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

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN **SWEDEN**

IN 2005

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

on 15 December 2005

Reference: CFR-CDF/SE/2005

The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon 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 iur.kand. 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.

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Euthanasia is still a crime under Swedish law. The issue has, however, received great attention in Swedish media after the act of active euthanasia was carried out on a Swedish patient (Joakim Alpgård) on the 15 October 2005 in the Dignitas clinic in Zurich, Switzerland.[1]

Domestic violence

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

In its third report on Sweden, the European Commission against Racism and Intolerance (ECRI) commended the Swedish authorities for the intensification of their efforts to help young people, and particularly girls, who are at risk of honour-related violence.[2]

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny the Government Bill 2004/05:45 "A new Legislation on Sexual Crimes" (Prop. 2004/05:45, *En ny sexualbrottslagstiftning*) was approved by the Parliament and it entered into force on 1 April 2005 (SFS 2005:90).

The provisions relating to rape in the Penal Code (*Brottsbalken* (BrB)) were amended in order to include more offences in the classification of rape. These include the most serious cases of sexual exploitation, such as when the victim is drunk, unconscious or other wise in a helpless condition, or asleep, or has a disability. In other words, the new provisions will also apply to situations where the victim was in a state of 'helplessness' due to intoxication or is in a situation of similar incapacitation. The requirement that violence or a threat be involved in connection with such violations will be given less emphasis, *i.e*. the focus on the coercion requirement has been somewhat relaxed. In addition, with regard to the degree of threat, it is no longer required that the threat be imminent violence endangering life or health or some other more significant interest. Thus, a lesser degree of threat can suffice for liability for rape.

Furthermore, the scope of the definition of 'gross rape' has been broadened. It is more clearly stated that group rape will be treated as a gross rape.
Also the term 'sexual intercourse' has been replaced by the term 'sexual act' throughout the relevant Chapter 6 in the Penal Code (*Brottsbalken* (BrB)) in order to encompass a wider range of acts.

[1] *G.von Hall*, Chefsåklagare kräver skärpt lag efter att Joakim Alpgård fick dödshjälp på kontroversiell klinik, SvD 20 October 2005, p. 7.
[2] ECRI, Third Report on Sweden, Strasbourg, adopted on 17 December 2004 and made public on 14 June 2005, CRI(2005)26, p. 26.

The new legislation comprises, moreover, more severe penalties for rape and sexual abuse of children and young people. According to the new provisions the requirement that coercion be involved in the case of offences against children has been abolished.

The Committee of Inquiry on Gender Equality Policy, which was set up with the aim to review, *inter alia*, the objectives, orientation and effectiveness of gender equality policy in Sweden presented its report SOU 2005:66, *Makt att forma samhället och sitt eget liv-jämställdhetspolitiken mot nya mål*, on 1 August 2005.

Part III of the report focuses specifically on violence against women within the framework of gender equality issues. One of the central and, according to the Committee new objectives with regard to gender equality policy is to stop men's violence against women. For that purpose the inquiry proposes that development work should be initiated to examine the application of process-based programme management. It is believed that by increasing cooperation between gender equality policy and other policy areas, development work should strengthen the implementation of gender equality policy. The first stage of the development work should focus on men's violence against women.[3]

Positive aspects

The new legislation on sexual crimes reflects to a greater extent and more clearly the contemporary attitudes on sexuality and gender equality as well as offering greater protection than before of the individual's right to her/his personal and sexual integrity (sexual self-determination).[4]

Moreover, the amended Penal Code (*Brottsbalken* (BrB)) strengthens the protection of children and adolescents from sexual exploitation. Thus, the requirement of double liability has been removed so that people who have committed sexual offences against children less than eighteen years of age outside Sweden may be now sentenced in Sweden for serious sexual offences, *e.g*. rape, gross rape, sexual coercion, sexual exploitation of a person in a position of dependency etc. Nevertheless, a Swedish court is not bound by the severest punishment provided for the crime under the law where the act was committed.

In addition, of significance is also that among the consequences of the replacement of the concept of 'sexual relations' with the concept of 'sexual act' which is broader in meaning some of the acts previously defined as sexual molestation will instead be defined as sexual coercion or sexual abuse of a child.

The Prime Minister of Sweden, Mr Göran Persson, promised in a speech before the Parliament on 13 September 2005 that the National Centre for Battered and Raped Women will be made a national centre for knowledge on men's violence against women and that Government support for women's shelters will be reinforced.[5]

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[3] SOU 2005 :66, p. 36. See also Regeringskansliet, Pressmeddelande, Förnyelse i jämställdhetspolitiken, 1 August 2005, www.regeringen.se

[4] See the Committee on Justice Report (*justitieutskottet*) 2004/05:JuU16, www.riksdagen.se A few practicing lawyers have expressed satisfaction with the above mentioned reform. Den nya sexualbrottslagen, Advokaten, May 2005, p. 22.
Nevertheless, the drafting process of the above mentioned Bill on sexual offences has taken considerable time and criticism has been expressed in Swedish media also in respect to the wording of the crime elements of rape. *M.Leijonhufvud*, Lagen kommer för sent och ger inte tillräckligt skydd, SvD 16 February 2005, p. 8.

[5] Statement of Government Policy presented by the Prime Minister, Mr Göran Persson, to the Swedish Riksdag on 13 September 2005, p. 6.

Good practices

In December 2004 the Swedish Government organised and hosted an international conference on patriarchal violence against women, focusing on violence in the name of 'honour'. The aim of this gathering of Swedish and foreign participants was to promote exchange of experience and working methods in the hope of fostering cross-border dialogue and commitment in this field. The purpose of the conference was to support and highlight efforts to combat honour-related violence, both in Sweden and abroad.[6]

The Government decided in August 2005 to contribute with 5 million SEK to the Office of the Chief Prosecutor (*Åklagarmyndigheten*) with the aim to enable this authority to carry out a specially designed education programme for prosecutors on, *inter alia*, how to deal with cases concerning honour related crime.

The Office of the Chief Prosecutor (*Åklagarmyndigheten*) together with the National Police Board (*Rikspolisstyrelsen*) on 1 June 2005 in Gothenburg organized a hearing in order to discuss the question of how to improve the investigations dealing with cases of violence against women, including cases of rape.[7]

Sweden's very first emergency ward specialised for receiving raped women was inaugurated in October 2005 in Stockholm.[8]

Reasons for concern

There are reasons for concern with regard to the persistence of violence against women in Sweden and especially domestic violence. The earlier cited report SOU 2005:66, *Makt att forma samhället och sitt eget liv*, contains a whole Chapter on violence against women and the statistics presented there confirm that there is indeed an increase in reported cases of sexual violence, including cases of rape.[9] However, the report comprises also a number of important proposals on how the various actors, including the public authorities, should proceed to fight men's violence against women.[10]

Moreover, Amnesty Internationals' 2005 report on Sweden disclosed a reality which gives rise to serious concern about the ability of local authorities to help survivors of domestic violence.[11] In addition, most of the municipalities continue to lack strategic plans of action for addressing violence against women.

Remarkable and alarming is the study on the incidents of domestic violence against women with disabilities (*psykiska funktionsnedsättningar*) that has been carried out by the National Board of Health and Welfare (*socialstyrelsen*).[12]

Even though the coercion requirement with regard to cases of sexual violence has been somewhat relaxed in the 2005 legislation on sexual crimes, recent case law of Swedish first instance courts (*tingsrätter*) and the Court of Appeal (*Svea Hovrätt*) shows that the new

[6] Swedish Government Offices Yearbook, Stockholm 20 July 2005, p. 20.
[7] See also Pressmeddelande, Åtgärder för bättre våldtäktsutredningar, 21 April 2005, www.aklagare.se and www.polisen.se and the report "*Gemensam inspektion, Granskning av brottsutredningar avseende våldtäkt och grov våldtäkt där brottsoffret är över 15 år*", RPS/ÅM 1/05, April 2005.
[8] See www.sodersjukhuset.se
[9] SOU 2005:66, pp. 355-422. The statistics show an increase of approximately 16 per cent in cases dealing with violence against women. *Brottsförebyggande rådet halvårsstatistik*, www.bra.se
[10] Ibid., pp. 397-398.
[11] Amnesty International Report 2005-Sweden, www.amnesty.org see also SOU 2005 :66, p. 397.
[12] *Socialstyrelsen*, Våld mot kvinnor med psykiska funtionshinder-Förekomst, bemötande och tillgång till stöd, Stockholm 2005, p. 33.

legislation is still not in conformity with the latest legal developments within the Council of Europe, *i.e.* the jurisprudence of the European Court of Human Rights.[13]

The Swedish *Rädda Barnen* (Save the Children) together with other NGOs has rightly expressed concern regarding the tendency of decreased involvement by the Swedish police forces in the preventive work against violence against women and girls in the name of 'honour'.[14]

Other relevant developments

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

During the consideration of the Swedish report under the UN Convention on the Rights of the Child in 2005, the Committee on the Rights of the Child expressed its concern about "the increasing incidence of suicide" and therefore recommended that the Swedish authorities should take the necessary measures to prevent the occurrence of this phenomenon.[15]

Legislative initiatives, national case law and practices of national authorities

Even though the European Convention on Human Rights does not contain a right to political asylum *per se*, an expulsion order (deportation or extradition) of an alien can raise issues under several Convention provisions. Under the period under scrutiny the European Court did, for example, take up a few Swedish cases where it believed that there are substantial grounds to assume that there is a real risk of treatment of the applicant/s contrary to the guarantees in Article 2 and/or Article 3 of the Convention if deported.[16]

The European Court of Human Rights (Chamber), the Case of *Bader and Others v. Sweden*, Application No. 13284/04, Judgment of 8 November 2005

Abstract : The applicants and their two children are Syrian citizens living in Sweden. They arrived in Sweden in August 2002 and submitted applications requesting for asylum. However, the requests were rejected by the Swedish National Migration Board (*Migrationsverket*) and a deportation order was issued. The applicants appealed the decision to the Aliens Appeals Board (*Utlänningsnämnden*) and requested a stay of execution of the deportation (*verkställighetshinder*) order in 2004. The main claim in the request was based on the argument that if Mr Bader was sent back to Syria he would be facing the death penalty because of a judgement that had been passed in 2003 stating that he had been convicted in his absence for involvement in a murder and therefore sentenced to death.
The judgement in question clarified that Mr Bader and his brother had threatened their brother-in-law because they considered that he was mistreating their sister and thereby dishounering their family. In November 1998 Mr Bader's brother shot the brother-in-law with a weapon that Mr Bader had provided. Nevertheless, Mr Bader denied the charges.

[13] See on this issue SOU 2005 :66, *Makt att forma samhället och sitt eget liv*, p. 390. See for the criticism expressed by Professor Madeleine Leijonhufvud in *T.Nilsson*, Kritik mot våldtäktslag efter ny dom, SvD 27 September 2005, p. 12.
[14] Rädda Barnen, Minskat polisarbete mot hedersrelaterat våld, Barn 3-4, 2005, p. 15. See also the reports in Swedish media such as *e.g. Chr. Wahldén*, Polisen drar in expert på hedersrelaterat våld, SvD 22 April 2005, p. 15.
[15] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 6.
[16] The Swedish judge at the European Court of Human Rights -E.Fura-Sandström- is not found of this development. See *T.Knutson*, Framgångar föder krav på nytt arbetssätt, Advokaten, May 2005, p. 14.

In April 2004 the Aliens Appeals Board (*Utlänningsnämnden*) rejected the applicants' request for asylum. The reasons for the decision were that, according to a local lawyer in Syria, the case would be re-opened and Mr Bader would therefore receive a full retrial. Furthermore, if he was convicted he would not be facing the death penalty as the case was related to family honour.

The applicants complained that if they were to be deported to Syria, Mr Bader would indeed face a risk of being arrested and executed contrary to Article 2 and 3 of the European Convention.

In these circumstances the European Court ruled that it agrees with the applicant that the information in the report from the Swedish Embassy in Syria is vague and imprecise as to whether the case would be re-opened and as to the likelihood, in the event of a conviction at a retrial, of Mr Bader escaping capital punishment. Thus, in the view of the Court the report contained only assumptions and no answers as to what would happen if the applicants were deported to Syria.

The Court found it therefore surprising that Mr Bader's defence lawyer in Syria does not even seem to have been contacted by the Swedish Embassy during their investigation into the case, even though the applicant had furnished the Swedish authorities with his name and address and he could, in all probability, have provided useful information about the case and the proceedings before the Syrian court.

More importantly, the European Court noted that the Swedish Government had obtained no guarantees from the Syrian authorities that Mr Bader's case will be re-opened and that the public prosecutor will not request the death penalty at any retrial (*Mamatkulov and Askarov v. Turkey* (§ 76) ; *Soering v. the United Kingdom* (§§ 97-98); *Nivette v. France*, Appl. No. 44190/98, ECHR 2001-VII).

In these circumstances, the Court did not have difficulties in establishing that the Swedish public authorities would be putting Mr Bader at serious risk by sending him back to Syria without any assurance that he will receive a new trial and that the death penalty will not be sought or imposed. (§ 45 of the Judgment)

The European Court considered, in other words, that Mr Bader has a justified and well-founded fear that the death sentence against him will be executed if he is forced to return to his home country. Moreover, since executions are carried out without any public scrutiny or accountability, the circumstances surrounding his execution would inevitably cause Mr Bader considerable fear and anguish while he and the other members of his family would all face intolerable uncertainty about when, where and how the execution would be carried out.

Finally, having regard to all the circumstances of the case, the European Court ruled in favour of the applicants, *i.e.* that there are substantial grounds for believing that Mr Bader would be exposed to a real risk of being executed and subjected to treatment contrary to Articles 2 and 3 of the Convention if deported to his home country. The Court came, thus, to the conclusion that the deportation of the applicants to Syria, if implemented, would give rise to violations of Articles 2 and 3 of the Convention.
Interestingly, the Court did not concider the subject matter under review under Additional Protocol No 13 (the abolition of the death penalty in all circumstances) to the European Convention.
According to information in Swedish media, Mr Bader and his family have been granted residence permits in Sweden.[17]

[17] Sverige bröt mot Europakonventionen, DN 9 November 2005, p. 9.

Positive aspects

The Swedish Parliament decided unanimously on 27 April 2005 to ask the Government to prepare a national action plan with the aim of intensifying the efforts (including advanced scientific research) that are deemed necessary in order to successfully prevent the occurrence of suicide.

Reasons for concern

It seems that the suicide prevention efforts by the public authorities with regard to adolescents' environments are insufficient since apart from the young adult category, children and adolescents are the age group most prone to suicide in Sweden's population as a whole.

Article 3. Right to the integrity of the person

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Committee of inquiry, which was entrusted with the assignment to examine certain issues in the Act concerning the Ethical Review of Research involving Humans (*Lag om etikprövning av forskning som avser människor* (SFS 2003:460) in force since 1 January 2004, released its report SOU 2005:78, *Etikprövningslagstiftningen- vissa ändringsförslag*, on 27 September 2005. The inquiry had also to investigate whether any difficulties have arisen in the application of the 2003 Act, and if so, to propose changes.

The Committee proposed that the 2003 Act on Ethical Review should be expanded to include a requirement for ethical review in cases involving processing of sensitive personal data as defined in the existing legislation, *i.e.* the Personal Data Act (*Personsuppgiftslagen*) (*i.e.* when such processing entails an obvious risk of violation of personal integrity), irrespective of whether the research subject has given his/her consent or not as well as in cases where research is conducted according to a method that entails an "obvious risk of harming the research subject".[18]
The Inquiry was also of the opinion that there is a need to reassess as regards secrecy, certain research databases and the organisation of the ethical review boards.[19]

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 and institutions for the detention of persons with a mental disability

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

On 18 November 2004 the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) released a 74 page report of its visit

[18] SOU 2005 :78, p. 18.
[19] Ibid., p. 22.

to Sweden in 2003.[20] In the Committee's view, arrangements for outdoor exercise for remand prisoners subject to restrictions at the Gothenburg and Umeå Remand Prisons as well as for all inmates at Västberga prison were unsatisfactory.[21] Against this background the CPT recommended that the Swedish authorities impose restrictions on remand prisoners only in exceptional circumstances and in addition pursue strategies to address inter-prisoner violence.

Legislative initiatives, national case law and practices of national authorities

The Governmental Commission on the Prison and Probation Service, charged with the task to draw up a completely new penal care law, is due to present its recommendations in 2005. The Commission has been instructed to review the question of, *inter alia*, the appropriate time for releasing inmates on parole.

Positive aspects

According to the Budget Bill for the year 2006 which was submitted to the Parliament in September 2005, more resources have been allocated to penal care. The Swedish Prison and Probation Service will receive 400 million Swedish Kronor (SEK) with the aim to enable it to continue its expansion to accommodate more inmates as well as to improve the quality of the required measures with regard to security, treatment and occupation.[22]

Good practices

The greater use of electronic tagging has allowed more inmates to serve whole or part of their sentence under 'home curfew' as part of an electronic tagging scheme.[23] The method is conducted on a trial basis.

Reasons for concern

A worrisome Amnesty Internationals report on Sweden[24] from 2005 which indicates that overcrowding in the Kronobergs remand and detention centre has led to remand detainees being held in cells not intended to house them, such as isolation cells ordinarily used for intoxicated people and equipped only with plastic mattresses and a drain in the floor. Even more disturbing is the information that detainees should be kept in such cells for only brief periods, but have sometimes spent up to 10 days in them.

Moreover, detainees have been held in storage or laundry rooms. In the view of AI such conditions amounted to cruel and inhuman treatment. The report also refers to situations where several prisoners with mental disabilities have been held in ordinary prisons in contravention to international standards.

[20] Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003, CPT/Inf(2004)32, www.cpt.coe.int
[21] See also CFR-CDF/Rep/SE/2004, p. 17.
[22] Government Bill 2005/06 :1, The Budget Bill for 2006 (prop. 2005/06 :1, *Budgetpropositionen för 2006*), www.sweden.gov.se
[23] According to statistics as of 22 November 2005 approximately 2 387 persons served their sentence in this way, www.kvv.se
[24] See Amnesty International, The State of the world's human rights, Report 2005-Sweden, www.amnesty.org

With regard to the situation of persons deprived of their liberty, Sweden continues to have overcrowded prisons, *i.e*. 104 prison population per 100 places available, according to the official statistics of the Swedish Prison and Probation Service in November 2005.[25]

Protection of the child against ill-treatments

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

During the review of the Swedish report under the UN Convention on the Rights of the Child in 2005, the Committee on the Rights of the Child expressed its concern that no data is available on children victims of abuse aged 15 to 18 years.[26] In the view of the Committee, also the persistence of bullying children with disabilities and of foreign origin is alarming.[27] The Committee recommended subsequently that the Swedish authorities should pay special attention to children with disabilities and of foreign origin in their efforts to prevent and combat bullying. Moreover, rules for countering bullying should be fully implemented in all schools and other institutions with the involvement of children.

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry which has been set up by the Government with the task to evaluate, among other things, the 1998 custody reform presented its final report SOU 2005:43 *Vårdnad-Boende-Umgänge.Barnets bästa, föräldrars ansvar*, on 1 June 2005.

In the view of the Commission, joint custody should be out of the question if a parent subjects a member of the family to violence or other degrading treatment. Moreover, if there has been violence or degrading treatment against a family member has occurred, the court in charge of reviewing a case dealing with the right of access of a child to a parent, must make a risk assessment and consider the consequences that the degrading treatment may have for the child concerned.[28] The Commission also proposes that if a parent has deliberately killed the other parent, the parent in question must always, as a matter of principle, be denied custody.[29]

In addition, the inquiry suggests that the issue of custody should be subject to automatic examination when the social welfare committee has received information about circumstances indicating that a child is at a risk of being harmed. The Committee must then promptly conduct investigation and take a position on whether additional measures were needed such as, for example, a judicial examination of the custody arrangements.

Reasons for concern

The fact that children and young people with disabilities are more exposed to bullying at school than other children gives reason to concern.[30]

[25] See also Fler fångar-fler JO anmälningar, www.kvv.se and *M.Luteman*, Överfullt på svenska häkten, SvD 23 November 2005, p. 6.
[26] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 3.
[27] Ibid., p. 7.
[28] SOU 2005 :43, p. 45.
[29] SOU 2005 :43, p. 44.
[30] See Barnombudsmannen (BO), Observations to the UN Committee, p. 11, www.bo.se

Other relevant developments

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

Legislative initiatives, national case law and practices of national authorities
The Commission of inquiry which has been instructed to prepare and propose a new Prison and Other Correctional Treatment Act (e.g. *kriminalvårdslag*) dealing with, *inter alia*, the implementation of all sanctions implemented by the Prison and Probation Service, presented its very comprehensive report SOU 2005:54, *Framtidens kriminalvård (del 1 och del 2)* in May 2005. Much of the basis for the considerations and proposals for legislative changes made by the Commission consists of existing standards in public international law, such as the UN Basic Principles for the Treatment of Prisoners (1990), the European Prison Rules (CoE) etc.

According to the proposed new Act, the Prison and Probation Service shall work together with other agencies such as the social services, the National Labour Market Board and the health service in order to facilitate the prisoner's adjustment and reintegration in society.[31] For that purpose, it is recommended that the opportunity to stay outside the prison be expanded. In the view of the Commission there must, however, be no risk that the prisoner, during the stay outside the prison, will engage in criminal activity, evade completion of the sentence or engage in misconduct in another way.[32]

The Commission proposed that the provisions in the Intensive Supervision by Electronic Control Act (SFS 1994:451) (*Lag* (1994:451) *om intensivövervakning med elektronisk kontroll*) should be transferred into the new legislation. It is clarified, however, that this form of enforcement should be called 'short-term electronic tagging' and that it may not be granted if there is an "evident risk that the sentenced person will commit new crimes, evade serving the sentence, or engage in misconduct in another way".[33] On the other hand, it shall be possible to grant electronic tagging as an introduction to work release at night.

Another proposal concerns the rules on the possibility of infants remaining with the prisoner during his/her stay at the prison. The rules should be made gender-neutral, *i.e*. either the sentenced father or the mother of a child should be given such prospects.

The inquiry, furthermore, underlined that prisoners should be given an opportunity to spend at least one hour a day out-of-doors unless very special difficulties prevent this.
New rules were proposed which enables the Prison and Probation Service to decide that visits are to be controlled by the use of a visiting room, which is designed in such a way as to make impossible the handing over of objects, *i.e.* the introduction of visiting rooms with a glass partition.

Finally, the Commission proposed that it shall be possible to appeal decisions that appear as particularly intrusive or restrictive compared with what can normally be considered to follow from the sentence imposed. In its view it shall not be possible to appeal against other decisions, "unless it otherwise follows from the European Convention".[34]

In order to achieve a uniform and fast decision-making system, the decisions in enforcement issues of the Prison and Probation Service's should be appealed to an administrative court.

[31] SOU 2005 :54, p. 49.
[32] Ibid., p. 58.
[33] SOU 2005 :54, p. 51.
[34] SOU 2005 :54, p. 65.

The consequences of this proposal would be that the probation committees and the National Paroles Board shall be abolished.[35]
It is expected that the new legislation may come into force on 1 April 2007.

The Government Bill (prop. 2004/05:107, *Svenskt godkännande av fakultativt protokoll till FN:s konvention mot tortyr m.m.*) which proposes ratification by Sweden' Government of the Additional Protocol to the UN Convention against Torture, was presented to the Swedish Parliament on 3 March 2005.

The modification of the relevant act (*lag* (SFS 1988:695) *med anledning av Sveriges tillträde till den europeiska konventionen mot tortyr m.m.*) entered into force on 1 July 2005 and Sweden became a party to the additional protocol to the European Convention against Torture on 14 September 2005.

As from 1 January 2005, the Office of the Prosecutor-General (*riksåklagaren*) and the six public prosecution regions were phased out and merged into a new national prosecution body, the Public Prosecution Authority.[36]

Reasons for concern

Several leading Swedish organisations, such as the Swedish Red Cross and the Swedish Helsinki Committee, have expressed concern - and rightly so- about the statement in the Government Bill on the ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (prop. 2004/05:107) that there was no need for modification of the Swedish legislation in order to set up a new independent national body entrusted with the task to perform regular visits to places where people are deprived of their liberty, since the Parliamentary Ombudsman (JO) could undertake such missions.

Torture is not a crime defined in the Swedish Penal Code (*Brottsbalken* (BrB)) and this fact complicates the investigations of alleged abuses.[37] Instead torture is comprised within the crime of assault.
The absence of an explicit definition of torture demonstrates moreover the incompatibility of the existing Swedish legislation with the requirements of Article 1 of the UN Convention against Torture.

Article 5. Prohibition of slavery and forced labour

Trafficking in human beings

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

The European Commission against Racism and Intolerance (ECRI) noted in its third report on Sweden that the Swedish authorities have taken additional measures, including financial ones, to combat trafficking in human beings. The authorities have, *e.g.* earmarked funds for the

[35] Ibid., p. 67.
[36] Swedish Government Offices Yearbook, Stockholm 20 July 2005, p. 21.
[37] This concern was expressed by Swedish practicing lawyers during a hearing which took place on 1 December 2005 on the premisses of the Swedish NGO Foundation for Human Rights in Stockholm with the aim to facilitate the preparation of the 2005 Swedish report (contribution to the EU Network of independent experts in fundamental rights).

police to combat trafficking.[38] The Commission also expressed satisfaction with the fact that investigations have reportedly been increasingly successful.

Nevertheless, ECRI mentioned that it has received information which indicates that the material assistance and support provided to victims of trafficking, especially as concerns shelter and rehabilitation, are insufficient, *i.e.* they do not yet meet the levels of actual need.[39]
With regard to trafficking in human being, ECRI recommended that "the Swedish authorities ensure that residence permits are granted to victims of trafficking irrespective of their willingness to co-operate with the authorities."[40]

In addition, the Commission encouraged the Swedish authorities "to consider improving the access of victims of trafficking who agree to co-operate with the authorities to longer term residence permits".[41]

In 2005, the Committee on the Rights of the Child during the review of the Swedish report under the UN Convention on the Rights of the Child expressed its great concern regarding the occurrence of trafficking of children, prostitution and related issues in Sweden and abroad committed by Swedish citizens. It recommended in this regard that Sweden should "strengthen measures to reduce and prevent the occurrence of sexual exploitation and trafficking, including sensitizing professionals and the general public to the problems of sexual abuse of children and trafficking through education including media campaigns".[42]

Legislative initiatives, national case law and practices of national authorities

The Government Bill (prop. 2004/05:138, *Sverige tillträde till FN:s tilläggsprotokoll mot människosmuggling*) which was submitted to the Swedish Parliament in 2005 contains a proposal for the Swedish ratification of the additional protocol (in force since 24 January 2004) supplementing the UN Convention against transnational organized crime dealing with the smuggling of human beings.

The Ministry memorandum, Ds 2005:24, *Tidsbegränsat uppehållstillstånd för offer för människohandel m.fl.*, contains a few proposals which will enable the implementation of Directive 2004/81/EC from 29 April 2004.
Importantly, the report suggests that the criteria for granting temporary residence permits to victims of human trafficking so that they can be given protection as well as the circumstances under which such permits may be withdrawn need to be clarified.

Moreover, it is also proposed that a specific provision be introduced in the Aliens Act (*utlänningslagen* (SFS 1989:529)) which shall prescribe that an alien who has received a residence permit so that he/she can take part in criminal investigations in Sweden shall not be a subject of refoulment/extradition.[43]

[38] ECRI, Third report on Sweden, CRI(2005)26, Strasbourg 14 June 2005, pp. 6 and 29.
[39] Ibid., p. 29.
[40] CRI(2005)26, p. 29. As already reported (CFR-CDF/SE/2004, p. 24) since 1 October 2004 victims of trafficking who agree to co-operate with the authorities in criminal proceedings against those responsible, are able to apply for temporary residence permits in Sweden.
[41] CRI(2005)26, Ibid., p. 29.
[42] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 8.
[43] An intense debate has taken place in the Swedish Parliament on how to strengthen the legal position of witnesses in cases dealing with trafficking, *i.e.* giving them better chance to be granted a permanent resident permit in Sweden. *F.Mellgren*, Ökat skydd för vittne till människohandel, SvD 18 November 2005, p. 13.

With regard to the domestic case law some encouraging developments have taken place during 2005. A considerable number of persons have been successfully prosecuted for trafficking in human beings for sexual purposes. Here follow a few examples:

The District Court in the town of Borås, (*Borås Tingsrätt*), Case B436-05, Judgment of 25 May 2005

The District Court in the town of Borås sentenced the person who conducted the abduction and transportation of a 17 years old girl from Kosovo to Sweden for the purpose to use her for sexual services to 3 years of imprisonment. The man who had ordered the recruitment and organized the harbouring of the girl in question was sentenced to five years and six months of imprisonment as the perpetrator of the criminal act constituting trafficking.

The District Court in Stockholm (*Stockholms tingsrätt*) on 28 February 2005 for the second time (the first case B7477-03) was decided in first instance court in 2003) after the coming into force of the domestic legislation criminalising trafficking for sexual purposes sentenced two men from Estonia to five years imprisonment and an expulsion order with a lifelong prohibition to enter Sweden. Two of the victims were girls under the age of 18 years.

Positive aspects

A welcomed National Action Plan for the continued work to combat prostitution and trafficking in human beings for sexual purposes as well as for forced labour purpose was submitted to the Swedish Parliament in 2005[44]; the proposal is still under consideration by the reviewing instances. This plan should improve the assistance to victims of prostitution and trafficking in human beings.

According to reports in Swedish media the number of investigated cases dealing with trafficking in human beings for the purpose of sexual exploitation in Sweden has increased during the period under scrutiny due to the more targeted and enhanced resources made available to the police.[45]

Good practices

Sweden has on several occasions demonstrated its commitment to counteract trafficking in human beings. For example, on 1 March 2005, the Permanent Mission of Sweden to the UN in New York hosted an open event on trafficking in women and girls during the meeting of the 49th session of the UN Commission on the Status of Women.

Reasons for concern

Cross-border crime, including human trafficking has increased and it seems that it is becoming more problematic.

[44] Barnombudsmannen, Remissvar, Barnombudsmannen välkomnar att regeringen ämnar anta ett nationellt handlingsprogram för arbete med att bekämpa alla former av människohandel, 18 May 2005, www.bo.se

[45] *E.Sidenblad*, Fler anmäls för människohandel, SvD 17 June 2005, p. 10 ; *Chr.Wahldén*, Många fler döms för koppleri, SvD 1 March 2005, p. 7.

Protection of the child

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

During the review of the Swedish report under the UN Convention on the Rights of the Child, the Children's Committee noted with concern that the total number of children victims of sexual exploitation was not precise in the report. Furthermore, the insufficient protection of children against child pornography (due to, *inter alia,* the subjective and incomplete definition of the child under the Swedish Penal Code concerning child pornography) and violent computer games were worrying to the Committee's members.

Against this background the Committee recommended that Sweden takes "all necessary measures, including by enforcing appropriate legislation, providing parental education and awareness-raising of children, to effectively protect children against violence on the Internet, television and computer games, and against the display of child pornography and encourage international cooperation in this respect".[46]

It also recommended that Sweden strengthens "a) the protection measures for children who are using the Internet and the awareness-raising programmes for children about the negative aspect of the Internet, including by working with service providers, parents and teachers; c) the legislation against possession and production of child pornography, among others by prohibiting the display of child pornography on Internet by service providers, and by revising the definition of the child in the Penal Code concerning child pornography setting a clear objective age limit at 18 years; e) increase the protection provided to victims of sexual exploitation and trafficking, including prevention, witness protection, social reintegration, access to health care and psychological assistance in a coordinated manner including by enhancing cooperation with non-governmental organizations".[47]

Legislative initiatives, national case law and practices of national authorities

The Government Bill 2004/05:45 (prop. 2004/05:45, *En ny sexualbrottslagstiftning*) "A new Legislation on Sexual Crimes" on new sexual offences entered into force on 1 April 2005. The new legislation is partly based on the EU Framework Decision combating the sexual exploitation of children and child pornography.

Among the significant innovations/changes in the legislation on sexual crimes mention should be made of, *inter alia*, the new crime of sexual exploitation of a child.[48] Thus, the seriousness of sexual crimes against children has been explicitly underlined. Furthermore, under the new legislation gross exploitation of children for the purpose of sexual posing or procuring constitutes a criminal offence. The crime refers to sexual posing that occurs in sex clubs, in private circles or for the production of pornographic pictures. Sexual posing means "to participate in or perform a sexual act or to openly expose the body to one or more people or in front of a camera".[49]

Importantly, in order to strengthen the child's right to redress, the statutory limitation period for some serious sexual offences against children has been extended so that it does not begin to count until the child turns or would have turned 18 years of age. Moreover, the extended statutory limitation period covers additional crimes such as gross exploitation of a child for sexual posing, procuring and gross procuring.

[46] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 5.
[47] Ibid., pp. 8-9.
[48] Regeringskansliet, Justitiedepartementet, Fact Sheet Ju 05.07e, 22 June 2005, p. 2.
[49] Regeringskansliet, ibid., p. 2.

Another amendment of substance is that the maximum penalty for gross child pornography offences has been raised from four to six years' of imprisonment.

The Act prohibiting the Purchase of Sexual Services (SFS 1998:408) has been revoked through the above mentioned bill and replaced with a new penal provision on the purchase of sexual services in Chapter 6 of the Penal Code (*Brottsbalken*). The provision has been broadened so that it applies, in addition, to a person who obtains for himself /herself a casual sexual relation by giving compensation also to a person who takes advantage of a sexual service paid by another person.

Good practices

A specially designed handbook with the purpose to be used in the training of, *inter alia*, members of the National Police Board, in the investigation of crimes involving the sexual exploitation of children is currently under preparation.[50]
The Swedish Police forces' cooperation with Internet providers and the use of Net Clean Technologies has turned to be en efficient method to block access to child pornography on the Internet. According to estimates approximately 20-30 000 attempts to enter such websites were blocked daily.[51]

Reasons for concern

Sweden has not yet ratified the 2002 Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Nevertheless, a number of legal amendments have been carried out with the aim to ensure compliance with Sweden's obligations under that instrument and the issue of ratification is scheduled for a review by the Parliament in November 2005.[52]

Notwithstanding the fact that the Swedish authorities make many efforts to apply the relevant EU regulations and to cooperate with Internet providers, there is still no specific legislation to combat pornography on the Internet.

A newly published report by ECPAT International[53] reveals that Sweden is among the hosts of commercial child pornography websites and that violence against children through new technologies is pervasive.

The Swedish *Rädda Barnen* (Save the Children) has expressed criticism with regard to the proposed legislation on temporary resident permits for victims of trafficking (Ds 2005:24). In the view of the organisation child victims of trafficking should be granted permanent resident permits if they wish so.[54]

Although it is difficult at times to gather information, the Children's Ombudsman (BO) has rightly pointed out that more efforts should be made by the public authorities to identify the number of children who have been victims of sexual exploitation in Sweden.[55]

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[50] UN Doc. CRC/C/SR.1002, Summary Record, Sweden 17/01/2005, p. 4.
[51] *A.Careborg*, Tusentals pedofiler stoppas varje dygn, SvD 25 November 2005, p. 6 and www.polisen.se
[52] Regeringskansliet, Statsrådsberedningen, Planerade propositioner och skrivelser 2005/2006, 13 September 2005, www.regeringen.se
[53] ECPAT International, Violence against Children in Cyberspace, 11 November 2005. See www.ecpat.se
[54] *Rädda Barnen*, Remissvar tidsbegränsat uppehållstillstånd för offer för människohandel m.fl. (UD2005/37286/MAP) 6 October 2005, p. 1.
[55] Observations with respect to the written replies of the Government of Sweden concerning the list of issues (CRC/C/Q/SWE/3), www.bo.se

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Detention following a criminal conviction

Legislative initiatives, national case law and practices of national authorities

The Government Bill, prop. 2005/06:35, *Lag om omvandling av fängelse på livstid*, which was submitted to the Swedish Parliament on 20 October 2005, contains a proposal for the introduction of a new legal Act with the aim to open up for a possibility for the conversion of a life time sentence for individuals who already have served 10 years imprisonment of their sentence and if certain other conditions were met. One of the important motivations behind the proposed reform is the aspiration to increase the legal security (*rättssäkerhet*) for persons sentenced to lifelong imprisonment. Currently in Sweden, approximately 130 inmates were convicted with lifelong imprisonment.

However, the proposed legislation shall not apply to persons who have been convicted of crimes under international humanitarian law by the ICC and the UN *ad hoc* tribunals and who were serving their sentence in Swedish prisons.
The new legislation is due to be enforced on 1 November 2006.

Deprivation of liberty for juvenile offenders

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

During the review of the Swedish report under the UN Convention on the Rights of the Child in 2005, the Children's Committee expressed its concern over the lack of prosecutors and judges specialized to deal with children's issues. Considering this, the Committee suggested that Sweden review its legislation, policies and budgets to ensure the full implementation of juvenile justice standards, in particular Article 37 (b) and Article 40, § 2 (b) (ii-iv) and (vii) of the Convention on the Rights of the Child, as well as the UN Standards Minimum Rules for the Administration of Juvenile Justice. In this respect the Committee specifically recommended that the Swedish Government "a) ensures that prosecutors and judges dealing with children's issues are all appropriately trained; b) ensures that punitive measures are taken only by judicial authorities, with due process and legal assistance; c) strengthens preventive measures, such as supporting the role of families and communities, in order to help eliminate the social conditions leading to such problems as delinquency and crime".[56]

Reasons for concern

The Swedish Children's Ombudsman (BO) has expressed concern about the absence of fully independent inspectors who can conduct regular inspections of the facilities run by the National Board of Institutional Care. This is in the view of the Ombudsman contrary to §§ 72-74 of the 1990 UN Rules for the Protection of Juveniles deprived of their Liberty. For children placed in other foster care institutions than those run by the National Board of Institutional Care there is an independent supervisory mechanism, but again, there is no general right of juveniles to talk in confidence to an inspecting officer.[57]

[56] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 9.
[57] Barnombudsmannen (BO), Observations with respect to the written replies of the Government of Sweden concerning the list of issues (UN Doc. CRC/C/Q/SWE/3), p. 6, www.bo.se

The Ombudsman is, moreover, worried about the information that the number of children in pre-trial detention is increasing drastically and that some children who are suspected of serious crimes have been placed in pre-trial detention in prison facilities that cannot be considered suitable for children.[58]

Deprivation of liberty for foreigners

Legislative initiatives, national case law and practices of national authorities

A precedent setting case involving a two years detention of an applicant for asylum in Sweden (Mamadu Ouri Bari) with a view of his removal from the territory of Sweden was reviewed by the Supreme Administrative Court (*Regeringsrätten*) in November 2005.[59]
The Court ruled that two years of detention of an asylum applicant because of the difficulties for the police to carry out an order of deportation is in contradiction with the relevant legal provisions. Mr Bari was subsequently released on 15 of November 2005 when the new temporary Aliens Act came into force (see for more information on the new legislation under Article 18 of the present report).[60]

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 Human Rights, (Sec. 2), *Enhorn v Sweden*, Application No 56529/00, Judgment of 25 January 2005 (final 25 April 2005)

Abstract : The applicant, an HIV-positive man, who had been forcefully isolated on the basis of the Swedish law on highly contagious diseases (*smittskyddslagen*) for a period of nearly one and a half years, complained that the compulsory isolation orders for seven years and his subsequent placement in hospital had been in violation of Article 5 § 1 of the European Convention.

After establishing that the applicant's detention had been founded on existing Swedish law, the European Court examined whether the deprivation of the applicant's liberty amounted to "the lawful detention of a person in order to prevent the spreading of infectious diseases" within the meaning of Article 5 § 1 (e) of the Convention.

The Court arrived at the conclusion that the criteria of significance when assessing the "lawfulness" of the detention of an individual "for the prevention of the spreading of infectious diseases" were firstly whether the spreading of the infectious disease was dangerous for public health or safety, and secondly whether detention of the person infected was the last resort in order to prevent the spreading of the disease and if less severe measures had been found to be insufficient to safeguard the public interest. In the view of the Court, it was apparent that the first criterion has been fulfilled, since the HIV virus embodies danger for the public health and safety.

The Court continued its review by taking notice of that the Swedish Government had not provided any examples of less severe measures which might have been considered for the applicant in the period from 16 February 1995 until 12 December 2001, but had turned out to be insufficient to safeguard the public interest.

[58] Ibid., p. 10.
[59] See www.ra.se
[60] See also www.flyktingamnesty.nu

Furthermore, the Court observed that no evidence has been presented and there was no indication that during the period in question the applicant had transmitted the HIV virus to anybody, or that he had sexual intercourse without first informing his partner about his HIV infection, or that he did not use a condom, or that he had any sexual relationship at all for that matter.

On this bakground, the Court ruled finally in favour of the applicant and established that his compulsory isolation could not be considered as a last resort in order to prevent him from spreading the HIV virus. Moreover, by extending over such a lengthy period the order for the applicant's compulsory isolation, with the result that he had been placed involuntarily in a hospital for almost one and a half years in total, the Swedish authorities had failed to strike a fair balance between the need to ensure that the HIV virus did not spread and the applicant's right to liberty. Therefore, there had been a violation of Article 5 § 1 of the European Convention in the present case.

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 Government Bill on the use of surplus information in connection with the application of forced secret measures etc. (prop. 2004/05:143, *Överskottsinformation vid användning av hemliga tvångsmedel m.m.*) was submitted to the Swedish Parliament on 23 March 2005.

In the starting part of the Bill, the Government uttered its agreement with the earlier expressed view of the Council of Legislation (*Lagrådet*) that the introduction in Swedish law of a specific provision on the use of surplus information by the way of, among other things, the use of secret surveillance in criminal investigations is required in order to comply with, *inter alia*, Article 8 of the European Convention on Human Rights.[61]

The above mentioned Bill contains also a proposal implying that relevant surplus information which can be used for the prevention of crimes should be stored as long as it is deemed necessary. The surplus information shall be used in investigations on the condition that imprisonment for at least one year is prescribed for the crime in question and that it can be assumed that the court will not only fine the defendant or in case where there are special reasons ("*särskilda skäl*") for not doing so.

In order to make some of the above mentioned proposals on the use of forced secret measures more concrete the Ministry of Justice presented a 134 page report (*Promemoria*) *Hemlig rumsavlyssning* (secret room-bugging/interception) on 27 October 2005 comprising a draft proposal on new regulations within this legal area.[62] Accordingly, room bugging should be allowed in cases where there is a suspicion of crime punishable by at least four years of imprisonment. Terrorist crimes and murder were cited as such examples.

On 24 of May 2005, respectively on 1 June 2005 one report (SOU 2005:38, *Tillgång till elektronisk kommunikation i brottsutredningar m.m.* and one Ministry memorandum, Ds 2005:21, *Tvångsmedel för att förebygga eller förhindra allvarlig brottslighet*) were submitted to the Government containing proposals for the legalisation of, *inter alia*, a bearing of mobile

[61] Prop. 2004/05:143, p. 2.
[62] See www.regeringen.se , Promemoria, Hemlig rumsavlyssning, pp. 16-19.

phones and that it should be possible for the police force after a trial to use secret telephone interception, phone and camera surveillance, post control and searching of premises in order to prevent severe crime.

Of further relevance to the subject matter dealing with forced secret measures is also the Ministry memorandum, Ds 2005:53, (*Hemliga tvångsmedel m.m. under en stärkt parlamentarisk kontroll*) which was made public on 15 November 2005.
Referring to the current situation in Sweden (*i.e.* there is a lack of efficient supervision over the police forces' use of bugging) and the need to provide better protection for individual's right to privacy, the report enclosed a proposal for the establishment of a specialised authority (*tvångsmedelsnämnden*) as of 1 July 2006 with the task to monitor the use of forced secret measures by other public authorities.[63]

On the basis of EU regulation EG No 2254/04 of 13 December 2004 legislative changes were introduced in Sweden by the adoption of the Government Bill (prop. 2004/05:119, *Ökad säkerhet i pass m.m.*) with the effect that Swedish passports issued after the 1 October 2005 must comprise biometric data of their owners.

In order to implement EU Directive 2004/82/EC of 29 April 2004 in Sweden, new regulations on the transfer of passengers data were proposed to be enforced as of 5 September 2006 in a Ministry memorandum Ds 2005:48 (*Överlämnande av passageraruppgifter*) which was made public on 9 November 2005.

The Government Bill on expanding the mandate of the police force to make use of DNA records in its fight against criminality, prop. 2005/06:29, *Utvidgad användning av DNA-tekniker inom brottsbekämpningen*, from 13 October 2005 was adopted by the Parliament on 30 November 2005.
The relevant modifications of Chapter 28 in the Code of Judicial Procedures (*Rättegångsbalken*) and the Act on Police Data (*polisdatalagen*) shall enter into force on 1 January 2006.[64] As of 1 December 2005 approximately 5000 persons have been DNA tested. It is expected that their number will increase to the figure of 30 000 individuals next year on the basis of the implementation of the new legislation.

The report of the Government inquiry on the handling of permit applications on the basis of personal ties (SOU 2005:14, *Effektivare handläggning av anknytningsärenden*) (Government Report SOU 2005:14, More efficient handling of applications for residence permits on the basis of personal ties) which was presented in March 2005, contains a number of proposals, among other things, that all sponsors should be checked against criminal records and records of suspected offenders. It is believed that in this way the public authorities will be able to more easily discover and assess whether there is a palpable risk that the applicant and accompanying children may be exposed to violence or other serious violations.[65]

This particular proposal in the inquiry mentioned above, has received an overwhelmingly positive response by the Swedish civil society and NGOs. According to the Swedish Children's' Ombudsman the need for protection of the applicant for a residence permit or the sponsor, against acts of violence, especially when children are involved, should be given priority and greater weight than the interest in protecting the personal integrity of the person in question.[66]

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[63] Ds 2005:53, pp. 11-15.
[64] Justitiedepartementet, Faktablad, DNA i brottsbekämpningen, Ju 05.20, October 2005.
[65] SOU 2005 :14, p. 18.
[66] See *e.g.* Barnombudsmannen (BO), Remissvar, Betänkandet (SOU 2005 :14) Effektivare handläggning av anknytningsärenden, Stockholm 19 July 2005, pp. 1-2, www.bo.se

The Commission of inquiry which has been commissioned by the Government to evaluate the question of whether, and if so when, the resources of the Police need to be complemented with contributions from other public authorities in order to be able to prevent and combat crime (including terrorist attacks) presented its report SOU 2005:70, *Polisens behov av stöd i samband med terroristbekämpning*, (Government Report SOU 2005:70, The Need of Support for the Police in Connection with the Fight of Terrorism) on 31 August 2005.

The report also contains an examination of the extent of the Armed Forces and other supportive public bodies which should be given during joint efforts with the Police *e.g.* concerning intervention against individuals (*i.e.* the role of the armed forces in a civil context).

In the view of the Commission of inquiry, the tragic incident that occurred in Ådalen on 14 May 1931 where five people died as a result of a military shooting in connection with a workers protest march, seems today both "antiquated and irrelevant".[67]

The Commission arrived at the conclusion that the resources of the Police are sufficient for several kinds of terrorist attacks, but not all. It proposed therefore that, when needed, requests should be made for support to prevent, investigate or in other ways intervene in such crimes that are covered by the Act on punishment of terrorist crimes (SFS 2003:148) (*lag om straff för terroristbrott* (SFS 2003:148)) and that are especially difficult to handle. According to the proposed new legislation (*lag om stöd till Polisen i samband med bekämpning av terrorism och annan liknande svår brottslighet*) support can be given in the form of intelligence and other information services as well as in the form of equipment, transportation and human resources.[68]

In addition, armed forces personnel should be given police authority in accordance with the Police Act (*polislagen* (SFS 1984:387)) when providing support to the Police. This implies that armed forces' personnel, under the command of a police office, can use force against an individual in extreme circumstances.[69]

Reasons for concern

The Swedish Helsinki Committee for Human Rights has expressed concern about the series of new regulations in Sweden dealing with the use of secret surveillance techniques, which apparently interfere in the right of privacy.[70]

In its most recent report, the organisation commented on the situation as follows: "The SHC (i)s concerned not only because the increased use of surveillance techniques is not followed by proper evaluation about their efficiency, necessity and proportionality, but also-and more importantly-because the system still does not provide enough protection for the individual's right to privacy. Those subject to surveillance do not have the right to be informed of the prosecutor's request or a court's decision to grant it, not even after the investigation is over. The lack of legal remedies, such as the ability to test the legality of a decision to use secret surveillance, is, according to SHC, in violation of the ECHR."[71] The Swedish Bar Association

[67] SOU 2005 :70, p. 11.
[68] Ibid., p. 14.
[69] SOU 2005 :70, p. 15.
[70] International Helsinki Federation for Human Rights, 2005 Report on Human Rights in the OSCE Region, the Chapter on Sweden, p. 7, www.shc.se
[71] Ibid., p. 7.

as well as components of Swedish civil society have also expressed their anxiety over the expansion of the legislation related to the use of forced secret measures.[72]

The Swedish Police Forces, including the Secret Police (SÄPO) have taken a critical stand-point with regard to the proposed extension of the Armed Forces power and competence in situations of an terrorist attack (SOU 2005:70). In their view the fundamental principle characterising a state ruled by law is that only the police has a monopoly to use violent methods in its fight against criminality and that this principle should be upheld.[73]

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

The inquiry Committee which has been entrusted with the task to investigate if women who are not Swedish citizens and who are not domiciled in Sweden should be given the possibility of undergoing safe abortion in Sweden, presented its report (Official Government Reports, SOU 2005:90) (SOU 2005:90, *Abort i Sverige*) on 7 November 2005.

One of the most significant proposals put forward by the Committee suggests that the relevant provision in the Swedish Abortion Act (*abortlagen* (SFS 1974:595)) should be modified in a way so that non-citizens and women who do not posses residence permits (and who are not applying for asylum) in Sweden should be permitted, as are Swedish citizens or residents in Sweden, to undergo an abortion on request until the end of the 18th week of pregnancy. Nevertheless, the Swedish National Board of Health and Social Services must approve an abortion at a later stage.[74]

Furthermore, counselling before and after an abortion should always be made available.
The legislative changes are expected to enter into force on 1 July 2006.

In the view of the Committee, the financing and payment for abortions should be attuned to the general rules for foreigners receiving health services in Sweden. However, these rules differ between patients from the Member States of the EU and for those patients from countries outside the Union. In other words, all non-resident women from countries outside EU must pay the full cost of that kind of medical treatment.

Positive aspects

The Official Government Report on the modification of the Swedish Abortion Act comprises a well reasoned and based on extensive research chapter on the significance of free access to contraceptives as well as safe abortion services for the reproductive health of women.[75] Moreover, in part 1 of the same report it is stated that "The reproductive health of women in developing countries is a high priority in Sweden and an amendment of the Swedish abortion law will have a high symbolic value".[76]

[72] *L.Hennel*, Utökad buggning får hård kritik, « Oerhört integritetskränkande förslag » anser Advokatsamfundets generalsekreterare, SvD 19 October 2005, p. 10 ; *O.Billger*, Buggning tillåts vid grova brott, SvD 25 October 2005, p. 6 ; *O.Billger & L.Hennel*, Terrordåden har ökat polisens makt, SvD 20 November 2005, p. 20.
[73] *O.Billger*, Militär hjälp mot terrorister avvisas, SvD 3 November 2005, p. 11 ; *J.Edberg*, Polisen kritisk till terrorutredningar, Västerås Tidning 5-11 November 2005, p. 9.
[74] SOU 2005:90 (del 1), p. 13.
[75] SOU 2005:90 (del 1), p. 63 ff.
[76] SOU 2005 :90 (del 1), p. 14.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry which has been instructed to propose a new Prison and Other Correctional Treatment Act, submitted its report SOU 2005:54, *Framtidens kriminalvård*, to the Government in May 2005. The introduction of new rules has been proposed which will enable the Prison and Probation Service to decide that visits are to be controlled by use of a visiting room, which is designed in such a way as to make impossible the handing over of for example objects.

Moreover, one of the Commission's proposals implies that the rules on inspection of letters according to which the Prison and Probation Service can in certain cases refrain from notifying a prisoner that a letter has been retained should be transferred into the new Act. However, the new legislation will clarify when copies, translations, recordings or records made in connection with control of a visit, electronic communication or a letter may be destroyed.[77] The new Act shall, in addition, specify that information that has emerged during a control of the above mentioned kind may be used in the work of security and crime prevention.

Family life

Removal of child from the family

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 took the position in its conclusions on Sweden in 2005 with regard to Article 17 of the Revised European Charter (*e.g. children in public care*) , that no changes have taken place in the situation regarding children in public care it previously considered to be in conformity with the Charter. The Committee recalled, however, that in order to comply with Article 17 § 1 of the Revised Charter "children placed in institutions should be entitled to the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as to special protection and assistance. In order to be considered as adequate institutions, they shall provide a life protecting human dignity for the children placed there and shall provide conditions promoting their growth, physically, mentally and socially. A special unit in a child welfare institution shall be set up to resemble the home environment and it should not accommodate more than 10 children."[78]

During its consideration of the Swedish report under the UN Convention on the Rights of Children in 2005, the Committee on the Rights of the Child expressed its concern about:

- The increase in number of children placed in institutions rather than foster homes;
- The fact that the proportion of children with a foreign background who are placed in institutions is higher than that of Swedish children and
- The fact that the National Board of Institutional Care has a self-regulatory role.

Bearing in mind the above said, the Committee recommended that: "a) preventive measures specifically targeted at families with a foreign background be taken, including awareness-raising within social services about the relevance of cultural background and immigrant status, so that help can be given before a situation develops that necessitates the taking of

[77] SOU 2005 :54, p. 55.
[78] Council of Europe, European Committee of Social Rights, Conclusions 2005 (Sweden), p. 10, www.coe.int

children into care; b) the regulation of cases where children are taken into care against their will take place under a separate umbrella from that of the National Board of Institutional Care, and that this regulation also ensures the quality of care".[79]

Right to family reunification

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

In 2005 the Committee on the Rights of the Child expressed its concern during the review of the Swedish report under the UN Convention on the Rights of the Child about the "excessive length of family reunification procedures for recognized refugees".[80] The Committee recommended therefore that Sweden strengthen the measures taken to ensure that family reunification procedures for recognized refugees are dealt with "in a positive, fair, humane and expeditious manner".[81]

Legislative initiatives, national case law and practices of national authorities

The Inquiry Committee entrusted with the task, among other things, to propose how the Council Directive 2003/86/EC concerning the right to family reunification should be implemented in Swedish law, presented its interim report SOU 2005:15 (*Familjeåterförening och fri rörlighet för tredjelandsmedborgar*e) in March 2005.

In order to comply with the requirements of the above mentioned Directive, the inquiry proposed, *inter alia*, that new provisions should be incorporated into the Aliens Act (*Utlänningslagen* (SFS 1989:529)) so that a spouse or a cohabite should be entitled to a residence permit on grounds of personal ties with the sponsor. Also children under the age of 18 years, who are unmarried and children of the sponsor, spouse or cohabite should be entitled to this right.[82] Furthermore, it is proposed that a new wording should be given to the relevant provisions in the Aliens Act dealing with newly established relationships. While the current procedure entailing deferral of immigrant status for the so-called short – term ties will continue to apply for third country nationals also in the future, the inquiry suggested that the temporary residence permit during the trial period should be valid for no less than one year.

With regard to the exceptional rules, the inquiry puts forward the proposal that new provisions should specify the exceptional situations. Thus, an application for a residence permit may be rejected "if the sponsor does not cohabit with his/her spouse or cohabite or does not intend to do so; if it is a matter of a polygamous household; if the sponsor, spouse or cohabite is a minor; if the applicant for instance has misled or submitted incorrect information in the application for a residence permit; or if it is a matter of a marriage or partnership of convenience".[83]

In addition, the inquiry proposes that the possibility of revoking a residence permit on the grounds of the alien's way of life should be removed from the Aliens Act (*utlänningslagen*).[84]

Finally and most importantly, a new provision has been proposed to be included in the Aliens Act under which the Swedish Migration Board must observe a nine-month time limit within

[79] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 6.
[80] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 8.
[81] Ibid., p. 8.
[82] SOU 2005 :15, pp. 19-20.
[83] SOU 2005 :15, p. 20.
[84] SOU 2005 :15, p. 21.

which a decision on an application for a residence permit for family reunification must be notified to the applicant.

The Commission presented its final report SOU 2005:103, *Anhörigåterförening*, on 29 November 2005. The Commission established to start with that the term 'nuclear family' refers to spouse, registered partner, cohabite and minor children. Thereafter, the Commission proposed a modification of the relevant provision dealing with residence permit on the basis of family reunification in the Aliens Act (*lag om ändring i utlänningslagen (*SFS 2005:716)) to the effect that the requirements for a residence permit for a foreign national who is or intends to cohabit with a sponsor shall also be true for a foreign national who is or intends to cohabit with a citizen of an EEA country or Switzerland who holds a Swedish residence permit.

The Commission stressed, furthermore, that the EU Directive on family reunification is "what is known as a minimum directive and provides scope for more generous conditions".[85] Bearing that in mind, the Commission proposed that residence permit may be granted to parents and adult unmarried children if a state of dependence exists between the parent or adult child and the sponsor that cannot be dealt with in any other way. The implications of this proposal, if adopted, would be that the currently valid joint household requirement must be revoked. Importantly, the relationship of dependence that must exist needs not to have existed when the persons in question lived together abroad. The state of dependence can be of personal or financial nature.

Finally, the Commission expressed its view with regard to the EU Directive's support requirement that "it would be difficult to reconcile such a requirement with both the principles of general welfare that characterise Swedish society and with those of justice and gender equality".[86] Therefore, the Commission proposed that a support requirement should not be introduced in Swedish legislation as a condition for spouses or cohabitees, in either established or newly established relationships, or minor children to be granted residence in Sweden. Neither should such a requirement be set up for foreign nationals who intend to marry or begin to cohabit with a sponsor in Sweden.

Other relevant developments

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

During its review of the Swedish report under the UN Convention on the Rights of the Child in 2005, the Committee on the Rights of the Child noted with appreciation "that financial assistance is made available to cover the costs incurred by individuals when restoring illicitly transferred or non-returned children and the review currently under way of the implementation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction."[87]

However, the Committee also observed that there are still a number of pending cases to be solved involving abducted children of mixed marriages. Against this background the Committee recommended that Sweden strengthens its measures to prevent and combat illicit transfer and non-return of children as well as to solve the pending cases with due consideration to the best interest of the child.

[85] SOU 2005:103, p. 27.
[86] Ibid., p. 30.
[87] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 5.

Article 8. Protection of personal data

Protection of personal data

Legislative initiatives, national case law and practices of national authorities

On 24 May 2005 the Commission of Inquiry, which was given the task of conducting a review of the existing regulations on electronic communications and their use by public authorities in order to gain access to information needed for the efficient fight against criminality, presented its report SOU 2005:38, *Tillgång till elektronisk kommunikation i brottsutredningar m.m.* (See also the information under Article 7 of the present report)

Some of the important proposals made by the Commission relate to the issue of strengthening the legal protection/security (*rättssäkerheten)* for the individuals concerned in cases when certain information on electronic communications must be used in criminal investigations. While in the Commission's view there should be a possibility for the police forces to have access to secret surveillance of such communications/reading off computer traffic (*dataavläsning*) when dealing with cases of severe criminality[88], it also envisages proposals implying that courts should take decisions on such matters as well as that the protection of the integrity of the concerned persons should be monitored by specially appointed solicitors.[89]

On 1 July 2005, the Inquiry Commission which was given the assignment to review some aspects of the processing of personal data by the public authorities, private companies and other actors presented its final report SOU 2006:61 entitled *Personuppgifter för samhällets behov*, *Betänkande av SPAR-utredningen*.

Some of the proposals for legislative changes to be enforced on 1 July 2007, *e.g.* in the Act on processing of personal data by the National Taxation Board (*Skatteverket*), (*lag* SFS 2001:182) *om behandling av personuppgifter i Skatteverkets folkbokföringsverksamhet*) were based on the EC Directive 2003/98/EC and were aimed to increase the protection of the integrity of individuals concerned.[90]

The Ministry memorandum Ds 2005:13, *Försäkringsbolags tillgång till patientjournaler*, which was made public on 18 May 2005, contains important proposals on the imposition of further restrictions with regard to the possibilities for insurance companies to require and receive information contained in certain patient journals directly from the public health and medical services.[91]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Committee on the Constitution (*Konstitutionsutskottet*) agreed with the Swedish Government that it is imperative for private individuals to be able to take their experiences to the Council that has been set up on account of the natural disaster in Asia/ the tsunami (26 December 2004) without them becoming public information. On 8 February 2005 the Parliament also agreed to the Government's proposal for confidentiality protection in such cases.[92] Accordingly, confidentiality protection was introduced for information about personal

[88] SOU 2005:38, p. 71.
[89] Ibid., pp. 115-148.
[90] SOU 2005 :61, p. 136.
[91] Ds 2005 :13, pp. 98-111.
[92] Riksdagen, All the parties in the Committee on the Constitution agree to confidentiality protection, Press release 8 February 2005, www.riksdagen.se

relationships and experiences for private individuals to entrust with their information the public authorities.

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

Marriage and control of marriages suspect of being simulated

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny, the Inquiry Committee that had been entrusted with the task, among other things, to propose measures so that people who marry and want to be united with someone from another country will not have to wait, for what often appears at present, an unreasonably long time for a decision, presented its report SOU 2005:14, *Betänkande Effektivare handläggning av anknytningsärenden* (Government Report SOU 2005:14 on permit applications based on personal ties).

The new legislation, if adopted by the Parliament, is expected to enter into force on 1 July 2006. The inquiry proposes the introduction of a provision in the Aliens Act which will make it possible to revoke a temporary residence permit if the relationship ends within the two-year period.[93]

The number of applications granted on the basis of newly established relationships amounts approximately 15 000 a year (15 360 in 2004) and 20 per cent of those were rejected.[94] One of the reasons for their rejection has been a suspicion of a simulated relationship.

Positive aspects

The above mentioned inquiry on issues dealing with residence permit applications (SOU 2005:14) comprises a few constructive proposals with respect to reducing the processing time of applications for residence permits based on personal ties without disregarding the need to protect the legal security of the individual. If the suggested changes were adopted, the examination procedure will be made more flexible by changing the present verbal requirement in the examination of the seriousness of the relationship so that the Swedish migration authorities will be able to determine which method is most suitable and effective in each individual case. Nevertheless, according to the inquiry, the requirement of undertaking verbal investigation in cases of arranged marriages, especially if one of the partners has been domiciled outside Sweden, in order to verify whether both parties have entered marriage with their full and free will, shall remain. [95]

Other relevant developments

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

During the review of the Swedish report under the UN Convention on the Rights of the Child, the Committee on the Rights of the Child expressed its appreciation with respect to the entry into force as of 1st January 2005 of the amended legislation on inter-country adoption (Government Bill, prop. 2003/04:131).[96]

[93] SOU 2005 :14, p. 16.
[94] Government Offices of Sweden, Press release, Report of the inquiry on permit applications based on personal ties submitted to Barbro Holmberg, 11 March 2005, p. 1, www.sweden.gov.se
[95] SOU 2005:14, p. 18.
[96] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 1.

One of the aims of the amendments has been to secure that every inter-country adoption is made in the best interest of the child. Moreover, clearer requirements have been established for authorization of an association to work on intermediation of inter-country adoptions. There are also stronger requirements for consent to receive a child for adoption. In this regard it can be added that some of the measures based on the new legislation were aimed to ensure that all financial transactions involved in such adoptions were in accordance with the provisions of the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. The new Swedish legislation also requires that partner countries should have a functional inter-country adoption administration and that all costs should be transparent. About 1,000 children from other countries are adopted by Swedish families every year.[97]

In 2005 the new Swedish legislation dealing with the protection of children in cases of international adoptions and in accordance with the Hague Convention, (*Tillkännagivande* (SFS 2005:599) *av staters tillträde till Haagkonventionen om skydd av barn och samarbete vid internationella adoptioner*) entered into force.

Legislative initiatives, national case law and practices of national authorities

The Government Bill 2004/05:137, "Assisted fertilisation and parenthood" (Prop. 2004/05:137 *Assisterad befruktning och föräldrarskap*) was approved with a great majority by the Swedish Parliament on 3 June 2005.

This means that on the basis of the new legislation (SFS 2005:443)[98], which implies adjustments of the Act on Insemination with donated sperms (*lag om insemination* (SFS 1984:1140)) and the Act on In-vitro Insemination (*lag om befruktning utanför kroppen* (SFS 1988:711)), lesbian couples will be able to have children by means of assisted/artificial fertilisation at general or university hospitals in Sweden as from 1 July 2005.

According to the new legislation, both women living as a couple will be legally recognised as the child's parents.[99] The partner or cohabite of the woman, who gave birth to the child after such fertilisation, shall consequently be deemed to be the child's mother, provided she consented to the fertilisation and it is probable that the child was conceived as a result of such fertilisation. The child will, in the legal sense, have two mothers.

If the fertilisation took place outside the Swedish public healthcare services, the partner or cohabite is not deemed to be the mother of the child. In such cases paternity will be determined in accordance with the prior rules. In other words, the issue of parenthood will be determined by means of confirmation or a court judgment. The child who has been conceived through assisted fertilisation will, however, be ensured the right to investigate the identity of his or her biological father.

Lesbian couples who have used other ways of carrying out assisted fertilisation, *e.g.* home insemination or fertilisation accomplished abroad, will not be granted the same legal

[97] UN Doc. CRC/C/SR.1002, Summary Record, Sweden, 17/01/2005, p. 10.
[98] See also laguskottets betänkande 2004/05 :LU25 ; *Å.Saldeen*, Barn- och föräldrarätt, Uppsala 2005, pp. 90-91 and pp. 105-110.
[99] Some of the political parties (*e.g.* the Christian Democrats) which are represented in the Swedish Parliament contested this legislation since in their opinion it disregards the importance of the father on a child's development. The Christian Democrats believe that the state should not encourage family formations in which children are, from the outset, automatically deprived of the right to one of their parents. See The Riksdag at Work, Press release, 25 May 2005, Lesbian couples get right to insemination at Swedish hospitals, www.riksdagen.se; TT, Klart för befruktning för lesbiska, SvD 4 June 2005, p. 15.

recognition as parents since the child's right to knowledge concerning his/her origins constitutes a principle of great significance in the Swedish legislation.

Finally, mention should be made of the fact that the new legislation does not comprise any rules for assisted fertilisation of single women.

Positive aspects

After the enforcement of the modifications in the Swedish Marriage Code (*Äktenskapsbalken*), Chapter 2 § 1 (impediments to marriage) and the Act on Certain International Legal Relations Concerning Marriage (*lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*) on 1 May 2004, the number of applications for exemption from the minimum age requirement (18 years of age) submitted to the County Administrative Board (*länsstyrelsen*) has dramatically decreased (as of 7 November 2005, 3 applications of that kind have been registered).[100]

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 Court of Appeal (*Göta hovrätt*)
Åke Green – Göta hovrätt (avd 1), Case B 1987-04, Judgment of 11 February 2005

During 2005, the prosecution of Mr Åke Green continued to cause vast interest in Swedish society.[101] This is also the very first case where a major TV channel transmitted directly the court proceedings before the Supreme Court (*Högsta domstolen*) in November 2005.

Abstract: Åke Green, a Swedish Pentecostaist pastor, held a sermon entitled "Is homosexuality biological or are evil powers playing games with people?" in Borgholm on July 2003. Mr Green told his congregation that "Sexual abnormalities constitute a large cancerous tumour in the body of the society," and that homosexuals are "perverts, whose sexual drive the Devil has used as his strongest weapon against God." He also said that a person cannot be a Christian and a homosexual at the same time.

This speech led to a prosecution on the grounds that Mr Green had incited hatred against a minority group (homosexuals), *i.e.* he was responsible for agitating against lesbian, gay, bisexual and transgender persons and who are legally protected against that kind of misconduct in Sweden since 2003. On June 29, 2004, he was convicted and sentenced by the District Court (*tingsrätten*) in Kalmar on the basis of the Swedish Act relating to hate crimes, including prohibition of agitation against a national or ethnic group (*lag om hets mot folkgrupp*) to serve a one month prison term.

[100] On the other hand, The Swedish Liberal Party has initiated discussions within the Parliament on the necessaty of abolishing the existing possibility for making exemptions from the marriage impediments in the Swedish Marriage Act. See Parti-och kommittémotioner, NU 41/05, p. 9.
[101] Here follow just a few examples: *S.Gustavsson m.fl.*, Ska åsikter om homosex straffbeläggas?, SvD 6 November 2005, p. 5; *K.Krantz*, Pastor Greens homopredikan tas upp i HD, SvD 9 November 2005; *A.Engström*, HD synade Greens predikan, SvD 10 November 2005, p. 8; *B.Brink*, Svensk lag hade fällt Green, SvD 30 November 2005, p. 7; *U.Bernitz*, Dom för en ny tid, 30 November 2005, SvD, p. 5.

Mr Åke Green appealed subsequently the District Court's decision to the Court of Appeal (*Hovrätten*) in Jönköping. On February 11, 2005, the Court of Appeal acquitted him of all charges.

The Court of Appeal argued that the motives behind the hate speech legislation are not aimed to prohibit debates and discussions about homosexuality, but rather to prevent verbal attacks on homosexuals. Citing religious doctrines and simply encouraging listeners to follow the doctrines' messages should thus not be considered as a hate speech. In addition, there is still no clear definition of what constitutes hate speech and what does not. The Court emphasised furthermore that the guarantees regarding the freedom of speech and the freedom of religion that are enshrined in the European Convention on Human Rights have to be regarded as well. The conclusion, therefore, has to be according to the Court that only in an apparent case can a religious citing be considered as a hate speech.

In the Court's view, after taking into account all the circumstances at hand, it is evident that Mr Green's purpose with the speech was to spread his religious messages. The Court believed that the statements by the pastor were no worse that what can be found in the Bible. Much of what could be regarded as hate speech in his sermon is in fact sin according to the Bible. Mr Green argued in court that his expression that "sexually twisted people will even rape animals" is simply a literal interpretation of the Bible. However, the Court noticed that his own remarks, with which he concludes the biblical citations, were of more dubious nature. Their meaning is, nevertheless, no more far reaching than those cited from the Bible. The Court ruled on this background that to sum up and to express biblical messages with one's own words must be allowed, even though those messages may be of a provocative nature.

Moreover, the Court stressed that Mr Green's purpose was not to use his status as a pastor to condone hatred against homosexuals, instead the majority of the Court believed his intention simply was to explain and describe his biblical views to his followers. This must be regarded as being outside the extent of the hate speech provision. Mr Green should, therefore, be acquitted of the charges. One member of the Court was of dissenting opinion.

The Prosecutor-General (*Riksåklagaren*) appealed the decision by the Court of Appeal (*Göta hovrätt*) to the Supreme Court in Stockholm in March 2005.[102] On May 8, 2005, the Swedish Supreme Court decided to hear the case and the trial began on November 9, 2005.

The Court's verdict acquitting Mr Green was made public on 29 November 2005. In the Court's view the pastor's comments went beyond what could be considered an objective and sound discussion about gay people. On the contrary, his speech was deliberately offensive. But, the Court reasoned similarly as the Appeal Court did, namely that by considering all the circumstances surrounding Green's comments it becomes apparent that they do not fulfil the prerequisites of the crime hate speech. The fact that the sermon was held in front of his own congregation was also given a significance. Interestingly, the Court mentioned that a conviction would not be upheld by the European Court of Human Rights and decided accordingly in favour of Mr Green.

[102] Åklagarmyndigheten, Pressmeddelande 9 mars 2005, Riksåklagaren överklagar domen mot pastor Green, www.aklagare.se

Article 11. Freedom of expression and of information

Freedom of expression and of information

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

In 2005 ECRI in its third report on Sweden observed that prosecutions of hate speech under the Fundamental Law on Freedom of Expression and the Freedom of the Press Act are very rare. The Commission referred to the concern expressed by Swedish NGOs that "as a result of the restrictive approach to prosecutions under the Fundamental Law on Freedom of Expression and the Freedom of the Press Act, explicitly racist material is legally disseminated in Sweden through means of communication covered by these laws".[103] ECRI noted moreover, that several NGOs' reports indicate that "dissemination of racist, xenophobic and anti-Semitic propaganda on the Internet has also dramatically increased and that none of the offences committed through the Internet are prosecuted".[104]

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

Legislative initiatives, national case law and practices of national authorities

A Government Bill on the introduction of a ban on the use of masks during demonstrations prop. 2005/06:11, *Maskeringsförbud*, was submitted to the Swedish Parliament on 22 September 2005 and it was approved by a great majority at the beginning of December 2005.[105]
The new legislation shall enter into force on 1 January 2006.

According to the *travoux préparatoires*, it is believed that the instigation of a prohibition on the wearing of masks under certain circumstances in a new Act (*lag om förbud mot maskering i vissa fall*) as well as the corresponding modification in the Public Order Act (*ordningslagen* (SFS 1993:1617)) will not restrict the constitutionally guaranteed freedom to demonstrate but instead will contribute to preventing and combating serious disturbances in public order.

It is also supposed that a ban of that kind will have positive effects as regards avoidance of acts of violence in connection with demonstrations and similar gatherings (*i.e.* crime-reducing effect) as well as the effect that more citizens will dare to make greater use of the freedom to demonstrate. In addition, it is said that such a prohibition shall lead to increase of legal certainty of individual citizens.

The proposed legislation contains, however, some exceptions to the prohibition to wear a mask during demonstrations for, *e.g.* individuals who cover their faces (use clothes) for religious reasons.

[103] CRI(2005)26, p. 9.
[104] Ibid., p. 32.
[105] See www.riksdagen.se and *I.Thulin*, Ett omdebatterat förbud blir lag, NU 49/05, 8 December 2005, pp. 10-11.

Freedom of association

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

ECRI recommended in its third report on Sweden from 2005 that "the Swedish authorities introduce legislation which provides for the possibility of dissolution of organisations that promote racism and penalises the creation or the leadership of a group which promotes racism; support for such a group, and participation in its activities."[106] As a basis for this recommendation, ECRI referred to its General Policy Recommendation No. 7, which contains further guidance on this subject matter.

Reasons for concern

Despite the existence of a number of racist organisations in Sweden, and despite the observations and recommendations made on several occasions in this regard by various international human rights bodies, there is still no general prohibition in the Swedish legislation against their existence or the participation in such organizations.
The official view continues to be that by criminalising racial agitation against a national or ethnic group, a racist organization will be punished for its racist actions, but not for its existence, which otherwise would be incompatible with the freedom of association. The public authorities have, in addition, stressed that unlawful military activity is also punishable. Thus, the aim of the relevant provision is to prevent the establishment of organizations that are beyond the reach of democratic control.[107]

Other relevant developments

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

Court of Justice of the European Communities, Case C-341/05[108]

The Swedish Labour Court (*Arbetsdomstolen*) referred by order of that court of 15 September 2005 for a preliminary ruling in the proceedings between *Laval un Partneri Ltd* and *Svenska Byggnadsarbetareförbundet, Avdelning 1 of the Svenska Byggnadsarbetareförbundet, Svenska Elektrikerförbundet*, to the Court of Justice of the European Communities on the following questions:
"1. Is it compatible with rules of the EC Treaty on the freedom to provide services and the prohibition of discrimination on the grounds of nationality and with the provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services for trade unions to attempt, by means of industrial action in the form of a blockade, to force a foreign temporary provider of services in the host country to sign a collective agreement in respect of terms and conditions of employment such as that set out in the above-mentioned decision of the Arbetsdomstolen, if the situation in the host country is such that the legislation intended to implement Directive 96/71 has no express provision concerning the application of terms and conditions of employment in collective agreements?" and the second question has been formulated in the following terms:

" The Swedish Medbestämmandelagen (Law on workers' participation in decisions) prohibits industrial action taken with the intention of circumventing a collective agreement concluded

[106] CRI(2005)26, p. 12.
[107] CRI(2005)26, p. 43.
[108] OJ C 281, 12/11/2005 P. 0010-0010.

by other parties. That prohibition applies, however, pursuant to a special provision contained in part of the law known as the 'lex Britannia', only where a trade union takes measures in respect of industrial relations to which the Medbestämmandelagen is directly applicable, which means in practice that the prohibition is not applicable to industrial action against a foreign undertaking which is temporarily active in Sweden and which brings its own workforce. Do the rules of the EC Treaty on the freedom to provide services and the prohibition on discrimination on grounds of nationality and the provisions of Directive 96/71 constitute an obstacle to an application of the latter rule — which, together with other parts of the lex Britannia also mean in practice that Swedish collective agreements become applicable and take precedence over foreign collective agreements already concluded — to industrial action in the form of a blockade taken by Swedish trade unions against a foreign temporary provider of services in Sweden?"

Article 13. Freedom of the arts and sciences

Freedom of the arts

Good practices

According to the Budget Bill for 2006[109] which was presented to the Swedish Parliament in September 2005, 600 new employment opportunities will be established for unemployed higher education graduates during 2006 and 2007 that will restore and conserve museum collections.

The Government has, furthermore, proposed a range of measures to strengthen the cultural sector, *inter alia*, increased support for the free dramatic art and for dance.

Freedom of research and academic freedom

Legislative initiatives, national case law and practices of national authorities

The Committee of inquiry, which was given the assignment to examine certain issues in the Act concerning the Ethical Review of Research involving Humans (*lag om etikprövning av forskning som avser människor* (SFS 2003:460) presented its report SOU 2005:78, *Etikprövningslagstiftningen-vissa ändringsförslag,* on 27 September 2005.

Firstly, the Committee proposed a change in the definition of the notion 'research' in the 2003 Act so that research should be understood as "a systematic scientific search for new knowledge".[110] The inquiry believes that this change in legislation will bring the Swedish definition in line with the OECD definition of the concept research, *i.e.* research will then refer to basic research, applied research and development work.

Secondly, the Committee recognized that currently no permission from the National Board of Health and Welfare is required in cases of stem cell research. The relevant legislation requires only the approval of a regional ethical review board in order to conduct research involving egg donation. After stressing how ethically sensitive this type of research may be, the inquiry suggested that the regional ethical review boards should be obliged to inform the National Board of Health and Welfare whether such research has been subjected to ethical review.[111]

[109] Prop. 2005/06:1, *Budgetpropositionen för 2006*, www.sweden.gov.se
[110] SOU 2005:78, p. 20.
[111] SOU 2005:78, ibid., p. 20.

Finally, the Committee found it necessary that the Swedish Research Council issues regulations containing guidelines on how decisions by the ethical review boards should be formulated so as to facilitate data processing.

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 the consideration of the Swedish report under the UN Convention on the Rights of the Child, the Children's Committee welcomed the Swedish efforts to provide free compulsory schooling through the age of 16 years, including free national pre-schools for children aged 4-5. The Committee showed appreciation for the measures that have been carried out by the Swedish authorities to combat racism, especially with regard to children, and to ensure that education of children is directed to the development of respect for cultures different from his/her own and of friendship among all peoples, in accordance with Article 29(1) of the Convention.[112]

Nevertheless, the Committee on the Rights of the Child expressed its concern about the fact "that children without residence permit, in particular children 'in hiding', do not have access to education" and that "there are considerable variations of results among various regions".[113]
The Committee recommended subsequently that Sweden ensures that "a) all children enjoy the right to education, including children without residence permits, including children "in hiding"; b) variation of results and differences between schools and regions be eradicated; c) vocational training is available and that transition from school to work is supported".[114]
Moreover, in the view of the Committee, Sweden should continue to strengthen the measures taken to combat racism and xenophobia, including in the field of education.

The European Commission against Racism and Intolerance (ECRI) noted in its third report on Sweden that "in practice, national minority children do not always have access to mother tongue education and that there are differences in this respect between municipalities".[115]
Therefore, the Commission encouraged the Swedish authorities to intensify their efforts to guarantee the practical enjoyment by members of national minorities of their mother tongue education throughout the country. Moreover, all schools should educate their pupils about the culture, religion and history of national minorities.

ECRI, however, welcomed the fact that children who have pending asylum applications and have received a final expulsion decision are entitled to school education, including in their mother tongue.[116]

Finally, ECRI recommended that the Swedish authorities "intensify their efforts to address racist bullying and offensive treatment in schools".[117]

The European Committee of Social Rights in its conclusions on Sweden in 2005 found that the situation in the country with regard to the implementation of Article 17 § 2 of the Revised

[112] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 4.
[113] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 7.
[114] Ibid., p. 7.
[115] CRI(2005)26, p. 10.
[116] Ibid., p. 20.
[117] CRI(2005)26, p. 23.

Social Charter (*free primary and secondary education-regular attendance at school*) was in conformity with that provision.[118] The Committee noted that all teaching material in compulsory school is free of charge, textbooks and disposable materials included. In addition, a child is entitled to receive some form of instruction, even if he/she has behaved improperly or have been absent from lessons. There are, however, no national statistics concerning unjustified absence in compulsory schools.

Legislative initiatives, national case law and practices of national authorities

According to a Parliament decision in December 2001 higher education institutions must take measures to broaden student recruitment. The institutions have been urged to draw up local action plans with measurable objectives for how this work is to be pursued. During the period under scrutiny, a number of affirmative action programmes have been created for the disadvantaged groups in society to receive better opportunities to be accepted to Swedish universities.

However, the case of *JM & CL v staten*, which received considerable attention in Swedish media[119] constitutes an illustrative example of the controversy which arose in connection with the application of affirmative action (quota) by institutions of higher education.
Abstract:
The case (T 2171-04 and T 2171-04) was decided by a court of first instance –District Court in the town of Uppsala (*tingsrätten i Uppsala*) on 12 January 2005. It related to the issue of priority given to students who applied for admission to the Faculty of Law at Uppsala University on the grounds that at least one of their parents is foreign born. Thus, Uppsala University decided in 2003 to earmark 30 out of 300 first year law study slots for applicants whose parents were born abroad.

The two applicants and prospective students in law (*Josefin Midander and Cecilia Lönn*) argued that they would have been accepted to the University but for the requirement of ten percent of the new students having other ethnic background than Swedish. They told the court that all the students among the ten percent (the quota based on ethnicity) had lower grades than themselves and they therefore felt discriminated against on the basis of their ethnicity.

The District Court came to the conclusion that the applicants have been subjected to unlawful discrimination contrary to the Swedish Act on the Equal Treatment of students in higher education (*lagen om likabehandling av studenter i högskolan*) as well as the jurisprudence of the European Court of Justice (ECJ). In the District Court's view the Equal Treatment Act prohibits admission practices that discriminate against applicants by reason of their ethnic identity or the use of seemingly neutral criteria that in practice operate against members of certain ethnic group. Thus, the effort by the University in question to reduce the skewed recruitment to higher education on the basis of ethnicity did not justify the use of special quotas.

The University decided in late December 2004 to discontinue the application of the admission system which has been in place since the autumn 2003.
On the other hand, the Swedish Chancellor of Justice (*Justitiekanslern* (JK)) has appealed the above decision of the District Court to the Court of Appeal (*Svea Hovrätt*). The case is due for review on 16 November 2005.[120]

[118] Council of Europe, European Committee of Social Rights, Conclusions 2005 (Sweden), p. 11, www.coe.int
[119] See all the references at Centrum för rättvisa, info@centrumforrattvisa.se
[120] See *JM och CL v staten genom Justitiekanslern*, www.jutitiekanslern.se

Positive aspects

On 26 October 2005 the Government Bill, prop. 2005/06:38, *Trygghet, respekt och ansvar-om förbud mot diskriminering och annan kränkande behandling av barn och elever*, was submitted to the Parliament for adoption. One of the major proposals contained in the draft Bill relates to the expansion of the Prohibition of Discrimination Act (*lagen om förbud mot diskriminering* (SFS 2003:37)) which currently guarantees protection against discrimination solely in higher education, so that it shall cover all levels of education.[121]

In addition, the new legislation regarding the equal rights and preventing discrimination of pupils shall include also bullying in the schools. The fact that the new legislation places the burden of proof on the school and not the victim of bullying has been welcomed by the civil society.[122]
The above mentioned legislative reform is expected to be enforced on 1 April 2006.

The Swedish Government decided in September 2005 during the negotiations for the 2006 budget to reserve funds to cover the free education of children 'in hiding', *i.e.* asylum applicants whose requests for protection in Sweden have been rejected. However, the education of these children poses certain practical problems since it is difficult for a child to remain in hiding and to attend a school at the same time, unless the school board decides not to cooperate with the public authorities. In order to resolve these problems the Minister for Immigration referred recently to her plans to initiate the setting up of an inquiry with the explicit task to propose a new bill on this particular subject matter.[123]

Good practices

The Swedish National Agency for School Improvement has produced and disseminated good practices against bullying and offensive treatment in schools. In addition, the Swedish National Agency for Education has drawn up national guidelines on these issues.[124]

The Swedish municipalities are free to accept into their schools children who have been de-registered by the Migration Board because they are kept in hiding.[125] However, on the negative side of such practices the Government will not reimburse the municipalities for the costs of educating these children.

Reasons for concern

Despite the fact that a special University programme has been funded with the aim to remedy the serious shortage of teachers who can provide instruction in mother tongue education for Sámi children, the problem continues to persist. The large geographical distances place additional obstacles for many children to access some of the existing six Sámi schools in Sweden.

The majority of the Swedish municipalities (3 out of 4) do not apply the legal guarantees for education in ones' mother tongue for children in pre-school age.[126]

[121] See also Faktablad, U05.046, 26 October 2005, www.regeringen.se
[122] Rädda Barnen, Ny lag mot mobbning, Barn no 5.05, p. 17.
[123] *D.Nilsson*, Gömda flyktingbarn får rätt att gå i skolan, SvD 17 September 2005, p. 12.
[124] See www.skolverket.se
[125] CRI(2005)26, p. 44.
[126] See Rapport om modersmål i förskolan, November 2005, www.skolverket.se

Distressing are the results that have been presented in a recent study indicating that solely 10 to 15 per cent of the students with disability (hearingimpairement) continue their studies at university level.[127]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Government Bill with the title in English "New world-new university" (prop. 2004/05:162, *Ny värld-ny högskola)* was submitted to the Parliament on 14 June 2005.

It comprises several proposals with the aim to make higher education in Sweden more attractive as well as more international and thereby to achieve broader recruitment of students. For that purpose the Bill introduces simpler and fairer admission rules in order to open up education for more people.[128] The Act on Higher Education (*lag om ändring i högskolelagen* (SFS 1992:1434)) shall be modified subsequently.

In addition, the draft Bill foresees a clearer structure for educational programmes, courses and degrees which is expected to facilitate international comparison. As part of the process of internationalisation, Sweden shall develop high-quality education along the lines intended in the Bologna Process. It is expected that the changes concerning the structure of higher education and degrees will be implemented in the autumn of 2007.

Moreover, it is also believed that the above mentioned changes would make it easier for students to obtain employment both in Sweden and abroad.[129] Besides, some of the concrete proposals for legislative changes relate to an overall national strategy of the internationalisation of higher education in Sweden. One example of the objectives of the national strategy can be given here. It is formulated as follows: "Universities and other higher education institutions must conduct active internationalisation efforts so as to enhance the quality of their education and promote understanding of other countries and of international conditions and relations".[130]
Finally, the situation of the exchange students will be reviewed with a view to strengthening their legal position.

Furthermore, of relevance to be mentioned here are two Government Bills which were presented before the Parliament under the period under scrutiny, namely the Government Bill (prop. 2004/05:80, *Forskning för ett bättre liv* (research for a better life)[131] and the Government Bill (prop. 2004/05:111, *Förstärkning av studiestödet*) envisaging stronger economic support for students.

The Committee of inquiry which has been assigned with the undertaking to review the role of the timetable in a school driven by objectives and results, presented its final report (Official Government Report SOU 2005:101, *Utan timplan-för målinriktat lärande* (No timetable - in favour of objective oriented learning) on 15 November 2005. The inquiry has had also the task of providing the Government with a basis for decision-making regarding whether and if so how the compulsory school timetable can be abolished.

[127] Hörselskadades riksförbund, Sanning och konsekvens, om hörselskadades situation i Sverige, Årsrapport 2005, p. 65.
[128] Prop. 2004/05:162, pp. 32-35. See also The Ministry of Education, Research and Culture, Factsheet, U05.030, June 2005, www.regeringen.se
[129] Ibid., prop. 2004/05:162, pp. 26-29.
[130] Summary of the Government Bill SOU 2004/05 :162, Factsheet U05.030, p. 1.
[131] See for more information under Article 37 of this report.

After having performed an in-depth scrutiny of the current Swedish compulsory school system, the Committee arrived at the conclusion that the timetable both can and should be abolished. Schools must take control over time since "it is both illogical and contradictory to control the use of a school's time on the national level whilst employing a management by objectives and result system".[132]

In addition, the Committee underlined that there is sufficient evidence suggesting that a more individualised working method leads to pupils in need of special support actually receiving such support to a greater degree. Thus, teachers tend to organise solutions for pupils based on the pupils' individual needs. Moreover, having no set timetable seems to stimulate schools to improve and adopt a goal-oriented working method.

Positive aspects

The proposal made by the Committee of inquiry on the objective oriented learning (SOU 2005:101) to include mother tongue tuition in the Education Act (*skollagen* (SFS 1985:1100)) as a subject for certain pupils at compulsory school[133], is a welcome initiative.

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

The prohibition of any form of discrimination in access to employment

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

ECRI observed in its third report on Sweden from 2005 that persons of immigrant background continue to be seriously over-represented among the unemployed population of Sweden and therefore this situation "must be addressed as a matter of priority".[134] ECRI has received information which indicates that those persons with foreign sounding names are generally not even called for job interviews.[135]

ECRI, moreover, expressed concern about reports disclosing "that most employers, including many trade unions, do not have or do not implement action plans for ethnic diversity and against discrimination."[136] With this in mind, the Commission recommends that "legislation allow for positive measures (i)n the employment field". In the view of the Commission, Swedish authorities should also ensure resources and co-ordination to monitor the implementation of the duty of employers to adopt and implement ethnic diversity plans.[137]

Reasons for concern

The number of complaints of discrimination in working life filed with the Ombudsman against Ethnic Discrimination (DO) has during the year of 2005 continued to increase.

[132] SOU 2005 :101, p. 26.
[133] Ibid., p. 33.
[134] CRI(2005)26, p. 34.
[135] Ibid., p. 35.
[136] CRI(2005)26, p. 36.
[137] Ibid., p. 36.

Access to employment in public administrations

Positive aspects

According to the Budget Bill for 2006 (prop. 2005/06:1, *Budgetpropositionen för 2006*) the advanced education programme in administrative practice for immigrants with higher education will be expanded by the creation of 120 new positions in 2006 with the aim to increase diversity in the central government sector.[138]

Other relevant developments

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

In 2005 the European Committee of Social Rights reiterated its earlier conclusions implying that the situation in Sweden with regard to the implementation of Article 18 § 3 (*Access to the national labour market*) is not in conformity with the Revised European Charter "because the conditions for the granting of temporary and permanent work permits were too restrictive since permanent work permits are only granted to workers with exceptional qualifications and temporary permits are granted only for a specific job, with a specific employer, in cases of shortages in the workforce".[139]

Moreover, the Committee considered the current administrative practice in Sweden which is related to the renewal of residence permits as not being in conformity with Article 18 § 3 of the Revised European Charter on Social Rights since "residence permit extensions for foreign workers who have lost their job in order to provide sufficient time for a new job to be found are not granted".[140]

Positive aspects

The Swedish labour market is still affected by the economic slump that prevailed during 2001-2003 and the unemployment rate remains around 6 percent.[141] An unusually large proportion of today's unemployed have a university-level education.[142] The Swedish Parliament therefore has decided to allot extra employment funding to municipalities and county councils during 2005-2006. Moreover, the municipalities have signed agreements with the County Labour Boards to provide municipal youth programs the purpose of which is to ensure that municipalities assume responsibilities for their unemployed youth under the age of 20.[143]

In addition, the Government in its Budget Bill for 2006[144] has launched a broad two-year employment package to start on 1st January 2006 which will give 55 000 people a job, a trainee position or a place in education or training.

[138] Government Offices of Sweden, The budget for 2006 : Investing in new jobs, growth and welfare, Press release 20 September 2005, www.sweden.gov.se
[139] Council of Europe, European Social Charter (Revised), European Committee of Social Rights, Conclusions 2005 (Sweden), p. 12, www.coe.int
[140] Ibid., p. 12.
[141] Swedish labour market policy, Fact Sheet FS 6, May 2005, p. 1, www.sweden.se/templates/cs
[142] Akademikernas erkända arbetslöshetskassa, Informerar Nr 3, 2005, p. 1. See also www.aea.se
[143] Ibid., p. 5.
[144] Prop. 2005/06:1, Budgetpropositionen för 2006, www.sweden.gov.se

Good practices

The Government has during the period under scrutiny broadened the programs for the occupationally handicapped people through, for example, wage subsidies. This has been achieved through a system of financial compensation to employers who hire someone with a reduced working capacity. Moreover, occupationally handicapped people who cannot find jobs in the regular labour market can now be offered a meaningful and stimulating job at Samhall AB, a government-owned corporate group. Unemployed people with socio-medical disabilities, severe and/or chronic mental illnesses or motor disabilities may also be offered jobs in the public sector as part of a form of support called public sheltered employment.

Starting in 2005, Sweden has introduced a sabbatical year system which gives an employee an opportunity for recreation, skill enhancement or starting his/her own business, while giving an unemployed individual the chance to a stronger position in the labour market working as a substitute for the person absent on a sabbatical year.

Reasons for concern

A certain degree of discrimination in the labour market continues to persist.[145] Immigrants - especially within the group of recently arrived immigrants-[146] and people with occupational handicaps are still to be found among the large groups with labour market problems. Aside from those who are unemployed, many of these people are participating in labour market training programs, are partially unemployed or have temporary jobs etc.

Sweden has not ratified the ILO Convention No. 131 (the Minimum Wage-Fixing Convention) and it seems that it has no intention to do so, on the grounds that the minimum wage is settled by means of collective agreements or individual contracts.

Article 16. Freedom to conduct a business

Other relevant developments

Positive aspects

During the period under scrutiny some 40 000 new businesses were started in Sweden, a figure which has never been as high for the past twenty years. Moreover, the Government promised that small businesses will be given better opportunities for investing in research and development in the coming year.[147]

In order to encourage entrepreneurship by women, a special drive will be undertaken within the framework of regional resource centres (RRCs). The Government has in accordance with the Budget Bill for 2006, which was submitted to the Parliament in September 2005, allocated 15 million SEK (Swedish Kronor) for this purpose.[148]

Furthermore, the above mentioned Budget Bill foresees simpler tax rules for close companies. On 1st of January 2006, the reform of tax rules for active owners of close companies will be

[145] UN Doc. CRC/C/SR.1002, Summary Record, Sweden 17/01/2005, p. 2.
[146] SOU 2005 :66, *Forskarrapporter till Jämställdhetspolitiska utredningen*, *A.Nyberg*, Har den ekonomiska jämställdheten ökat sedan början av 1990-talet ?, p. 28.
[147] Statement of Government Policy presented by the Prime Minister, Mr Göran Persson, to the Swedish Riksdag on 13 September 2005, p. 4. www.riksdagen.se
[148] Prop. 2005/06:1, Budgetpropositionen för 2006, www.sweden.gov.se

completed. Full implementation of the reform will have cut these taxes by a total of SEK 1 billion.

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

In 2005, ECRI noticed in its third report on Sweden that Sweden has not yet ratified the ILO Convention No. 169 on Indigenous and Tribal Peoples Rights. The Commission also observed that there is a need to "further enhance the influence of the Sámi in decisions concerning the use of natural resources, including forestry, tourism, and mining, which affect their traditional means of subsistence".[149] At the same time, information has been received by ECRI indicating that measures are underway to improve the involvement of the Sámi peoples in such decisions, including through the transfer of certain administrative responsibilities from the County Administrative Boards and the Board of Agriculture to the Sámi Parliament.

Nevertheless, ECRI recommended that "the Swedish authorities continue to work to solve the issues around Sami's land rights and that they enhance the participation and influence of the Sami in decision-making in matters concerning them generally, and particularly on land use in their traditional areas. "[150] Furthermore, the Swedish authorities are encouraged to continue to work to improve the knowledge of the general public of the Sámi people and their culture.

Legislative initiatives, national case law and practices of national authorities

Two interim Government reports on the history of the Sámi peoples' (during the last 300 years), the traditional Sámi territories and the protection of indigenous peoples' rights in public international law were published in 2005. These are the report of 23 February 2005, SOU 2005:17, (delbetänkande) *Vem får jaga och fiska?- Rätt till jakt och fiske i lappmarkerna och på renbetesfjällen?* focusing on property rights and the report of 21 September 2005, SOU 2005:79, (delbetänkande) *Vem får jaga och fiska?- Historia, folkrätt och miljö* focusing on the public international law aspects of the hunting and fishing rights of indigenous peoples'.

The main purpose of these two interim reports is to give a broad background and basis for the coming final report comprising the findings and recommendations of the Commission for Hunting and Fishing Rights which was appointed in 2003 entrusted with the task to clarify the scope of the Sámi hunting and fishing rights and how these resources should be administered. The final outcome with conclusions and recommendations is expected to be made public in December 2005.

In addition, the final report of the Indigenous peoples delegation (*Slutrapport från regeringens urbefolkningsdelegation*)[151] should be mentioned here since it was published during the period under scrutiny, namely on 23 March 2005. The principal task of the delegation, which was set up by the Government in 1995 to mark the UN Decade for the Indigenous Peoples (1994-2004) has been to carry out long-term work on strategic issues for the Swedish Sámi population such as, for example, to propose measures on how to strengthen their right to self-determination, culture and property rights. After giving an account for its

[149] CRI(2005)26, p. 27.
[150] Ibid., p. 28.
[151] Jordbruksdepartementet, Urbefolkningsdelegationen, www.regeringen.se

activities, the delegation recommended, among other things, that the Swedish Government ratifies without a delay the ILO Convention No 169 ("*snarast möjliga svenska anslutning till ILO konvention 169*").[152]

The delegation also emphasised that the Sámi peoples have indeed become a minority on their traditional territories and that their opinions were seldom put forward in the democratic process.[153]

The Commission of inquiry which has been entrusted with the task to prepare a proposal for a new Prison and Other Correctional Treatment Act submitted its final report SOU 2005:54, *Framtidens kriminalvård*, to the Government in May 2005. Accordingly, property shall be provided by the Prison and Probation Service. However, in the view of the Commission a prisoner may have private possessions of a simpler kind "if there is no risk that the possession will jeopardise good order or security at the prison or the intended purpose of the treatment that the prisoner is undergoing".[154]

The Commission has, furthermore, put forward the proposal that the Prison and Probation Service be able to confiscate property found in the prison, which may not be possessed by the prisoner. Nevertheless, confiscation shall not take place if it is evidently inequitable. The new Act shall also include specific provisions on taking care of property, on handling of confiscated property and on early sale or destruction of property.[155]

Even though it can be argued that a simple freezing of assets of individuals suspected of financing acts of terrorism will not be seen as a denial of their right to property but rather a control on the use of ones property, it is also arguable that if a targeted economic sanction is of unlimited duration, the measure could be seen as a deprivation of property (Eur.Ct.H.R. The *Sporrong & Lönnroth v. Sweden* case).

It would therefore be of relevance to mention here that in order to implement the Council Directive 2003/577/RIF of 22 July 2003 on the mutual recognition of decisions on freezing of assets, a Government Bill (prop. 2004/05:115, *Lag om erkännande och verkställighet inom Europeiska unionen om frysningsbeslut*) was submitted to the Parliament on 23 February 2005.[156]
The proposed legislation (*Lag* (SFS 2005:500) *om erkännande och verkställighet inom Europeiska unionen av frysningsbeslut*) concerning the recognition and enforcement of decisions on freezing of assets within the EU, entered into force on 1 July 2005. The new Act contains provisions which describe in detail the required conditions to be fulfilled for decisions dealing with freezing of assets.

The Ministry memorandum Ds 2005:38, *Tillträde till Förenta Nationernas konvention mot korruption*, which was made public on 27 September 2005 suggests that Sweden should ratify the UN Convention against Corruption since the necessary adjustments in the Swedish legislation already have been carried out.[157]

Positive aspects

The Sámi Parliament (*Sametinget*) suffers from a lack of real decision-making power, *i.e.* it is established as part of the state administration. Moreover, its elaborated functions are limited

[152] Slutrapport från regeringens urbefolkningsdelegation, p. 5.
[153] Ibid., p. 5.
[154] SOU 2005:54, p. 53.
[155] SOU 2005:54, p. 53.
[156] See Justitieutskottets betänkande 2004/05:JuU 34.
[157] See Ds 2005 :38, pp. 155-277.

to culture and language issues. Political and economic issues, including land rights, are not supposed to be included within the mandate of the Sámi Parliament.

Nevertheless, a positive step towards correction of this uneven distribution of power is the recent proposal on how to increase the Sámi peoples' influence on issues dealing with, among other things, reindeer herding by the Government which was submitted to the Council of Legislation (*lagrådet*) on 8 December 2005. The title of the proposal is "*Ett ökat samiskt inflytande*".[158]

Reasons for concern

According to contemporary understanding of international human rights standards, the concept of "property" includes indigenous peoples' communal property, such as traditional land and resource tenure systems that arise from and are grounded in indigenous customs and tradition. (IACourtHR, the case of *Mayagna (Sumo) Community of Awas Tingni v. Nicaragua*, 31 August 2001). Issues connected with the land rights and with the hunting and fishing rights for the Sámi population in Sweden, which amounts to approximately 20,000 persons[159], are still unresolved and cause concern. Even though the Sámi peoples are vulnerable in a number of ways, the domestic courts' case law continues to reflect the position that they have no legal right to their traditional land. Thus, the Sámi peoples' traditional way of life is constantly threatened by the economic and recreational activities of modern society.

In spite of the centrality to the Sámi peoples of the issue of accession to the ILO No 169 Convention on Indigenous and Tribal Peoples Rights and in spite of an apparently favourable attitude towards it, Sweden has not yet ratified this treaty. It would be fair to establish in this regard that Sweden lags behind in active promotion of Sámi interests. This state of affairs has created frustration, especially among the young Sámi peoples, who initiated and participated in a huge demonstration against the current Government policy on 18 June 2005 in Stockholm.[160]

The ethnic identity of the Sámi peoples is closely connected to reindeer herding as well as to their own language which is distinct from the Scandinavian language spoken by the non-Sámi population.[161] Notwithstanding the fact that the Sámi have gained greater protection for their cultural rights during recent years, their legal rights to land and especially the right to graze reindeer continue to diminish. Thus, a major problem facing the Sámi peoples today includes maintaining their traditional livelihoods and safeguarding of overall culture.

Considered on this background the District Courts' in the town of Östersund recent decision of 8 August 2005 (Östersunds tingsrätts dom 2005-08-08 i mål T977-04) and entailing that the *Tåssåsen sameby* (the Sámi village[162] Tåssåsen) lost its right to winter grazing (pasture) area with regard to the area of Rätan-Klövsjö, is but a regrettable ruling causing much of

[158] Regeringen föreslår att Sametinget ska få huvudansvaret för rennäringsfrågor, 9 December 2005, www.samer.se
[159] *The Ministry of Agriculture, Food and Consumer Affairs*, The Sami-an Indigenous People in Sweden, Sametinget, p. 3, www.regeringen.se
[160] *S.Karam*, Unga samer kräver sina rättigheter, Protesttåg i Stockholm mot regeringen, SvD 19 June 2005, p. 8.
[161] *Samerådet*, Observations by the Saami Council on the 16th Periodic Report Submitted by Sweden to the ICERD, 19 February 2004, Dnr 3/2004, Ark.902, p. 2.
[162] The only people who can engage in reindeer herding are members of a sameby, which is a type of collective herding unit. In other words, the Sámi who belong to a sameby are the only one who are able to exercise hunting and fishing rights.

disappointment among the Sámi peoples.[163] This will probably affect the reindeer herding negatively since the court did not acknowledge the particular circumstances for reindeer husbandry. Moreover, it seems that this case confirms the supposition (*i.e*. the courts do not decide in favour of Sámi claims) that there is a marked trend toward that the interests of the non-Sámi persons frequently override those of the Sámi peoples in cases of disputes between Sámi and non-Sámi in courts of law.[164]

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)
The UN Sanction Committee on 9 November 2001 approved the list of persons and organizations believed to be associated with a terrorist network. This decision (SC/7206) resulted in implications for three Swedish citizens of Somalian descent.

On 10 December 2001, the concerned individuals initiated a plea on the basis of Article 230 TEU for the annulment of the relevant measures at the Court of First Instance of the European Communities (CFI) as they challenged the EU decision to freeze their assets. On 7 May 2002 the Court pronounced its decision on part of a claim for provisional measures in the case *Aden and others v. The Council and the Commission of the European Communities* T-306/01R.[165] The claim for temporary measures was rejected on the grounds that the applicants were entitled to social assistance by the Swedish authorities and that the petition did not prove that the freezing of their assets constituted serious damage only able to be repaired with difficulty. In addition, Ahmed Ali Yusuf's application for legal aid was rejected on 3 May 2004.

After negotiations between the individuals, the Swedish Government and the relevant authorities in the US, an agreement was achieved for the two of the men, namely Abdi Abdulaziz Ali and Abdirisak Aden. Their names were thus struck from the sanction list on 15 July 2002. They were subsequently removed from the EU sanction list by means of the Commission Regulation 1589/2002 on 4 September 2002.

Nevertheless, the name of the third person, Ahmed Ali Yusuf, has still not been removed from the sanction list as it is held that he did either not approve the US conditions or was not deemed trustworthy. On 14 October 2003, the procedure at the CFI began with regard to the legality of the imposed sanctions.

On 21 September 2005 the Court of First Instance (CFI) delivered its decision, which is the first ruling on the subject matter of terrorist lists (*i.e*. it is the first judgment on the merits of two cases concerning challenges to the EU implementation of UN Security Council's

[163] This issue was considered as a very important topic to be included in the present report during the hearing with Swedish NGOs and other representatives for civil society *etc* on 1 December 2005 in Stockholm.
See furthermore *H.Hamilton*, Vår egen urbefolkning är glömd, SvD 16 August 2005, p. 27*; M.Nilsson*, Samisk kultur hotad, www.impuls.nu Per-Erik Jonasson standpoint expressed in an interview, Sameby förlorade rätt om renbete, SvD 8 August 2005, p. 8 ; *H.Hamilton*, Samekulturen dömd till tystnad, SvD 25 August 2005, p. 3 ;TT, 25 000 renar blir utan bete i vinter, Metro 4 October 2005, p. 2 ; *H.Beach et al*, « Den samiska kulturen kommer att utrotas », DN, www.dn.se 23 October 2005 ; Med renen som levebröd, 14 November 2005, www.jordbruksverket.se
The above mentioned decision of the Disctrict Court has been, however, appealed to the Court of Appeal (*Hovrätten för Nedre Norrland*).
[164] Ibid., *Samerådet*, Observations, p. 5.
[165] Order by the ECJ of May 7, 2002, T-306/01R (2002) *ECR* II-2387.

Resolutions concerning terrorist financing). The judgment received a great attention in Swedish media.[166]

Abstract: *Ahmed Ali Yusuf, Al Barakaat International Foundation and Yassin Abdullah Kadi v. the Commission of the European Communities*, Cases T-306/01 and T-315/01[167]

To start with, the Court of First Instance (CFI) ruled that the EC had the power to adopt rules concerning sanctions against individuals. With regard to the *Ali Yusuf* case (T-306/01) the Court came to the conclusion that the EC had the authority pursuant to its powers to interrupt economic or financial relations with third countries to implement sanctions against individuals allegedly contributing financially to the Taliban regime and Al-Qaeda during the period when the Taliban regime was in control of a large part of the Afghanistan's territory.

Nevertheless, the CFI found in both cases under review that the EC lacks the term of office to take these measures pursuant to its economic sanctions powers because such measures are not designed to interrupt economic relations with third countries. In other words, the EC is short of the power to take such measures on the basis of Article 308 in the EC Treaty. Notwithstanding that the Court took the position that the sanctions powers and the 'residual powers' clause, taken together, grant the power to the EC to take the measures in question.

The Court further stated that the UN Charter has superiority over all other international treaties and domestic legislation according to its terms. Furthermore, Article 307 in the EC Treaty ascertains that EC Member States are obliged to apply international treaties that bound them before their EC membership, in the event of a conflict with EC law. All member states except Germany joined the UN before the EC.

The Court concluded that the EC is not a party to the UN Charter. The EC is, therefore, not directly bound by it. This did not preclude, however, the Court to establish that the EC must be considered to be bound by the obligations under the Charter of the United Nations in the same way as its Member States, because of the EC Treaty.

Finally, the Court arrived at the conclusion that it cannot examine the legality of the Security Council acts from the perspective of EC law. However, it can examine the legality of Security Council's resolutions in the light of *jus cogens* obligations under public international law. Still, the CFI did not find any *jus cogens* rules being violated in the cases under consideration as regards the right to property, the right to a fair hearing and the right to a judicial remedy.

According to an announcement made by the men's legal representative the judgment has been appealed to the EU's Court of Justice on 22 November 2005.[168]

Legislative initiatives, national case law and practices of national authorities

The Inquiry Committee which has been entrusted with the task to review the relevant Swedish legislation on stolen and illegally exported cultural objects and to make proposals with regard to Sweden's ratification of the 1995 UNIDROIT Convention on this subject matter, presented its report SOU 2005:3, *Sveriges tillträde till 1995 års Unidroitkonvention om stulna eller olagligt utförda kulturföremål*, on 26 January 2005.

[166] The major Swedish TV news channels included on 21 September 2005 reports on the case in question. See also *e.g*. *E.Sidenbladh*, "Det är en politisk process", SvD 22 September 2005, p. 7. See, in addition, Statewatch News online, First EU Court ruling on terrorist lists, www.statewatch.org
[167] OJ C 281, 12/11/2005, P. 0017-0017.
[168] See e.g. TT, Terrorstämpel överklagas, SvD 23 November 2005, p. 13.

Council Directive 93/7/EEC on the return of cultural objects illegally removed from the territory of a Member State has been incorporated into Swedish legislation by the provisions of Chapter 6 of the Heritage Conservation Act (*kulturminneslagen*).
In the view of the Committee of Inquiry, Sweden should make a declaration when acceding to the UNIDROIT Convention "since the Directive takes precedence over the Convention to the extent that its provisions regulate the same matter"[169], *i.e.* the provisions of Chapter 6 of the Heritage Conservation Act should continue to apply in relation to the EEA states. However, according to the inquiry the provisions of the Convention on the restitution of stolen cultural objects are fully applicable in relation to the Contracting States within the EEA.

Moreover, the definition of a cultural object in Chapter 6, Section 2 of the Swedish Heritage Conservation Act (*kulturminneslagen*) is based on the corresponding concept in the above mentioned Council Directive and it is therefore not fully compatible with the definition of cultural object in the UNIDROIT Convention. The Committee for that reason recommended that the Swedish definition should be expanded so that it comprises return of illegally exported cultural objects to the contracting states outside the EEA as well. In other words, the Swedish legislation should be adjusted to cover what is considered to be a cultural object in the UNIDROIT Convention.

In addition, the adaptation of Swedish legislation to the rules of the Convention on the restitution and return of stolen cultural objects implies that the time limits pursuant to Section 3 and 5 of the Good Faith Acquisition of Personal Property Act (*godtrosförvärvslagen*) must be extended to three years for claims for return and redemption of those cultural objects referred to in the UNIDROIT Convention.

Finally, the Committee of inquiry recommended that Sweden should ratify the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

At last, mention should be made here also of the Government Bill, prop. 2004/05:169, *Tredimensionell fastighetsindelning-kompletterande lagtekniska frågor*, which was submitted during the period under scrutiny to the Swedish Parliament for adoption. It concerns one specific kind of division of real estates.

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

The European Commission against Racism and Intolerance (ECRI) in 2005 recommended in its third report on Sweden that "the Swedish authorities carry out the planned reform to give responsibility to examine asylum appeals to the administrative courts. In this respect, it recommends that the authorities ensure that the expertise currently existing within the Aliens Appeals Board is transferred, as necessary, to those working in the administrative courts. ECRI recommends that the possibility of having a claim re-examined in the light of evolving circumstances be maintained."[170]

During the consideration of the Swedish report under the UN Convention on the Rights of the Child, the Children's' Committee expressed its concern about the fact that the best interest of asylum seekers and migrant children are not sufficiently taken into account in the asylum

[169] SOU 2005 :3, p. 30.
[170] CRI(2005)26, p. 18.

processes in Sweden. It therefore recommended that "the State party take appropriate and efficient measures in order to ensure that the principle of the best interests of the child be the basis and guide the process and decisions in asylum cases involving children, inter alia, by reforming the guidelines and procedures of the Swedish Migration Board".[171]

Legislative initiatives, national case law and practices of national authorities

In September 2005 the Swedish Parliament approved the Government Bill on new rules of jurisdiction and procedure in matters affecting aliens and citizenship in prop. 2004/05:170, *Ny instans- och processordning i utlännings- och medborgarskapsärenden*. The Aliens Appeals Board (*Utlänningsnämnden*) will be subsequently discontinued and replaced by Migration Courts on 31 March 2006.

This reform entails that the decisions of the Swedish Migration Board in matters concerning asylum or residence permits as well as citizenship will be subject to appeal through the appropriate court system. The purpose behind the legislative changes has been to create a more open asylum procedure with better guarantees of due process. According to the Bill, the County Administrative Courts in Stockholm, Gothenburg and Malmö will be Migration Courts and the Stockholm Administrative Court of Appeals (*kammarrätten*) will be the highest Migration Court.

It is a positive step that the new rules of jurisdiction and procedure imply that applicants who appeal against the decisions of the Swedish Migration Board will be able to obtain an oral hearing in a Migration Court on the basis of the provisions governing administrative courts.

Positive aspects

The envisaged reform of the asylum process in Sweden will hopefully enhance the legal security of those applying for asylum. Thus, after the 31 March 2006 the asylum seeker and the representatives for the Swedish Migration Board will meet as two parties during an appeal. In this way there will be a better opportunity to present their arguments as well as the merits of the case orally. Moreover, the decision will be made by means of a judgment. The long-awaited reform has been welcomed by the Swedish Bar Association.[172]

Reasons for concern

The Swedish authorities have been criticised on several occasions and by various civil society actors for the length of time applicants have had to wait for residence permit decisions.[173]

Recognition of the status of refugee

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

On 6 September 2005 the UNHCR released a report indicating that Sweden continues to be one of the largest receiving countries in 2005.[174] Nevertheless, the number of new asylum applications for the time-span covered by the report, is lower than during the same period two years ago (30 percent fewer applications).

[171] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 4.
[172] Reformer i asylärenden skjuts up, Advokaten, June 2005, p. 7
[173] UN Doc. CRC/C/125/Add.1, p. 66 ; *T.Hammarberg & A.Nilsson*, Bra början, men bara en början, 19 January 2005, p. 33.
[174] UNHCR, *Asylum levels and trends in industrialized countries, second quarter 2005*, http://www.unhcr.ch

International case-law

1. The European Court of Human Rights (Section II), *Hukic´ v. Sweden*, Application no 17416/05, Judgment of 27 September 2005

The case concerns a Bosnian Muslim family which applied for asylum in Sweden in 2003. The applicants claimed first and foremost that the younger child of the family suffered from Down's syndrome for which he could not receive the required treatment in their country of origin. Secondly, the applicants alleged that the father would not be safe if returned to Bosnia and Herzegovina as he had been involved as a member of a police unit in the arrest of a mafia criminal.

The Swedish National Migration Board (*Migrationsverket*) had rejected the application, considering that the purported threats and attacks had not been sanctioned by the national authorities, nor had the applicants shown that the authorities would be unwilling to protect him.

With regard to the child with the Down's syndrome's application the National Migration Board was of the view that medical care was indeed available in Bosnia and Herzegovina and that the availability of care of a higher standard in Sweden was not a reason to issue residence permits in Sweden. This decision was appealed against but the Swedish Aliens Appeals Board (*Utlänningsnämnden*) upheld the decision of the Board.

The subsequent new applications which the family lodged with the Swedish authorities were all rejected. The applicants had submitted medical certificates declaring that the child in question was reacting very well to the medical treatment in Sweden and that for this positive development to continue it was an absolute prerequisite that he was granted residence permit.

According to the authorities, despite the seriousness of the applicant's handicap, Down's syndrome could not be compared to the final stages of a fatal illness. In other words, having regard to the high threshold of Article 3 of the European Convention, particularly where the case did not concern the direct responsibility of the State for the possible harm, the applicants' deportation to Bosnia and Herzegovina would not be contrary to the standards of this provision.

Since the case under review did not disclose the *exceptional* circumstances required by the established jurisprudence of the European Court (*i.e.* to consider that the applicants' removal would result in a violation of Article 3 of the Convention) the European Court declared the case manifestly ill-founded and thereby inadmissible under Article 3 of the Convention.

2. European Court of Human Rights (Section II), the Case of *Razaghi v. Sweden*, Application No. 64599/01, Judgment of 25 January 2005 (final 25/04/2005)

Abstract: Mr Razaghi applied for asylum in Sweden on 30 November 1998. He claimed that he was sought by the Iranian authorities as he had had a relationship with a married woman whose husband was a mullah. The mullah and his followers had been planning to apprehend him and he had therefore fled his home town. Before leaving Iran, he had been told that a warrant for his arrest had been issued and he also believed that he and the woman he had relationship with had been sentenced to death by stoning.

On 14 April 1999 the National Immigration Board (*Statens invandrarverk*) rejected the application and ordered that the applicant be expelled to Iran. The Board did not find his allegations plausible and also noted that the evidentiary requirements in cases of adultery were very high in Iran.

The applicant appealed against the decision and claimed that, despite the rules on evidence concerning adultery, he could still be convicted on less evidence for having offended public morals and be sentenced to be lashed. As an additional argument he referred to the fact that he had converted to Christianity on 7 February 1999. This is a reason for which he could be sentenced to death in Iran.

On 13 November 2000 the Aliens Appeals Board (*Utlänningsnämnden*) rejected the appeal. The Board noted that the applicant had not produced any evidence showing that he had had the above-mentioned relationship or that he would be subjected to inhuman treatment on account of it. In regard to his conversion, the Board stated that conversion to Christianity was regarded by the Iranian authorities as a "technical" step to acquire asylum.

On 14 December 2000 the applicant lodged a new application for a residence permit with the Aliens Appeals Board. He submitted two Iranian documents, which contained a summons for him to appear before an Iranian court to answer charges of adultery. Claiming that he would rather commit suicide than return to Iran, the applicant also submitted a medical certificate issued on 5 January 2001 by a psychologists, who stated that the applicant showed signs of desperation and expressed suicidal thoughts which should be taken seriously and that he was in need of treatment in a psychiatric ward.

On 16 January 2001, following the Court's indication under Rule 39 of the Rules of Court, the National Migration Board (*Migrationsverket*) decided to stay the enforcement of the expulsion order (*verkställighetshinder*).

By a decision of 23 September 2004 the Aliens Appeals Board revoked the expulsion order and granted the applicant a permanent residence permit. While considering that the Iranian documents relied on by the applicant were falsifications and that he could not be regarded as a refugee, the Appeals Board found that there were humanitarian reasons to grant him a residence permit. In this respect, it noted that the new application had been pending for a long time, that the applicant had been residing legally in Sweden since January 2001 and that the validity of its decision of 13 November 2000 to expel him would expire on 13 November 2004.

With this in mind, the European Court stressed that the applicant complained that his expulsion to Iran would expose him to a risk of treatment in violation of Articles 2 and 3 of the Convention and Article 1 of Protocol No. 6 to the Convention. After taking into consideration the fact that the Aliens Appeals Board had revoked the expulsion order against the applicant in September 2004 and that he was granted a permanent residence permit, the Court came to the conclusion that the applicant no longer faces expulsion to Iran or any risk of treatment in violation of the mentioned provisions.

The Court concluded, therefore, that the matter has been resolved within the meaning of Article 37 § 1 (b) of the European Convention and decided to strike the case out of its list.

Legislative initiatives, national case law and practices of national authorities

According to the Government Bill, prop. 2004/05:170, *Ny instans- och processordning i utlännings- och medborgarskapsärenden* (New rules of jurisdiction and procedure in matters concerning aliens and citizenship) which was approved by the Parliament in September 2005, the current Aliens Act of 1989 (*utlänningslagen*) will be replaced by a new Aliens Act (*utlänningslag* (SFS 2005:716)) on 31 March 2006.

According to the new legislation, the difference between the various grounds for granting residence permits in Sweden has been made more distinct and the protection aspects have been given a more prominent role. Importantly, the protection grounds according to the new

Aliens Act will also cover individuals who have good reasons to fear grave violation of their person due to serious conflict in their own country. Thus, the concept of refugee has been expanded and new grounds for protection have been added such as, for example, protection from internal as well as external armed conflicts and non-state persecution.

The proposal also suggested that term 'humanitarian grounds' will be replaced by the concept of 'circumstances of particular hardship'. An applicant will be granted a residence permit on this ground if none of the other grounds are applicable. In addition, the circumstances do not need to be of the same gravity and impact for children as for adults with regard to being granted a residence permit under this provision of the Aliens Act.

In addition, the Government Bill on persecution on the grounds of gender and sexual orientation, prop. 2005/06:6, *Flyktingskap och förföljelse på grund av kön eller sexuell läggning*, which was submitted to the Parliament on 22 September 2005, was approved by the Parliament in November 2005.

The Bill contains a proposal for a wider definition of a refugee, *i.e.* the refugee concept in the Aliens Act (*utlänningslagen* (SFS 1989:529)) shall also include individuals at risk of persecution on grounds of their gender or sexual orientation. Currently, persecution because of gender or sexual orientation does not qualify for refugee status. The protection is given with reference to "people otherwise in need of protection".

The new refugee definition will enter into force on 31 March 2006 and it shall apply, *inter alia*, to homosexuals, or women who risk genital mutilation or violence in the name of honour.

A proposal (a five party motion), which was put forward by several political parties (the Christian Democrat Party, the Liberals, the Center Party, the Left Party and the Green Party) represented in the Swedish Parliament, that those who have applied for asylum no later than one year before the court reform comes into force, *i.e*. 31 March 2006, should be granted a permanent residence permit on humanitarian grounds, on certain conditions, was defeated. The main arguments against a general amnesty for asylum seekers who have been 'in hiding', (*i.e*. their asylum requests have been rejected but they are still on Swedish territory),[175] has been firstly that each application for asylum must be assessed individually and secondly that setting up a specific date line for the applications for residence permits to be reviewed once again will generate arbitrariness.

On the other hand, the Parliament approved the proposal for a new temporary Aliens Act (*lag* (SFS 2005:762) *om ändring i utlänningslagen* (SFS 1989:529)) which enables applicants whose applications for asylum and residence permits have been rejected by the Swedish authorities and who have been in hiding in Sweden to have their applications reviewed once again by the National Migration Board. The new Act entered into force on 15 November 2005 and it shall be applied until 31 March 2006.

According to information presented by the Swedish Migration Board approximately 1000 persons have contacted the Board by 18 November 2005.[176] Moreover, the Board took decisions in 3 precedent setting cases on 21 November 2005 and which were of principle significance for the application of the new temporary Aliens Act. All of the applications

[175] It has been estimated that approximately 15 000 asylum applicants are living in hinding currently in Sweden. *L.Brattberg*, Längre väntetid för flyktingar, DN 10 September 2005, p. 10.

[176] See Migrationsverket, Prövning av avvisning och utvisningsärenden, www.migrationsverket.se According to the information published in Swedish media on 11 December 2005, 900 cases have been decided on the basis of the new temporary Asylum Act and the outcome for approximately 85 percent of these cases have been positive. *E.Sidenbladh*, Många familjer får asyl, SvD 11 December 2005, p. 6.

concern families that had resided under a long period of time 'in hiding' in Sweden. The family with children who have been in Sweden since 2003 and whose members were granted residence permits were able to clarify their identity. In other words, the Board placed decisive importance on the attested identities of the applicants.

Positive aspects

The precedent setting decision relating to asylum-seeking children with symptoms of devitalisation which was delivered by the Swedish Government on 7 July 2005, has been welcomed by several Swedish NGOs and political parties.[177]

After making an overall assessment of the family's situation and the child's very serious condition (the child's state of health), combined with the situation of uncertainty in the country of origin and that a deportation would seriously affect the child's conditions, the Government granted the child in question and the other members of his family a permanent residence permit on humanitarian grounds.[178]

In this pilot case the Government affirmed explicitly that a child's own grounds for seeking asylum are to be examined and assessed independently from the accompanying persons' application. The Government, furthermore, stressed that children may experience persecution and fear differently from adults and this must be taken into consideration when assessing a child's grounds for asylum.

Most importantly, in the view of the Government "Greater consideration shall be given to how children are affected by a refusal of entry".[179] Thus, the risk of a child's psycho-social development being permanently harmed if he or she is being returned to the country of origin shall carry greater weight in the future decision making process of the public authorities.

The above mentioned decision has had the effect that 8 out of 12 children with symptoms of devitalisation were granted residence permits in Sweden.[180]

The temporary asylum legislation has been welcomed and it has been regarded as a step in the right direction by representatives for a few NGOs as well as by practicing refugee lawyers.[181]

Reasons for concern

Notwithstanding the fact that Sweden has the most liberal law on immigration in Scandinavia, Swedish authorities continue to apply restrictive criteria for identification of those to benefit from refugee status and the recognition rates on the basis of the 1951 UN Refugee Convention continue to be extremely low, *i.e.* approximately 1, 2 per cent. This situation was a subject to a strong criticism during an asylum trial that was organized by the Swedish PEN society together with other major Swedish NGOs on 13-16 November 2005.

Children's' own grounds for seeking protection in Sweden are still seldom investigated. A recent study that has been carried out by Save the Children (*Rädda Barnen*) in Sweden and

[177] See *e.g.* Svenska Röda Korset, Välkommet besked för de apatiska barnen, www.redcross.se *J.Johansson*, Regeringens beslut välkomnas, NU 29/05, p. 4.
[178] Government Offices of Sweden, Decision in indicative matter involving a child, Press release, 7 July 2005, www.sweden.gov.se
[179] Government Offices of Sweden, ibid., www.sweden.gov.se
[180] Utrikesdepartementet, Redovisning till regeringen vad gäller ärenden rörande barn med uppgivenhetssymptom (UD2005/54159/MAP) 30 November 2005. See also www.farr.se
[181] The Swedish Network of Asylum and Refugee Support Group (FARR), Tillfälligt asyllag ett steg i rätt riktning, Uppsala 17 November 2005, www.farr.se

the Swedish Council for Refugees (*Rådgivningsbyrån för asylsökande*) demonstrates that only in one fifth (out of 50 cases) of the children in families applying for asylum was the child questioned about his/her reasons for claiming asylum.[182]

Despite the earlier mentioned precedent setting decision by the Government of relevance for asylum seeking children, Swedish media have continued to report about the return/expulsion of a few children and their families in similar situation.[183]

Unaccompanied minors seeking asylum

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

ECRI recommended in its third report on Sweden that "the Swedish authorities extend the competences of legal custodians of unaccompanied children in order to take better care of the children's needs and, in particular, avoid disappearances".[184]

During the review of the Swedish report under the UN Convention on the Rights of the Child, the Children's Committee, while taking note of the efforts made by Sweden to address the situation of unaccompanied minors and to enhance the quality of interviewing and reception of asylum seeking children, it also expressed concern about the high number of unaccompanied children that have gone missing from the Swedish Migration Board's special units for children without custodians as well as the very long processing period for asylum application, which obviously have negative consequences for the mental health of the child.

Bearing this in mind, the Committee recommended that Sweden should pursue its efforts to: "increase coordination between the different actors, in particular the police, the social services and the Swedish Board of Migration, in order to react efficiently and in a timely manner when children disappear; consider appointing a temporary guardian within 24 hours of arrival for each unaccompanied child and conduct refugee status determination procedures of children in a child sensitive manner, in particular by giving priority to applications of children and by considering child specific forms of persecution when assessing an asylum seeking child's claim under the 1951 Convention relating to the Status of Refugees".[185]

Legislative initiatives, national case law and practices of national authorities

In recent years, the number of unaccompanied children arriving in Sweden has ranged between 350 and 550 per year.[186]

During the review of the Swedish report under the UN Convention on the Rights of the Child in 2005, one of the Swedish representatives at the meeting replied that "not many unaccompanied children were granted refugee status, although they were sometimes allowed to stay in Sweden on humanitarian grounds".[187] Nevertheless, the same official also emphasised that when applications were rejected, there were strict requirements concerning

[182] Interview with L.Olsson, a lawyer at Rädda Barnen, see Rädda Barnen, Barn 6.05, p. 14.
[183] *I.Sevastik*, Den hårdföra flyktingpolitiken fortsätter, SvD 27 September 2005, p. 31; *H.Ennart*, Gömda flyktingar fortsätter avvisas, SvD 27 September 2005, p. 6.
[184] CRI(2005)26, p. 20.
[185] UN Doc. CRC/C/15/Add.248, 28 January 2005, pp. 7-8.
[186] The official statistics for the year 2004 show that approximately 400 adolescents arrived in Sweden without a guardian. Regeringskansliet, To seek asylum-a human right, Swedish refugee policy in brief, 2005, p. 3 at www.regeringen.se
[187] UN Doc. CRC/C/SR.1002, Summary Record, Sweden 17/01/2005, p. 8.

conditions for expulsion, which meant that, more often than not, the expulsion of unaccompanied child did not take place.

During the period under scrutiny more effective and comprehensive measures to improve the situation for asylum-seeking children who arrive in Sweden without being accompanied by an adult have been adopted.

According to the new regulations contained in the Government Bill, prop. 2004/05:136, *Stärkt skydd för ensamkommande barn* ("Greater Protection for Unaccompanied Refugee Children"), which came into force on 1 July 2005, a more comprehensive protection has been introduced for unaccompanied refugee children.[188] Thus, a personal representative will be appointed shortly after a child has arrived in Sweden. This person shall act as both a guardian and a custodian of the child. In case the child has received a residence permit, a special custodian will replace the personal representative. (See also the information under Article 24 of the present report)

Sweden is among the first countries in the world to introduce a portal paragraph on the best interests of the child in the Swedish Aliens Act. In 2005 the Swedish Government has put a great deal of effort into improving the reception of children who come to Sweden on their own. Staff members of the reception centres have received instructions in children's matters as well as the content and the implementation of the UN Convention on the Rights of the Child.

The Government Bill, prop. 2005/06:46, *Mottagande av ensamkommande barn* (Reception of unaccompanied children) contains a few proposals for legislative amendments, *inter alia*, the introduction of a special provision relating to the reception of unaccompanied children in the Act of Reception of Refugees (*lag om mottagande av asylsökande m.fl*. (SFS 1994:137)).

Moreover, while the overall responsibility for the reception of asylum-seeking children shall remain within the Swedish Migration Board in the future the municipalities shall manage these activities on the basis of agreements with the Board.
The new legislation is expected to enter into force on 1 July 2006.

Positive aspects

The Swedish Children's Ombudsman (BO) has welcomed the proposal that has been presented in the interim Government Report - SOU 2005:15*, Delbetänkande om uppehållstillstånd for familjeåterförening och fri rörlighet för tredjelandsmedborgar* - and which implies that unaccompanied refugee children shall be guaranteed a right to family reunification with his/her parents by the way of granting them residence permits in Sweden.
On the other hand, the Ombudsman also underlines the importance of that the new Swedish legislation also ensures that unaccompanied minors who have received residence permits in Sweden on humanitarian grounds were given the same right to family reunification as the refugee children.[189]

Good practices

The Swedish Migration Board has developed together with the Office of the Children's Ombudsman and the Linköpings University a method for conversing with asylum-seeking

[188] See in addition Lagutskottets betänkande 2004/05 LU26, Stärkt skydd för ensamkommande barn, www.riksdagen.se
[189] Barnombudsmannen (BO), Remissvar*, Delbetänkandet om uppehållstillstånd för familjeåterförening och fri rörlighet för tredjelandsmedborgare* (SOU 2005:15), Stockholm 18 May 2005, www.bo.se

children in order to better understand and deal with children's vulnerability and considering their own grounds for asylum.[190]

Reasons for concern

According to official statistics presented by the Swedish Government during the consideration of the third report under the UN Convention on the Rights of the Child, 124 cases of disappearances regarding asylum seeking children were registered by the end of 2004.[191] Despite that there are reasons to believe that, in some cases, one child could have been the object of two or more registered disappearances, this number still appears to be very high. Thus, the system is neglectful in providing a secure environment for unaccompanied children. More seriously, it is feared that some of these children have become victims of sexual exploitation by traffickers and paedophiles.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The new regulation, *Förordning (*SFS 2005:203) *om den Europeiska flyktingfonden för perioden 2005-2010*, which empowers the Swedish Migration Board (*Migrationsverket*) to support the European refugee fund for the period 2005-2010, entered into force on 1 May 2005.

Witness protection is an important component in the fight against impunity. Of relevance to this issue is that a Government Bill, prop. 2004/05:172, *Uppehållstillstånd för tribunalvittnen* (Residence permits for tribunal witnesses) was submitted to the Parliament in 2005.
Sweden has concluded agreements with international tribunals on the protection of witnesses and their relatives as well as on their transfer to Sweden. The above mentioned Bill comprises proposals on the introduction of special rules for residence- and work permits in the Aliens Act (*utlänningslagen*) for such persons admitted to Sweden.

The Ministry memorandum Ds 2005:3, *Svensk rätt i integrationspolitisk belysning* (Swedish legislation in the light of integration policy) was presented in 2005.

Positive aspects

During 2005 the Swedish National Board of Health and Welfare (*Socialstyrelsen*) has been given the task to draw up recommendations to prevent children from developing symptoms of devitalisation and to create early support measures during the on-going asylum process. The role of the social services has thereby been given special attention. The recommendations are to be presented by 1 November 2005 at the latest.

Good practices

As of 15 August 2005 Sweden occupies fifth place among the world's largest donors with regard to contributions to UNHCR programmes.[192]

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[190] Government Offices of Sweden, To seek asylum-a human rights, Stockholm 2005, p. 11 at www.regeringen.se
[191] UN Doc. CRC/C/RESP/74, Written replies by the Government of Sweden concerning the list of issues received by the Committee of the Rights of the Child relating to the consideration of the third periodic report of Sweden, p. 5.
[192] See UNCHR donor profile and donor history, www.unhcr.ch

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

Subsidiary protection and prohibition of removals of foreigners to countries were they face a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments

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

Forty-eight cases have been lodged, in total, against Sweden to the UN Committee against Torture (CAT) in accordance with the requirements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Swedish Government has been criticised on eleven separate occasions for either breaching the cardinal principle of international law, the *non-refoulement* principle, when the expulsion/deportation orders have been carried out or in cases where there is an apparent risk for the persons in question to be exposed to an irremediable situation of objective danger, *e.g.* torture and/or inhuman and degrading treatment, outside its jurisdiction.[193]

One particular case, which has received much national and international attention, concerned the expulsion in December 2001 of two Egyptian asylum seekers (Ahmed Agiza and Mohammed El Zary) on suspicion of involvement in terrorist activities and for posing a threat to national security.[194]

1. The UN Committee against Torture (CAT), Decision on Communication No. 233/2003, *Ahmed Agiza v. Sweden*, Decision of 20 May 2005 (CAT/C/34/D/233/2003)

Abstract: On 20 May 2005 the UN Committee against Torture (CAT) ruled that Sweden had violated the cardinal principle embedded in international refugee law (the *non-refoulement* principle) as well as the unconditional ban on torture in public international law by expelling a terrorism suspect, Ahmed Agiza, to Egypt. Regardless of the justification for the expulsion, *i.e.* the Swedish Government had based its decision on a so-called 'diplomatic assurances' of fair treatment from the Egyptian authorities upon his return, the Committee came to the conclusion that Sweden had violated Article 3 of the UN Convention against Torture.

In the view of CAT, the applicant had credibly alleged that he was tortured after his forcible return to Egypt. More importantly, the Committee stressed that assurances of the kind that has been given to the Swedish authorities could not protect Agiza from the risk of torture he faced upon return. In other words, "the procurement of diplomatic assurances, which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk".[195]

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[193] Regeringens skrivelse Skr 2005/06 :18, Migration och asylpolitik, 21 October 2005, p. 43.

[194] See *e.g.* Human Rights Watch, Sweden Violated Torture Ban with U.S. Help, New York 20 May 2005, www.hrw.org ; *E.Löfgren*, Människorättsorganisationer välkomnar FN:s tortyrkommittés beslut, Pressmeddelande 21 maj 2005, www.amnesty.se ; *A.Klum*, Fonden välkomnar Tortyrkommitténs beslut och efterlyser en snar och genomgripande internationell utredning, Pressmeddelande 23 maj 2005, www.humanrights.se ; International Helsinki Federation for Human Rights, Call for Action against the Use of Diplomatic Assurances in Transfers to Risk of Torture and Ill-Treatment, www.ihf-hr.org. Riksdagens Ombudsmän - JO, Avvisning till Egypten- sammanfattning, 22-03-2005, www.jo.se

[195] UN Doc. CAT/C/34/D/233/2003, 20 May 2005, p. 34. The UN Special Rapporteur of the Commission on Human Rights on torture, Prof. Manfred Nowak stressed also in his latest report to the GA that diplomatic assurances from states that returnees will not be tortured are ineffective. UN News, UN Rights Expert Urges the End of Deportation to Countries that Torture, 30 September 2005, www.un.org

CAT also pointed out that it "should have been known, to the State party's authorities at the time of the complainant's removal that Egypt resorted to consistent and widespread use of torture against detainees, and that the risk of such treatment was particularly high in the case of detainees held for political and security reasons".[196]

Finally, the Committee made the observation that the applicant's retrial in an Egyptian military tribunal in April 2004 was deemed unfair by the Swedish authorities themselves.

2. The UN Committee against Torture (CAT), Case *T.A. & S.T. v Sweden*, CAT/C/34/D/226/2003, Decision of 27 May 2005
Abstract: Two citizens in Bangladesh (a mother and a daughter) who were awaiting deportation from Sweden complaint to the UN Committee against Torture that their expulsion would amount to a violation by Sweden of Article 3 and 16 of the Convention.
One of the applicants (the mother) had applied for asylum in Sweden on the grounds, among other things, that she has been subjected to torture, including rape, by the police in Bangladesh to make her confess of a political crime.

The Swedish National Migration Board (*Migrationsverket*) did not dispute the fact that she had been tortured and raped. However, the Board argued that these acts could not be considered to be attributable to the State of Bangladesh but had to be regarded as the result of the actions of individual policemen. In its decision of 25 February 2002, the Aliens Appeals Board (*Utlänningsnämnden*) reached to the same conclusion and rejected the appeal.

After reviewing the merits of the case CAT arrived, however, to another conclusion. Subsequently, it ruled that given the circumstances of the case the deportation of T.A. and her daughter would amount to a breach of Article 3 of the Convention. The Committee urged, in addition, the Swedish authorities to inform it of the steps taken in response to the Committees' decision. The applicants were, however, granted subsequently resident permits in Sweden.

In 2005, ECRI in its third report on Sweden recommended that "the Swedish authorities ensure that proceedings leading to expulsions are surrounded by appropriate safeguards, including a right to appeal before a judicial instance". The Commission furthermore recommended that the Swedish authorities "introduce the necessary legal and policy changes in order to ensure that Articles 3 and 13 of the ECHR are respected with regard to persons considered to raise concerns of national security."[197]

Legislative initiatives, national case law and practices of national authorities

The Swedish Committee on the Constitution (*Konstitutionsutskottet*) on 21 September 2005 decided to deliver its opinion on the deportation of the two Egyptian citizens in December 2001 after examining the matter. According to the unanimous Committee, the Swedish Government should not have accepted Egypt's guarantee that no torture or other form of mistreatment would occur. The guarantee should, therefore, not have led to the deportation of the persons concerned. In the view of the Committee on the Constitution, the lack of planning how to follow up the guarantee reflected that the actual follow-up was deficient. The Committee furthermore stressed that "it is important that Sweden submits satisfactory background material and cooperates in other ways with the UN Committee against Torture".[198]

[196] Ibid., CAT/C/34/D/233/2003, p. 34.
[197] CRI(2005)26, p. 22.
[198] Sveriges Riksdag, Konstitutionsutskottet, rapport 2005/06:KU2 www.riksdagen.se

According to a citation in Swedish media, the strong criticism expressed by the Committee on the Constitution has had the effect that the Minister for Foreign Affairs has drawn some conclusions for the future handling of such cases, *inter alia*, that the relevant recommendations made by the UN Special rapporteur on torture should be taken into account. [199]

The Swedish Chief Parliamentary Ombudsman (*Justitieombudsmannen (JO)*) has reviewed the enforcement by the Security Police (SÄPO) of the Governments' decision to expel the two Egyptian citizens. (Reg. no. 2169-2004)
In an adjudication of 22 March 2005 the JO made the remark that the enforcement of the decision on expulsion revealed serious shortcomings and he therefore found reasons to express "extremely grave criticism of the Security Police".[200]

Moreover, in his view the enforcement was carried out in an inhuman and degrading and therefore unacceptable manner.[201] The Ombudsman came to the conclusion that foreign officials who assisted the Swedish police officers in Sweden were not, in principle, entitled to use force and may not resort to other forms of coercion.[202] He also expressed hope that the Security Police will adopt "cogent measures to avoid any repetition of what occurred".[203] In fact, the National Police Board has already issued regulations and general guidelines in this area.

On the other hand, the Swedish Parliament decided on 27 October 2005 to abstain from establishing a special inquiry with the task to review the procedures in cases of expulsion similar to the *Agiza* case.[204]

Reasons for concern

The *Agiza* case provides a good illustration of the deficiencies in the current legal system in Sweden with regard to expulsion of terrorist suspect asylum seekers. The Swedish Special Control of Foreigners Act (*Lag om särskild utlänningskontroll* (SFS 1991:572)) allows asylum seekers who have been suspected of terrorism in their country of origin to be expelled to the country in question under a procedure which deprives them from the opportunity to appeal the decision or have it reviewed in any other way. Moreover, the suspected individual is precluded from obtaining knowledge about what evidence is relied upon to reach the decision on expulsion. The representative of the UNHCR in Sweden at that time, has underlined that the Swedish Government's handling of this case felt short of the principles of rule of law.[205]

Also Amnesty International has voiced strong criticism[206] with regard to the forcible deportation of the two asylum-seekers to Egypt in 2001 and the organization has raised concerns about the fact that "the Swedish authorities had colluded in their unlawful "rendition" to the custody of the US before their eventual transfer to Egypt".[207]

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[199] *D.Nilsson*, Regeringen prickas av KU, SvD 22 September 2005, p. 6.
[200] Justitieombudsmännens ämbetsberättelse, avgiven vid riksmötet 2005/06, p. 559.
[201] See *O.Billger*, Svidande kritik mot Säpo, SvD 23 March 2005, p. 7.
[202] Justitieombudsmannen, ibid., p. 587.
[203] Ibid., p. 587.
[204] Riksdagen, Frågan om utredning av avvisningsförfarande, Utskottsbetänkande 2005/06 :KU3, 27 October 2005, www.riksdagen.se
[205] *I.Nilsson*, Human Rights in Counter-Terrorism, Sweden under a Grim Spotlight, www.humanrights.se
[206] Sweden: *Refugee rights undermined in war on terror*, 23/06/2005, EUR 42/001/2005, www.amnesty.org
[207] Amnesty International, The State of the world's human rights, Report 2005-Sweden, May 2005, www.amnesty.org

Other relevant developments

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

In its third report on Sweden, ECRI recommended that "the Swedish authorities ensure that officials responsible for carrying out expulsions are thoroughly trained and receive detailed guidance about their obligations and the methods they can use".[208]

Legislative initiatives, national case law and practices of national authorities

The Act dealing with issues related to extradition on the basis of, *inter alia*, criminal acts (*tillkännagivande* (SFS 2005:638) *av överenskommelser som avses i lagen* (SFS 1957:668) *om utlämning för brott*) has been amended so that it includes now references to the 1948 UN Convention prohibiting genocide, 1997 UN Convention on fighting against terrorist bombing attacks and the 1999 UN Convention on fighting against financing of terrorism. The foreseen modifications entered into force on 14 July 2005.

A new legal Act (*lag om transitering av tredjelandsmedborgare* (SFS 2005:754)) on transit conveyance of third country nationals when refoulement/expulsion order is going to be carried out from Swedish airports is expected to enter into force on 1 December 2005.

The case-law of domestic courts
The Court of first instance-Stockholm District Court (*Stockholms tingsrätt*), Case B 2965-04, Judgment of 12 May 2005

Abstract: In one fairly recent case involving two men of Iraqi heritage (AB and FA), the Swedish Act on Criminal Responsibility for Terrorist Crimes (*Lag om straff för terroristbrott* (SFS 2003:148)) was applied for the first time in Sweden by the Stockholm District Court. Since it could be proven (the evidence for criminal charges that have been presented during the judicial proceedings consisted of material to a great extent based on the use of secret wiretapping and secret wire-surveillance) that the accused were associated with the organization Ansar al-Islam as they had financed and planned acts of terrorism in Iraq by sending money (approximately 148 000 USD) to the mentioned terrorist organization, the Court found both men guilty of financing acts of terrorism, *i.e*. preparing acts of terrorism (*förberedelse till terroristbrott*).

The Court arrived at its conclusion by assessing whether the organization in question was in fact associated with terrorist activities and in turn, if the accused men were part of the network. AB and FA were consequently sentenced to six, respectively seven years imprisonment as well as expulsion with an order of a life time prohibition to enter Sweden. The prosecutor had called for 8 to 10 years in prison.

For the transfer of the money before the 1 July 2003 both men were sentenced for planning hazardous destruction (*allmänfarlig ödeläggelse*). Bearing in mind that one of the men is married in Sweden and has two children living in Sweden, the level of the sentence has been considered very severe in the Swedish context.[209] Thus, the Special Control of Aliens Act does not enable the taking into consideration of established ties with society, *i.e*. family interests and weighting them against national security interests.

[208] CRI(2005)26, p. 19.
[209] *B.Brink*, Åtalade irakier dömda för brott mot terrorlag, SvD 13 May 2005, p. 10 and *C.Arvidsson*, Terrorismen har slagit rot, SVD 13 May 2005, p. 4; TT, Terrorlag gav kurder hårda straff, Metro, 13 May 2005, p. 2.

Mention should be made also of the fact that neither of the men's names were on any of the sanction lists. However, the organization Ansar al-Islam was placed on the UN sanction list in February 2003. It was listed as an organization associated with the Al-Qaida movement and therefore, in the view of the Court, the case under review was clearly related to the targeted sanction regime (§ 15 of the judgment).

The prosecutor appealed the above mentioned case (B 2965-04) to the Court of Appeal (*Svea hovrätt*) in Stockholm.
The Court of Appeal (*Svea hovrätt*) – Case B 3687-05, Judgment of 3 October 2005

The Court of Appeal came to the conclusion that it was apparent that the both men (AB and FA) had been part of the terrorist organisation Ansar al-Islam but it stated, however, that it could only be proven that they had transferred 33 000 USD to the organisation in question. Only 20 000 USD of that amount had been transferred after 1 of July 2003, when the new Act on criminal responsibility for terrorist crimes came into force in Sweden.

For this reason the Court of Appeal lowered the sentences of the convicted individuals to 5 and 4,5 years of imprisonment respectively and lifelong deportation. Two members of the Court were of dissenting opinion. This decision was appealed to the Supreme Court which, nevertheless, decided on 21 November 2005 to abstain from reviewing the case in question.

CHAPTER III. EQUALITY

Article 20. Equality before the law

Equality before the law

Legislative initiatives, national case law and practices of national authorities

The Inquiry entrusted with the task to review and present relevant recommendations, among other things, with regard to counteracting structural discrimination due to ethnicity or religion and enabling the achievement of equality in Sweden, presented its report SOU 2005:56, *Det blågula glashuset - Betänkandet om strukturell diskriminering på grund av etnisk eller religiös tillhörighet i Sverige*, on 13 June 2005. The use of the term 'structural discrimination' in the report of the Committee of inquiry covers both structural as well as institutional discrimination. In the view of the members of the inquiry, structural discrimination means that the principle of equality is not being upheld and this indeed constitutes a serious problem in regard to democracy and not just a problem for those groups that are subjected to discrimination.[210]

Of relevance is also the Committee's proposal that a special fund for the development of case law related to equality issues should be established since the development of related Swedish jurisprudence within this specific legal area has been very slow.[211]

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

ECRI recommended in its third report on Sweden that the Swedish authorities "increasingly put the fight against discrimination at the heart of their integration strategies and consequently focus on measures aimed at the majority population".[212]

ECRI furthermore noted that "Black Africans are reported to continue to face discrimination in access to public places such as bars and restaurants".[213] Therefore, the Commission recommends that the Swedish authorities should consider the possibility of using the provisions concerning the issuing and withdrawal of licenses to serve alcohol also in respect of licensees that are found in breach of civil anti-discrimination provisions and not solely with respect to licensees who are in breach of criminal law provisions prohibiting discrimination.[214]

In addition, ECRI expressed the view that there is a need for the Swedish authorities to intensify their efforts to raise the awareness of those working in the entertainment industry of the need to combat racism and racial discrimination.

In Sweden data are collected, *inter alia*, on the nationality and place of birth of Swedish residents. Thus, registration of individuals on ethnic, religious or linguistic grounds is not

[210] SOU 2005:56, p. 42.
[211] Ibid., p. 55.
[212] CRI(2005)26, p. 6.
[213] CRI(2005)26, p. 6.
[214] Ibid., pp. 24-25.

allowed. The official reason for this practice is first and foremost historical. However, considerations with regard to the integrity of the persons concerned also play a certain role.[215]

ECRI noted in this regard that gaps existed in Sweden in the information available on the situation of various minority groups in areas such as education, employment, health and housing and therefore suggested that the authorities think about how these gaps could be filled. More importantly, in the view of ECRI "the absence of such data in Sweden limits the general awareness of the need to take positive measures to improve the position of certain disadvantaged groups".[216]

Reliable data is, in other words, of importance when evaluating the situation of minority groups and the success of policies and measures designed to improve their situation in various areas in Sweden. ECRI therefore recommended that the Swedish authorities should "improve their monitoring systems by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin, and to ensure that this is done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should be elaborated in close co-operation with civil society organisations and take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination".[217]

Finally, ECRI expressed its concern over the continuation of discriminatory practices in Sweden by private businesses against members of ethnic minorities.[218]

During the review of the Swedish report under the UN Convention on the Rights of the Child, a question was raised by members of the Committee on the Rights of the Child concerning official statistics since Sweden did not compile statistics along ethnic or religious lines on the grounds that that kind of statistics may be open to abuse and is considered by many as discriminatory. In the reply to this question, the Government representative stated that Sweden "was not willing to reconsider its position on the provision of disaggregated data".[219]

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry which has been entrusted with the task to review and present research and information in Sweden on structural discrimination due to ethnicity or religion, particularly in regard to the labour market, the housing market, mass media, the political system, the educational system and welfare services, presented its report Government Report SOU 2005:56 (del 1) (del 2) (del 3), *Det blågula glashuset-Betänkandet om strukturell diskriminering i Sverige på grund av etnisk eller religiös tillhörighet*, in June 2005.

To start with, the Inquiry established in its very comprehensive Part I (comprising a total of 687 pages) with regard to the relationship between racism and discrimination, that the concept of 'culture' has taken over the role of race as a concept for defining perceptions that exist about different people in the world. Culturally related racism is thus currently the most common form of prejudice in Sweden and is expressed in terms of stereotypical assumptions concerning the cultures of immigrants and the cultures of Swedes. They are often seen as completely different and incompatible.[220] With regard to the relevant Swedish legislation, the inquiry came to the conclusion that structural discrimination is "quite limited" as opposed to

[215] CFR-CDF/RepSE/2004, p. 62.
[216] CRI(2005)26, p. 31.
[217] Ibid., p. 31.
[218] CRI(2005)26, p. 11.
[219] UN Doc. CRC/C/SR.1002, Sweden, 17/01/2005, p. 1.
[220] SOU 2005 :56 (del 1), p. 42.

the situation in other countries. Nevertheless, it seems that immigrants run a greater risk of being placed in custody and sentenced to prison, as opposed to a "Swede" in a similar situation.[221]

Among the Inquiry's proposals mention should be made of the following:

- That all national authorities shall develop action plans against discrimination and they should be submitted annually to the Ombudsman against Ethnic Discrimination (DO). The Ombudsman will then have a duty to evaluate them (page 54);
- The parts of civil society that are subjected to structural discrimination due to ethnicity or religion should be provided representation in relevant government inquiries;
- The introduction of a framework of a comprehensive anti-discrimination law and supervision since this seems to be the most effective way to counteract structural discrimination;
- The adoption of an executive order that requires all governmental authorities to include an anti-discrimination clause in their public procurement contracts. The clause should cover all grounds of discrimination. (page 56)

Another Committee of inquiry presented its report SOU 2005:41, *Bortom Vi och Dem-Teoretiska reflektioner om makt, integration och strukturell diskriminering* (del 1) och (del 2) in July 2005. The report could be described as an interdisciplinary study carried out by researchers from Sweden as well as from other countries working within, among other things, the fields of sociology, social anthropology, history and cultural geography. The main task of the research has been to review and analyse the mechanisms behind the existing structural discrimination.

Furthermore, the interim report SOU 2005:69, *Delbetänkande*, *Sverige inifrån - Röster om etnisk diskriminering - Utredning om makt, integration och strukturell diskriminering*, was presented publicly on 31 August 2005. The Committee of inquiry was entrusted with the task of identifying and systematising the mechanisms behind structural/institutional discrimination due to one's ethnicity or religion. Much of the material is based on experiences within some of the larger cities in Sweden. The report contains, among other things, some 20 well reasoned recommendations on various measures which, if adopted, could efficiently counteract the currently existing segregation in Swedish society. However, these recommendations will be further developed and made even more specific in the final report yet to be produced.

Also of importance is the Ministry memorandum Ds 2005:3, *Svensk rätt i integrationspolitisk belysning*, which was published in January 2005. Besides an in depth analysis of the compatibility of the Swedish legislation, such as the Aliens Act and the Constitution, with the prohibition of discrimination and the principle of equality as enshrined in public international instruments, the memorandum comprises a useful comparison of the Swedish legal norms that are relevant in the integration policy context with the corresponding legislations in other European countries.[222]

Positive aspects

The proposals with regard to, *inter alia*, the desirability of introducing a consolidated legal act providing protection against discrimination on different grounds and across most fields of life in Sweden, that has been put forward by the Parliamentary Committee in its report SOU 2005:56, may have many positive implications within this area in the future.

[221] Ibid., p. 48.
[222] Ds 2005 :3, pp. 101-129.

Attention has also been paid to the issue of adopting positive measures to promote equality of persons irrespective of racial and ethnic origin in working life.

According to the European Civic Citizenship and Inclusion Index[223], which was launched on 21 March 2005, comprising, *inter alia*, an assessment of and comparison between 15 EU member state' anti-discrimination policies, the Swedish integration policy received good credits.[224]

Good practices

In 2005 the 2002-2004 National Human Rights Action Plan, which addressed racism, xenophobia and racial discrimination as one of its priority issues, has been evaluated[225] and a new Human Rights Action Plan (2006-2009) is being drawn up within the Department of Justice (Ju2004/11236/D).

Reasons for concern

Sweden has yet to sign and/or ratify the Optional Protocol No. 12 to the ECHR which establishes a general prohibition against all forms of discrimination. The Ombudsman against Ethnic Discrimination (DO) as well as numerous representatives for other NGOs and civil society have actively supported Sweden's ratification of the protocol but so far without success.[226]

The numbers of complaints of discrimination filed with the Ombudsman against Ethnic Discrimination (DO) relating to discrimination in the work place have continued to grow during the year of 2005.[227] Immigrants continue to encounter severe difficulties in finding jobs and even being invited for an interview.[228]
The powers of the DO to carry out investigations are, however, limited. In addition, the level of compensation awarded to victims of discrimination is still very low. Similar criticism was expressed by the inquiry entrusted with the task to review the implementation of the National Action Plan on Human Rights 2002-2004.[229]

Various surveys reveal that girls feel more exposed than boys to more or less all forms of violations at school. Even more disturbing is the fact that many violations were of an ethnic nature and that many pupils with a foreign background feel more vulnerable than those with a Swedish background.[230]

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[223] See Migration Policy Group, European Civic Citizenship and Inclusion Index, Brussels 21/3/2005, www.migpolgroup.com
[224] See Integrationsverket, Svensk integrationspolitik får bra betyg i internationell jämförelse, www.integrationsverket.se
[225] *T.Hammarberg & A.Nilsson*, Bra början, men bara en början, Stockholm 19 January 2005, Justitiedepartementet Ju2004/6673/D.
[226] Ibid., p. 26. See also the report « Rasism och främlingsfientlighet i Sverige 2004 » which was made public by the Department for Integration in late October 2005, www.integrationsverket.se
[227] For the most recent statistics see www.do.se see also International Helsinki Federation for Human Rights, The 2005 report, the Chapter on Sweden, p. 10; *C.Axelsson*, Invandrare nekas job, SvD Näringsliv, 9 September 2005, p. 9.
[228] *A.Näslund*, « Invandrare måste kämpa lite extra », Civilekonom sökte 120 jobb utan att ens få komma till intervju, SvD, Näringsliv 12 June 2005, p. 12
[229] *T.Hammarberg & A.Nilsson*, Bra början, men bara början, 19 January 2005, pp. 1 and 42. www.mansligarattigheter.gov.se
[230] UN Doc. CRC/C/RESP/74, Written replies by the Government of Sweden concerning the list received by the Committee of the Rights of the Child relating to the consideration of the third periodic report of Sweden, p. 13.

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

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

In 2005 ECRI recommended in its third report on Sweden that "further attention be paid to the problem of misconduct of public order guards and watchmen employed by private security companies towards members of ethnic minority groups".[231] The Commission expressed its concern with regard to the active presence of the White Power movement in Sweden and the production as well as distribution of hate music. Subsequently ECRI recommended that the public authorities ensure that racial agitation committed through the Internet is prosecuted and punished. Mention could be made here of the 1998 Act on Responsibility for Electronic Bulletin Boards which requires suppliers of electronic bulletin boards to delete any message, which has a content that constitutes agitation against a national or ethnic group.
Furthermore, the Commission reiterated its earlier recommendations implying a need to prohibit racist organisations and the participation in their activities.[232]

Legislative initiatives, national case law and practices of national authorities

The case-law of domestic courts - The District Court in the town of Malmö

Abstract: Åklagaren ./. Bengt Lindström (*The Prosecutor v Bengt Lindström*), Case B 2929-05, Judgment of 11 October 2005

A 43-year old police officer who sent an e-mail containing racist statements to Ilmar Reepalu, the Chair of the Municipality Board in the town of Malmö (*kommunstyrelseordförande*) was tried for his actions at a court of first instance -the District Court in Malmö- (*tingsrätt*). The prosecutor demanded a prison sentence or fine for the policeman.

The personnel department of the National Police Board had already decided that he would be dismissed if he was found guilty of a serious offence.

However, the Malmö District Court (*tingsrätt*) acquitted the accused of all the charges, claiming that the policeman was not guilty of persecution of a minority group. In his e-mail to Mr. Reepalu he referred to "criminals called Mohammed from Rosengård" and urged the Chair of the Municipality Board to withdraw the "massive subsidies to all the damn foreigners in Malmö".

The District Court ruled that the content of the e-mail was indeed offensive and degrading for the persons concerned, but at the same time the Court was also convinced that the police officer did not have the intention of spreading his views more widely – even though the message became public when he sent it to Mr Reepalu.

Positive aspects

In 2005 an apparent trend shows that a greater number of victims of hate crimes decided to take the step to report the incidents to the police.[233]

[231] CRI(2005)26, p. 30.
[232] Ibid., p. 32.
[233] Tidningen Svensk polis, 29 November 2005, www.polisen.se

Good practices

As from 1 January 2005, there is a special unit with nationwide competence "*Riksenheten för polismål*". This independent body is comprised of prosecutors with special skills and who are entrusted with carrying out all of the investigations concerning alleged police misconduct, including acts of racism or racial discrimination. The unit cooperates with special internal investigation units within the police force.

The general work done by the Office of the Ombudsman against Ethnic Discrimination (DO) should be mentioned here.[234] There has been a three-fold increase in its budget from 2003 to 2005.

Reasons for concern

Even though the situation is by and large being improving, discrimination in the treatment of customers in restaurants on the basis of their nationality/ethnicity persists.[235] Thus, the greater part of the complaints submitted to DO in 2005 concerned individuals being denied entrance to restaurants and pubs because of their skin-colour or ethnic origin (as of 11 December their number is 137). A subpoena against one of the restaurant owners was delivered in February 2005.[236]

The statistics dealing with hate crimes for 2005 which have been presented by the police[237] as well as by the Swedish Federation for Lesbian Gay, Bisexual and Transgender Rights (RFSL) disclose an increase in hate crimes targeting homosexual persons.[238]
However, the official hate crime figures do not distinguish between islamophobic hate crimes and other types of hate crimes.[239] It is, therefore, difficult to establish whether islamophobia has increased or decreased in Sweden. This has been a subject to criticism.[240] Nevertheless, the Swedish Council for Crime Prevention (BRÅ) shall be responsible for the yearly compilation of that kind of statistics with beginning in 2006 and it is expected that the statistics may include also details with regard to this type of hate crimes.

Protection of Gypsies / Roms

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

ECRI referred in its third report on Sweden in 2005 to information received which indicates that Roma communities continue to suffer disadvantages and discrimination in housing and harassment by neighbours, discrimination in access to public places such as restaurants and shops, as well as discrimination by potential employers.[241]
ECRI was on the other hand pleased to note that the DO will be provided with targeted funds to continue working with Roma issues, including structural discrimination.

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[234] See www.do.se
[235] UN Doc. CRC/C/SR.1002, Summary record, Sweden 17/01/2005, p. 2.
[236] International Helsinki Federation for Human Rights, The 2005 report, p. 11. See also, DO stämmer krogar i Stockholm, Göteborg och Malmö, April 2005, www.do.se
[237] See the report « Brottslighet kopplad till inre säkerhet 2004 » which was submitted by the Swedish Secret Police to the Government in late November 2005, www.sakerhetspolisen.se
[238] See e.g. *Chr.Wahldén*, Fler anmälningar om hatbrott mot homosexuella, SvD 30 November 2005, p. 7.
[239] Ibid., www.sakerhetspolisen.se
[240] *J.Winter*, Säpokartläggning missar hatbrott mot muslimer, SvD 3 December 2005, p. 25.
[241] CRI(2005)26, p. 25.

Finally, ECRI emphasised the importance of developing "institutional arrangements to promote an active role and participation of Roma/Gypsy communities in the decision-making process, through national, regional and local consultative mechanisms, with the priority placed on the idea of partnership on an equal footing". [242]

Reasons for concern

Among the areas of concern, the low school attendance and the high drop-out rates from schools of Roma children are particularly alarming.

According to Swedish media camping places continue to discriminate Roma people.[243]

Article 22. Cultural, religious and linguistic diversity

Protection of linguistic minorities

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry entrusted by the Government with the task to review, among other things, the implementation of international commitments to support the cultures and languages of the five Swedish national minorities (the Sámi, the Swedish Finns, the Tornedalers, the Roma and the Jews), presented its final report SOU 2005:40, *Rätten till mitt språk-förstärkt minoritetsskydd*, on 24 May 2005.

To start with, the Commission noted the international criticism which has been expressed in connection with the dissatisfactory implementation of the Council of Europe Minority Conventions in Sweden. Thus, some individuals have not been able to fully exercise their rights of the current minority language legislation, *e.g. Lag om rätt att använda samiska hos förvaltningsmyndigheter och domstolar* (SFS 1999:1175) and *lag om rätt att använda finska och mëankelieli hos förvaltningsmyndigheter och domstolar (*SFS 1999:1176).

The inquiry proposed the introduction of a new Act on National Minorities and National Minorities Languages to encompass all of the national minorities.[244] Furthermore, according to the proposals, one of the County Administrative Boards (*länsstyrelsen*) should be entrusted with the task to supervise the new Act on National Minorities and Minority Languages as well as to have responsibility to monitor issues related to the National Minority Policy. However, the all-around national responsibility should be placed with the County Administrative Board in the county of Stockholm.

Another proposal which has been put forward by the inquiry implies that pupils belonging to the Swedish Finnish or the Jewish minorities should have the right to education in Finnish and Yiddish, even if there is only one pupil in the municipalities who wishes to pursue it.[245]

Finally, in the view of the Commission, the protection of national minorities, their languages and cultures should be expressly specified in the Swedish Constitution (*Regeringsformen*). This is not the case at present.[246] The inquiry underlines that the current regulation does not fulfil Sweden's commitments in accordance with the Council of Europe Framework Convention on Minorities.

[242] Ibid., p. 26.
[243] *H.Ennart*, Campingar diskriminerar romer, SvD 2 August 2005, p. 6.
[244] SOU 2005:40, p. 22.
[245] Ibid., p. 23.
[246] SOU 2005:40, p. 22.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry presented its interim report SOU 2005:91, *Agenda för mångkultur-programförklaring och kalendarium för Mångkulturåret 2006*, in October 2005.
In addition to a broad discussion on the definition of the notion of 'diversity' in various sectors, including diversity in the work place, as well as demonstrating the significance for the whole society of achieving diversity, the report also contains very useful clarifications of the terms indirect and direct discrimination through the use of illustrative concrete examples in daily life.
The final report of the inquiry is expected to be made public in July 2007.

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

The Government Bill on extended protection against discrimination on the basis of sex (prop. 2004/05:147, *Ett utvidgat skydd mot könsdiskriminering)* was presented to the Swedish Parliament on 7 April 2005 and the legislative amendments entered into force on 1 of July 2005 (*Lag* (SFS 2005:480) *om förbud mot diskriminering*). In other words, this enabled Sweden to implement the EC Equal Treatment Directive within the prescribed time, *i.e.* no later than 5 October 2005.[247]

In addition to the amendments of the provisions dealing with the definitions of direct and indirect discrimination on the basis of sex new provisions were introduced in the Equal Opportunity Act (*jämställdhetslagen* (SFS 1991:433)) which explicitly 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" as well as sexual harassment, *i.e.* "conduct of a sexual nature that violates a job applicant's or an employee's dignity".

Another legislative change of significance relates to the prohibition against discrimination on the basis of sex in the form of instruction to discriminate.
Corresponding amendments were also made in the Prohibition of Discrimination Act (*lagen om förbud mot discriminering* (SFS 2003:307)) with the effect that sex has been added as a new ground for prohibited discrimination and it has been included in the definitions of direct discrimination, indirect discrimination and harassment. Previously, the mentioned Act contained protection against discrimination on the grounds of ethnicity, religion or other faith, disability and sexual orientation.

On 1 August 2005, the Committee of Inquiry on Gender Equality Policy presented its report SOU 2005:66, *Makt att forma samhället och sitt eget liv-jämställdhetspolitiken mot nya mål* (Government Report SOU 2005:66, The Power to shape society and ones own live-the equality policy towards new objectives).

The main task of the inquiry has been to conduct a review of the objectives, orientation, organisation and effectiveness of gender equality policy in Sweden. On the basis of the social changes that have occurred in the last ten years in society, the Committee proposed new overall objectives and a new organisation in the area of gender equality policy. In the view of

[247] Prop. 2004/05:147, p. 2.

the inquiry, gender mainstreaming as a strategy for gender equality policy should remain in place.

Among the new targets for the future policy, mention has been made of, *inter alia*, paid jobs which provide lifelong economic independence and care without subordination, *i.e*. unpaid care work, is to be shared equally.[248]

Some of the conclusions reveal that the collective problems faced by women in the work place "have to be solved by women individually". Furthermore, insecure employment, part-time work and sick leave were seen as a result of the existing inequality on the labour market as well as individual solutions to structural problems. The study, however, shows a general increase of economic equality during the 1990s. Nevertheless, during the same period the income trend had been poorer for single mothers than for mothers and fathers living together.[249]

Finally, the Committee suggested that a new agency for gender equality entrusted with the responsibility to coordinate and evaluate the implementation of gender equality policy, should be established in the near future. Moreover, the county administrative boards (*länsstyrelser*) should be given the task of translating the national gender equality objectives into regional gender equality objectives. Subsequently, an overall county strategy should be formulated based on the regional objectives and they should function as a platform for the development of a local agenda for gender equality.

Some of the proposals for legislative changes in the existing Swedish parental insurance legislation which were made by the Commission of inquiry in its report SOU 2005:73, *Reformerad föräldrarförsäkring-Kärlek, omvårdnad och trygghet*, were specifically aimed at facilitating the achievement of equality between men and women, including in the labour market.[250]

Positive aspects

The proposal made by the above mentioned inquiry SOU 2005:66[251] that a gainful employment tax allowance for single parents should be introduced, has the potential to lower the threshold and marginal effects for lone parents with low incomes and to strengthen the group that is financially vulnerable.

Reasons for concern

Notwithstanding the fact that a great number of initiatives are surfacing in the area of gender equality, the gap in wages between women and men, both in private and public sectors persists.[252] Worrisome is also the persistence of gender segregation in the labour market.[253]

[248] SOU 2005: 66, p. 35.
[249] Ibid., p. 37.
[250] SOU 2005:73, pp. 245-281.
[251] SOU 2005:66, p. 37.
[252] Ibid., pp. 161 and 167. See also Avtalsrörelsen och lönebildningen 2004, Medlingsinstitutet, Stockholm 2005; *A.Danielsson*, Lönegapet ökar, SvD 15 September 2005, p. 6.
[253] SOU 2005:66, p. 172 and SOU 2005:73, pp. 270-274.

Article 24. The rights of the child

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

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

With regard to the rights of the child to express her/his views freely in all matters concerning her/him and have them duly taken into account, the UN Committee on the Rights of the Child in its concluding observations on Sweden's report, welcomed the adoption of legislative reforms as well as the various programmes such as 'influence forums' and the right of the child to have his/her views heard in legal proceedings and in school matters.

Nevertheless, the Committee also expressed concern over information received that some children and young persons "do not feel they have any real influence in matters concerning their life in society".[254] The Committee therefore recommended that Sweden "ensures that administrative or other decisions relevant to children contain information on how the views of the children were solicited, on the degree to which the views of children were adopted and why" as well as to "consider providing a child in very conflicting custody and visitation disputes with appropriate assistance".[255]

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry which has been commissioned by the Government to evaluate the 1998 custody reform presented its report SOU 2005:43, *Vårdnad-Boende-Umgänge. Barnets bästa, föräldrar ansvar*, on 1 June 2005. The report contains an investigation of, *inter alia*, how the new rules on custody and related issues have been applied by Swedish courts and social welfare committees. The inquiry has thereby paid particular attention to how the rules for joint custody and residence have been applied in cases where there has been abuse or suspicion of abuse.[256] (See also the information under Article 4 in the present report)

Another aspect of the Commission's remit has been to evaluate the 1996 reform concerning the right of children to be heard and to examine how the courts and the social welfare committees have applied these regulations (including the amendments of 1998). At present the courts must take into account the "will" of the child in matters concerning custody, residence and access. The inquiry clarifies the phrase "will" and proposes a more expansive understanding of the right of the child to have an influence in matters concerning it personally, *e.g*. custody. Thus, in the opinion of the Commission it is not compatible with the best interests of the child to disregard more generally expressed thoughts on the part of the child, *i.e.* which not necessarily can be comprised within the term "will". Therefore, it is proposed that the legislative text in the Parental Code (*Föräldrarbalken* (SFS 1998:319)) be amended so that it is the child's attitude that the court must take into account and not merely its will.
The Commission underlined, furthermore, that also relatively young children (from at least the age of 6 years of age) should have a chance to be heard and to influence their situation.[257] Therefore, it proposed as a general principle that the child must always have an opportunity to be heard and that her/his attitude must be taken into account.

Moreover, bearing in mind that courts and social welfare committees have been criticised for focusing more to parents' than the child's interests, the Commission suggested that the

[254] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 4.
[255] Ibid., p. 5.
[256] SOU 2005 :43, del A, p. 41.
[257] SOU 2005 :43, p. 48.

wording of Chapter 6, sec. 2a (§ 1) of the Parental Code be changed as follows: "Decisions under this chapter on all matters relating to custody, residence, access and contact other than access must be made solely on the basis of what is best for the child". In the words of the Commission ""it is of fundamental importance that the assessment is made not from an adult perspective but from a child's perspective and that the child has the opportunity to speak in the matter and to influence her or his situation".[258]

The Commission also believed that joint custody is incompatible with the best interests of the child in all cases where the parents have difficulty in cooperating. The inquiry therefore makes the proposal that the court should be able to decide in favour of joint custody only if it can be assumed that the parents are able to cooperate in matters that concern the child.[259]

As already is the case in a few other countries, the report contains a proposal to introduce a possibility for the Swedish courts to prescribe indirect access for the child, *e.g.* by telephone, letters etc. when one of the parents lives far away or is serving a prison sentence.[260]

Another specific question has been to consider which body in the future should examine issues regarding the enforcement of decisions on custody and related matters, the return of children and conditional penalty payments. The inquiry proposes that cases under the Act concerning Recognition and Enforcement of Foreign Decisions relating to Custody etc. and concerning the Return of Children (SFS 1989:14) should also be dealt with by the general courts rather than by the administrative courts, as at present.[261]

Finally, mention should be made of the inquiry's task to consider the skills of judges and the introduction of automatic assessment of custody or access when a parent has committed certain criminal acts against the other parent. (See also the information under Article 4 of this report)

Good practices

Children and young people in a great number of the 289 Swedish municipalities are given the opportunity to influence decision-making on issues affecting them by the way of conducting an ongoing dialogue with the decision-makers through the so called "influence forums". The National Board for Youth Affairs each year surveys the number of such forums available to young people around the country and the integration of a youth perspective into local government affairs.

Reasons for concern

The Swedish Children's Ombudsman (BO) has expressed concern that younger children, in particular, often are not allowed to express their views in proceedings regarding custody, residence and contact with a parent. Furthermore, when parents are in dispute in a custody case, the child has no access to an adult person, neutral to the conflict between the parents, who will be able to assist him/her in expressing his/her views.[262]

[258] Ibid., p. 42.
[259] SOU 2005 :43, p. 43.
[260] Ibid., p. 46.
[261] SOU 2005 :43, p. 57.
[262] Barnombudsmannen (BO), Observations with respect to the written replies of the Government of Sweden concerning the list of issues (CRC/C/Q/SWE/3), p. 7, www.bo.se

Children with functional impairment (disability) continue to have special difficulties in safeguarding their own rights.[263]
Cumbersome is also the current situation where there are a very few (43) agreements between municipalities and county administrative boards on their mutual cooperation with regard to implementing measures in favour of children with needs exceeding limits (*gränsöverskridande behov*), *e.g.* children with disabilities and very special needs.[264]

Other relevant developments

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

The UN Committee on the Rights of the Child recommended in its concluding observations with regard to the Swedish periodic report under the Children's' Convention, that Sweden should "consider providing the Children's Ombudsman with the mandate to investigate individual complaints" and that "the annual report of the Children's Ombudsman be presented to the Parliament, together with information about measures the Government intends to take to implement the recommendations of the Children's Ombudsman".[265]

Furthermore, the Committee encouraged Sweden to "continue its efforts to provide adequate and systematic training and/or sensitization on children's rights for children and professional groups working with and for children, in particular law enforcement officials as well as parliamentarians, judges, lawyers, health personnel, teachers, school administrators and others as required".[266]

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry which has been entrusted by the Government with the task to make proposals on necessary reforms of the current parental insurance system presented its report SOU 2005:73, *Reformerad föräldraförsäkring - Kärlek, omvårdnad, trygghet*, on 15 September 2005.

The situation of unaccompanied children in Sweden has attracted attention in recent years. A considerable number of unaccompanied children have disappeared from the special centres run by the National Migration Board (*Migrationsverket*), where they were accommodated.[267]
In order to prevent the occurrence of such incidents, a few important proposals for legislative changes envisaged to enter into force on 1 July 2006 were introduced on 27 October 2005 in the Government Bill prop. 2005/06:46, *Mottagande av ensamkommande barn* (Reception of unaccompanied children). The Swedish municipalities shall have the responsibility for the reception of unaccompanied children in the future, both for children who are applying for asylum status and children who have been granted residence permits.

Of certain relevance to this issue is also the Government Bill, prop. 2004/05:136, *Stärkt skydd för ensamkommande barn* (Stronger protection for unaccompanied children), which was submitted to the Swedish Parliament in 2005.
According to the proposal shortly after the arrival of an unaccompanied child in Sweden a 'good man' (*god man*), *i.e.* representative, should be appointed who will have a position

[263] *Rädda Barnen*, Rädda Barnens kommentar till "Ett Sverige anpassat för barn", 14 October 2005, p. 3.
[264] Nationell kartläggning av samverkansavtal kring barn och unga med funktionshinder, Socialstyrelsen , Stockholm 2005.
[265] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 2.
[266] Ibid., p. 3.
[267] See Report on Sweden 2004, CFR-CDF/SE/2004, p. 56.

corresponding to a custodian. If the child in question receives a residence permit a special legal custodian shall be appointed in accordance with the Parental Act (*Föräldrarbalken*).

Positive aspects

The Government has announced that one of its major priorities for the years to come is "to ensure a child perspective in all public decision-making".[268]

Reasons for concern

Lay members in district courts are persons who represent their communities and they are persons with diverse professional backgrounds. The great majority of them, however, lack expertise in child-related issues.

The Swedish Children's Ombudsman (BO) has expressed concern regarding the absence of a child perspective (especially with reference to Articles 9 and 18 of the UN Convention on the Rights of the Child) in the proposed changes in the Swedish administrative practice dealing with the handling of applications for residence permits on the basis of personal ties (Delbetänkandet SOU 2005:14, *Effektivare handläggning av anknytningsärenden*) (Government Report, SOU 2005:14, Effective handling of residence permits on the basis of personal ties).[269]

The Children's Ombudsman emphasised moreover that only in exceptional cases should there be a possibility for the public authorities to revoke a temporary residence permits if a child (especially a common one) is involved.[270] As already mentioned under Article 9 of this report, the Government inquiry proposes that there should be a possibility to revoke a temporary residence permit granted on the basis of personal ties if the relationship ends during a two-year period.

Article 25. The rights of the elderly

Specific measures of protection for the elderly

Reasons for concerns

There is a clear tendency in Sweden towards a growing number of elderly people. In other words, an increasing number of people reach high age (almost every third woman is able to celebrate her 90th birthday).[271] According to recent estimates Sweden has currently the oldest population in the world. However, not all elderly people have access to high-quality care on equal terms.[272] Neither does the availability of special sheltered housing for the elderly currently meet the growing needs.[273]

[268] UN Doc. CRC/C/RESP/74, Written replies by the Government of Sweden concerning the list of issues by the Committee on the Rights of the Child relating to the consideration of the third periodic report of Sweden in 2005, p. 16.
[269] Barnombudsmannen (BO), Remissvar, Betänkandet (SOU 2005:14) Effektivare handläggning av anknytmingsärenden, Stockholm 19 July 2005 www.bo.se
[270] Ibid., p. 2.
[271] Statement of Government Policy presented by the Prime Minister, Mr Göran Persson, to the Swedish Riksdag on 13 September 2005, p. 7. www.riksdagen.se
[272] *A.Bratt*, Svensk äldreomsorg inte längre ett föredöme, DN 21 November 2005, p. 8.
[273] See the reports at www.aldrecentrum.se and *A.Engström*, Äldreomsorgen får underkänt, SvD 25 August 2005, p. 6.

A great number of people demonstrated on 12 November 2005 against the municipality's decision to shut down the elderly housing in Luojddo which accommodates Sámi peoples. The Sámi peoples feel that they should have more to say in connection with the use of resources in Sámi areas and that this decision affects guarantees with regard to the right to use ones' mother tongue.[274]

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Reasons for concern

Despite that much of the relevant Swedish legislation concerning the rights of persons with disability/functional impairments is founded on the fundamental principle of the equal value of all human beings, accessibility in society –especially with respect to services and shelter[275]- has not yet fully been guaranteed for this group of people. The issue of accessibility continues to be the cause for most of the complaints brought to the Swedish Disability Ombudsman (*Handikappombudsmannen* (HO).

More seriously, the modern contemporary doctrine of the human rights' indivisibility and interdependency did not have any noticeable impact in reality during the period under scrutiny.[276] Thus, persons with functional impairment (disability) were often not regarded in their contacts with public authorities as being right-holders but rather as patients and recipients of welfare support.[277] It goes without saying that for citizens the rights based approach is an important tool in gaining influence over their situation and exerting pressure.

Professional integration of persons with disabilities: positive actions and employment quotas

Reasons for concern

Despite Sweden's' longstanding tradition of disability policy, the number of persons with functional impairment/disability continues to cover great part of the unemployed population in Sweden according to a recent study which has been carried out by the Disability National Board (*De Handikappades Riksförbund*).[278] Only four out of ten persons with functional impairment have some kind of employment.[279]

[274] *Å.Lindstrand*, Samisk reaktion mot nedläggningshot, Kräver äldreboende kvar, Kuriren 14 November 2005, p. 2 ; *Å.Lindstrand*, Sameavdelning i graven, www.kuriren.nu 8 November 2005 ; *Å.Lindstrand*, Äldreomsorg i stöpsleven, www.kuriren.nu, 12 October 2005.
[275] *G.Eriksson & L.Olsson*, Skärpt lag ger stöd åt handikappade, SvD 27 September 2005, p. 9.
[276] *T.Hammarberg & A.Nilsson*, Bra början, men bara början, 19 January 2005, p. 38.
[277] *J.Franksson*, Förbundet Unga Rörelsehindrade, Mänskliga rättigheter ur ett svenskt perspektiv- omhändertagande och förtryck, 27 September 2005, MR forum, www.mrforum.se See generally *Handikappombudsmannen*, HO:s önskelista till Diskrimineringskommittén, April 2005.
[278] De Handikappades Riksförbund, Vi vill ha arbete- inte bidrag, 28 September 2005, www.dhr.se see also Hög arbetslöshet, Jusektidningen 6/05, p. 15 and Funktionshindrades situation på arbetsmarknaden 2004, Statistiska Centralbyrån 2005.
[279] TT, Svårt få jobb för funktionshindrad, SvD Näringsliv 7 July 2005, p. 8.

Other relevant developments

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

In its concluding observations on Sweden's report under the UN Children's Convention, the Committee on the Rights of the Child expressed concern over the fact that there is no data available on the total number of children with disabilities. The Committee consequently recommended that data on children with disabilities be collected and disaggregated by the type of disability.[280]

Positive aspects

According to official statements, approximately 70 percent of children with disabilities attend special classes in mainstream schools and 20 to 30 per cent of such children have been fully integrated into mainstream classes.[281] In addition, there are some special schools for children who are deaf or have hearing problems.
A report is under preparation and it will be submitted to Parliament on an Action Plan for a National Disability Policy in 2006.

Reasons for concern

The Swedish Children's Ombudsman has expressed concern about the fact that children and young persons with disabilities are more often exposed to bullying at school than other children. These children's possibilities to exercise their right to engage in play and recreation activities appropriate for their age as well as to fully participate in cultural and artistic activities are, in addition, often limited.[282] Thus, children with disabilities are not yet integrated into mainstream sporting and other activities.

One explanation of this state of affairs could be that while the legislation in force requires that there should be an equal provision of services throughout the country for children with disabilities, municipalities comply with the legislation in different ways.

[280] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 3.
[281] UN Doc. CRC/C/SR.1002, Summary Record, Sweden 17/01/2005, p. 8.
[282] Barnombudsmannen (BO), Observations with respect to the written replies of the Government of Sweden concerning the list of issues (CRC/C/Q/SWE/3), p. 11, www.bo.se

CHAPTER IV. SOLIDARITY

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

Article 28. Right of collective bargaining and action

Article 29. Right of access to placement services

Article 30. Protection in the event of unjustified dismissal

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 Human Rights, (sec 2) *Jonasson v. Sweden*, Application No. 59403/00 (friendly settlement), Judgment of 12 July 2005

Abstract : The applicant, Anders Jonasson, a Swedish citizen was employed in February 1995 by Air Inn at an airport restaurant rented from the Civil Aviation Administration (CAA) (*Luftfartsverket*), which is a public body responsible for airports, air-traffic control and air safety in Sweden. He was given access to parts of the airport considered to be high security.

Following the entry into force on 1 July 1996 of the Security Protection Act (*säkerhetsskyddslagen* (SFS 1996:627)) and the Security Protection Ordinance (*säkerhetsskyddsförordningen (*SFS 1996:633)), Air Inn requested that the *Luftfartsverket* should conduct a security check on Mr Jonasson. It turned out then that he had been convicted of assault twice, in 1979 and 1998. During a meeting with Air Inn and the Director of the Airport, Mr Jonasson explained that the first conviction concerned a youthful misdemeanour that had occurred more that 20 years earlier and that the second one had stemmed from an incident within his family at a time when he had been under a great deal of stress due to his stepson's psychiatric handicap.

In its decision on 27 November 1998, the CAA found Mr Jonasson to be a security risk. Air Inn was ordered to prevent him from participating in activities requiring personnel to pass a security check and to order Mr Jonasson to hand in his airport access document to the Director of the Airport. No appeal against that decision was possible and, since the company could not offer transfer opportunities at the time, he was given notice and suspended from work as from 1 February 1999.

Subsequently, Mr. Jonasson brought unsuccessful proceedings for unfair dismissal. He complained about the decision of 27 November 1998, relying on Articles 6 § 1, 8 and 13 of the European Convention.

The case was, nevertheless, struck out following the friendly settlement between the applicant and the Swedish Government.

Article 31. Fair and just working conditions

Working time

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

European Court of Justice (ECJ)
In the Case C-287/04, *The Commission of the European Communities v Kingdom of Sweden*, the ECJ (sixth Chamber) declared in its judgment of 26 May 2005 that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 3, 6 and 8 of the Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time and rest period, Sweden has failed to fulfil its obligations under the directive in question (*i.e.* failure to transpose the Directive within the prescribed period of time).[283]

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

Article 33. Family and professional life

Parental leaves and initiatives to facilitate the conciliation of family and professional life

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

In 2005 the European Committee of Social Rights recalled in its conclusions on the Swedish report under the Revised European Social Charter that "it has previously found the situation not to be in conformity with the Revised Charter on the grounds that the compulsory period of maternity leave is insufficient; the Revised Charter requires that states provide for a compulsory period of leave of no less than six weeks."[284]

Since there has been no change in this respect the Committee came to the conclusion that the current situation in Sweden in relation to the implementation of Article 8 § 1 (*Right of employed women to protection of maternity*) in the European Social Charter, is not in conformity, *i.e.* the compulsory period of post natal leave is less than six weeks.

With regard to the implementation of Article 8 § 3 (*Time off for nursing mothers*) the Committee, to start with, referred to its earlier standpoint that the situation in Sweden was in breach of this provision on the grounds that while women nursing their children may reduce their daily working time, this time is not remunerated as working time, although loss of income is compensated by parental benefit. Nevertheless, the Committee now takes the position that "where loss of income is compensated by parental benefit, the situation is in conformity with the Revised Charter".[285]

Legislative initiatives, national case law and practices of national authorities

The Ministry memorandum Ds 2005:15, *Förstärkning och förenkling-ändringar i anställningsskyddslagen och föräldraledighetslagen*, which was published on 27 April 2005,

[283] OJ C 182, 23/07/2005, P. 0017-0017.
[284] Council of Europe, European Social Charter (Revised), European Committee of Social Rights, Conclusions 2005 (Sweden), p. 3, www.coe.int
[285] Ibid.

contains proposals for legislative changes in the Act on Security of Employment (*lag* (SFS 1982:80) *om anställningsskydd*) and the Act on Parental Leave (*lag* (SFS 1995:584) *om föräldrarledighet*) with the aim to strengthen the protection of parents who use their right to parental leave in situations when they are employed for a limited time period.[286]

Article 34. Social security and social assistance

Social assistance and fight against social exclusion

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry, which has been entrusted with the task of reviewing the existing Swedish legislation on parental assistance (parental insurance) from a child- and gender perspective, submitted its final report SOU 2005:73, *Reformerad föräldraförsäkring, Kärlek, omvårdnad och trygghet*, to the Government on 15 September 2005.

Bearing in mind Sweden's international obligations under human rights conventions such as the UN Convention on the Rights of the Child and the UN Convention against Discrimination of Women[287], the Commission made several proposals for legislative changes in order to better facilitate access of the child to both parents as well as to improve the situation of households with one parent. Special support has been envisaged for single parents since in the view of the Commission children living in such families are often vulnerable.[288]

Since 1st of January 2005 social insurance is administrated by a new authority - the Swedish Insurance Agency.[289] Currently parental insurance is available for a total of 480 days. The inquiry suggested that this period should be extended.[290]

Positive aspects

The welfare policy and its objective of fighting social exclusion are continued by the National Action Plan against poverty and social exclusion 2003-2005. The Plan comprises national policy measures adopted to fight social exclusion and it is completed by a whole range of plans relating to social inclusion in several areas, such as older persons, health care, disability, alcohol and drug abusers, etc.

Reasons for concern

During the review of the Swedish report under the UN Convention on the Rights of the Child, the Swedish representative stated that the Government was concerned over the number of children exposed to poverty and social exclusion and that the economic gap in society had widened. The children most at risk were those from migrant families and single-parent families. Thus, the risk of social exclusion was greatest for children from such families.[291]

[286] Ds 2005:15, pp. 17 and 67.
[287] SOU 2005 :73, pp. 55-67.
[288] Ibid., p. 16.
[289] Ministry of Health and Social Affairs, Fact Sheet No. 20, Social Insurance in Sweden, October 2005, p. 1.
[290] SOU 2005:73, p. 15.
[291] UN Doc. CRC/C/SR.1002, Summary Record, Sweden 17/01/2005, p. 3.

Social security in favour of persons moving within the Union

Reasons for concern

The Swedish Section of Doctors without Borders (*Läkare utan gränser*) has expressed its great concern about the exclusion of undocumented migrants in practice from all health care services in Sweden. Such access exists with regard to emergency health care. Nevertheless, these migrants have to pay the full cost of such a treatment, including for childbirth which may cost approximately 2 000 euros. Moreover, there is a risk that this practice may be consolidated into Swedish legislation.[292]
Upsetting is the information that has been presented in Swedish media regarding patients with cancer who have been denied emergency treatment.[293]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny the following Government bills dealing with some very specific issues of relevance to social security matters were submitted to the Swedish Parliament for adoption: the draft Bill, prop. 2004/05:112[294], *Ändrade regler för bostadsbidrag,* which deals with new rules on housing allowance; the draft Bill, prop. 2004/05:116, *Ett reformerat underhållsstöd*, which introduces new provisions on maintenance[295] and finally the Bill, prop. 2004/05:108, *Vissa frågor om sjukpenninggrundande inkomst och livränta,* which deals with such issues as sickness benefits and life annuity.

In addition, the proposals contained in the Government Bill prop. 2004/05:111, *Förstärkning av studiestödet*, suggest improved possibilities for people above 50 years of age to receive study allowances as of 1 July 2006.

In 2005 the Commission of Inquiry which was established with the aim to review the compatibility of the existing Swedish legislation with the EC Directive 2004/38/EG and, if necessary, to make proposals for legislative changes, submitted its report SOU 2005:34 entitled *Socialtjänsten och den fria rörligheten*.

Another significant proposal is the introduction of a new Chapter 4, § 1 (a) in the Act on Social Security (*Socialtjänstelagen* (SFS 2001:453)) in order to implement Article 24.2 of the EC Directive. This means that certain EU citizens shall be excluded from the right to social security, except in acute situations and during the first 3 months of their residence in Sweden. However, the Commission also underlined that when implementing the restriction rule, the authorities should take into consideration the outcome in the *Collins case* (ECJ, C-138/02).[296]
The new provision is expected to enter into force on 30 April 2006.

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[292] These views were expressed during the hearing of the EU independent experts in fundamental rights with representatives for a number different NGOs and civil society on 17 October 2005 in Brussels. See also the paper 'PICUM's main concerns with respect to the situation of fundamental rights in 2005', p. 2, www.picum.org

[293] *A. Haverdahl*, Förskott krav för vård av flykting, Cancerpatienter har vägrats livsuppehållande behandling, SvD 30 November 2005, p. 6 ; Gömda utestängda från vård, Läkare utan gränser, 30 November 2005, www.farr.se

[294] The new rules which will bring improvement for the economy of families with children entered into force on 1 November 2005.

[295] The Act on Maintenance (*lag* (SFS 1996:1030) *om underhållsstöd*) was adjusted as of 1 November 2005, which means that the maintenance level has been increased with 100 SEK for a child and for each month.

[296] SOU 2005 :34, p. 15.

In 2005 a new Act dealing with the implementation of a bilateral agreement between Sweden and Turkey on social security issues - *Lag* (SFS 2005:234) *om konvention mellan Sverige och Turkiet om social trygghet*-entered into force. The aim of the new act is primarily to up-date an earlier agreement from 30 June 1978 on the same subject matter. (See also the Government Bill - prop. 2004/05:71, *Konvention mellan Konungariket Sverige och Republiken Turkiet om social trygghet*.)

Finally, a new Act established the Swedish acceptance of the accession of the Faeroe Island (Färöarna), Greenland and Åland to the Nordic Convention on Social Security from the 18 August 2003 (*Tillkännagivande av Färöarnas, Grönlands och Ålands anslutning till den nordiska konventionen om social trygghet* (SFS 2005:745)).

Article 35. Health care

Access to health care

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

In its conclusions on Sweden in 2005, the European Committee of Social Rights found the situation with regard to the implementation of Article 11 § 3 (*Right to protection of health*) of the Revised Charter as being in conformity with the relevant provision.[297]

The Committee took notice of the Swedish legislation which has implemented Directive 2001/37/EC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products as well as the legislation implementing Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products. It may be mentioned here that Sweden has signed the WHO Framework Convention on Tobacco Control.

During the review of the Swedish report under the UN Convention on the Rights of the Child, the Children's Committee expressed concern about the possible inequalities among various regions in Sweden with regard to protection of mothers, infants and school aged children, since health care and services are comprised within the responsibility of the county councils. The Committee was in particular worried about the increasing number of school pupils who feel the effects of stress, the increasing numbers of pupils with bulimia, anorexia, students who are overweight and obesity cases, as well as the lack of programmes on mental health of children.[298]

The Committee, therefore, recommended that Sweden should take necessary measures to "reduce the stress level of school pupils and help them deal with its effects; address the issue of bulimia and anorexia; address the issue of students who are overweight and obesity as well as strengthen mental health programmes for children, both preventive and interventional".[299]

[297] Council of Europe, European Social Charter (Revised), European Committee of Social Rights, Conclusions 2005 (Sweden), www.coe.int
[298] UN Doc. CRC/C/15/Add.248, 28 January 2005, p. 6.
[299] Ibid., p. 6.

Positive aspects

The aim of the Swedish National Action Plan for the prevention of alcohol-related harm is to reduce the alcohol consumption by 2005. The Government has appointed a committee to co-ordinate the plan, which is attached to the National Board of Health and Welfare and is composed of representatives of a number of national authorities and NGOs. An evaluation of the results obtained will follow next year. A national drug policy co-ordinator has been appointed under the plan and he is responsible for assessing the National Action Plan and to present an annual report to the Swedish Parliament.

Children of illegal immigrants, *i.e.* 'children in hiding' are entitled to the same health care as other Swedish children (the only exception is that this right is regulated in an agreement between the Government and the regional councils, while it is regulated by law with regard to children who have received a permanent residence permit in Sweden). The parents of such children are also eligible for long-term therapy, such as the treatment of mental illness.[300] More comprehensive legislation on this subject matter is under way which will be in accordance with the EU Directive 2003/9/EC laying down minimum standards for the reception of asylum-seekers.

Good practices

The National Plan of Action for Health Care for the period of 2005-2007 incorporates a number of measures directed specifically towards children and young people. Special attention has been given to improve mental health amongst young people and increase the co-operation between all public authorities involved in treating young persons with mental illnesses.

Reasons for concern

The Swedish Children's Ombudsman has expressed concern over the differences in physical health between different social groups. Statistics show that there is a 60 percent higher frequency of physical health problems among children in economically disadvantaged families than among the richest families.[301]

Moreover, according to the Children's Ombudsman, the waiting period of children and young persons for medical and psychiatric services continues to vary significantly in different parts of the country. For example, the longest waiting period in Sweden for psychiatric services for children in 2004 was two years and the shortest less than one week.[302]

Drugs

Legislative initiatives, national case law and practices of national authorities

The Government Bill, prop. 2004/05:118, *Tobakskontroll-genomförande av WHO:s ramkonvention om tokaskontroll m.m.*, which contains a proposal for ratification of WHO's Convention on Control of Tobacco consumption by Sweden, was submitted to the Swedish Parliament for adoption. Through the adoption of this bill, Sweden will also implement the Directive 2003/33/EG from the 26 May 2003 on *inter alia*, advertising of tobacco products and the Council of Ministers' Recommendation 2003/54/EG from the 2 December 2002 on

[300] UN Doc. CRC/C/SR.1002, Summary Record, Sweden 17/01/2005, p. 8.
[301] Barnombudsmannen (BO), Observations with respect to the written replies of the Government of Sweden concerning the list of issues (CRC/C/Q/SWE/3), p. 6, www.bo.se
[302] Barnombudsmannen (BO), ibid., p. 5, www.bo.se

prevention of smoking. The necessary changes in the Act on Tobacco (*tobakslagen* (SFS 1993:581)) entered into force on 1 July 2005.

The Commission of inquiry which was given the assignment by the Government to evaluate the Swedish policy with regard to alcohol consumption presented its report SOU 2005:25, *Gränslös utmaning-alkoholpolitik i ny tid*, on 16 March 2005.

One of the important proposals put forward by the inquiry for legislative changes has been motivated by the official statistics revealing an increase in the alcohol consumption in 2004 with two per cent compared to the figures for the year 2003.

The Commission therefore suggested that the Act on Alcohol (*alkohollagen* (SFS 1994:173) (with the latest amendments of 1999)) should be adjusted so that the age limit for the legal selling and serving of alcohol should be raised to 20 years of age instead of the current 18 years of age limit.[303]

Article 36. Access to services of general economic interest

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry which has been entrusted with the task to elaborate on some aspects of access to shelter for families with children and who have limited economic resources, submitted its report SOU 2005:88, *Vräkning och hemlöshet drabbar också barn*, on 28 October 2005 to the Government.

The study reviews, among other things, whether the existing Swedish legislation in this area can be judged as compatible with the requirements of the UN Convention on the Rights of the Child and, in addition, clarifies the scope of state responsibility with regard to preventing homelessness.

The report criticises municipalities and private companies for not taking into account to a greater extent the needs of children as well as for not considering the effects of homelessness on children. The inquiry also expresses its dissatisfaction with the Social Services' involvement in such matters, since in the view of the inquiry, the relevant authorities act too late and in a too restricted manner.

Reasons for concern

The preliminary results of the study which is still under preparation by the Swedish National Board of Health and Welfare (*Socialstyrelsen*) and which is expected to be completed in January 2006, are cumbersome since the figures show that the numbers of homeless parents has increased nearly twofold since the year 1999. Approximately 5000 homeless parents currently have children under the age of 18 years.[304]

[303] SOU 2005 :25, p. 17 and p. 23.
[304] This information has been given by Anna Qvarlander, Socialstyrelsens hemlöshetsprojekt, 20 October 2005.

Article 37. Environmental protection

Right to a healthy environment

Legislative initiatives, national case law and practices of national authorities

In May 2005 the Government submitted a draft Bill on Swedish Environmental Objectives - a Common Task (Prop. 2004/05:150, *Svensk miljömål-ett gemensamt uppdrag*) to the Swedish Parliament, which contains an in-depth evaluation of the work that has been carried out to solve the major environmental problems in society within a generation. The evaluation shows that there are good prospective of achieving 10 of the 15 environmental quality objectives in less than 20 years. Among the five of the objectives which will be very difficult to realise are mentioned sustainable forests, zero eutrophication, a non-toxic environment, reduced climate impact and balanced marine environment and flourishing coastal areas and archipelagos.[305]

The Government Bill comprises a number of important proposals dealing with measures and initiatives for further work to achieve the objectives. Here are a few examples:

- The Swedish Environmental Protection Agency will be commissioned to prepare a basis for a national action plan for greening public procurement by 1 December 2005;
- The boards of state-owned companies should report each year on their work on environmental issues;
- An international task force with representatives of all the Baltic Sea countries and the EU should be set up in order to review the incidence of toxic substances in the Baltic Sea ecosystems and in Baltic Sea fish;
- Consumers and professional users must be entitled to information on the dangerous substances contained in products;
- To increase the element of environmental management in vehicle taxation a carbon dioxide-based tax will be introduced in 2006 and finally,
- A new 16th environmental quality objective called rich biodiversity is introduced in the Bill implying that loss of biodiversity must be stopped by 2010.

The Government Bill (prop. 2004/05:80, *Forskning för ett bättre liv*) (Research for better life) is also of relevance to the subject matter and should be mentioned here since it mentions sustainable development among the identified strategic areas for qualified research which shall be given a priority and special support during the years 2005-2008.

Finally, during the period under scrutiny the Third national report to the Convention on Biological Diversity was approved on 26 May 2005.

Positive aspects

Swedish environmental policy has on the whole been successful. The effects of acidification and eutrophication have decreased.[306]

In order to continue the transformation of Sweden into a sustainable society, the Government's Budget Bill for 2006 which was presented at the Parliament in September 2005, contains commitments totalling more than 1 billion Swedish Kronor (SEK) to the

[305] Regeringskansliet, Government Offices of Sweden, Pressmeddelande 18 May 2005, Environmental Objectives Bill key new initiatives and actions in brief, www.sweden.gov.se
[306] Miljö- och samhällsbyggnadsdepartementet, www.sweden.gov.se

environment and a continuation of the green tax shift.[307] In addition, new economic incentives have been proposed for switching from direct electricity heating or oil heating to more environmentally friendly energy sources, by means of new investment support schemes.

The marine environment is given top priority in the Environmental Objectives Bill (prop. 2004/05:150), *i.e*. the Government proposes the protection of a further 14 areas as nature reserves. In total there will be 19 marine reserves in Sweden in the next five years.
Moreover, in order to protect and preserve fish stocks and for the purpose of fisheries management fishing bans are to be introduced and evaluated in six areas by 2015.

Reasons for concern

During the period under scrutiny no plan of action for the marine environments was adopted. The marine environment especially in the area of the Baltic Sea is a particularly sensitive sea area and it needs to be improved.

The right to access to information in environmental matters

Legislative initiatives, national case law and practices of national authorities

The Commission of inquiry which has been entrusted with the task to review the accessibility to knowledge on, *inter alia*, the conservation and sustainable use of biological diversity presented its final report SOU 2005:94, *Kunskap för biologisk mångfald-inventera mera eller återvinn kunskapen?* on 27 of October 2007.

With regard to knowledge for a rich flora and fauna, the inquiry suggests that in order to be able to follow up Sweden's contribution to the international goal of halting the loss of biological diversity by 2010, the development of indicators should be intensified and coordinated with similar activities elsewhere in the EU. For that purpose, a national digital vegetation survey should be carried out for the parts of Sweden that have not previously been surveyed.[308] In addition, the proposal includes the preparation of general reports on the biological diversity situation in Sweden. These reports should be linked to the already existing reporting requirements such as, for example, the Convention on Biological Diversity.

According to the Commission, the state of knowledge linked to the environmental quality objectives with respect to thriving wetlands, sustainable forests and a varied agricultural landscape can be considered as satisfactory. However, it seems that there are still some deficiencies with regard to knowledge about nature conservation values and classifications on land owned by large forestry concerns.[309]

Finally, the Commission proposes that the Swedish Environmental Protection Agency's coordinating role in building knowledge to support work on biological diversity should be strengthened and further clarified.[310]

[307] The Budget Bill for 2006, 2005/06:1 (prop. 2005/06:1, *Budgetpropositionen för 2006*), www.sweden.gov.se
[308] SOU 2005:94, p. 18.
[309] Ibid., p. 19.
[310] SOU 2005:94, p. 25.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny, a few bills of relevance for the protection of the environment have been submitted to Sweden's Parliament. These are as follows: the Government Bill (prop. 2004/05:65, *Århuskonventionen*) which proposes the ratification of the UN Århus Convention on, *inter alia*, issues dealing with access to information on environmental matters, the participation of the public in decision-making processes etc.[311] , the Government Bill (prop. 2004/05:129, *En effektivare miljöprövning*) comprising proposals for the introduction of various models for a more efficient examination of environmental matters[312] and finally the Government Bill (prop. 2004/05:150, *Svenska miljömål-ett gemensamt uppdrag*) containing proposals for the introduction of additional aims with regard to Sweden's environmental policy and enabling the achievement of an increased diversity with regard to the plant and animal life.

Furthermore, an inquiry report (SOU 2005:51, *Bilen, Biffen, Bostaden, Hållbara laster-smartare konsumtion*) which examines how consumption could become more sustainable in the areas of transport, foodstuffs and housing, was presented to the Swedish Government in June 2005.

The proposed measures are of great importance since these sectors are responsible for an estimated half of all negative impact, on climate as well as on health and thereby on both public and private finances.
Among the selected proposals mention should be made here of the following:

- Sustainable development should be taught in domestic and consumer science courses at compulsory school;
- The Swedish Consumer Agency should actively help consumers to choose the goods and services that are the most resource efficient and environmentally sound on the market;
- The market for staple foods produced in Sweden should be strengthened;
- Investments in extensive Swedish meat production should be made;
- The proportion of organic foodstuffs should be increased;
- The proportion of fair trade products should be increased.[313]

With regard to live sustainability some five main strategies were singled out, *e.g*. speeding up the expansion of sustainable municipal biomass heating.
Within the framework of six main strategies for travel sustainability, premiums for people who buy lighter cars and for early scrapping of older vehicles were proposed among other things.[314]

[311] For that purpose a few changes in the Swedish Environmental Act (*e.g*. Chapter 16, § 13, *miljöbalken*) entered into force on 15 May 2005.
[312] The legislative changes in the Environmental Act (*miljöbalken*, kap. 17) entered into force on 1 August 2005.
[313] SOU 2005:51, pp. 20-21.
[314] Ibid, p. 22.

Article 38. Consumer protection

Protection of the consumer in contract law and information of the consumer

Legislative initiatives, national case law and practices of national authorities

In March 2005 the Government submitted a Bill to the Parliament on new and improved guidelines for market surveillance of products, *i.e.* ensuring that products meet the relevant requirements in areas including health, safety and environment. Emphasis has been put on the importance that consumers can continue to buy products, secure in the knowledge that they are safe. The Customs Act will be accordingly amended in order to facilitate the cooperation between the customs and the responsible authorities. Nevertheless, the authorities will still be responsible for the control itself. [315]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 8 April 2005 the Swedish Government referred a set of proposals on new regulations for occupational pension's institutions to the Council of Legislation. These regulations are intended to implement the EU Directive on the activities and supervision of institutions for an occupational retirement provision. The proposal is seen as a positive step towards more modern regulation and proactive supervision in the insurance field, *i.e.* creating a firm foundation for stronger occupational pensions, while ensuring consumer protection for pensioners. Thus, technical provisions corresponding to pension commitments should be based on a market valuation of these commitments.
The new regulations are expected to come into force on 1 January 2006.[316]

On 15 July 2005 the Swedish Government presented a very comprehensive National Strategy Report on Adequate and Sustainable Pensions. It is based on the eleven objectives set within the framework of the open method of coordination in the pensions area within the European Council approved at Laeken in December 2001. One of the conclusions reads as follows: "As Sweden has already implemented a pension's reform, the principle needs for modernisation have already been provided for".[317]

According to a press release from the Ministry of Health and Social Affairs from 9 August 2005, "people with a low or no income-related pension shall be guaranteed index-linked basic protection."[318] In addition, surviving spouses shall be given reasonable financial support to help them during the adjustment period following the death of their spouse.

[315] Regeringskansliet, The Government and the Government Offices, Ministry of Foreign Affairs, Press release, 15 March 2005, The Government wants to improve product control, www.regeringen.se
[316] Regeringskansliet, The Government and the Government Offices, Ministry of Finance, Press release, 8 April 2005, Sweden to implement the prudent person rule for occupational pensions, www.sweden.gov.se
[317] Regeringskansliet, The Swedish National Strategy Report on Adequate and Sustainable Pensions, Stockholm, 15 July 2005, p. 26.
[318] Government Offices of Sweden, Press release, Financial security in old age, www.sweden.gov.se

CHAPTER V. CITIZENS' RIGHTS

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

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

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In 2005 the Government Bill, prop. 2004/05:163, *Ny vallag*, (New Act on Elections) was submitted to the Parliament for adoption.

Firstly, one of the envisaged legislative reforms of the Act on Elections (*vallagen* (SFS 1997:157)) implies that the municipalities shall have the main local responsibility for the completion of elections in the future.

Secondly, in order to improve the electors' confidence in the election system, new rules were introduced with regard to situations when a vote will be submitted by proxy. There will be increased possibilities to control the mandate and the identity of the proxy.

In addition, the time period for sending a vote through mail will be extended and this right shall be legally guaranteed for persons living abroad.

Finally, municipalities shall be obliged to organise voting-stations which are accessible to persons with functional impairments/disabilities.
The new legislation is expected to be enacted on 1st January 2006.

Positive aspects

The number of Sámi peoples participating in the elections for the Sámi Parliament (*Sametinget*) (approximately 66 per cent) has increased in comparison to previous years.[319]

Reasons for concern

Some of the small political parties such as *Junilistan* (The June List) have criticized the above mentioned draft Bill on a new Election Act since only the well established political parties will be entitled to receive financial support for producing the ballot-papers.[320]

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.

[319] See www.sametinget.se
[320] *T.Nilsson*, Småpartier kritiserar vallag, SvD 26 February 2005, p. 15.

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

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

A Commission of inquiry established with the task to propose necessary legislative changes, among other things, in the Swedish Aliens Act (*Utlänningslagen*) in order to implement the EC Directive 2004/38/EC at the latest on 30 April 2006 into Swedish legislation, made its report SOU 2005:49 entitled *Unionsmedborgares rörlighet inom EU*, public on 1 June 2005.[321]

After a detailed discussion on the content of the Directive as well as of Article 8 of the EU Charter on Fundamental Rights and other relevant instruments, the Commission came to the conclusion that the existing Swedish legislation to a great extent satisfies most of the requirements in the above mentioned Directive. However, a few legal adjustments were proposed, for example, the introduction of an obligation for EC citizens and citizens in Switzerland who have the right to stay in Sweden to register themselves at the National Migration Board (*Migrationsverket*) no later than three months after their arrival.[322] For that purpose a new regulation shall be included in Chapter 5 of the Aliens Act (*Utlänningslagen* (SFS 1989:529)).

The Inquiry, in addition, proposed that a new rule should apply in cases of expulsion and refoulement, *i.e.* the concerned persons whose freedom of movement has been lawfully restricted should always be notified of the decision (*delgivning*) and the decision can not be carried out earlier than one month after the notification.[323] This should not be the case with decisions taken at the occasion of entry.

The Committee on Labour Immigration which has been entrusted with the task of proposing a regulatory framework that will allow more extensive labour migration from countries outside the EU/EEA, presented its interim report SOU 2005:50, *Arbetskraftsinvandring till Sverige*, (Swedish Government Official Reports SOU 2005:50, "Labour immigration to Sweden:

[321] Regeringskansliet, Utrikesdepartementet, Pressmeddelande 1 juni 2005, Unionsmedborgares rörlighet inom EU, www.regeringen.se
[322] SOU 2005 :49, pp. 19 and 190 ff.
[323] Ibid., p. 17.

population trends, labour market change, international outlook") in May 2005. The Committee concluded that freedom of movement in the EU and the common internal market has not led to very extensive migration between the member countries, even if migration has increased. Nevertheless, while the number of immigrants is increasing, so is the number of emigrants. In the view of the Committee, labour immigration can help invigorate the Swedish labour market and economy and therefore the regulatory framework must be made more open so as to enable this to happen to a greater extent.[324]

The Committee considered that the present regulatory framework imposes excessive restrictions on *e.g.* visiting students and researchers and their opportunity to stay and work in Sweden. It goes without saying that they could make a positive contribution to development in Sweden. The proposals for legislative changes in this area will be put forward in the final report.

During the period under scrutiny, the Inquiry Committee, which was established with the aim to propose necessary changes in the Swedish legislation in order to implement the Council Directive 2003/109/EC concerning the status of third –country nationals who are long term residence, presented its interim Government report SOU 2005:15, *Familjeåterförening och fri rörlighet för tredjelandsmedborgare*.

If the proposals are adopted by the Swedish Parliament later on, among the important changes of the Aliens Act (*utlänningslagen*) currently in force, will be the introduction of a new provision on the basis of which a third country national who has permanently resided in an EU state for five years may be granted special status on request, *i.e.* that of a long-term resident in that country. However, the applicant must show that he/she is able to support himself/herself. The long term resident will be also entitled to free movement within the EU. On the other hand, refugees and other persons in need of protection will be exempted from being able to obtain the status of long term resident. In addition, persons who are considered a threat to the public order and security will also be exempted from the possibility to obtain such a status in Sweden.[325]

Furthermore, the status of a long term resident may be revoked if, for example, the resident settles outside the territory of Sweden for more than one year or outside the EU for more than six years.

Finally, the inquiry suggests that the Administrative Procedure Act (*Förvaltningslagen*) and the appropriate sections of the rules of the Aliens Act (*Utlänningslagen*) on the processing of residence permit cases should be changed to the effect that the Swedish Migration Board must observe certain time limits for notification of a decision in such cases and that the decision should contain the reasons for it.

The Government on 12 May 2005 referred a proposal to the Council on Legislation concerning residence permits for threatened witnesses before international courts and tribunals.[326] Sweden has already received such witnesses and their families but this has in practice been regulated within the framework of the refugee quota. The proposal implies that the witness protection against harassment or threats as referred to in Sweden's agreements with international courts and tribunals should comprise a statutory right for these persons to a temporary residence permit lasting at least one year.

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[324] SOU 2005:50, pp. 19-22.
[325] SOU 2005 :15, p. 22.
[326] Regeringskansliet, The Government and the Government Offices, Ministry of Foreign Affairs, Press release, 12 May 2005, Protection of witnesses before international courts and tribunals, www.sweden.gov.se

The Ministry memorandum on the implementation of EC Directive 2004/114/EG from 13 December 2004 (Ds 2005:36, *Genomförande av EG-direktivet om uppehållstillstånd för studier*) was made public on 21 September 2005. A few changes in the Aliens Act and relevant administrative regulations were proposed, among other things, the introduction of additional grounds for the withdrawal of residence permits for students at Swedish universities who are citizens in countries outside the EU.[327]

Positive aspects

Twice as many nationals of new EU Member States sought work and residence permit in Sweden during the period under scrutiny than in previous years. According to the statistics prepared within the Swedish National Migration Board (*Migrationsverket*) approximately 90 percent of the applicants were successful.[328]

Article 46. Diplomatic and consular protection

[327] Ds 2005 :36, p. 5.
[328] Migration News Sheet 2005, www.migrationsverket.se

CHAPTER VI. JUSTICE

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

Access to a court and, in particular, the right to legal aid / judicial assistance

Legislative initiatives, national case law and practices of national authorities

The proposed reforms of the much criticised Swedish technical solutions for regulating the right of access to court for administrative decisions, which was presented by the Ministry Inquiry on the Modernisation of Judicial Review (Ministry memorandum Ds 2005:9, *En moderniserad rättsprövning m.m.*), has been welcomed in academia.[329]

The amendments of the existing legislation imply that the solution contained in the Judicial Review Act, *i.e.* to define the threshold criteria of 'civil rights and obligations' by reference to Chapter 8, Articles 2 or 3 of the Instrument of Government, should be repealed and replaced by a direct reference to the definition of this phrase in Article 6 of the ECHR and subsequent case-law.

Moreover, the proposed changes of the relevant rules in the Administrative Procedure Act (*Förvaltningslagen* (SFS 1986:223)) comprise their clarification so that the appeals provisions of the Act are expressly applicable to decisions in matters that encompass the consideration of 'civil rights and obligations', even in the event of any statute including an explicit prohibition on appeal.

The Government Bill on the modernisation of the legal procedures in general courts (prop. 2004/05:131, *En modernare rättegång-reformering av processen i allmän domstol*) was submitted to the Swedish Parliament on 17 March 2005. Among the proposed modifications to be undertaken in the Act of Legal Procedures (*Rättegångsbalken* (RB) (SFS 1942:740)) mention may be made of the proposal to use modern techniques in a more extensive and efficient way.[330]

Mention should also be made of the Government Bill, prop. 2004/05:167, *Ändringsprotokoll till Europakonventionen- en effektivare Europadomstol*, which concerns Sweden's accession to the additional protocol No. 14 to the European Convention on Human Rights and which was submitted to the Parliament on 26 May 2005. The law on the incorporation of the European Convention on Human Rights (*lag om den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna* (SFS 1994:1219)) shall be amanded as required.

Another Government Bill, which was presented before the Swedish Parliament on 31 March 2005 deals, among other things, with interntional legal help in criminal matters among EU member states as well as the Swedish accession to the EU Convention on the same issues from the year 2000 (prop. 2004/05:144, *Internationell rättslig hjälp i brottmål: tillträde till 2000 års EU-konvention*). The relevant legislation on international help in criminal matters (*lagen om internationell rättslig hjälp i brottmål* (SFS 2000:562)) was subsequently amended as of 1 July 2005.

Finally, of relevance is also the Government Bill on the issues of deportation and legal help in criminal matters between Sweden and the US on the basis of a bilateral agreement (prop.

[329] *O.Mårsäter*, Folkrättslig skydd av rätten till domstolsprövning, Uppsala 2005, pp. 332-333.
[330] Prop. 2004/05:131, pp. 78-121.

2004/05:46, *Avtal med Amerikas förenta stater om utlämning och om internationell rättslig hjälp i brottmål*) which was put forward to the Parliament on 10 March 2005.

Publicity of the hearings and of the pronouncement of the decision

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

The greatest number of Swedish cases dealth with so far by the European Court of Human Rights have concerned various aspects of Article 6 of the European Convention.

The European Court of Human Rights, (sec. 2), *Miller v. Sweden*, Application No. 55853/00, Judgment of 8 February 2005

Abstract : The applicant, Robert Miller, a Swedish citizen had applied for disability benefits in August 1996. He had also submitted that, even before his 65th birthday in 1983, he had incurred extra costs due to his illness (Charcot-Marie-Tooth) which had been diagnosed in September 1982. The Social Insurance Office of the County of Stockholm rejected however his application on the grounds that his disability had not reached the level required before he turned 65 years of age.

The applicant appealed this decision to the County Administrative Court (*länsrätten*) in Stockholm and requested that an oral hearing be held in his case. After the rejection of the appeal, Mr. Miller submitted an application to the Stockholm Administrative Court of Appeal (*Kammarrätten*) and to the Supreme Administrative Court (*Regeringsrätten)* with the request of an oral hearing, but without success.

Therefore, the applicant complained before the European Court in Strasbourg that the lack of an oral hearing in his case constituted a clear violation of Article 6 § 1 (right to a fair trial) of the European Convention.

To begin with, the European Court emphasised that the issues raised by the applicant's judicial appeal were not only technical in nature. In other words, the applicant should have been afforded a right to explain, on his own behalf or through his representative, his personal situation, taken as a whole, in a oral hearing before the County Administrative Court.

More importantly in the view of the Court the question of whether the applicant, before the age of 65, fulfilled the legal conditions for the grant of a disability pension, was not of such a nature as to release the County Administrative Court from the obligation to hold an oral hearing. Therefore, the Court ruled by four votes to three that in the circumstances of the present case there had been a violation of Article 6 § 1 of the European Convention.

Reasonable delay in judicial proceedings

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

The European Court of Human Rights (sec. 2), *Tibbling v. Sweden*, Application No. 59129/00, Judgment of 11 October 2005

Abstract : The case concerns the complaint of Mr. Tibbling, who was chairman of the board of directors of two private limited companies (HotLine Production and HotLine Export), dealing with the excessive length of civil proceedings in Sweden.

In the 1990s the companies entered into business with Intertex also a private limited company. In 1994 Intertext instituted civil proceedings before the court of firts instance in Stockholm (District Court of Stockholm) (*tingsrätten*) claiming compensation for alleged exploitation of trade secrecy, breach of contract and infringement of copyright. These cases were reviewed jointly and the court of first instance (*tingsrätten*) ruled in 1997 that HotLine Production should pay damages to Intertex. The decision was appealed to the the Court of Appeal (*Svea Hovrätt*) in 1998 with the request that the judgment should be set aside and the case referred back to the first instance court. The applicant's claim was, however, rejected in 1999 as was the leave to appeal to the Supreme Court in 1999.

In 2000 the Court of Appeal (*Svea Hovrätt*) referred the case back to the court of first instance in Stockholm on account of procedural errors. Subsequently, the trial took place in 2002 and the second judgment was delivered on 23 October 2002 finding HotLine Production liable to pay damages to Intertex. Both parties appealed against the judgment to the Appeals Court (*Svea Hovrätt*) where the case is still pending.

To begin with, the European Court emphasised that the reasonableness of the length of legal proceedings must be assessed in the light of the circumstances of the case under review and taking into account the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute. In the present case this was in the view of the Court apparently not the reason for the considerable length of the proceedings between Intertex and the applicant. It recalled that the first decision was taken on 20 January 1997 and the last by judgment of 20 March 2002.

Moreover, the Court noted that the progress of the case *Intertex v. the HotLine companies*, of which the outcome was awaited, could very easily and thoroughly be monitored by the court which decided to adjourn the proceedings in the case of *Intertex v. the applicant*, since both cases were assigned to the same division of the District Court of Stockholm. Nevertheless, the proceedings between Intertex and the HotLine companies before the first judicial instance, *i.e*. the District Court (*tingsrätten*), ended on 23 October 2002, thus lasting almost eight years.

The Court observed also that in the case *Intertex v. the applicant*, during the period from 17 February 1998 until 7 March 2001 an order was upheld to sequestrate of the applicant's property as corresponded to an amount of SEK 9,500,000 (approximately EUR 1,039,865). Nothwithstanding the fact that the value of the applicant's possessions that were de facto sequestrated never exceeded SEK 275,000 (EUR 30,101) in the Court's view this measure, together with the adjournment of the proceedings, had a serious impact to the detriment of the applicant.

Bearing in mind these circumstances, even assuming that the period to be taken into consideration lasted six years and three months for one level of jurisdiction, the European Court came to the conclusion that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. It, therefore, ruled in favour of the applicant and established that there had been a breach of Article 6 § 1 of the European Convention.

Article 48. Presumption of innocence and right of defence

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

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