



**The Expo Foundation**

## **A study on anti-discriminatory legislation in Sweden**

**On behalf of the European Monitoring Centre on Racism and Xenophobia**

**by**

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# 1. Executive Summary

The main purpose of this report is to make a survey of current legislation concerning discrimination based on ethnicity, religion etc, as well as other legislation relating to individuals with foreign origin. In addition the report gives a historical summary of Swedish migration policies and the situation of the Swedish minority groups.

The report indicates that although there are certain deficits in the Swedish legislation, there is also a broad on-going process to remedy the problems. It is important to continuously strive to improve the laws and legislation regulating the area.

The problems may vary depending on the groups migrating to Sweden, and how Sweden handles foreign traditions which may be in conflict with or considered inhumane or unacceptable by Swedish culture, tradition and laws. One such example is the practice of female genital mutilation in certain cultures. In such cases a balance must be reached between encouraging a change in attitude of people who support or practice oppression of women and at the same time not make Swedish customs appear superior. It is a fundamental right to practice one's own religion, culture and so on.

Another problem is the big difference in the way Swedes and immigrants are treated in the Swedish society. This can be concluded, among other things, in the 2002 report on the Swedish Labour Market. This area is part of the ongoing revision of Swedish policies, and the question is if legislation is a useful tool. The author of this report is convinced that improved legislation is beneficial, although it should not be regarded as the only solution – much more than that is needed. Legislation has, among other things, a function to demonstrate what is acceptable in society and can in that way influence the attitudes among the population. One recommendation is to adopt the use of so-called anti-discrimination clauses in public procurement. This has already been done with a positive result in other countries.

In recent years a number of racist and xenophobic groups have been established in Sweden. These groups can be divided in political parties that are attempting to gain power and influence by democratic means through elections, and organisations aligned with the so-called White Power Scene. The latter includes groups that don't hesitate to use force and violence or to commit crimes in the name of the ideology. They often have good knowledge about how to use loopholes in the current legislation to avoid prosecution. These groups use new technologies developed in the last decades, such as video, CD records, Internet communication and similar. In cases when such new technologies are protected by the constitutional laws on Freedom of Expression and the Freedom of the Press Act, the process of changing the legislation becomes slower. These issues also bring forward the question of what limitations of the Freedom of Speech that is acceptable without also limiting the purpose of the legislation.

Due to increased life span and the increasing number of Swedes approaching retirement age, a larger percentage of the work force must be drawn from abroad in the near future. Swedish migration policies will then in all likelihood soften and immigration will increase. What moral obligations has the state of Sweden? Is it

proper to curb immigration in periods when an additional work force is not necessary and to encourage immigration according to need? Should a true democracy function as a profit making corporation in relation to people in need?

## 2. Introduction and aims

Sweden's population has changed a lot in the last decades. Today approximately every fifth inhabitant<sup>1</sup> is either born abroad or has at least one foreign born parent. During the last few years an increasing negative tendency in hardened attitudes towards people of foreign descent can be seen. Different xenophobic organisations have moved their positions forward. In the 2002 elections different explicit racist parties gained seats in close to 35 of Sweden's 289 municipalities, which is an indication that these opinions also are taking root among broad layers of the population.

Among the things needed to counteract racist tendencies are an open debate and that people themselves realize the seriousness of the situation. It must not be forgotten that an efficient legislation also is needed to counteract the most extreme expressions of racism and xenophobia and the spreading of such propaganda. Racist and xenophobic organisations have not been slow to make use of new technical developments such as the Internet, which has hampered the legislation processes, which by nature is not that fast.

The aim of this report is to describe Swedish views on migration including asylum rights, the situation of Swedish minorities and the laws and conventions that regulate these issues. Another aim is to survey the Swedish legislation in the area and the changes made in the last years and those changes still subject to inquiries.

The report starts with a historical description of the situation for the groups mentioned above followed by considerations on the current policy that controls the area. This is followed by a description of the report's sources and a review of international and national legislation. The report concludes with an analysis of the situation and presents some suggestions for change.

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<sup>1</sup> Migration 2002, Swedish Government

### 3. History of migration

In the last decades Sweden has been a country with considerably more immigration than emigration. That has not always been the case. In 1950 the number of people born abroad was less than 200 000, making up less than three percent of the population. 50 years later the number of foreign born had increased to 11,4 percent of the whole population. Today every fifth Swedish inhabitant has foreign connections, including those born abroad and those born in Sweden with one or both parents born abroad.

#### ***3.1 Emigration is succeeded by immigration***

In the late 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century 1,4 million Swedes emigrated. Most left for the United States, a country being perceived as full of endless possibilities compared to Sweden where famines prevailed. By and by the American rules of immigration were sharpened up and the Swedish emigration subsided. This also made many Swedish-Americans return, which started to change Sweden from a country of emigration to one of immigration, even if the immigration still was extremely modest.

The outbreak of the Second World War led to a considerable increase in immigration. This consisted mainly of refugees from neighbouring countries hit by the war. After the Soviet Union's attack on Finland, some 70 000 children were evacuated to Sweden. Many of them were adopted by Swedish families and remained in Sweden after the war. During the final years of the war close to 100 000 Norwegians, Danes and Balts fled to Sweden and later more than 30 000 Europeans affected by the war arrived through the co-called Bernadotte action. Though many returned to their home countries after the war was over, a large number took up permanent residence in Sweden.<sup>2</sup>

The Second World War's large streams of refugees were replaced by labour immigration. The Swedish industry needed large amounts of new labour to increase production and in the late 1940s and during the whole of the 1950s almost 260 000 persons were recruited from other European countries.

In 1951 Sweden ratified the Geneva Convention. In 1954 the Aliens Act and the Nordic Passport Union were introduced, which means that Nordic citizens have free movement to live and work in all the Nordic countries. Though this was a period of labour immigration some refugees also arrived in Sweden. Among other things the 1956 military action of the Soviet Union against Hungary 1956 led to the arrival of some 8 000 people in Sweden.

The Nordic Passport Union from 1954 meant that immigration from the Nordic countries in the 1960s made up an incomparably large proportion of immigration in addition to the labour immigration mainly from Greece, Turkey and Yugoslavia. At the end of the 1960s the need for new labour decreased and as a consequence of the earlier large immigration a new approach to policies on labour and integration had to be developed.

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<sup>2</sup> Migration 2002, Swedish Government

In 1967 the Greek junta took power and almost 5 000 fled to Sweden. The same year measures were taken to introduce regulated immigration, which in principle means that all non-Nordic immigrants must have work permit, job and housing arranged before arriving in Sweden. The Soviet Union's occupation of Czechoslovakia and the expulsion of Jews in Poland led to that more than 4 000 people were seeking sanctuary in Sweden 1968–1969.

During the 1970s immigration was relatively large even though labour immigration slowed down. In this decade immigration consisted mainly of Nordic immigrants and immigrants with family ties, but the number of asylum seekers increased. The number of non-European immigrants increased notably. After Pinochet came to power in Chile in 1973 about 13 000 people fled from the dictatorship to Sweden. The refugees were not only Chileans but also included other Latin-American nationals who had previously sought sanctuary in Chile before the coup. In later years many of these refugees have returned to their home countries after the political situations changed.

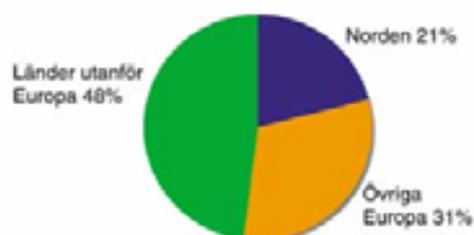
In the late 1970s about 12 000 Syrian-Orthodox Assyrians immigrated from Lebanon, Turkey and Syria on grounds of religious persecution. Although they were never recognized as refugees, many received residence permits for humanitarian reasons since they had lived in Sweden for a greater length of time.

During the 1980s the immigration consisted mainly of asylum seekers and other people in need of protection along with their relatives. In the beginning of 1980 about 3 000 boat refugees arrived from Vietnam, and after the Polish trade union Solidarity was banned a large group arrived from Poland. In the middle of the 1980s a new wave of 10 000 asylum seeking Chileans arrived. In the late 1980s many fled from the wars in Iran and Iraq. During the decade groups of refugees largely consisting of Kurds also arrived from Bulgaria and the Middle East.

During the 1990s a quarter of a million people sought asylum in Sweden. The majority were given residence permits on grounds of protection or for humanitarian reasons. The immigration in the 1990s therefore mainly consisted of these foreign citizens and their kin. Most refugees came from Iraq and former Yugoslavia but almost half of this group got their residence permits due to family ties to someone already staying in Sweden.

### 3.2 Migration

In 2001 about 43 000 people immigrated to Sweden. The diagram shows where they came from; 21 percent from Nordic countries, 31 percent from other European countries and 48 percent from countries outside Europe.<sup>3</sup>



<sup>3</sup> Immigration, the Swedish Migration Board's website, <http://www.migrationsverket.se/english.html>

According to Swedish law there are many ways to get permission to reside in Sweden, but a visa is also required for citizens from specified countries to visit for tourist purposes.

Permission to reside in Sweden is granted on special grounds. The most common reasons are being a refugee, in need of other protection, being a relative to someone already residing in Sweden or arriving to work.

### 3.2.1 Residence permit and citizenship

Residence permits can either be temporary or permanent. A permanent residence permit means the right to live, work and travel to and from Sweden for as long as you reside in the country. To stay in Sweden for a shorter period than three months no residence permit is required, but some foreign citizens need entry visas to Sweden. If the purpose is to work in Sweden for a shorter period a work permit is also required.

If you want to live in Sweden with a close relative already residing here, an application for a residence permit must be made. Husband/wife, co-habitee/co-habiter or children under 18 are counted as close relatives, but in exceptional cases other people are also included.

In 2001 almost 45 000 people were granted residence permits in Sweden. 17 percent had sanctuary needs or humanitarian reasons and 55 percent were relatives to residents in the country. The rest were given permits due to studies, work, adoptions and under the EU/EEA agreement. About 13 000 people were given limited permits to work for Swedish employers.<sup>4</sup>

Being a foreign citizen with a residence permit and a national registration in Sweden does not lead to exactly the same rights and obligations as a Swedish citizen. The difference is that a foreign citizen will lose the permanent residence permit for among other things not living in Sweden for a longer period or committing serious crimes, while a Swedish citizen has an absolute right to live and work in Sweden. Swedish citizenship also means the right to work in other EU-countries, the right to vote in the national elections, be eligible to be elected to Parliament and the right to work in special professions such as the police and armed forces.

Swedish citizenship is attained by being born to a Swedish mother or by having a Swedish father living in Sweden, by adoption, if the child is being born abroad through the father's marriage to a foreign mother (so called legitimisation), by *application* (so called naturalisation) or through *notification* (which means a right to become a Swedish citizen if certain conditions are fulfilled for children with a Swedish father, children and youth who are either stateless or foreign citizens who have lived in Sweden for a certain period of time and Nordic citizens)

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<sup>4</sup> Migration 2002, Swedish Government

### 3.2.2 Asylum

When asylum seekers arrive in Sweden they turn to the Swedish Migration Board to submit an application and to come in contact with a case officer, who decides if the reasons for asylum are adequate. If the application appears to be rejected, the asylum seeker has the right to legal assistance in the form of a public counsel. If needed the asylum seeker also has the right to an interpreter.

If there are not adequate grounds to grant asylum, a decision to refuse entry is reached. The asylum seeker may instead of going home appeal to the Aliens Appeals Board. Most people faced with rejection do this. If this leads to a second refusal the person must leave the country. The Migration Board can pay the return journey. If the asylum seeker does not leave voluntarily, the police are contacted.

According to the 1951 UN Convention Sweden must grant asylum to people regarded as refugees in accordance with the convention's definitions. The definition of a refugee is a person who has reasons to fear persecution in the home country because of nationality, race, religious och political opinions or that the person belongs to a certain group in society.

The Government also gives the Swedish Migration Board financial means to accept quota refugees, which in the last years have been 1 000–2 000 people each year. The transfer of quota refugees in the first hand concerns refugees that UNHCR has viewed as lacking other options. This might also include others in need of protection.

According to the Aliens Act people in need of protection but not regarded as refugees may be granted asylum. This requires that the person has left the home country and has strong reasons to fear death penalty, torture or similar persecution, is in need protection due to war or environmental catastrophe in the home country or that the person fears persecution due to gender or homosexuality.

According to the Aliens Act people with strong humanitarian reasons may stay in Sweden. One example is someone suffering from a serious illness that cannot be treated in the home country.

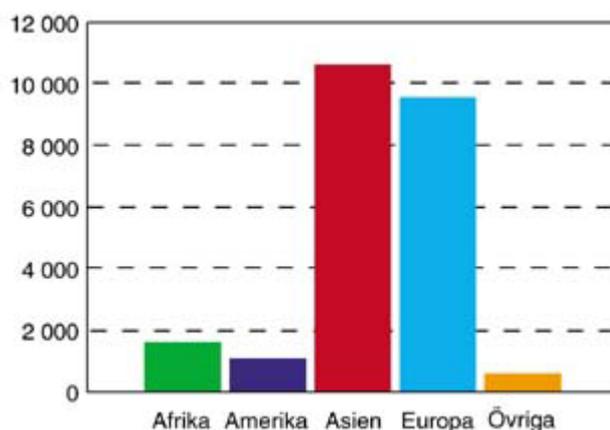
Usually people who have been granted asylum receive a permanent residence permit, but that is not an automatic process; individuals may instead be granted a time limited resident permit. In a so-called mass refugee situation time limited permits for maximum of two years are granted. The Government has been authorized to declare when such permits may be granted. If a repatriation programme has commenced the permit may be prolonged by a maximum of two years.

While awaiting a decision the asylum seeker may choose to live in one of the reception centers managed by the Swedish Migration Board or have their own housing. A daily allowance is paid to cover the basic needs of the asylum seeker.

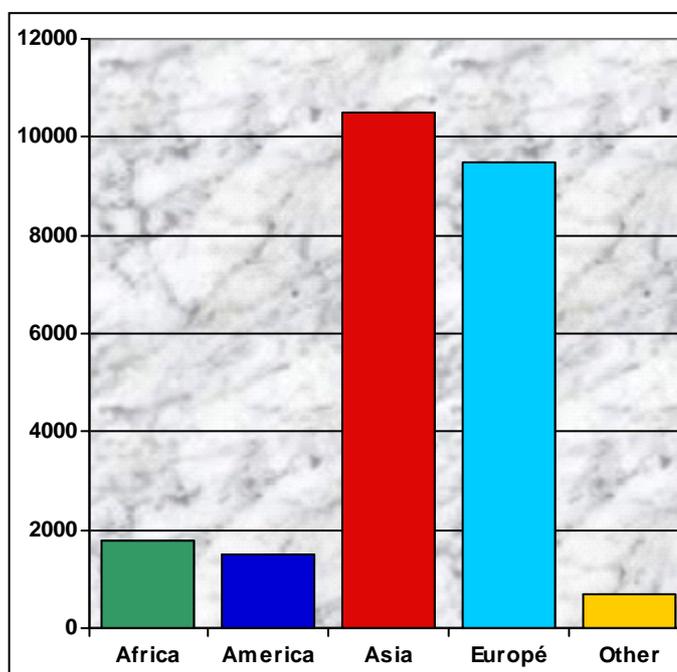
Sometimes there is reason to believe that some asylum seekers who have not been granted a residence permit and therefore must leave the country are in imminent risk to go into hiding. This may also be the case for other individuals. According to the Aliens Act the Swedish Migration Board is responsible for taking these people into preventive detention. The regulations surrounding how this is to be managed are

clearly defined and among other things mean that children's' stay in detention are to be relieved.

The asylum seeker only has the right to emergency hospital and dental treatment except for children who have the same rights to medical care as children resident in Sweden. Those in detention have the same rights to health and medical care as asylum seekers. If the residence permit is granted, the refugee will be referred to an apartment and after this the daily allowance stops. The responsibility for the refugee is transferred to the municipality, but the financial responsibility remains the state's, which in turn compensates the municipalities for accepting refugees.



In 2001 some 23 500 people applied for asylum in Sweden. The diagram shows how many arrived from different parts of the world.<sup>5</sup>



<sup>5</sup> Swedish Migration Board, <http://www.migrationsverket.se/>

### 3.2.3 New authority and legal procedure in alien matters

For a long time investigations have been undertaken on the question of a new authority and a new legal procedure in matters of aliens and citizenship. The Swedish Government has made a proposal with the main aim to increase legal security in the area. The proposal mainly contains the creation of a process involving two parties with possibilities for orally conducted trials. Appeals are to be made to Migration Courts, which will be linked to certain County Administrative Courts, in contrast to today when appeals are made to the Aliens Appeals Board. The final authority is suggested to be the Migration Court, which is to be linked to the Administrative Court of Appeal in Stockholm.<sup>6</sup>

### 3.3 Minorities

Sweden's national minorities are Roma, Swedish-Finns, Tornio Valley Finns (Meänkieli), Jews and Sami. The latter group is also a native population. The minority languages are Romani Chib, Finnish, Meänkieli (Torneo valley Finnish), Jiddisch and Sami. The aim of the Swedish Government's policy on minorities is to strengthen the national minorities and provide the support needed to maintain their languages.<sup>7</sup> This is among other things ensured by special legislation, education in the mother tongue and bilingual education, but also by providing extra support for literature and Culture Magazines.<sup>8</sup>

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<sup>6</sup> This issue has been discussed in the memorandum *En specialdomstol för utlänningsärenden* as well as in the report *Ökad rättssäkerhet i asylärenden*.

<sup>7</sup> Ministry of Industry, <http://naring.regeringen.se/inenglish/index.htm>

<sup>8</sup> Nationella minorities and minority languages, Summary of the Swedish Government policy, March 2001

## 4 Theory and method

Since this report mainly addresses legislation it is not possible to have the same approaches used in for example the reports on labour market regarding theoretical and methodological aspects.

In collecting data on legislation the current laws have been surveyed, since Swedish legislation does not in contrast to the Anglo-American sphere of justice give the Swedish courts the same scope formulating legislation by court rulings and others.<sup>9</sup>

Foremost, Sweden's national law, a collection of certain legislation, has been used. The WebPages of the Government Offices have also been used to a large extent, since they provide just about every Swedish law. Non-judicial information has been found among authorities concerned, such as the Prosecutor-General, the Police and the The National Council for Crime Prevention.

### 4.1 Developments up to current time

Racist crimes and discrimination have always been present in Sweden, but it wasn't until the last century that race hate crimes rooted in ideologies began to appear. Extreme rightwing organisations have previously existed in Sweden, but as such they have only attracted a small group of followers. Not until the end of the 1940s the Act on Agitation Against a National or Ethnic Group was passed, being the first law to specifically target racist agitation. (see further in 6.2)

Developments in discrimination due to ethnicity etc. and other racist crimes have since then accelerated at an alarmingly high speed. The number of reported crimes with xenophobic motives were 1 752 in 1997, and increased to 2 670 in 2001.<sup>10</sup>

In the 1980s mainly two individuals, Ditlieb Felderer and Ahmed Rami,<sup>11</sup> were widely noticed for racist crimes. Since then the situation has changed and many new hate groups have emerged in Sweden. They have found efficient ways to disseminate their messages by using Internet and the so called White Power music scene.

Due to the popularity of Internet race hate groups can reach a vast number of different individuals. This means that relatively small efforts gives racist and xenophobic groups previously unheard possibilities to reach potential sympathizers. Mainly youths are recruited to these groups. This combined with the fact that youngsters are the main users of the Internet, is making it easy to reach them.

White Power music is very important for the race hate world by giving its symphatizers means to reach the surrounding world in an effective way. The music is also important to instill feelings of common goals and visions shared by symphatizers.<sup>12</sup> White Power concerts also create a special mood that has a cohesive function. In connection to the concerts a lot of other propaganda such as periodicals and music from the White Power world is often merchandised.

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<sup>9</sup> *Civilrätt*, Malmström & Agell, 17 uppl., Liber Ekonomi, Malmö

<sup>10</sup> *Brottslighet kopplad till rikets inre säkerhet 2001*, RPS/Säkerhetspolisen Crime connected to the security of the nation 2001, National Police Board

<sup>11</sup> *Extremhögern*, Stieg Larsson och Anna-Lena Lodenius, Tidens förlag 1991, 1994

<sup>12</sup> *Vit maktmusik, en växande industri*, Brottsförebyggande rådet, rapport 1999:10

Music also represents a large part of the income for the race hate movement.<sup>13</sup> Sweden produces not just music for the Swedish market but also for other countries such as Germany, other Scandinavian countries, Czech Republic, Serbia, Britain etc.

It should not be forgotten that followers of the race hate movement are also linked to a large number of crimes. Some crimes are directed against their political or »racial« opponents but there is also a large variety of general crimes committed in the name of the movement. According to the Swedish Security Police followers of the White Power Movement were responsible for almost 16 percent of all racially motivated crimes<sup>14</sup> against minorities in 2001.<sup>15</sup>

Not only the more extreme »militant« organisations have gained ground and moved their positions forward, but also a number of party organisations that wish to gain power through general elections. Although several such groups have been launched within the frame of the militant movement, and although there are numerous continuing links to the race ideological movement, most »party building« organisations try to distance themselves from traditional Nazism and try to present themselves as serious »nationalist« or »national democrat« parties.<sup>16</sup>

By the end of 1980 a local leader and of the mainstream Center Party in Sjöbo, south Sweden, protested against his party's liberal immigration policy and opposed the reception of refugees in the municipality. As the Center Party expelled him, he went on to form the Sjöbo Party, named after the municipality, which became hostile to immigration in general and won a large number votes in the 1998 local elections. The politician in question, Mr Sven-Olle Olsson, has since joined the Sweden Democrats.

Next party to gain success with similar anti-immigration rethoric was New Democracy, which in the 1991 general elections received almost seven percent of the votes in the national parliament. However, after an internal chaos marked by bitter political infighting, the party lost almost all confidence among the voters in the following 1994 elections.

During the 1990s a coalition of different small local populist parties joined forces against immigration and had some success in the south of Sweden. Today the large political parties with strong anti-immigration views are the Sweden Democrats and the National Democrats.

The Sweden Democrats was originally formed as the racist campaign organisation Bevara Sverige svenskt (BSS; Keep Sweden Swedish) in 1979 and grew out of the race ideological movement of the 1980s. Although the party as late as in the mid 1990s was made up of a number of traditional race hate activists, it has in recent years successfully transformed into a »suit and tie« party with a respectable front. In 1995 the party leadership prohibited the use of political uniforms at public gatherings. In the 2002 elections the Sweden Democrats made a breakthrough, increasing its vote from 20 000 to 76 000, and from eight seats in local municipalities to more than 50 seats in close to 30 out of Sweden's 289 local municipalities. The total vote put

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<sup>13</sup> Vit maktmusik, en växande industri, Brottsförebyggande rådet, rapport 1999:10

<sup>14</sup> Enligt *Brottslighet kopplad till rikets inre säkerhet 2001* räknas denna typ av brottslighet främlingsfientlig, anti-semitisk och homofobisk brottslighet.

<sup>15</sup> *Brottslighet kopplad till rikets inre säkerhet 2001*, RPS/Säkerhetspolisen

<sup>16</sup> *Sverigedemokraterna – den nationella rörelsen*, Stieg Larsson och Mikael Ekman

the Sweden Democrats at 1.4 percent of the national vote, making it the largest party outside parliament. Experts consider this the largest success of a basically traditional »national movement« party since the 1940s.

The single competitor, the National Democrats, was formed as a splinter from the Sweden Democrats in 2001, by members who criticized the transformation of the party as making it »too liberal«. Although being far more militant in rhetoric and ideological outlook, the National Democrats won 7 000 votes and four seats in local municipalities in the 2002 general election.

## 5. Data and sources

There is quite a lot of material available on the subject of racism and xenophobia. However, there are great differences in the available amount of material on the different parts of the issue.

There is a lot of information on migration and especially asylum seekers. It is harder to find information on minority issues and especially current legislation on minorities. The website of the Ministry of Industry could assist in most cases. Both the national and international legislation that this report deals with is relatively new, which means that the supply of information is likely to increase. The basis of the Swedish minority policy can be found in the Public Bill 1998/99:143, National Minorities in Sweden.

There is substantial and valuable information on discrimination on the website of the Ombudsman against Ethnic Discrimination. This website also gives an overview of particularly interesting cases.

In general most background information comes from the websites of different authorities, such as the Government Offices and the Swedish Migration Board and also from employees of these authorities, especially with regard to knowledge of the on-going changes that is not that well described on the websites. Information has also been collected partly from different international bodies such as the website of the European Council.

Most of the website material is available in English though somewhat abridged. No area lacks information, but there are difficulties in obtaining relevant commentaries on certain legislation.

In general there is rather little research done on legislation in this area.

Main sources used in this report are described below. In addition some other sources of information are listed, that would be of value to those with a particular interest in the questions dealt with.

### **5.1 The Government Offices**

The website of the Swedish Government Offices contains extensive information about most areas covering the government's work and that of the various Ministries. The site has clear icons making it easy for further search. For example there is a special icon for Human Rights, where a lot of information can be found concerning this report.

However, the combination of enormous amounts of information and a bad search engine makes it time consuming to find information on the Government Offices' website. The exception is legislation, where a special link makes it possible to choose either short or full text versions of laws. The website also contains links to preparatory works, directives for Commissions of Inquiries and such.

This website gives an overview of the Swedish Government's work and provides possibilities to search for information. <http://www.sweden.gov.se/>

## **5.2 The Ministry of Industry**

The Ministry of Industry is among other things responsible for minority issues and until late 2002 the Minister responsible for Integration issues was attached to this ministry. Following a reshuffle of portfolios after the 2002 election, the Minister for Integration issues is now attached to the Ministry of Justice.

The Ministry of Industry has also produced the fact sheet *Government initiatives for girls at risk in patriarchal families presenting* different measures to help these girls, for example legislation and initiatives by schools and social services.

More information on the Ministry of Industry and their areas of responsibility can be found at <http://www.naring.regeringen.se/> and <http://naring.regeringen.se/inenglish/index.htm>.

## **5.3 The Swedish Migration Board**

The main task of the Swedish Migration Board is immigration and emigration to and from Sweden, to undertake required investigations, issue residence permits etc. This means that the Swedish Migration Board is responsible for the well-being of asylum seekers and refugees.

The Swedish Migration Board's website contains detailed information on questions ranging from the different procedures on obtaining residence permit in Sweden and the national and international legislation regulating this, to practical manuals on how to apply for Swedish citizenship.

A lot of the facts used in this report comes from the website of the Swedish Migration Board. The website has a good and »easy to find« layout. The only thing missing might be a critical analysis of facts and activities. The address of the website is <http://www.migrationsverket.se/> and <http://www.migrationsverket.se/english.html>.

## **5.4 The National Council for Crime Prevention**

The National Council for Crime Prevention works to reduce crime and increase safety in the Swedish society by compiling facts and statistics on crime, crime prevention activities and the legal systems response to crimes.

The authority acts on initiatives taken by the Parliament and the government, but the authority can also take its own initiatives. The government has among other thing stated that racist crimes shall be given priority in the work of The National Council for Crime Prevention.

The National Council for Crime Prevention has produced the reports on *White Power Music (Vit maktmusik)* and *Agitation against ethnic groups (Hets mot folkgrupp)*.

## **5.5 The Ombudsman against Ethnic Discrimination**

The Ombudsman against Ethnic Discrimination was established in 1986 and is a State authority. The Ombudsman has only mandate to work against ethnic discrimination, which is described by the Ombudsman as being treated in different ways in similar cases. The work against discrimination in working life is based on *Measures to Counteract Ethnic Discrimination in Working Life Act*<sup>17</sup> and *Equal Treatment of Students at Universities Act*<sup>18</sup> (see further in Chapter 6). In the *Law on the Ombudsman against Ethnic Discrimination*<sup>19</sup> the tasks of the Ombudsman is regulated in other areas of society.

The tasks of the Ombudsman against Ethnic Discrimination in working life is based on complaints and the Ombudsman can only present somebody's case in court in matters on discrimination in working life. The Ombudsman may not change verdicts or pass sentences and does not enter trials in progress. On the other hand, the task of the Ombudsman is to by advice contribute to the safeguarding of the rights of the person subjected to ethnic discrimination and many cases are solved by mediation before taken to court.

Presently the Ombudsman against Ethnic Discrimination is involved in a broad supervision of how employers comply with the law on *Measures to Counteract Ethnic Discrimination in Working Life*.

Extensive information about the work of the Ombudsman against Ethnic Discrimination and how to file a complaint can be found at the website <http://www.do.se/>.

## **5.6 Sweden against Racism**

*Sweden against Racism* is a national bank of knowledge on work against racism, xenophobia and ethnic discrimination. The authority responsible for the knowledge bank is the Swedish Integration Board.

The website contains information on subjects ranging from the work done by different NGO:s against racism, xenophobia and ethnic discrimination to relevant legislation and current research.

The website can be found at <http://www.sverigemotrasism.nu/>.

## **5.7 The Swedish NGO Foundation for Human Rights**

The Swedish NGO Foundation for Human Rights has four principals: the Church of Sweden, Diakonia, the Swedish Red Cross and Swedish Save the Children. The work of the Foundation is intended to supplement the activities of these principals in the field of human rights and democracy. The non-profit foundation is politically and religiously independent.

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<sup>17</sup> SFS 1999:130

<sup>18</sup> SFS 2001:1286

<sup>19</sup> SFS 1999:131

The Foundation is very active in spreading knowledge on it's main questions by among other things taking part in and arranging courses and seminars.

The Foundation also collaborates in different ways with other NGO:s. This is among other things done by writing joint alternative reports on certain conventions ratified by Sweden. The alternative report to the International Convention on the Elimination of All Forms of Racial Discrimination is of special interest and can be read at the Foundation's website. More information about the Foundation's work and its alternative reports can be found at the website <http://www.humanrights.se/>.

### **5.8 Amnesty International**

Amnesty International works with a number of different issues on human rights by documenting, informing, applying pressure and influencing public opinion. Normally the national sections of Amnesty take no part in their own country's issues, but an exception from that principle is work for refugees threatened by expulsion and facing risks of torture or death penalty.

The work for refugees is largely aimed at supplying information to those involved in handling asylum cases to provide them with a complete picture of risks and other facts. Amnesty can in certain well-documented cases also appeal to authorities. Amnesty can also on the basis of the organisation's vast knowledge in the area inform and comment on the situation for asylum seekers and refugees.

Amnesty International's web page can be found at <http://www.amnesty.org/>. The web page of the Swedish section can be found at <http://www.amnesty.se/>

### **5.9 The Swedish Network of Asylum and Refugee Support Groups (FARR)**

The Swedish Network of Asylum and Refugee Support Groups (FARR) work for a human and generous application of the legislation on aliens and for complying with international conventions. FARR functions partly as a watchdog group, partly by giving advice in individual questions of asylum and humanitarian cases, and by informing on the issues. More information can be found at the network's website <http://hem.passagen.se/asylum/>.

Many other Swedish organisations work with the issues dealt with in this report. Among them are Youth Against Racism, the Council for Asylum Seekers and Refugees and the Red Cross. The latter is very involved in informing and giving advice to refugees and asylum seekers.

Youth Against Racism's web page can be found at <http://www.ums.nu/> (no English version). The Red Cross web page is at <http://www.redcross.se/>. The Council for Asylum seekers and Refugees doesn't have a webpage.

## 6. Conventions and Legislation

Sweden has to a large extent ratified different international conventions and regulations, also including conventions on refugees, minorities and discrimination.

### 6.1 Conventions

In a dual legal system such as the Swedish, international conventions are not applied by the national judicial authorities. The conventions are only binding to the state as such towards other affiliated states. However conventions can either be transformed or incorporated to be given the same status as the national legislation. But even if a convention only results in obligations on human rights, it still means that the ratifying state is bound to carry out the provisions it has agreed to.

This chapter presents the conventions and decrees which Sweden has ratified and which are of interest to this report. A final chapter lists interesting decrees which Sweden has not ratified.

#### 6.1.1 1951 UN Convention on the Legal Status of Refugees

The 1951 UN Convention on the Legal Status of Refugees is the most important convention regarding refugees. Sweden's Aliens Act is largely based on that.

In 1967 the convention was supplemented with a Protocol on the legal status of refugees. The Protocol binds ratified states to apply the 1951 Convention without time limitations to events that occurred before 1951 and without the geographical limitations to events only taken place in Europe.

The Convention defines a refugee as a person who

*»is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.«*

The definition refers to a person's individual, subjective fear of persecution on the basis of stated objective, obvious circumstances. This means that the convention does not provide any general protection for people in escape.

The convention also includes stateless people as refugees and who for reasons mentioned above are outside the country where he or she previously stayed, providing that the person cannot or owing to fear will not return. According to the convention it is forbidden to refuse entry to or to expel refugees to a country where they risk persecution or where they are at risk at being sent to another country thereby risking persecution.

The convention also contains regulations on among other things travel documents to refugees and that refugees shall have equivalent rights to ordinary citizens regarding certain social benefits and so on.

### **6.1.2 UN Convention on Racial Discrimination**

The International Convention on the Elimination of All Forms of Racial Discrimination came into force in 1969. Sweden ratified the convention in 1971.

To supervise how the affiliated states fulfill their obligations the States Parties elect a committee called CERD (Committee on the Elimination of Racial Discrimination). CERD's supervision consists among other things of studying the reports each member state must submit every two years. Sweden has been criticized by CERD for a long time for not having an effective ban on racist and xenophobic organisations. (see further Chapter 6.2.2)

In 2000 a group of NGO:s wrote an alternative report addressed to CERD.<sup>20</sup> In this report Sweden was among other things criticised for the increasingly segregated society and the growing violence directed at people of foreign descent.

### **6.1.3 Ban on torture**

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment came into force in 1987. Individuals in countries which have accepted the right for individuals to lodge complaints according to the Convention makes these complaints to the UN Committee against Torture. Sweden has granted individuals this right and so far Sweden has been criticised in eight cases and a ninth is under investigation.<sup>21</sup>

The Convention against Torture in article 3 explicitly prohibits torture and other cruel, inhuman or degrading treatment or punishment.

There is also a ban on torture in Article 3 of the European Convention on Human Rights, but Sweden has so far not been found breaking the article in any case.

Sweden seems to place great importance on the rights of individuals to complain to international surveillance organs. A thorough analysis is made of each case in which Sweden has been criticised and the routines for handling asylum cases are continuously improved. Sweden always adjusts to decisions made by the European Court of Human Rights and the Committee against Torture. No refugees or asylum seekers have been expelled in the cases in which Sweden has been criticised.

### **6.1.4 The Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages**

In 2000 Sweden ratified the Council of Europe's Framework Convention for the Protection of National Minorities and the same year the European Charter for Regional or Minority Languages was also ratified. The Framework Convention's main

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<sup>20</sup> The alternative report is found at <http://www.humanrights.se/>

<sup>21</sup> <http://www.amnesty.se/>, under landinformation, Sverige

purpose is a general protection of national minorities, but also to clarify that this is a vital part of the protection of human rights.<sup>22</sup>

### **6.1.5 International Court of Justice**

On 1 July 2002, the Rome Statute of the International Criminal Court came into force. This means that after decades of negotiations a permanent court of justice has been established. The prerequisite was that a minimum of sixty states ratified the Charter. Sweden ratified it in 2001.

The International Court of Justice shall prosecute individuals who have committed crimes of war, crimes against humanity or genocide. The court shall be seated in The Hague.

### **6.1.6 Non ratified documents**

Sweden has not ratified the ILO's (International Labour Organisation) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, containing a number of rules and provisions to protect native populations. It has been established that the Sami people are a Swedish native population.

The reason as to why Sweden has not ratified this convention is mainly that the provisions on the native peoples right to ownership of land or territories could not be met.<sup>23</sup>

Another interesting document in this context but not signed by Sweden is the European Convention's twelfth Protocol on discrimination. One of the reasons why Sweden has not ratified the Protocol is that its wording is too general and imprecise, and it will therefore take a long time before any conclusions can be drawn on its practical outcome. Other important reason is that no exceptions are made for »affirmative action« and also that the Protocol does not clarify the extent to which ratified states will be held responsible for the behaviour of individuals.<sup>24</sup>

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<sup>22</sup> <http://www.coe.int/>

<sup>23</sup> SOU 1999:25

<sup>24</sup> Sweden's declaration on voting at the adoption on Protocol 12 to the European Convention regarding protection of human rights and fundamental freedoms *Sverigesröstförklaring vid antagandet av protokoll 12 till den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna*

## 6.2 Legislation

Swedish legislation contains a number of regulations aiming to fight racist crimes and to counteract discrimination. The Penal legislation has different sections aiming at this and if the crime is racist it may also affect the penal value through a paragraph in the Penal Code on increased sanctions.

This area is also covered outside of the penal system. Below follows a survey of the interesting law sections both concerning the penal legislation and other legislation.

### 6.2.1 The Instrument of Government

The Instrument of Government is one of the four fundamental laws of the Swedish Constitution. The others are the Fundamental Law on Freedom of Expression, the Freedom of the Press Act and the Act of Succession. The main difference to other legislation is that the constitutional laws enjoy a special protection since they largely encompass areas particularly worth defending in a democracy.

The Instrument of Government in Chapter 1, section 2 states that:

*Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person.*

It also states that:

*Opportunities should be promoted for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own.*

The Instrument of Government in Chapter 2 deals with fundamental freedoms and rights. Sentence 1, section 6 decrees *freedom of worship that is, the freedom to practise one's religion either alone or in the company of others*. In sentence 2 every citizen is protected in his relations with the public institutions...

*...against any coercion to divulge an opinion in any political, religious, cultural or other such connection, against any coercion to participate in a meeting for the formation of opinion or a demonstration or other manifestation of opinion, or belong to a political association, religious community or other association for the manifestation of opinion.*

According to sentence 12 these rights and freedoms *may be restricted in an act of law to the extent provided for in sentences 13 to 16*. In the context of this report, the most interesting section is sentence 15, which states that

*No act of law or other provision may imply the unfavourable treatment of a citizen because he belongs to a minority group by reason of race, colour, or ethnic origin.*

Also interesting is that the Freedom of Association (a fundamental right and freedom) according to sentence 14, second sentence may be restricted for associations with

activities aimed at *persecution of a population group of a particular race, colour, or ethnic origin*.

The restrictions may only be introduced to safeguard purposes that are acceptable in a democratic society. They may never exceed what is necessary considering the activity that caused the restrictions and not be extended to form a threat to the free formation of opinion, being one of the basic principles of a democracy. Restrictions may also not be imposed on the sole ground of political, religious, cultural or other such beliefs.

The first sentence of sentence 22 states the freedoms and rights in which the protections of foreigners are equated with that of Swedish citizens. The second paragraph states the freedoms and rights in which foreigners are equated with Swedish citizens, unless it follows otherwise from special provisions of law.

### **6.2.2 Act on Agitation against a National or Ethnic Group**

The Act on Agitation against a National or Ethnic Group is regulated in parallel in the Penal Code Chapter 16, section 8, the Freedom of the Press Act Chapter 7, section 4 and the Fundamental Law on Freedom of Expression Chapter 5, section 1.

The main difference between these is basically that the Freedom of the Press Act and the Fundamental Law on Freedom of Expression protects the freedom of opinions and consequently they target deeds committed in printed matter and media such as film, radio, television or sound recordings such as CD-discs. The Penal Code targets all other deeds. These laws also define the perpetrator of the deed in different ways.

One problem is that the regulations on responsibility differ for different websites on the Internet. For example, webplaces of newspapers and other media are subject to the regulations stipulated by the Freedom of the Press Act and the Fundamental Law on Freedom of Expression; that is webplaces have the same liability as a printed or broadcasted edition. Other webpages produced by private companies or individuals are regulated by ordinary legislation such as the Penal Code.

In 1948 the Act on Agitation against a National or Ethnic Group was transferred from the 1864 Penal legislation to the Penal Code. The act was introduced after a proposal by the Committee on Punishment and meant that anyone who in public threatened, slandered or insulted a population group of certain origins or beliefs would be sentenced to fines or prison for agitation against a national or ethnic group.

In 1970 the area of legal application for agitation against national or ethnic groups was expanded. The purpose was to align Swedish legislation to the UN Convention on Racial Discrimination. According to Article 4 of the Convention on Racial Discrimination the ratified states condemn all organisations and all propaganda based on views or theories that any race or group of people of certain ethnic origin or colour of skin are superior to any other, or those who strive to justify or promote racial hatred and discrimination in any form. This shall among other things be upheld by the states taking the actions stipulated in the article. However at the same time the convention states must consider the principles expressed in the general declaration

on human rights, which among other things mean that freedom of opinion and assembly must not be infringed upon by imposing article 4.

Three criteria must be fulfilled for something to be regarded as agitation against a national or ethnic group. The first is that the deed must contain threat or express disdain. Threats are to be understood by common use of language, which means a wider definition than those of unlawful threats or unlawful coercion. Disdain not only refers to smearing or slander, both punishable by law, but also other abusive expressions, which degrade or ridicule the group concerned. Criticism based on facts is allowed though.

The Act on Agitation against a National or Ethnic Group does not protect individuals but only people defined as a collective. Therefore the person aggrieved cannot file complaints under this act. Indirect expressions are also outside of the area of sanctions.

For the threat or disdain to be considered as agitation against a national or ethnic group it must also be presented in a statement or otherwise be distributed as a message. It is not a prerequisite that these statements or messages are spread among the public or made public. This prerequisite is made to hinder the activities of racist organisations. Otherwise punishable statements are allowed within the fully private sphere, but similar statements within for example an organisation are punishable. The spreading of statements not only includes personal views but also the spreading of hearsay.

The punishment for agitation against a national or ethnic group is imprisonment for a maximum of two years and fines if the crime is considered minor.

During recent years discussions and investigations have taken place on which changes are needed in the area due to the increased activity of racist organisations and the developments of new techniques for spreading of information.

**In January 2003 the legislation on agitation against a national or ethnic group will partly change. Among other things** it will be possible to define incitement as at "gross" or serious crime with a penal scale ranging from 6 months to 4 years imprisonment. The decisive factor for a message to be regarded as a serious crime is if it had a particularly degrading or threatening content and was spread to a large number of people in ways meant to attract considerable attention. The area of application will according to the new legislation also be extended to encompass agitation hinting at sexual orientation.<sup>25</sup>

Medias regulated by the Freedom of the Press Act and the Fundamental Law on Freedom of Expression have special rules of limitation. A periodical and a radio programme must be prosecuted within six months after the message was printed or spread, while other media have limitations of one year, with two exceptions. This leads to some difficulties to prosecute.

There is a current proposal for legislation, which among other things deals with changes and clarifications on limitations to prosecute for some media. This is an answer to a growing realization of the necessity to make it easier to rebut allegations

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<sup>25</sup> Proposition 2001/02:59

that the case is beyond limitations of prosecution. The problems in prosecution are only partly due to short limitations, and mainly due to problems of defining when the limitations shall commence, since it is mostly defined as the date of publication, which can be difficult to establish.<sup>26</sup> It is suggested that a clarification of the date of publication for technical recordings is to be the same as for printed matter, that is the day it was handed over for distribution in Sweden. The limitations are consequently counted from that date.

On 1 January 2003 some changes to the statutes of limitation for media protected by Fundamental Law are also made. The purpose is to make it easier to refute claims that the material has passed the time limit defined by the statutes of limitation.<sup>27</sup>

Examples of such changes concerns lengthening of the statute of limitation which allows prosecution against CD-records that are lacking so called IFPI data, defining origin and date of issue, and that the statute of limitation for crimes against Freedom of Speech in data bases will be counted from the date when a file was deleted from a web page.

Exempel på de förändringar som görs är att preskriptionstiden för yttrandefrihetsbrott på CD- skivor och liknande som saknar ursprungsuppgifter förlängs samt att preskriptionstiden för yttrandefrihetsbrott i databaser börjar löpa först när ett yttrande tas bort ur databasen.

### **6.2.3 Unlawful Discrimination (SFS1987:610)**

According to the Penal Code Chapter 16, sentence 9...

*...a businessman who in the conduct of his business discriminates against a person on grounds of that person's race, colour, national or ethnic origin or religious belief by not dealing with that person under the terms and conditions normally applied by the businessman in the course of his business with other persons, shall be sentenced for unlawful discrimination. The provisions also apply to a person employed in a business or otherwise acting on behalf of a businessman and to a person employed in public service or having a public duty.*

It is also punishable for any organiser of a public assembly or gathering, and any collaborator of such organiser, to discriminate against a person on grounds of his race, colour, national or ethnic origin or religious belief by refusing him access to the public assembly or gathering under the terms and conditions normally applied to other persons.

The sentence for unlawful discrimination is fines or imprisonment for a maximum of one year.

### **6.2.4 The Penal Code's Paragraph on Increased Sanctions**

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<sup>26</sup> Government Bill 2002/02:74

<sup>27</sup> Prop. 2001/02:74

Punishments shall according to the Penal Code 29:1 be determined within the penal scale according to the penal value of the crime or crimes committed. In assessing the penal value, special consideration shall be given to the damage, wrong or danger occasioned by the criminal act and to what the accused realised or should have realised about this, and to the intentions or motives he may have had.<sup>28</sup>

The second sentence enumerates the aggravating circumstances that shall be given special consideration in addition to what is an applicable penal value to each and every type of crime. Among these, one aggravating circumstance is:

*»whether a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief or other similar circumstance.«<sup>29</sup>*

The meaning of this sentence is that the court shall consider it an aggravating circumstance and increase the sentence of the perpetrator, if for example somebody of non-European origin is assaulted by somebody who in connection with the assault in any way expresses racist or xenophobic motives.

The Swedish Parliament has voted on the parts of the Government Bill dealing with the clarification of increased sanctions in cases of aggrievements due to sexual orientation.<sup>30</sup>

### **6.2.5 Act on Responsibility for Electronic Billboards**

According to this act the supplier of a service (such as a webhotel or a chat channel) must have a supervision »within reasonable demand to the direction and scope of the activity«. The person responsible is according to sentence 5 of the act obliged to remove pages if the contents are regarded as agitation against an ethnic or national group. If that is not done, a maximum penalty of two years in prison can be sentenced if the crime is considered serious.

Despite that the Act on Responsibility for Electronic Billboards is established to regulate some areas of the internet, some problems and uncertainties are linked to it, for example how available it is to the public or how frequently it is updated.

### **6.2.6 The Uniforms Act**

From the Uniforms Act follows that it is forbidden to wear uniform or similar outfits that serve to mark the wearer's political opinions. The ban also includes parts of uniforms, armbands with insignias or other comparable and noticeable signs. This means that people who wear nazi symbols in public break the law, but also that this targets all other types of political uniforms such as sweaters worn by any party members during election periods.

Since the act hinders freedom of expression and freedom of opinions and consequently is in conflict with the constitution, two Supreme Court rulings have with

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<sup>28</sup> SFS 1988:942

<sup>29</sup> SFS 1994:306

<sup>30</sup> Government Bill 2001/02:59

reference to the act acquitted people wearing nazi symbols and the act is considered obsolete. The Uniforms Act was repealed all together on July 1, 2002<sup>31</sup>, after it was established that the wearing of emblems or certain clothing may be regarded as a message and therefore breaks the Act on Agitation against National or Ethnical Groups. Since the wearing of racist symbols is already covered by the Act on Agitation, there is no need for a specific ban the wearing of racist symbols.<sup>32</sup>

## **6.2.7 Discrimination**

Swedish legislation does not contain any coherent law on discrimination. Instead the issue is regulated in a number of laws. There are some current proposals and an ongoing debate suggesting that a coherent law on discrimination should be adopted.

During 2003 all member states of the European Union must see to that their legislation adheres to the Council's directives 2000/43/EG and 2000/78/EG. The former deals with enforcement of the principle of equal treatment regardless of race or ethnic origin, the latter aims at establishing a general framework for equal treatment in working life-viewing discrimination on the grounds of religion or beliefs, disability, age and sexual orientation.

No change in legislation has yet been made, but different investigations have presented proposals to revise the current discrimination laws. Among other things there is a need to expand the ban against ethnic discrimination in working life and make it applicable in a larger area of society. Such proposals have been put forward.<sup>33</sup> The different Ombudsmen are suggested to be responsible to uphold the legislation and this will expand their areas of supervision. This especially concerns the Ombudsman against Ethnic Discrimination.<sup>34</sup>

There is also an ongoing investigation on a coherent legislation on discrimination. The proposals will be presented no later than December 1 2004.<sup>35</sup>

### **6.2.7.1 Measures to Counteract Ethnic Discrimination in Working Life Act<sup>36</sup>**

The act came into force in 1999 and is the main basis of the work of the The Ombudsman against Ethnic Discrimination. According to the act the Ombudsman shall investigate cases on discrimination filed by individuals and take the case to court if no other solutions is possible. The Ombudsman shall also survey that employers actively promote ethnic diversity in workplaces. The purpose of the act is to promote equal rights and opportunities regardless of ethnic origin, terms of employment, conditions in working life and opportunities. The act also stipulates collaboration between employers and employees to promote ethnic diversity and to counteract discrimination. The act also prescribes that a Board against Discrimination shall be established with the task of deciding on default fines and considering certain appeals.

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<sup>31</sup> Swedens Code of Statutes (SFS) 2002:333

<sup>32</sup> NJA 1996, page 577

<sup>33</sup> Government Bill 2002:43

<sup>34</sup> Government Bill 2002:43

<sup>35</sup> Directive for Investigations of a Coherent Discrimination Legislation, (Dir. 2002:11)

<sup>36</sup> SFS 1999:130

Sanctions for not adhering to the Act is that a discriminatory contract may under certain circumstances be invalid and that the employer may be sentenced to pay damages.

An employer may also be ordered to pay a default fine to make him or her fulfil the obligations described in the Act.

### **6.2.7.2 Equal Treatment of Students at Universities Act<sup>37</sup>**

The act came into force as late as March 1, 2002, and its purpose is not only to counteract ethnic and religious discrimination, but also discrimination due to gender, sexual orientation and disability. It targets the universities and university colleges and attempts to promote equal rights and counteract discrimination of students and applicants in the areas mentioned above.

From the law follows among other things that a university or a university college which is managed by the State, a municipality or a county council and also private organisers of education who hold a licence to award degrees are under certain stated circumstances subject to *pay damages for the violation that a student or an applicant has been subjected to.*

### **6.2.7.3 Discriminatory marriage laws**

The legal age of marriage is 18 years in Sweden according to the Swedish Marriage Code (SFS 1987:230) 2:1.<sup>38</sup> The Act on certain International legal conditions on marriage and guardianship (IÄL- International Regulations on Marriage and Guardianship) states in Chapter 1, sentences 1 and 3 that foreign citizens may be married at the age of 15 by Swedish authorities.<sup>39</sup>

The county administrative board may according to the sentences mentioned above give permission for persons younger than 18 or for foreigners 15 to marry.

Marriages entered into in other countries are valid in Sweden if the marriage was formally legal according to the law applied at the time of the marriage (IÄL - International regulations on Marriage and Guardianship, Chapter 1, sentence 7). A Swedish prosecutor may according to the Swedish Marriage Code Chapter 5, sentence 5, dispute marriages, which were entered in conflict with certain impediments, even if the couple still wish to stay married. This rule is only applied for marriages between relatives as direct ascendants or descendants, siblings and in cases of polygamy.

The IÄL - International Regulations on Marriage and Guardianship, Chapter 7, sentence 4, states that a marriage entered into in another country is valid if it is not in conflict with Swedish *ordre public*.<sup>40</sup> By this is meant that it is »obviously incompatible

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<sup>37</sup> SFS 2001:1286

<sup>38</sup> Law, Swedish Code of Statutes 1987:230

<sup>39</sup> Law, Swedish Code of Statutes 1904:26

<sup>40</sup> Michael Bogdan, *Svensk internationell privat- och processrätt* (Institutet för vetenskaplig forskning) Norstedts Juridik AB, Stockholm 1999.

to the fundamental legislation of this country«. Ordre public must be defined in Swedish law or jurisprudence.

The 15 year age limit for a foreign citizen to enter into marriage in Sweden is an example of a regulation that contradicts Swedish ordre public. In *Swedish international law and procedurals*, lawyer Michael Bogdan writes that to some extent *e contrario decisions* can be made based on the 18 year age rule and the general rule of ordre public in the IÄL – International regulations on Marriage and Guardianship, Chapter 7, sentence 4. He gives as an example a foreign marriage that was entered into abroad by someone under the age of 18 and which is valid in Sweden despite the fact that permission is required in Sweden but not in the foreign country.<sup>41</sup> Applied to the age limit of 15 years for foreign citizens it means that marriages entered by foreign citizens under age of 15 in countries where no permission is required are also valid in Sweden. One reason according to Swedish rules of ordre public to dissolve a marriage entered into in another country may be that one of the parties was very young. The reasons linked to ordre public diminish with the passing of time.<sup>42</sup>

### **6.2.8 Female Genital Mutilation Act**

The Female Genital Mutilation Act was introduced in 1982 in Sweden and prohibits – regardless of the woman’s consent – any incisions of the female outer genitalia with the purpose of mutilating or creating permanent changes.

The act makes no distinction in its wording between Swedish and foreign women, but since there is no Swedish tradition of female circumcision the law does in practice not deal with Swedish girls.

The penalty for breaking the law is imprisonment for a maximum of four years. The sentence for a serious crime is imprisonment for a minimum of two and a maximum of ten years. A serious crime is defined as a crime causing mortal danger, serious illness or in other ways constitute a ruthless behaviour. There are also penalties for attempt, preparation and conspiracy and also to neglect to report if genital mutilation is imminent.

In 1999 the principle demanding that a crime must be generally punishable in both countries was abolished to prevent girls from being taken from Sweden to be subjected to genital mutilation. The principle of double punishment means that a crime committed abroad must be punishable in that country for the case to be prosecuted in Sweden.<sup>43</sup> This is with certain exceptions valid for crimes committed abroad. The reason for abolishing the principle was that it made it easy to perform genital mutilation abroad instead of in Sweden, which to some extent would render the law ineffective.

### **6.2.9 The Aliens Act**

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<sup>41</sup> Michael Bogdan, *Svensk internationell privat- och processrätt* (Institutet för vetenskaplig forskning) Norstedts Juridik AB, Stockholm 1999.

<sup>42</sup> According to David Fischer, lektor i internationell process och privaträtt på Stockholms universitet. international law and procedurals

<sup>43</sup> Government Bill 1998/99:70

The Aliens Act from 1989 regulates conditions such as foreigners travelling in and out of the country, their staying and acquiring of residence permits in Sweden. It is possible to receive a residence permit for many reasons, one of them being in need of protection.

People who primarily are counted as being in need of protection are according to the Aliens Act those who are regarded as refugees according to the 1951 UN Convention on the Legal Status of Refugees, so called Convention refugees. The designated residence permit for convention refugees is asylum, which no others in need of protection may receive.

The Aliens Act's definition of a refugee is the same as the one given by the 1951 UN Convention. The definition is:

*»An alien who is outside the country of his nationality owing to a well founded fear of being persecuted for reasons of race, nationality, membership of a special social group or religious or political opinion, and who is unable or owing to such fear is unwilling to avail himself to the protection of that country.«*

The Aliens Act also defines others than refugees as being in need of protection. The act also prescribes a principal right for other categories of people to receive sanctuary in Sweden. These are people who have left their country for other reasons than those outlined for a refugee. The reasons are:

*– Has a well-founded fear of being sentenced to death or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment.*

*– Due to an external or internal armed conflict needs protection or, on account of an environmental disaster, cannot return to his/her country of origin*

*– Because of his/her gender or homosexuality has a well-founded fear of persecution.*

*– Is stateless and who for reasons mentioned above are outside of the country of his/her nationality and in accordance to reasons mentioned above cannot or owing to fear will not return*

In 2000 some changes in the Aliens Act came into force. One change concerns those applying for residence permits on the grounds of family ties. Residence permit for someone in a newly established relationship is limited during the first two years and if the relationship still continues after these two years a permanent residence permit is granted. The significance of the change is that a continued residence permit can be granted even if the relationship is over within the period, provided that the applicant or the applicant's children have been subjected to violence or acts like serious insulting violations of the freedoms or peace of the applicant or the applicant's children. The change also means that residence permit can be denied at the first time of application even if the relationship seems serious if the applicant is at an obvious serious risk of being subjected to violence or other serious violations in the relationship.

In 2000 some changes regarding adoption were also introduced. Among other things rules on possibilities to grant residence permit were introduced on the grounds of adoption of children under the age of 18 and that Swedish courts always shall obtain statements from the Swedish Migration Board in cases of adoption of non-Nordic citizens aged twelve or older.

#### **6.2.10 Act on Special Control of Alien nationals**

The Act on Special Control of Alien nationals (Lagen om särskild utlänningskontroll) of 1991 complements the Aliens Act with rules for when an alien may be expelled. Reasons allowed in accordance with the Act for expelling an alien are:

- If it is deemed necessary for the safety of the nation
- considering what is known about the alien's earlier activities and other circumstances and it can be feared that he will commit or assist in committing criminal acts consisting of violence, threat or coercion for political purposes, with the exception of the danger of these acts being committed in another country and the crime is predominantly of political nature.

Decisions on expulsion are announced by the Swedish Government.

The decision on expulsion is combined with a prohibition for the alien to return to Sweden without the permission of the government. The ban announced is with or without a time limit.

#### **6.2.11 Act on Reception of Asylum Seekers and Others**

The Act on Reception of Asylum Seekers and Others contain regulations on responsibility for reception, organized activities and assistance to among others asylum seekers.

The Swedish Migration Board is by the Act obliged to manage refugee centres or commission others to manage these and shall offer the aliens referred to in the Act a place in a centre. The aliens in question shall also be given opportunities to take part in some kind of meaningful activity and also have the rights to support in the form of housing or equivalent, daily allowances and special allowances for urgent needs.

#### **6.2.12 Swedish Citizenship Act**

The Swedish Citizenship Act contains provisions for obtaining a Swedish citizenship. Rules define who may acquire Swedish citizenship by birth and how to obtain it later by for example adoption or by application. There are also regulations on how to regain a Swedish citizenship and rules for when it is lost. The Swedish Migration Board is – with the exception of Nordic citizens – the authority that tries cases of citizenship.

### **6.2.13 Special legislation on minorities**

By special legislation<sup>44</sup> individuals have among other things been given the rights to use the minority languages Sami, Finnish and Meänkieli in their contacts with courts and authorities in the geographical areas where these languages traditionally have been and still are used. The municipalities in these geographical areas are also obliged to provide pre-schools and care for the elderly that wholly or in part managed with the use of these languages.<sup>45</sup>

### **6.2.14 The Genocide Act**

The Genocide Act stipulates that the perpetrator of a crime against a defined national, ethnic, racial or religious group of people, with the specific intent to destroy it in whole or in a substantial part and which fetches a minimum of four years in prison, shall be convicted of genocide.

The sentence for genocide is a minimum of four years and maximum of ten years to life imprisonment.

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<sup>44</sup> Swedish Code of Statutes 1999:1175 and 1176

<sup>45</sup> A summary on Swedish Policy on National Minorities 2001,  
[http://naring.regeringen.se/fragor/minoriteter/pdf/n2001\\_018e.pdf](http://naring.regeringen.se/fragor/minoriteter/pdf/n2001_018e.pdf)

# 7 Analysis

## 7.1 Introduction

It is very important to give priority to racist crimes through the whole legal process. The reasons are that these crimes are very serious from society's point of view and the exposed groups must feel that society attaches great importance to these questions.

Police, prosecutors and courts must take all measures possible for a fast process and to find the perpetrators without risking the safety of the legal system. It is also important that society sends a clear message to the so-called Nazi world and its sympathisers, that race hate crimes are not accepted by society.

Since the mid 1990s the state has clarified its basic view on hate crimes and many measures have been taken to deal with these crimes. Among other things the legal system shall give priority to these types of crimes.

This sharpened approach has also led to an increase in media attention to hate crimes and the appropriate regulations in the area. According to the The National Council for Crime Prevention the mere fact that the regulations have been better known in society, may have contributed to the six-fold increase in the last ten years of complaints against xenophobic agitation and unlawful discrimination. However, another reason for the increase may also be that these crimes really have increased in number.<sup>46</sup>

It is difficult to measure why this increase has occurred. It is impossible to study the crime development for the years before 1990, since no separate statistics were made on unlawful discrimination and agitation against ethnic groups.

## 7.2 Considerations on Swedish legislation in the area

In 1994 the regulation for increased sanctions in the Penal Code Chapter 29:2, point 7 was introduced as a step in the state's sharpened view on racist crimes. The purpose of the regulation was also to increase the focus on racist hate crimes in the early stages of criminal investigations.<sup>47</sup>

In Hate crimes, a follow-up of efforts made in the legal system, a report from the National Council for Crime Prevention, the measures of the legal system to give priority to hate crimes is described. This includes how the courts have applied the regulation of increased sanctions. The report also surveys hate crimes reported in 2000 and their progress from report to sentence in district courts.

The survey shows that district courts increased sanctions in 46 of 360 cases that were prosecuted. In most cases the motive behind the crime gave reasons for

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<sup>46</sup> [www.bra.se](http://www.bra.se), vilka är brotten?, rasistiska brott (Which are the Crimes? Racist hate crimes)

<sup>47</sup> *Hatecrimes, a follow-up of efforts made in the legal system (Hatbrott, En uppföljning av rättsväsendets insatser*, rapport 2002:9, Brottsförebyggande rådet), the National Council for Crime Prevention

increased sanctions, but in just a few cases it was possible to draw conclusions from the verdict on how much the sentence had been influenced for hate crimes. There is no similar praxis on how the courts decide to increase sanctions for hate crimes. Apart from regulations on increased sanctions in the Penal Code, there are also possibilities to deem the hate crime as serious or "gross" in view to the hate motive and thereby increase the fines.

The survey also differs in describing how the courts have regarded the motives giving rise to increased sanctions, which makes it difficult to follow up the application of the new regulation in the Penal Code. The regulation for increased sanctions in the Penal Code was only stated in the verdict of seven of the 46 cases, and was otherwise just mentioned in the text

According to many of the judges interviewed in the survey the main reason for not trying circumstances that might lead to increased sanctions more often, is that the prosecutor does not refer to the new regulation.

The Ordinance on Information in Certain Crimes which came into force in 2001 prescribes that the follow-up of the regulation on increased sanctions shall be made easier and in cases of hate crimes copies of the verdicts shall be sent by the courts to among others the National Council for Crime Prevention. During the first year of the Ordinance the National Council for Crime Prevention received eight verdicts. In view to the 46 cases of verdicts for hate crimes in 2000 it seems that not all verdicts that should have been sent to the National Council for Crime Prevention really were sent. This indicates that the Ordinance has not made the follow-up of hate crimes easier as it was meant to.

To reach the desired effect the National Courts Administration in 2002 issued a recommendation that judges in the hate crime cases shall instruct the staff of the district courts if the verdicts are to be handled according to the Ordinance. This might otherwise be difficult for the administrative personnel to know.<sup>48</sup>

Sweden shares a problem with the rest of the world in that some men in different ways oppress women. This is the same for women of Swedish and foreign origin, but it often contains more complex problems for women of foreign descent. In certain families of foreign origin girls live in patriarchal families and are subjected to threats, force and violence to a larger extent than Swedish girls. A reason that makes it difficult to counteract this is that the girls often lack support among their relatives and in their family, who instead actively support the oppression or at least closes their eyes to the fact that the girl is abused.

During the last years these problems have been given more and more attention in Sweden, especially after a young Kurdish woman was murdered by her family in January 2002. She had broken off with her family to get away from a life of threats and coercion and also had taken her story to the media to show the problems that can exist in patriarchal families.

The Swedish society's views on religious customs and cultural traditions where children and young women are subjected to abuse has started to show tendencies of becoming more restrictive. Female genital mutilation have been forbidden since 20

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<sup>48</sup> Recommendation 2002:9, National Courts Administration

years, and in 1999 the regulation on double punishment was deleted, which means that it has become a crime to take a girl abroad and subject her to genital mutilation. Up to today no case has gone to court, mainly because of an unwillingness to report.

A natural development along the same lines as the discussion on female genital mutilation is to limit the validity of marriages between foreign-born children in an effort to stop them from being maltreated.

A simple way of dealing with child marriages would be to include this as another ground in the The Act on certain International legal conditions on marriage and guardianship (IÄL) for the prosecutor to dispute marriages, even if the couple still wish to stay married. This rule can so far only be applied for marriages between relatives as direct ascendants or descendants, siblings and in cases of polygamy.

Another measure would be to change the rules for dispersion for marriage to the age of 18 for all residents in Sweden. Swedish authorities should not overlook child marriages just because these children are part of another culture than the Swedish, but it should be regarded as serious as any other violence against a child. In the end this is not about culture and religion but concerns the rights of children. These rights should not differ in protection within a country and thereby cause discrimination because the children in question have different religious beliefs or cultural traditions

The regulations in the Swedish Marriage Code and The Act on certain International legal conditions on marriage and guardianship (IÄL) differ on the legal age for marriage. This means that children who are not Swedish citizens or who have a dual citizenship are not protected to the same extent as Swedish children. A proposal for a change in legislation on marriage exists and is expected to come into force in 2004.<sup>49</sup> There is also other current work on behalf of these vulnerable girls. For example two million Swedish kronas have been earmarked for sheltered housing for girls in patriarchal families<sup>50</sup> in the three large city areas of Stockholm, Gothenburg and Malmö, but the question is if this is enough. A long-term change requires a change of attitudes among the perpetrators.

The Government has also appointed an expert group with the task to suggest measures and methods to protect and support vulnerable girls. The expert group shall also propose measures to reach men with strong patriarchal values.

In late 2001 the Government decided to survey the reception and introduction of refugees with the purpose of giving new immigrants a better knowledge and understanding of fundamental principles in the Swedish society and the democratic system.<sup>51</sup>

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<sup>49</sup> Committee of the rights of the child with the task of monitoring States' implementation of the Convention on the Rights of the Child, has encouraged the Swedish Government to take measures to give the same protection to children with other citizenships than Swedish as to Swedish children. Committee of the rights of the child, *Considerations of reports submitted by states parties under article 44 of the convention*

<sup>50</sup> Government initiatives for girls at risk in patriarchal families, 2002:7

<sup>51</sup> Government initiatives for girls at risk in patriarchal families, 2002:7

### 7.3 Conclusion

Sweden is involved in a lot of changes regarding the issues dealt with in this report. Proposals for legislation are currently under investigation or well underway to be introduced. To sum it up it is doubtful if the Swedish legislation in the area is enough. The doubt comes from the fact that a lot more can be wished for in the current legislation. It is not enough that the work is in progress, but it should already have been completed, which of course is an eternal dilemma. The legislation process in a democracy is for natural reasons always slow.

One of the existing weaknesses and which have been investigated for some time is the statute of limitations for crimes on agitation against a national or ethnic group when they constitute crimes against the constitutional laws on Freedom of Expression and the Freedom of the Press Act. The situation today is that a CD-record (under the protection of the Freedom of the Press Act in the constitution) and with a criminal content may be distributed forever after the one-year limitation has passed as long as the record is not released as a new edition. To avoid being persecuted it is enough to print a sufficient number of criminal CD-records and store them for a year, after which it is non-punishable to distribute them. This has happened several times in Sweden and also gives an example that the White Power scene in Sweden are up-dated on the legal situation. Considering that the statute of limitations commence from the first date of distribution and is often impossible to prove unless the suspects provide the information, which also makes it difficult for the prosecutor to act. In cases of violations of the Freedom of the Press Act, the Office of the Chancellor of Justice shall prosecute.

Some changes that hopefully will influence the work in a positive direction will take place in 2003. Among other things Forum for Living History, an educational project established by Prime Minister Göran Persson in 1997, will be transformed into a new government authority in 2003. Forum for Living History takes the Holocaust as a starting point to further education on all issues of genocide and abuse of people due to ethnic, cultural or religious origin. The purpose is to strengthen people's willingness to actively promote all peoples equal value. Forum for Living History will also promote work, discussion and thought on democracy, tolerance and human rights today seen in a historical perspective from the Holocaust to Swedish current history.

## **Appendix**

SFS means Swedish Code of Statutes. Copies of SFS can be ordered from bookstores or purchased directly from Fakta Info Direkt, telephone 08-587 671 00, fax 08-587 671 71.