform concerns the issue of which authority should have the main responsibility for the realisation of elections. In the Committee's view it should be within the realm of the municipalities to have the local responsibility to carry out elections.³⁴²

Furthermore, a few new rules have been proposed which should enhance the security arrangements during elections. This relates, for example, to situations when a vote will be submitted by a proxy. There will be increased possibilities to control his/her mandate as well as better control of the identity of the electors themselves shall be ensured.

³³⁹ CERD/C/452/Add.4.

³⁴⁰The 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, § 79.

³⁴¹ *Diskrimineringsombudsmannen* (DO), Romaprojektet, www.do.se

³⁴² SOU 2004 :111, p. 14.

In addition, the time period for sending a vote through mail will be extended from the current 30 to 45 days prior the day of elections.

The new legislation is expected to be enacted on 1st of January 2006.

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 45. Freedom of movement and of residence

No significant developments to be reported

Article 46. Diplomatic and consular protection

No significant developments to be reported

CHAPTER VI: JUSTICE

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

Access to a court

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Several NGOs brought to the attention of the Council of Europe's Human Rights Commissioner, Mr. Alvaro Gil-Robles during his visit to Sweden in April 2004 some problems relating to the issue of access to justice. He received reports showing that victims of crime with a foreign background often experience difficulties in getting their cases heard before the regular courts. While ten per cent of the cases involving victims of Swedish origin are not reviewed by courts, the corresponding figure for persons of foreign origin is 30 per cent. Bearing that in mind, the Commissioner welcomed the fact that the Government has established an inquiry with the task to review, *inter alia*, whether the justice system has been predisposed to structural discrimination.³⁴³

On the other hand, as a positive aspect of recent developments, the Commissioner mentioned the creation of a commission through which Roma women who were forcibly sterilised between the 1930s and 1970s, can now seek compensation.³⁴⁴

During the review of the Swedish report in 2004 the CERD-Committee took notice of "the allegations that in cases of land disputes between Sámi and non-Sámi in courts of law, the interests of the non-Sámi frequently override those of the Sámi, and that the latter are allegedly not provided with financial means to support litigation in respect to their rights to land". The Committee requested subsequently more information from the Government on this particular issue.³⁴⁵

The European Court of Human Rights:

1. The Case of *Manasson v. Sweden*, Application no. 41265/98, Judgment (friendly settlement) of 20 July 2004

Abstract: The applicant, who complained to be a victim of a violation of Article 6, Article 1 of Protocol 1 and Article 4 of Protocol 7 of the ECHR was born in 1947 and is domiciled in Älvsjö. In the autumn of 1994, as part of a large-scale investigation into taxicab operators, the Tax Authority (*skattemyndigheten*) of the County of Stockholm carried out a tax audit of the applicant's taxi firm. By decisions of 14 December 1995 and 8 February 1996 the Tax Authority increased the applicant's liability to income tax, value-added tax and employer's contributions. Moreover, as the information supplied by the applicant in his tax returns was found to be incorrect and the turnover of the applicant's business had been revised upwards under a discretionary assessment procedure, the Tax Authority ordered him to pay tax surcharges (*skattetillägg, avgiftstillägg*) amounting to 20% or 40% of the increased tax liability, depending on the type of tax involved. The additional taxes levied on the applicant, including interest and surcharges, totalled SEK 566,967, of which SEK 99,507 were surcharges. The amounts were payable in February and May 1996.

³⁴³ CoE, *Office of the Commissioner for Human Rights*, CommDH(2004)13, p. 13.

³⁴⁴ *Op.cit.*, p. 14.

³⁴⁵ CERD/C/64/CO/8, 10 May 2004, § 14.

The applicant appealed against the Tax Authority's decisions on 4 March 1996. As the appeal had no suspensive effect on the obligation to pay the taxes and tax surcharges, he also requested a stay of execution in respect of the amounts assessed. As the applicant was unable to provide security for the amounts in question, his request was rejected, the final decision being taken by the Swedish Supreme Administrative Court (*Regeringsrätten*) on 17 September 1997.

Meanwhile, the debts relating to the taxes and tax surcharges imposed by the Tax Authority essentially remained outstanding. On 15 April 1997 the Enforcement Office (*kronofogdemyndigheten*) of the County of Stockholm, representing the State, filed a petition with the District Court (*tingsrätten*) of Stockholm, requesting that the applicant be declared bankrupt. The Office stated that an investigation had revealed that the value of the applicant's property was insufficient to cover the debts. By a decision of 12 June 1997 the District Court declared the applicant bankrupt. The declaration was upheld on appeal, the final decision being taken by the Swedish Supreme Court (*Högsta domstolen*) on 26 September 1997.

Moreover, on 31 January 1997 the County Administrative Board (*länsstyrelsen*) of the County of Stockholm revoked the applicant's traffic licence (*trafiktillstånd*) and decided that he was unsuitable to run a commercial taxi business for a period of three years on the ground that he had failed to fulfil his obligations with respect to the payment of taxes and other charges. The decision was upheld on appeal, the final decision being taken by the Supreme Administrative Court on 17 December 1997.

On 5 September 1997 the Public Prosecution Office (*åklagar-myndigheten*) in Stockholm indicted the applicant for a suspected bookkeeping offence related to the amounts which were subject to determination in the taxation proceedings. By a judgment of 13 January 1998 the District Court found the applicant guilty of having intentionally failed to enter certain income and salary payments in the books. He was sentenced to two months' imprisonment. The applicant appealed to the Court of Appeal but subsequently withdrew his appeal. Accordingly, on 14 December 1998 the case was struck out of the appellate court's list.

By a judgment of 2 December 1998 the County Administrative Court upheld the Tax Authority's taxation decisions. The judgment was upheld by the Administrative Court of Appeal on 15 February 2001. On 7 May 2002 the Supreme Administrative Court refused the applicant leave to appeal.

On 11 March 2004 the European Court of Human Rights received a letter declaring that the Swedish Government and the applicant had reached a friendly settlement on the basis of respect for human rights, as defined in the ECHR (access to fair hearing, the right not to be tried or punished twice) in order to terminate the proceedings before the Court. The Court decided on this basis to strike the case out of the list.

2. The Case of *Romlin v. Sweden*, Application no. 48630/99, Judgment (friendly settlement) of 15 June 2004

Abstract: The applicant, Tinna Romlin, a Swedish citizen, complained that she was denied an oral hearing, as is required by Article 6 (1) of the ECHR, in relation to her application for a disability allowance.

The applicant suffers from rheumatoid arthritis. On 14 December 1989 she applied for a disability allowance (*handikappersättning*) under Chapter 9, Section 2 of the Social Insurance Act (*Lagen om allmän försäkring* (SFS 1962:381)) on the grounds of incapacity due to rheumatoid arthritis and asthma. On 20 March 1991 the Social Insurance Office (*försäkringskassan*) of the County of Stockholm rejected the application, finding that her need for assistance and her additional costs due to her handicap did not attain the level required

under the above provision. The applicant unsuccessfully appealed against this decision to the competent administrative courts, in proceedings which ended on 30 December 1994 when the Supreme Social Insurance Court (*Försäkringsöverdomstolen*) refused her leave to appeal. No oral hearing was ever held in those proceedings. In the meantime, in August 1993 the applicant reapplied for a disability allowance. On 20 January 1994 the Social Insurance Office decided: "As from January 1993, [the applicant's] additional expenses because of her reduced functional capacity entitled her to a disability allowance at the level of 69 per cent of the basic amount (*basbeloppet*)."

The applicant, represented by a lawyer, appealed against the Office's decision to the County Administrative Court (*länsrätten*) of the County of Stockholm, claiming that the reduction in her functional capacity caused by her handicap and her need for support had remained unaltered at any rate since August 1991 and that she should have been granted a disability allowance as from then. She invoked the existing medical reports and requested the court to obtain the opinion of experts in rheumatology and to hold an oral hearing.

On 4 May 1995 the County Administrative Court rejected both her requests and gave her two weeks within which to indicate the further circumstances she wished to invoke and to submit final written observations. By a judgment of 22 June 1995 the Court upheld the Social Insurance Office's decision.

The applicant, through her lawyer, appealed against the above judgment to the Administrative Court of Appeal (*kammarrätten*) requesting it to carry out an investigation in order to establish the extent of her disability and additional expenses for the period from August 1991 to December 1992 and to hold an oral hearing. In December 1997 the Administrative Court of Appeal rejected her request for an oral hearing and gave her two weeks to complete her submissions in writing. On 5 January 1998 it refused her leave to appeal. On 9 February 1998 the Supreme Administrative Court (*Regeringsrätten*) rejected the applicant's request for an oral hearing and gave her three weeks within which to submit additional written observations. On 25 February 1999 it refused the applicant leave to appeal.

On 2 February 2004 the European Court of Human Rights received a letter declaring that the Swedish Government and the applicant had reached a friendly settlement on the basis of respect for human rights, as defined in the Convention, in order to terminate the proceedings before the Court. Therefore, the European Court decided to strike the case out of the list.

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny some modifications were undertaken with respect to international agreements dealing with international legal help in criminal matters, *i.e.* (*Tillkännagivande* (2004:371) *av överenskommelser som avses i lagen* (SFS 2000:562) *om internationell rättslig hjälp i brottmål* (SFS 2004:371)).

In 2004 a few Bills were presented before the Swedish Parliament dealing with, *inter alia*, the review dispensation possibilities for the Chief State Prosecutor before the Court of Appeal and the Supreme Court (Prop. 2003/04:78, *Prövningstillstånd för riksåklagaren i hovrätt och Högsta domstolen*), the issue of legal aid in international legal matters (Prop. 2003/04:87, *Rättshjälp i gränsöverskridande rättsliga angelägenheter*) as well as the ratification of Sweden of the agreement on immunities and privileges of the International Criminal Court (Prop. 2003/04:171, *Sveriges tillträde till avtalet om immunitet och privilegier för Internationella brottmålsdomstolen*).

Finally, mention should be made of the findings of an inquiry Committee which were put forward to Sweden's Parliament (SOU 2004:74, *Utlänningslagstiftningen i ett domstolsperspektiv*). The Committee proposed, among other things, the establishment of a

new system for procedures and appeals of the Migration Board's decisions in matters involving asylum applications. The legal changes are intended to enhance the legal procedures and to secure access to court for asylum applicants. (See for more information Article 18 in the present report)

The case-law of domestic courts:

The Administrative Supreme Court, Case RÅ 2004 ref 17, *The Swedish Financial Supervisory Authority (Finansinspektionen) v. C.O.*

Abstract: The Swedish Financial Supervisory Authority decided to charge C.O. with a special fee of 61 600 SEK for neglecting to bring a report under paragraph 9 of the insider trading law (*insiderlagen* (SFS 1990:1342)) in due time. C.O. claimed that he had the right to a fair trial and that he had valid reasons for not bringing the report in due time.

The Administrative Supreme Court stated that Article 6 of the European Convention is applicable in cases of special fees regardless of the fact that the fee is not considered as a punishment under Swedish law regulations. It, therefore, should be considered as a criminal charge and consequently C.O. indeed had the right to a balanced and not too restrictive judgement. The Court had to rule on whether or not there were valid reasons to make a concession. After review the Court decided the reasons were, however, not sufficient.

Positive aspects

In a speech delivered on 14 September 2004, the Swedish Prime Minister considered the time aspect in judicial proceedings as being of particular importance when young people commit or become victims of crime. For this purpose a new law- *Lag om försöksverksamhet med snabbare handläggning av brottmål* (SFS 2004:505) and a new ordinance- *Förordning om försöksverksamhet med snabbare handläggning av brottmål* (SFS 2004:506) - were enacted in 2004.³⁴⁶

Moreover, the prosecutors and the courts were promised to receive additional resources in 2005 in order to speed up their work.³⁴⁷

Reasons for concern

The Sámi peoples' lack of financial means to try their land rights in courts constitutes a source of concern.

³⁴⁶See also the Bill on measures for a more effective and faster proceedings in criminal matters, Prop. 2003/04:89, *Åtgärder för ett effektivare och snabbare brottmålsförfarande*.

³⁴⁷ Statement of Government Policy, 14 September 2004, op. cit., p. 12.

Independence and impartiality

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Court of Human Rights:

1. The Case of *AB Kurt Kellerman v. Sweden*, Application No. 41579/98, Judgment of 26 October 2004.³⁴⁸

Abstract: On 1 July 2003, the European Court decided that it would hear a case concerning the issue of whether the composition of the Swedish Labour Court (*Arbetsdomstolen*) may be regarded as impartial. The members of the Labour Court are both professional judges and lay representatives of employers' associations and trade unions.³⁴⁹

The issue under consideration stemmed from a judgment issued by the Swedish Labour Court in 1997. AB Kurt Kellerman was a Swedish limited liability company in the textiles sector with 20 employees. It was not a member of any employers' association nor had it signed any collective agreements. Two of its employees were members of the Industrial Workers' Union (*Industrifacket*) and this trade union demanded in negotiations with management in spring 1997 that the company should conclude a collective agreement. The negotiations ended in disagreement, with the company refusing to meet the demands of the union. The union gave notice of a strike and blockade of the company, and carried out some of this industrial action.

In October 1997, AB Kurt Kellerman went to the Stockholm District Court, claiming that the industrial action was illegal and that the company could show that it did not offer its employees worse pay and working conditions than others, even though there was no collective agreement. The District Court referred the case to the Labour Court. The employer objected to this, stating that the majority of members of the Labour Court were not impartial, and that professional judges should rule on the matter.

When the case was reviewed by the Labour Court, the key legal question was whether the industrial action carried out by the two employees with trade union memberships at AB Kurt Kellerman could be seen as an infringement of the employer's negative freedom of association (i.e. the right not to join an employers' organisation) as protected by Article 11 of the ECHR.

In brief, the Labour Court assessed the *Kellerman* - case in the spirit of the earlier *Gustafsson*-case from 1998 where the Court came to the conclusion that the Convention had not been violated and that the industrial action could not be seen as illegal according to Swedish law.

AB Kurt Kellerman (since declared bankrupt) subsequently referred a number of complaints to the European Court, which ruled on their admissibility on 1 July 2003. While rejecting several of the complaints, the Court declared admissible a complaint that the company did not have a fair hearing by an impartial tribunal, as required by Article 6 (1) of the European Convention. The applicant pointed out that the Labour Court was comprised of four members representing social partner associations and maintained that, as the cases heard by the Court

³⁴⁸This particular case received great attention in Swedish media. See, for example, *C.Klåvus*, *Europadomstolen anser inte att Arbetsdomstolen har en partisk sammansättning*, *Jusektidningen* 8/04, p. 38 ; *Europarätten hotar Arbetsdomstolen*, *Legala affärer*, nr 3 2004, p. 10 ; *A.Danielsson*, « AD klarar inte sin uppgift », *SvD* 21-09-04, p. 6 ; *A.Danielsson*, *Arbetsdomstolen får stort stöd-men inte från JämO*, *SvD* 22-09-04, p. 7 ; *A.Danielsson*, *Varför ska AD ifrågasättas ?*, *SvD* 26-10-04, p. 2 ; *T.Öberg & A.Danielsson*, *AD vs Kellerman 5-2*, *SvD* 27-10-04, p. 8.

³⁴⁹ For a comment on the position of the AD in an international perspective, see *T. Sigeman*, *Arbetsdomstolen i internationellt perspektiv*, *Svensk Juristtidning* (*SvJT*), 2004, pp. 561-572.

concerned the right to negative freedom of association, these four members must be deemed to have had interests opposed to the applicant's claims. The applicant also asserted that the requirements of Article 6 (1) were not met as the majority of the Labour Court's members were not professional judges.

In the European Courts' judgement a majority of five judges out of seven found that the lay assessors (i.e. social partner nominees) sitting in the Swedish Labour Court have taken the judicial oath and have special knowledge and experience of the labour market. With respect to the objective impartiality of the lay assessors in the present case, the Court considered that, in accordance with the principles developed in the *Langborger* case, the decisive issue was whether the balance of interests in the composition of the Labour Court was upset and, if so, whether any such lack of balance would result in the court failing to satisfy the requirement of impartiality in the determination of the particular dispute before it.

This could be so either if the lay assessors had a common interest contrary to those of the applicant or if their interests, although not common, were such that they were nevertheless opposed to those of the applicant.

The European Court noted that the applicant's company was not affiliated to any employers' association and therefore it could not be argued that it has had any representation on the Labour Court. The opposing party, the Industrial Workers' Union, is affiliated to the Swedish Confederation of Trade Unions (*Landsorganisationen* (LO)), which had nominated one of the members of the Court. However, the European Court stated that to accept this circumstance may give rise to doubts as to the Labour Court's impartiality would be equal to considering that, in cases where lay assessors have been nominated by any labour organisation, the Swedish Labour Court would fail to meet the requirement of being an impartial tribunal in all disputes where one of the parties is not affiliated to such an organisation.

Relaying on these arguments, the Court considered that Kurt Kellerman AB could not legitimately fear that the lay assessors who sat on the Labour Court had interests contrary to those of the applicant company or that the balance of interests was upset to such an extent that the Labour Court failed to meet the requirement of impartiality in the determination of the dispute before it. There was, thus, no violation of Article 6 (1) of the European Convention.

Two out of the seven judges on the Court were of a dissenting opinion. In their view the applicant's fears of not receiving an impartial trial were justified because of the composition of the Swedish Labour Court. At the heart of the dispute was the question related to the interest of a trade union in forcing a collective agreement on an unorganised employer. According to the dissidents, the four lay assessors who represented the employers' organisations and trade unions represented in this way interests that are in favour of the establishment of collective agreements on the labour market.

Reasonable delay in judicial proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Court of Human Rights:

1. The case of *Hellborg v. Sweden*, Application no. 45275/99, Judgment (friendly settlement) of 14 September 2004

Abstract: The applicant, Mr Hellborg is domiciled in Åkarp and he is the owner of a piece of real property in the central part of the town Lund. Wishing to make an extension to the residential house situated on that property – a construction requiring a building permit under the Planning and Building Act (*Plan- och bygglagen* (SFS 1987:10)) – he applied, on 2 April

1990, to the Building Committee (*byggnadsnämnden*) of Lund for a tentative approval (*förhandsbesked*) of the permissibility of this project. The purpose of such an approval is to give a property owner, who is planning a building project for which the grant of a building permit is uncertain, the possibility to obtain an advance assessment of whether the planned measures may at all be permitted and thereby avoiding unnecessary projecting work and costs. In assessing an application for a building permit made within two years after the issuance of a tentative approval, the Building Committee is bound by the determinations made in that approval.

On 19 August 1992 the Building Committee, having obtained the opinions of some neighbours and several municipal offices, declared that a building permit could not be expected. It did not, therefore, give a tentative approval of the construction project.

The applicant appealed against the Building Committee's decision. On 16 May 1994 the County Administrative Board (*länsstyrelsen*) of the County of Malmöhus, having obtained the observations of the Committee as well as the applicant's point of view on several occasions upheld the appealed decision after visiting the location of the property in question.

Upon the applicant's further appeal, the Administrative Court of Appeals (*kammarrätten*) in Gothenburg held an oral hearing at the location of the applicant's property on 29 March 1995. By a judgment of 21 April 1995 it rejected the appeal.

The applicant then appealed to the Supreme Administrative Court (*Regeringsrätten*) which, by a decision of 15 October 1996, granted him leave to appeal. The Court requested the opinions of the Building Committee and the National Board of Housing, Building and Planning (*Boverket*). By a judgment of 25 November 1997 it rejected the appeal.

On 5 April 2004 the European Court of Human Rights received a letter declaring that the Swedish Government and the applicant had reached a friendly settlement on the basis of respect for human rights, as defined in the Convention (Article 6), in order to terminate the proceedings before the Court. On this basis the Court decided to strike the case out of the list.

2. In another case, *Andersson and Others v. Sweden*, Application No 49297/99 which concerned a complaint about the excessive length of civil proceedings, a friendly settlement was achieved and the European Court of Human Rights closed the case by a judgment on 14 of October 2004.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On the basis of a directive from July 2004 (Dir. 2004:96, *En samlad översyn av regeringsformen*) the Government established a Committee of inquiry with the task to review, *inter alia*, the issues of constitutional control (*lagprövning*).³⁵⁰ Further, the Committee has received the mandate to investigate whether there are reasons for the establishment of a constitutional court in Sweden. In this context the Committee should also review the courts' role in general and in relation to the constitutional system. If the Committee decides to propose changes with regard to the constitutional control system, it has been given, in addition, the authority to recommend necessary adjustments of the relevant provisions on fundamental human rights in Chapter 2 of the Swedish Constitution.

³⁵⁰Some legal scholars have also referred to the existing need of expanding the possibilities for constitutional control in Sweden. See, e.g., *J.Nergelius*, Aktuella konstitutionella frågor i Sverige : problem och reformbehov, Nordic Journal of Human Rights, Vol. 22, No. 2 :2004, p. 177.

Two days after the directives were made publicly available; the instructions faced criticism for their vagueness by some NGOs such as, e.g. the Swedish Helsinki Committee for Human Rights.³⁵¹

The Committee is expected to prepare and to submit its deliberations and proposals not later than 31 December 2008.

The Swedish Helsinki Committee for Human Rights asked for a more overall review of the provisions on fundamental rights in the Constitution taking into consideration the content of the European Convention on Human Rights, which has status as Swedish law. According to the same organisation, the Swedish Constitution exposes several deficiencies as compared to other European constitutional documents. For example, the Swedish Helsinki Committee pointed out the fact that the protection of the right to a fair trial as such is not currently guaranteed in the Swedish Constitution. Moreover, in the view of the organisation the chapter on fundamental rights was seldom applied by the courts. Finally, criticism was expressed with regard to the provisions in the Constitution distinguishing between Swedish and Non-Swedish citizens.

The case-law of domestic courts:

The Supreme Court (*Högsta domstolen*), Case Ö 1435-03, *RB v. Riksåklagaren*, Judgment of 11 Juni 2004³⁵²

Abstract: A police officer stopped RB due to speeding. At the District Court, RB denied the allegations. On the basis of evidential material presented by the police the District Court found the defendant guilty. RB appealed to the Court of Appeal and demanded interrogation with the police officer, claiming that the device for measuring his vehicles speed had not been calibrated properly. RB:s appeal was denied.

RB then appealed to the Swedish Supreme Court (*Högsta domstolen*). The Court stated that article 6(1) of the European Convention on Human Rights guarantees the right to an oral negotiation and the right to interrogation of witnesses. However, since RB himself had omitted this right during the District Court proceedings, there could not be a potential breach of article 6(1) of the ECHR. The appeal was, therefore, dismissed.

Article 48. Presumption of innocence and rights of defence

No significant developments to be reported

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

³⁵¹ P. Bratt, G. Lind and R. Hårdh, Svenskars rättighetsskydd för svagt, Expressen 2-07-04.

³⁵² See <http://www.hogstodomstolen.se/prejudicat.htm> and <http://www.lagrummet.dom.se>

APPENDIX: CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (O.J. C-364 OF 18.12.2000)

CHAPTER I: DIGNITY

Article 1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - c) the prohibition on making the human body and its parts as such a source of financial gain,
 - d) the prohibition of the reproductive cloning of human beings.

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

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II: FREEDOMS

Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

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

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

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

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16: Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

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

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III: EQUALITY**Article 20: Equality before the law**

Everyone is equal before the law.

Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views

freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV : SOLIDARITY

Article 27 : Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

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

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33: Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient

resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38: Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V: CITIZENS' RIGHTS

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

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

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

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

a) the right of every person to be heard, before any individual measure which would affect him or her

adversely is taken;

b) the right of every person to have access to his or her file, while respecting the legitimate interests of

confidentiality and of professional and business secrecy;

c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43: Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44: Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered

office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI : JUSTICE

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

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

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

1. No one shall be held guilty of any criminal offence on account of any act or omission

which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission

which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

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

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII: GENERAL PROVISIONS

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52: Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under

the conditions and within the limits defined by those Treaties.

Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.