

# **Analytical Report on Legislation**

## **RAXEN National Focal Point SWEDEN**

EXPO Foundation, Stockholm

by  
Paul Lappalainen,  
Lawyer L.L.M. (Sweden) and Juris doctor (US)

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# 1. Executive Summary

The legislation in Sweden concerning discrimination based on ethnicity and religion has been amended in 2003. Swedish law is now basically in compliance with the EC anti-discrimination directives. The most important shortcoming is that the education sector is not yet covered except in regard to the university level and important parts of the vocational sector. This should be remedied through an accelerated inquiry into the issue. It can also be noted that the bill proposing amendments to the anti-discrimination laws in working life concerning ethnicity and religion, disability and sexual orientation and the new more comprehensive law banning discrimination in fields other than working life (for example goods and services) went beyond the minimum requirements of the EC directives. This latter law covers all of the above grounds of discrimination, but provides the broadest scope of protection in relation to discrimination on the grounds of religion and ethnicity.

These new amendments and the new law actually add to the complexity of the situation with regard to the variety of laws that cover discrimination in Sweden. Both criminal law and civil law are used to cover discrimination. Four different ombudsmen have responsibility for the different grounds of discrimination (gender, ethnicity and religion, disability and sexual orientation). Various different government departments have responsibility for different grounds, although there seems to be an increasing focus on concentrating discrimination issues in the Justice Department.

This complex situation is one of the reasons that the government has appointed a parliamentary inquiry that has the task of examining a proposal for a new, comprehensive anti-discrimination legislation that covers some or all of the grounds of discrimination. The inquiry also has the task of examining the possibility of combining some or all of the current anti-discrimination ombudsmen into a single ombudsman. The inquiry is also to examine more specific issues. One is adding protection against age discrimination to the system in accordance with the requirements of the EC directive. Another is including the possibility of positive action in regard to under-representation based on ethnicity and religion. Another is the possibility of requiring employers to produce and implement equality plans. This would probably be similar to the requirement of gender equality plans that today applies to all employers with ten or more employees.

In other words a broader and more effective human rights approach is gaining ground in Sweden. Canada's Human Rights Act and the Netherlands Equal Treatment Act are examples of laws that cover all grounds of discrimination. Examples of enforcement bodies are Canada's Human Rights Commission and the Equal Treatment Commission in the Netherlands. At least some of those involved in the field assert that a comprehensive legislative and enforcement approach is and should be more effective than the current situation of various disconnected laws and enforcement bodies. The idea being that the broader human rights approach will lead to a more effective counteracting of discrimination on each of the grounds.

A continuing problem is the big difference in the way Swedes and immigrants are treated in the Swedish society. This can be seen in, among other things, the Swedish Integration

Board's 2002 report. The disparities, segregation and discrimination with a connection to ethnic background seem to be integral parts of Swedish society.

Legislation is a useful tool, but more than legislation itself 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. The key that seems to be developing though is that legislation must in addition be directed toward actually leading to changes in behavior. A lesson learned in some countries such as the US is that a person who is aware of his own racist ideas, can nevertheless employ minorities if the cost of discrimination is too high. On the other hand, liberal sounding employers can basically avoid employing minorities without considering the contents of their actions, since they act on the assumption that only ideological "racists" discriminate. This is a misconception and form of denial that is common in Europe according John Wrench: "The denial of the problem of discrimination at work is often rooted in a misconception. The argument goes something like this: "Discrimination against immigrants and ethnic minorities is caused by racism. Racism is an ideology which sees others as genetically inferior, and is expressed in practice by actions such as the burning down of refugee hostels by skinheads. We are not like that; therefore there is no discrimination here." In fact it is clear that racial and ethnic discrimination in employment can occur without any connection at all to racism so defined."<sup>1</sup> Presumably such a conclusion can be drawn in regard to Sweden as well as other European countries. As to the lack of research that demonstrates the occurrence or lack thereof of discrimination, there has basically been a ban on research using situation-testing or practice-testing in Sweden. While such research has been carried out in a number of European countries, the official position has been that such testing is unethical.<sup>2</sup>

Additional policies and tools being developed need to focus on behavioral change as well. One recommendation is the adoption of so-called anti-discrimination clauses in public procurement. Depending on the phrasing of the clause these can allow for cancellation of contracts if the contractor violates the current anti-discrimination laws. This idea, which is gaining momentum in Sweden, has already provided positive results in other countries, particularly Canada, the US and the UK. In principle the Government has decided to introduce such clauses into public contracts at the national level. The Swedish law on public procurement was changed in order to clarify that such clauses could be used as long as they stayed within the framework of EC law. In addition a number of local governments have agreed in principle to implement such clauses. The combined value of public contracts (both national and local) in Sweden is about SEK 400 000 000 000 per year. It is assumed that the introduction of such clauses will presumably affect the behaviour of at least some of the companies that are involved in such contracts. This is especially true since the laws against discrimination have been improved substantially. While many businesses may not necessarily reflect over the moral force behind various laws and policies, they should be sensitive to the risk of increased costs or lost profits if they discriminate.

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<sup>1</sup> See John Wrench, <http://www.fairer.info/wrench.html> , also see Wrench, J. (1996) Preventing Racism at the Workplace

<sup>2</sup> See Michael Banton, "The ethics of practice-testing", *New Community* 23(3): 413-420, July 1997. According to Banton, the former chairman of the UN Committee on the elimination of racial discrimination: "To conclude that the ethical objections to practice-testing constitute an insuperable obstacle to the use of this research method is, in effect, to endorse the prevailing incidence of racial discrimination".

The government is providing support to empowerment of the parts of civil society involved in counteracting racism and discrimination. A number of local anti-discrimination bureaus have received a measure of national funding. In addition, a national NGO-controlled centre against racism is in the process of being established.

In July the government announced that it is going to appoint a government inquiry with the task of examining research related to structural discrimination in various parts of Swedish society. This seems to involve a recognition that a greater focus on equal rights and opportunities issues is needed in Sweden.

In recent years a number of racist and xenophobic groups have been established in Sweden. These groups can be divided into 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 do not hesitate to use force and violence or to commit crimes in the name of their 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 and internet communication. In cases when such new technologies are protected by the constitutional laws on Freedom of Expression and the Freedom of the Press Act, the means for changing the legislation are quite slow. These issues also bring forward the question of the limits on freedom of speech in relation to the purpose of such legislation.

Two other important initiatives taken by the Swedish government are initiatives that can be said to be ideas that can facilitate diversity. Already in 1976 foreign citizens residing in Sweden were given the right to vote in local elections. In the year 2000 the citizenship law was amended to allow dual citizenship.

While previously there was a great deal of focus on more extreme forms of racism and discrimination, there seems to be an increasing awareness that the society must expand its efforts to deal not only with ideologically based racism, but also to develop tools to deal with the daily discrimination that is carried out within the mainstream of society. In addition this may help to counteract the extremists who often feel that they have the silent support of others, particularly given the exclusionary and discriminatory patterns that are apparent within Sweden.

## 2. Table of contents

1.	Executive Summary.....	3
2.	Table of contents .....	6
3.	Definition of the terms and concepts .....	8
4.	Introduction.....	10
5.	Background .....	11
5.1.	DESCRIPTION OF THE SIZE AND COMPOSITION OF THE CURRENT IMMIGRANT POPULATION.....	11
5.2.	OVERVIEW OF CURRENT LEGISLATION AND POLICY ON IMMIGRATION AND MINORITIES .....	12
5.2.1.	Residence permits and citizenship .....	12
5.2.2.	Asylum.....	13
5.2.3.	New authority and legal procedure in alien matters.....	14
5.2.4.	Legislation concerning immigration and asylum .....	15
5.2.5.	Special legislation concerning minorities .....	16
5.3.	OVERVIEW OF CURRENT POLICY FOR INTEGRATION, EQUAL TREATMENT AND DIVERSITY .....	17
5.3.1.	Introduction for refugees.....	18
5.3.2.	Ethnic discrimination, xenophobia and racism.....	18
5.3.3.	Integration policy shall permeate all areas of society .....	18
5.4.	RELATED RESEARCH .....	19
6.	Legislation against discrimination on ethnic and religious grounds .....	21
6.1.	DOCUMENTS RELATED TO ARTICLE 13 .....	21
6.2.	ANTI-DISCRIMINATION LEGISLATION COVERING THE GROUNDS OF ETHNICITY AND RELIGION.....	22
6.2.1.	Measures to Counteract Ethnic Discrimination in Working Life Act .....	23
6.2.2.	The Act (1999:131) on the Ombudsman against ethnic discrimination.....	24
6.2.3.	Act on Equal Treatment of Students in Higher Education.....	24
6.2.4.	The new Act prohibiting discrimination (outside of working life) and other issues related to implementation of the EU directives .....	25
6.2.5.	Other laws related to discrimination and racism .....	28
6.3.	RELATED RESEARCH .....	32
6.4.	GAP ANALYSIS .....	33
7.	Impact of anti-discrimination legislation .....	34
7.1.	SPECIALISED BODIES .....	34
7.1.1.	The Ombudsman against ethnic discrimination (DO) .....	34
7.1.2.	The Integration Board.....	34
7.2.	DESCRIPTIVE DATA ON RECORDED COMPLAINTS .....	34
7.3.	CASE LAW.....	35
7.3.1.	Civil law .....	35
7.3.2.	Criminal law.....	36
7.4.	STUDIES AND TRENDS.....	37
8.	Strategies, initiatives and good practices .....	39
8.1.	COMMITTEES OF INQUIRY, ETC.....	39

8.2.	INTEREST GROUPS .....	39
8.3.	OTHER IMPORTANT INITIATIVES AND GOOD PRACTICES .....	40
8.3.1.	Contract compliance (anti-discrimination clauses in public contracts) .....	40
8.3.2.	Sweden Against Racism.....	41
8.3.3.	The Living History Forum .....	41
9.	Analysis and conclusions .....	42

### **3. Definition of the terms and concepts<sup>3</sup>**

#### **IMMIGRANT**

A person who has migrated to Sweden.

#### **FIRST GENERATION IMMIGRANT**

A person who has migrated to Sweden.

#### **SECOND GENERATION IMMIGRANT**

A person who has one or both parents who have migrated to Sweden.

#### **PERSON WITH AN IMMIGRANT BACKGROUND**

A person who was born outside of Sweden or has at least one parent born outside of Sweden.

#### **NATIONAL MINORITIES**

The common denominator for minority groups is that they have been a part of the Swedish population for a longer time and that they are groups that have a clear commonality. They can even have their own religious, language or cultural identity and a will to retain their identity. There are five recognized groups that are recognized by Sweden – the Sami, Swedish-Finns, Tornedal Finns, the Roma and the Jews.

#### **ASYLUM SEEKERS AND REFUGEES**

Sweden is a party to the UN Refugee Convention. This means that Sweden must grant asylum to persons defined in the Convention as refugees. Convention refugees are those who have reason to fear persecution in their native country due to their race, their nationality, their affiliation to a particular social group or their religious or political opinions. Under Swedish law, persons who are not convention refugees may also qualify for asylum. This category is described in law as ‘persons in need of protection’. Persons in need of protection are those who have left their native country and have good reason to fear capital punishment, torture, etc, need protection due to war or an environmental disaster in their native country or fear persecution due to their gender or homosexuality. People with strong humanitarian grounds may also be granted permission to stay in Sweden.

#### **DISCRIMINATION**

Discrimination can in basic terms be described as unequal treatment of comparable cases. If a person considers herself or himself to have been treated unfairly and concludes that

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<sup>3</sup> Please note that not all of these definitions of terms and concepts are “official” Swedish definitions. For example, while the concept of “second generation immigrant” is not used officially, it tends to permeate the media and the ongoing public discourse.



he/she would have been treated better in the same situation if he/she would have had a different ethnic background, it can be a question of ethnic discrimination.

At times it can also be a question of discrimination if one treats comparable cases equally. This is called indirect discrimination. For example, if greater demands are placed in regard to a person's Swedish language ability than are necessary to perform a job in proper manner, or if an employer or a company requires a certain minimum height without an adequate motivation, this can constitute indirect discrimination.

## 4. Introduction

The aim of this report is to describe Swedish trends concerning the counteracting of ethnic and religious discrimination and the promotion of integration. There is a particular focus on an overview of existing legislation and government policies, as well as developing policy measures. In addition other related factors are examined such as legislation and policy related to immigration, refugees, citizenship and minorities.

The report concludes with an analysis of the situation and suggestions in regard to Sweden as well as ideas that may be of relevance on a broader scale, such as in regard to other Member States, the EUMC and the Commission.

In collecting data on legislation, mainly the current laws have been surveyed. At least in theory case law plays less of a role in Sweden in contrast to the Anglo-American sphere of justice where the courts seem to play a greater role in interpreting legislation through court rulings.<sup>4</sup>

Foremost, Sweden's national law, a collection of certain legislation, has been used. The web pages of various Government Offices have also been used to a large extent, since they provide just about every Swedish law. Legal as well non-judicial information can be found among the authorities concerned, such as the Ombudsman against ethnic discrimination, the National Integration Board, the Migration Board, the Prosecutor-General, the Police and the National Council for Crime Prevention.

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

There seems to be a broader human rights approach to discrimination developing in Sweden. This is why some of the inquiries mentioned are so important. Improvements related to ethnic discrimination are partly due to the EC directives but also due to the increasing learning and influence that is developing among the different grounds of discrimination. The Swedish Gender Equality Act was adopted in 1980. It was not until 1999 that Sweden adopted a relatively similar law against ethnic discrimination. Since then the knowledge seems to be increasing that at least in legal terms the lessons learned in one field of discrimination can be used in others.

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<sup>4</sup> *Civilrätt (Civil law)*, Malmström & Agell, 17 uppl., Liber Ekonomi, Malmö

## 5. Background

### 5.1. DESCRIPTION OF THE SIZE AND COMPOSITION OF THE CURRENT IMMIGRANT POPULATION

#### DEMOGRAPHY

In 2002 the Swedish population amounted to 8 940 788. Approximately 12 percent were foreign-born, while 21 percent were either foreign born or had at least one parent born outside of Sweden. In 2002 the largest foreign-born population group in Sweden consisted of persons born in Finland. This group consisted of 191 515 individuals or approximately 2 percent of the whole population and 18 percent of the foreign-born population (see annex). The second largest group, made up of persons born in former Yugoslavia, amounted to 74 418 persons.

Simply stated the ethnic composition of Sweden's population has changed significantly in the last decades. Today approximately every fifth inhabitant<sup>5</sup> is either born abroad or has at least one foreign born parent.

Another way of presenting these figures is by pointing out that

- More than one in ten inhabitants of Sweden were born abroad.
- A further 800 000 persons born in Sweden have one or both parents who were born abroad.
- The majority of Sweden's immigrants have been here at least ten years.
- More than 60 per cent of those who have migrated to Sweden have Swedish citizenship.

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.

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<sup>5</sup> Migration 2002, Swedish Government

## 5.2. OVERVIEW OF CURRENT LEGISLATION AND POLICY ON IMMIGRATION AND MINORITIES

### 5.2.1. Residence permits and citizenship

Residence permits can either be temporary or permanent. A permanent residence permit includes 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. 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 2002, 44 664 people were granted residence permits in Sweden.<sup>6</sup> 17 percent had sanctuary needs or humanitarian reasons and 50 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.

Being a foreign citizen with a residence permit and national registration in Sweden does not mean that the person has 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). As indicated above 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 certain exceptions concerning Nordic citizens – the authority that tries cases of citizenship.

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<sup>6</sup> Swedish Migration Board, Table 5, 2002, available on [www.migrationsverket.se](http://www.migrationsverket.se).

In this context it is important to note that the Swedish Citizenship Act (2001:82) was recently amended to allow dual citizenship. For a variety of reasons, a number of long-term immigrants who were eligible held off from becoming Swedish citizens because they did not want to lose their prior citizenship. In terms of the integration processes going on in Sweden, this change is considered to be a positive one.

### **5.2.2. 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 of a type that will 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 in some cases pay for 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 or 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 mainly 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 "convention" refugees may be granted asylum. This requires that the person has left his home country and has strong reasons to fear the death penalty, torture or similar persecution, is in need protection due to war or an environmental catastrophe in his 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 a 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 centres 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, in regard to some asylum seekers who have been refused a residence permit and therefore must leave the country, there is reason to believe that there is an imminent risk that they will go into hiding. 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 are not to be placed in detention except in very limited circumstances.

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. The state – through The Swedish Migration Board – is responsible for the decision on who is to be given a residence permit. The state also has the economic responsibility for the refugee reception. The Government finances municipal refugee reception through a system of a one-off standard grant, a fixed amount for each person received, with different sums for adults and children. The grant is paid out over a period of 24 months and follows the refugee if he moves to another municipality.

The standard grant is supposed to cover extra costs that the municipality incurs due to the reception of refugees, such as living expenses, housing, language courses, vocational training and costs related to extra resources that may be needed for refugee children in day-care centres and schools. The introduction period lasts for about two years but can differ from municipality to municipality and of course from individual to individual.

In 2002, 33 016 people applied for asylum in Sweden, which is an increase with nearly 10 000 compared to previous year. The three main groups of asylum seekers came from former Yugoslavia (18 percent), Iraq (16) and Bosnia-Herzegovina (9).<sup>7</sup>

### **5.2.3. 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 related to asylum, refugee status and citizenship. The Swedish Government has made a proposal with the main aim of increasing the legal safeguards 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>8</sup>

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<sup>7</sup> Swedish Migration Board, <http://www.migrationsverket.se/>

<sup>8</sup> This issue has been discussed in the memorandum *En specialdomstol för utlänningsärenden (A special court for matters concerning aliens)* as well as in the report *Ökad rättssäkerhet i asylärenden (Increased legal security in asylum cases)*.

## 5.2.4. Legislation concerning immigration and asylum

### 5.2.4.1. The Aliens Act

The Aliens Act from 1989 regulates conditions such as foreigners travelling in and out of the country, and their acquisition of residence permits in Sweden. A residence permit may be granted for many reasons, including the need for 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 persons other than refugees who may be 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 sexual orientation has a well-founded fear of persecution.
- Is stateless and who for reasons mentioned above is outside of the country of his/her nationality and due to the reasons mentioned above cannot or owing to fear will not return

In 2000 some changes in the Aliens Act came into force. One change involved the possibility of granting permanent resident status related to a newly established relationship that ends prior to two years provided that the applicant and/or applicant's children have been subjected to violence or related acts. In addition, residence permits can be initially denied if there is an obvious and serious risk of violence or other similar acts in the relationship.

#### **5.2.4.2. 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 deported. The reasons allowed in accordance with the Act for deporting 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 the fear that he will commit or assist in committing criminal acts consisting of violence, threats 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 deportation are announced by the Swedish Government. Re-entry is not allowed without permission. The deportation order can include a specific time frame.

#### **5.2.4.3. Act on Reception of Asylum Seekers and Others**

The Act on Reception of Asylum Seekers and Others contains regulations on the responsibility for reception activities, organised activities and assistance to among others asylum seekers. The Swedish Migration Board is 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 a right to support in the form of housing or equivalent, daily allowances and special allowances for urgent needs.

### **5.2.5. Special legislation concerning minorities**

Sweden's national minorities are Roma, Swedish-Finns, Tornedalers, Jews and Sami. The latter group is also a native population. The minority languages are Romani Chib, Finnish, Meänkieli (Tornedaler 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>9</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 cultural magazines.<sup>10</sup>

The basis of the Swedish minority policy can be found in the Public Bill 1998/99:143, National Minorities in Sweden.

In 2000 Sweden ratified the Council of Europe's Framework Convention for the Protection of National Minorities. In the same year the European Charter for Regional or Minority Languages was also ratified. The Framework Convention's main purpose is a general protection of national minorities, but it is also intended to clarify that the Convention is a vital part of the protection of human rights.<sup>11</sup>

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<sup>9</sup> Ministry of Industry, <http://naring.regeringen.se/inenglish/index.htm>

<sup>10</sup> *National minorities and minority languages*, Summary of the Swedish Government policy, March 2001

<sup>11</sup> <http://www.coe.int/>



By special legislation<sup>12</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 includes the use of these languages.<sup>13</sup>

### **5.3. OVERVIEW OF CURRENT POLICY FOR INTEGRATION, EQUAL TREATMENT AND DIVERSITY<sup>14</sup>**

The Swedish Government gives an account of the development of integration policy and its future direction in its report *Integration Policy for the 21st Century*. A greater awareness in today's society of integration policy goals such as equal rights, responsibilities and opportunities for all is emphasized. However, the report also points out that in a number of areas the disparities between immigrants and Swedish-born citizens are still too large. The Government thus commits itself to continued implementation of an extensive program of measures aimed at reducing these inequalities of condition and opportunity.

The Swedish Parliament (Riksdag) decided on an integration policy in 1997. This decision was based on the Government bill entitled *Sweden, the future and diversity – from immigration policy to integration policy* (1997/98:16). The point of departure for integration policy is that general policy should be based on society's ethnic and cultural diversity. It should encourage individuals to support themselves and take part in society, safeguard fundamental democratic values, contribute to equal rights and opportunities for women and men and prevent and combat ethnic discrimination, xenophobia and racism. Integration is defined as a process occurring at both the individual and community levels. The integration process is mutual in the sense that everyone is involved and must make a contribution. It is conditional, for example, on mutual respect for cultural differences, so long as these do not conflict with the fundamental democratic values of society.

Even though the earlier immigration policy was based on the principles equality, freedom of choice and co-operation, it was considered a failure.<sup>15</sup> In practice it was said to have become focused on immigrants as a homogeneous group that differed from "Swedes", even though a majority had lived in Sweden for a long time and many were even born in the country. The old policy strengthened the feeling of "us and them", thus, increasing the feeling of social exclusion among immigrants and their children.

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<sup>12</sup> Swedish Code of Statutes 1999:1175 and 1176

<sup>13</sup> A summary of 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)

<sup>14</sup> This section is to a large extent based on Swedish Integration Policy for the 21st Century, (2001/02:129), [http://www.justitie.regeringen.se/inenglish/\\_issues/integration/index.htm](http://www.justitie.regeringen.se/inenglish/_issues/integration/index.htm)

<sup>15</sup> Rooth, Dan-Olof. 1999: *Refugee Immigrants in Sweden, Educational Investments and Labour Market Integration*, Lund Economy Studies number 84, Lund, pp. 28-29

As part of the new policy the Swedish Integration Board<sup>16</sup> was set up in 1998 with the task of developing introductory procedures for new refugee arrivals, of promoting integration (counteracting discrimination and racism and supporting the development of ethnic diversity), and monitoring the situation and progress of integration policy objectives within the various sectors of the Swedish society. As instructed by the Government, the Swedish Integration Board has described and analysed developments in society from an integration perspective.

The objectives of Sweden's integration policy are:

- Equal rights, responsibilities and opportunities for all, regardless of ethnic or cultural background
- A community based on diversity
- A society characterised by mutual respect and tolerance, within the limits that follow from the basic values of society, in which every one can take an active and responsible part, irrespective of background.

### **5.3.1. Introduction for refugees**

The aim of the introduction process provided by society for refugees is to enable them as soon as possible to obtain housing, employment in which they are able to support themselves independently, a good knowledge of Swedish and the ability to take part in the life of society. Local municipalities are to provide for language training and other aspects of the individualised introduction program that are to be drawn up and implemented. For this, the municipalities receive government funding.

### **5.3.2. Ethnic discrimination, xenophobia and racism**

To achieve the objective of equal rights, responsibilities and opportunities for everyone, government policy states that violations of the concept of the equal value of all people must be combated at all levels and within all sectors of society. Preventing and counteracting ethnic discrimination, xenophobia and racism are thus issues that are given high priority in Sweden's integration policy.

### **5.3.3. Integration policy shall permeate all areas of society**

The Government's goal is to work systematically to ensure that integration policy permeates all policy areas. This method is called mainstreaming. It means that the ethnic and cultural composition of society is to be seen as the basis for all measures at all levels and in all sectors of society and that integration should be implemented in the everyday operations of all sectors.

Examples of this systematic work are more stringent legislation in the field of discrimination, the establishment of the Swedish Integration Board, development

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<sup>16</sup> See [www.integrationsverket.se](http://www.integrationsverket.se)

initiatives in the metropolitan regions, action plans or strategically important areas such as racism and discrimination, and more defined responsibility for the operations of a number of government agencies.

## 5.4. RELATED RESEARCH

There is quite a bit of research going on into specific issues related to migration, integration and diversity policies. In particular the Swedish Integration Board is active in this regard.

A substantial number of publications are produced concerning the field of integration. Concerning discrimination, in 2002 the Board published a very important report entitled *Vardagsdiskriminering och rasism i Sverige (2002:13, Everyday discrimination and racism in Sweden)*. This is basically an overview and analysis of much of the various research done in Sweden on discrimination in different areas of social life. In very clear terms the authors state that the research in the various fields shows that discrimination is a major issue in Sweden. At the same time they point out the very limited awareness of the issue within Sweden. As a final note the authors state that discrimination is primarily a question of power and the hierarchical relations involved. Thus “an effective anti-discrimination strategy can never be formulated from above. It must be formed parallel with the mobilisation, empowerment and the active participation of the discriminated groups”.<sup>17</sup>

Another important publication is the Board’s *Rapport Integration 2002 (Report on Integration 2002)*. This annual report examines developments concerning integration in different areas of society. Among other things the report examines the reasons for the ongoing higher rates of unemployment and underemployment of persons with a foreign background. The report concludes that discrimination is a major factor and that “The differences found on the labour market are to a great extent the result of various forms of discrimination”.<sup>18</sup>

The following are other examples of research produced in the recent past.

*"De Andra", Afrikaner i svenska pedagogiska texter (1768-1965) ("The Others", Africans in Swedish Educational Texts (1768-1965))* by Luis Ajagán-Lester<sup>19</sup> examines the manner in which Africans have been portrayed in Swedish textbooks and other educational materials. The author tries to capture and clarify how various ideologies have been interwoven into such texts.

In *(O)likhetens geografier – Marknaden, forskning och de Andra (Geographies of Difference – the Market, Research and the Others)*<sup>20</sup>, Katarina Mattsson examines the

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<sup>17</sup> *Vardagsdiskriminering och rasism i Sverige – En kunskapsöversikt (Everyday discrimination and racism – a research overview)*. Integrationsverkets rapportserie 2002:13, 78.

<sup>18</sup> Rapport Integration 2002, 16.

<sup>19</sup> *De Andra", Afrikaner i svenska pedagogiska texter (1768-1965) ("The Others", Africans in Swedish Educational Texts (1768-1965))* by Luis Ajagán-Lester, Lärarhögskolan (Educational University) in Stockholm (2000)

<sup>20</sup> *(O)likhetens geografier - Marknaden, forskning och de Andra (Geographies of difference – The Market, Research and the Others)*, Katarina Mattsson, Uppsala University (2001).

cultural distance theory. This theory asserts that the cultural distance of immigrants makes it difficult to live up to demands for “Sweden specific” competence on the labour market. Mattsson follows the development of this lack of competence discourse in the media and scientific research during the late 1990s. She applies a postcolonial perspective and various theories concerning cultural racism to these ideas.

In *En skola för andra (A school for others)*<sup>21</sup>, Ing-Marie Parszyk examines the experiences of minority students in primary school. There is a growing interest today in minority students’ opportunities and problems in multicultural schools. Parszyk shifts the focus from teachers’ assessments and school evaluations of student capacity to a perspective that focuses on the existential conditions in schools for minority students. She examines the latent message that seems to be delivered in practice. The minority students’ feelings of exclusion and lack of recognition leads to an analysis of how “a school for all” is experienced as a school for others.

In *Imag(in)ing the Other(s). Migration, Racism and the Discursive Construction of Migrants*<sup>22</sup>, Mekonnen Tesfahuney points out that although there are biologically speaking no human races (no black or white people) perceptions of race and racial differences penetrate both popular and academic discourses and not least do they influence immigration and immigrant policies and the life chances of immigrants in Sweden and other western countries. Although mobility rights formally speaking have expanded in Europe in the 1990s, the freedom to move both within and to Europe is highly restricted for “non-white” people. Employing the perspectives of critical geopolitics and cultural studies, Tesfahuney aims at understanding how the perceptions of race and racial differences colour the ideas about who belongs where, and how such ideas affect the development of racism and sense of insecurity, suspicion and threats.

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<sup>21</sup> *En skola för andra (A school for others). Minoritetselevens upplevelser av arbets- och livsvillkor i grundskolan* by Ing-Marie Parszyk, Lärarhögskolan i Stockholm (1999).

<sup>22</sup> *Imag(in)ing the Other(s). Migration, Racism and the Discursive Construction of Migrants*, Mekonnen Tesfahuney, Uppsala University.

## 6. Legislation against discrimination on ethnic and religious grounds

The framework for Swedish legislation is laid by the Constitution. Some provisions in the Instrument of Government, one of the four fundamental laws of the Swedish Constitution, are particularly relevant.

Chapter 1, article 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. Article 1, section 6 decrees the freedom of worship, that is the freedom to practise one's religion either alone or in the company of others.

In Article 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.*

In the context of this report, the most important provision is Chapter 2, article 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.*

### 6.1. DOCUMENTS RELATED TO ARTICLE 13

In the year 2000 the EU Council of Ministers adopted the following two directives:

- Directive (2000/43/EC) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and
- Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation.

These two directives deal with different discrimination grounds - and to some extent cover different areas of society.

The Committee on Discrimination (Diskrimineringsutredningen 2001) presented its report *Extended protection against discrimination (Ett utvidgat skydd mot diskriminering)* (SOU 2002:43). Among its proposals was a new law against ethnic discrimination that would bring Sweden into compliance with the requirements of the EC directives force in July 2003. The Committee proposals were transformed into a Government Bill (*Extended protection against discrimination*) that led to legislation that went into effect on 1 July 2003.<sup>23</sup>

## **6.2. ANTI-DISCRIMINATION LEGISLATION COVERING THE GROUNDS OF ETHNICITY AND RELIGION**

Swedish legislation does not contain a comprehensive law on discrimination. Instead the issue is regulated in a number of laws. These can be found in criminal law and civil law. In addition there are other laws that are relevant to the topic of racism and discrimination – such as those that relate to racist motivated crimes such as agitation against certain ethnic groups. Hate crimes and hate speech are other terms that are used.

In civil law, separate laws relate to different grounds for working life (ethnicity, gender, disability and sexual orientation) the laws and combined act covering the different grounds in relation to university education. In addition, a new civil law act banning discrimination outside of the field of working life went into effect on 1 July 2003. There are a number of government departments involved as well as various different supervisory authorities and enforcement mechanisms related to the different grounds.

There are several current proposals and an ongoing debate suggesting that a coherent and comprehensive law on discrimination should be adopted. This led to the establishment of a parliamentary inquiry that, among other things, has the task of examining the issue of a broad-based comprehensive act as well the possibility combining the various discrimination ombudsmen into one supervisory authority. The inquiry is to finish its work by 1 July 2005.<sup>24</sup>

During 2003 all member states of the European Union must see to it 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 while the latter aims at establishing a general framework for equal treatment in working life in relation to discrimination on the grounds of religion or beliefs, disability, age and sexual orientation.

Various changes went into effect on 1 July 2003 in the various laws already in effect and a major new law was adopted (discussed below). In addition to compliance with the

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<sup>23</sup> Regeringens proposition 2002/03:65, *Ett utvidgat skydd mot diskriminering (An expanded protection against discrimination)*.

<sup>24</sup> Dir. 2002:11, *En sammanhållen diskrimineringslagstiftning (A comprehensive anti-discrimination legislation)*.

directives there was a need to adopt effective legislation covering discrimination outside of working life. The penal code provision on unlawful discrimination (16:9), covering among other things discrimination in the provision of goods and services by merchants, had been enormously ineffective in this regard. These proposals were put forward in 2002.<sup>25</sup> The different Ombudsmen have expanded their fields of responsibility. This applies in particular to the Ombudsman against Ethnic Discrimination.<sup>26</sup>

### **6.2.1. Measures to Counteract Ethnic Discrimination in Working Life Act<sup>27</sup>**

The act came into force in 1999 and is the main basis of the work of the Ombudsman against Ethnic Discrimination (DO). According to the act the Ombudsman shall investigate discrimination cases related to working life filed by individuals, and take the cases to court if no other solutions are possible. The Ombudsman is to also follow up and ensure that employers actively promote ethnic diversity in workplaces.

The purpose of the act is to promote equal rights and opportunities regardless of ethnic origin in relation to the entering employment, the terms of employment and the 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 in cases where employers fail to assist in investigations.

The 1999 act shifts the burden of proof to the employer if the plaintiff shows unequal treatment and a difference in ethnicity.

The basic sanction for failure to adhere to the Act is an award of damages. In addition a contract term or the entire contract can be declared to be void if the terms are discriminatory. The damages that are awarded are quite modest, particularly if a larger employer is involved.

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

In order to fully implement the EC Directives a number of amendments in this law entered into effect on 1 July 2003. In part, the amendments are intended to establish the same definitions of discrimination grounds and the same concept of discrimination in the various acts covering working life discrimination with a connection to ethnicity, sexual orientation and disability, as well as the act related to universities. The rule on a shared burden of proof has been inserted directly into the text of the law.

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<sup>25</sup> Government Bill 2002:43

<sup>26</sup> Government Bill 2002:43

<sup>27</sup> SFS 1999:130

In addition, the following amendments were included:

- the Act is also applicable when an employer decides on or takes action that concerns practical work experience, training or vocational guidance, and
- the scope of the Act has been extended so that the prohibitions of discrimination and the prohibition of reprisals will also benefit a person who is applying for or doing practical work experience at a workplace but is not employed there.

### **6.2.2. The Act (1999:131) on the Ombudsman against ethnic discrimination<sup>28</sup>**

This Act specifies the mandate of the Ombudsman against ethnic discrimination (DO).<sup>29</sup> The DO is appointed with a mandate to ensure that ethnic discrimination does not occur in working life or in other areas of society (§ 2).

This is to be done through the provision of advice and other assistance to those subjected to ethnic discrimination in order to assist them in realizing their rights. The Ombudsman shall furthermore, through meetings with government authorities, companies and organisations, as well as through the influencing of public opinion, the provision of information and in other similar ways take the initiative in regard to various measures against ethnic discrimination (§ 3). The DO is to have a particular focus on the parties in working life (§ 4), and more specifically exercise a supervisory function as specified in the Measures against ethnic discrimination in working life act (see above in 6.2.1).

### **6.2.3. Act on Equal Treatment of Students in Higher Education<sup>30</sup>**

The act came into force on 1 March 2002. 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, as well as private organisers of education who hold a licence to award degrees are under certain stated circumstances subject to pay damages for the infringement of rights that a student or an applicant has been subjected to.

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<sup>28</sup> The Act (1999:131) on the Ombudsman against ethnic discrimination, SFS number: 1999:131, issued: 1999-03-11.

<sup>29</sup> More information can be found in the DO:s website [www.do.se](http://www.do.se)

<sup>30</sup> SFS 2001:1286



## **6.2.4. The new Act prohibiting discrimination (outside of working life) and other issues related to implementation of the EU directives<sup>31</sup>**

### **6.2.4.1. In general**

A new Act prohibiting discrimination went into effect on 1 July 2003. The new Act extends effective protection against discrimination to fields other than working life and higher education. The Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination due to Sexual Orientation and the Disability Ombudsman will monitor compliance with the new Act. In addition, the various other civil laws against discrimination were amended.

It is important to understand the background here. In Sweden there are at present a number of laws against discrimination. Four of these laws apply to working life. They are:

- the Gender Equality Act (1991:433),
- the Measures to Counteract Ethnic Discrimination in Working Life Act (1999:130),
- the Prohibition of Discrimination in Working Life of People with Disability Act (1999:132), and
- the Prohibition of Discrimination in Working Life due to Sexual Orientation Act (1999:133).

The last three are often called the 1999 Acts. There is also the Act on Equal Treatment of Students in Higher Education (2001:1286), which applies to discrimination in higher education on grounds of gender, ethnicity, disability or sexual orientation. The four ombudsmen mentioned above are responsible for supervising the application of these laws and monitoring compliance.

Outside of working life and higher education, protection against discrimination on grounds of ethnic origin and homosexual orientation has been dependent on the criminal law offence of unlawful discrimination (Penal Code 16:9 – discussed below in 7). Complaints concerning the crime of unlawful discrimination are handled by the police and the public prosecutor.

In the year 2000 the EU Council of Ministers adopted the two EC directives concerning the establishment of an EU-wide minimum level of protection (the race/ethnic directive 2000/43/EC and the equal treatment directive related to employment and occupation 2000/78/EC). These two directives deal with different discrimination grounds—and to some extent they cover different areas of society. Both directives have to be implemented by member states during 2003 with the exception of the provisions on age and disability discrimination. Member states have another three years to implement these provisions.

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<sup>31</sup> Government Bill 2002:43. *Lag (2003:307) om förbud mot diskriminering (Act on a ban against discrimination)*.

In Sweden these two European Community Directives are basically being implemented through a new Act prohibiting discrimination and through some amendments to existing laws against discrimination.

#### **6.2.4.2. The new act against discrimination (outside of working life)**

The purpose of the new Act is to combat discrimination related to ethnic origin, religion or other belief, sexual orientation or disability outside of working life.

The prohibition of discrimination related to ethnic origin, religion or other belief, sexual orientation or disability applies to

- labour market programmes,
- starting or running a business,
- occupational activity,
- membership of, participation in and benefits from organisations of workers or employers or professional organisations, and
- goods, services and housing.

In addition, the prohibition of discrimination on grounds of ethnic origin or religion or other belief also applies to

- the social services, local and national transport services for disabled people and housing adaptation allowances,
- social insurance and related transfer systems,
- unemployment insurance, and
- health and medical care and other medical services.

The Act prohibits both direct and indirect discrimination. Harassment and instructions to discriminate against an individual are defined as discrimination and are covered by the prohibition of discrimination. Direct discrimination is when an individual is disadvantaged by being treated less well than someone else has been treated or would have been treated in a comparable situation. It is sufficient that any one of the grounds is one of the reasons for the disadvantage for this to be counted as discrimination. The decisive factor is that a negative effect occurs, not what may be the reason behind the disadvantage.

Indirect discrimination is when an individual is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that in practice puts people of a particular ethnic origin, religion or other belief, sexual orientation or disability at a particular disadvantage. This does not apply, however, if the provision, criterion or procedure can be motivated by a legitimate aim and the means are appropriate and necessary to achieve the aim.

Harassment refers to conduct that violates a person's dignity and is related to ethnic origin, religion or other belief, sexual orientation or disability.

The term “instructions to discriminate” refers to a situation in which someone gives another person orders or instructions to discriminate against some other individual.

In addition, the Act also prohibits the person who is said to have carried out the discrimination from exposing an individual to reprisals because he or she has reported or drawn attention to the discrimination or taken part in an investigation of discrimination.

A rule of proof with the following wording has been introduced in the new Act: If a person who feels that he/she has been discriminated against or exposed to reprisals shows that the circumstances give reason to presume that he or she has been discriminated against or exposed to reprisals, the respondent shall show that discrimination or reprisals have not occurred.

The rule of proof means that if it is likely that discrimination has occurred, then the person who is supposed to have carried out the discrimination must show that this was not the case. In other words it is not the person who feels he or she has been exposed to discrimination or reprisals who has to prove it.

A person who discriminates against someone or exposes someone to reprisals in a way that is prohibited under the Act shall pay damages for the violation that the discrimination or reprisals involve.

If an employee discriminates against someone or exposes someone to reprisals the damages shall be paid by the employer of the employee. In the Bill proposing this legislation the Government emphasizes that any breach of discrimination legislation is to be seen as a serious violation and that application of this legislation should lead to higher levels of damages in discrimination cases than are usual in other labour law disputes.

As is the case with the 1999 Acts and the Act on Equal Treatment of Students in Higher Education, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation and the Disability Ombudsman are responsible for supervising the new Act. This means that the Act extends the supervisory powers of these Ombudsmen to new areas of society. The Ombudsmen are given the right to institute lawsuits for damages on behalf of individuals who feel that they have been discriminated against in accordance with this law. The Ombudsmen have to try to induce parties covered by the prohibitions of discrimination to follow the Act voluntarily. Legal proceedings have to be initiated within two years from the date of the action in question or from the last date on which an obligation should have been fulfilled. Otherwise the right to initiate legal proceedings is lost.

#### **6.2.4.3. Amendments to existing anti-discrimination legislation**

As discussed in 3.2.4.1 above, in order to comply with the EC Directives a number of amendments were added to the so-called 1999 Acts and to the Act on Equal Treatment of Students in Higher Education. In part, the amendments are intended to establish the same definitions of discrimination grounds and the same concept of discrimination in the Acts and to state the rule on a shared burden of proof directly in the text of each of the Acts. In addition, the following amendments were added to each of the 1999 Acts:

- they are applicable when an employer decides on or takes action that concerns practical work experience, training or vocational guidance, and
- the scope is extended so that the prohibitions of discrimination and the prohibition of reprisals will also benefit a person who is applying for or doing practical work experience at a workplace but is not employed there.

## 6.2.5. Other laws related to discrimination and racism

### 6.2.5.1. Unlawful Discrimination <sup>32</sup>

According to Penal Code Chapter 16, section 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. The new act examined above in 3.2.4.2 will to some extent overlap with this provision in the criminal code - at least until and if it is repealed. A similar penal code provision fell into disuse in the Netherlands when a new civil law concerning discrimination went into effect. This is probably at least in part due to the lower burden of proof in civil proceedings. At least in Sweden it has been very difficult to obtain convictions, even with the help of TV journalists who have filmed the events at issue. This occurred in a case decided by the appeals court and confirmed by the Swedish Supreme Court.<sup>33</sup> The Supreme Court stated: Even though CK:s explanations for excluding the victims are not supported by the facts, it is nonetheless not clear that there was no other explanation for CK:s actions. "There has been no assertion that CK has any racist predisposition. The possibility cannot be excluded that the victims, as also determined by the appeals court, who had went to the restaurant not for the purpose of going in but as a participants in a TV-program to test whether or not they would be subjected to unlawful discrimination, and according to Y:s expectations essentially expected to be rejected, made such an impression on CK that he considered to be sufficient reason for not admitting them. This impression does not necessarily have to have a connection with race or skin colour." This reasoning led to a not guilty verdict.

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<sup>32</sup> SFS 1987:610

<sup>33</sup> 1996-12-19, NJA:1996 s.768.

Furthermore, given the reasoning of the Supreme Court, it would be not hard to understand the failure of prosecutors to follow up such complaints concerning unlawful discrimination without some form of “confession” by the perpetrator.

#### **6.2.5.2. The Penal Code’s Paragraph on Increased Sanctions**

According to Penal Code 29:1 the punishments related to a specific case shall be determined within the scale of punishments 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, to what the accused realised or should have realised about this, and to the intentions or motives he may have had.<sup>34</sup>

Section two enumerates the aggravating circumstances that shall be given special consideration in addition to the penal scale that is related specifically 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, sexual orientation or other similar circumstance.«<sup>35</sup>*

This section indicates that the factors specified are to be considered by the courts to be aggravating circumstances which shall lead to an increased penal value for the perpetrator. One example is if a person of non-European origin is assaulted by an assailant who expresses racist or xenophobic motives for the assault.

It was fairly recently that the Swedish Parliament has voted to include grievances due to sexual orientation within the paragraph above.<sup>36</sup>

#### **6.2.5.3. Provision on Agitation against a National or Ethnic Group**

The provision on Agitation against a national or ethnic Group is regulated 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 on agitation targets all other acts. These laws also define the perpetrator of the act in different ways.

One problem is that the regulations on responsibility differ for different web sites on the internet. For example, the web sites 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 web sites carry the same liability as in regard to a printed or broadcasted edition. Other web sites produced by private companies or individuals are as a rule regulated by ordinary legislation such as the Penal Code.

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<sup>34</sup> SFS 1988:942

<sup>35</sup> SFS 2002:332

<sup>36</sup> Government Bill 2001/02:59

In 1948 the provision on Agitation against a National or Ethnic Group was introduced into the Penal Code. The provision 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 bring Swedish legislation into line with requirements of the UN Convention on the Elimination of All Forms of Racial Discrimination. According to Article 4 the ratifying states were to 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. 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 unduly infringed upon in the implementation of 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 a threat or express contempt. Threats are to be understood by common use of language, which means a wider definition than those of unlawful threat or unlawful coercion. Contempt not only refers to defamation or slander, which are punishable by law, but also other abusive expressions which degrade or ridicule the group concerned. Criticism based on facts is allowed though.

Hence the provision on Agitation against a National or Ethnic Group does not protect individuals, but only people defined as a collective. Therefore the person aggrieved can report the crime to the police but is not regarded as a plaintiff and entitled to compensation in the criminal proceedings.

For the threat or contempt 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 sanction for agitation against a national or ethnic group is imprisonment for a maximum of two years. If the crime is considered to be minor, a fine shall be issued. According to changes in the law that went into effect in January 2003, if the crime is considered to be gross or serious agitation, the minimum prison sentence is 6 months and the maximum is four years. 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 scope of the new legislation has also been extended to encompass agitation related to sexual orientation.<sup>37</sup>

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<sup>37</sup> Government bill 2001/02:59. SFS 2002:800.

During recent years discussions and investigations have taken place on which changes are needed in this area due to the increased activity of racist organisations and the developments of new techniques for spreading of information.<sup>38</sup>

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

There is a current proposal for legislation which among other things deals with changes and clarifications on time limitations for prosecution in relation to certain types of media. This is an answer to a growing realization of the necessity to make it easier to rebut allegations 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>39</sup> It is suggested that a clarification of the date of publication for technical recordings should 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 went into effect. 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>40</sup>

Examples of such changes concern lengthening of the statute of limitations which allows prosecutions in relation to CD-records that lack so-called IFPI data specifying the origin and date of issue, and that the statute of limitations for crimes against Freedom of Speech in data bases will be counted from the date when a statement was deleted from the website.

#### **6.2.5.4. Act on Responsibility for Electronic Billboards**

According to this act the supplier of an electronic billboard (such as a web hotel or a chat channel) must maintain a supervisory capacity »within reasonable demand to the direction and scope of the activity«. The supplier is according to section 5 of the act obliged to remove messages if the contents can be regarded as obvious agitation against an ethnic or national group. If that is not done, a maximum penalty of two years in prison can be issued if the crime is considered serious.

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<sup>38</sup> See e.g. the Swedish Helsinki Committee for Human Rights report from 2003 entitled “The language of hate – on the border between hate propaganda and freedom of speech (”Hatets språk – om gränsen mellan hatpropaganda och yttrandefrihet”). In the press release for the report the Committee concludes that a person who wants to spread racist or xenophobic propaganda via printed materials, radio, cd-records or certain internet sites runs much less of a risk of being charged with agitation than if he or she just utters the statements. This is in spite of the fact that printed materials and internet sites reach a greater audience and thereby cause more damage.

<sup>39</sup> Government Bill 2001/02:74

<sup>40</sup> Government Bill 2001/02:74

Even though the Act on Responsibility for Electronic Billboards was 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. This refers for example to the obligation for those responsible for the billboards to check the messages on the board.

#### **6.2.5.5. The Uniforms Act (repealed)**

According to the Uniforms Act it is forbidden to wear uniforms or similar outfits that serve to indicate 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 consequently is in conflict with the constitution, two Courts of Appeal rulings have with reference to the act acquitted people wearing Nazi symbols and the act is considered obsolete. The Uniforms Act was repealed on 1 July 2002<sup>41</sup>. This was done at least in part because the courts had determined that the wearing of emblems or certain clothing may be regarded as a message and therefore may violate the provision on Agitation against National or Ethnical Groups. Since the wearing of racist symbols is already covered by the provision on Agitation, there was no need for the Uniforms Act or a specific ban on the wearing of racist symbols.<sup>42</sup>

### **6.3. RELATED RESEARCH**

There is not a great deal of research that has been carried out, for example, that directly concerns the anti-discrimination laws. It is worth noting however that currently there is relatively effective ban on situation-testing as a research method. During the 1990s the ILO was promoting the use of such testing in order to be able to get a picture of the actual discrimination that occurs. Swedish researchers refrained from participating since the national organ for funding social research determined that the use of this method would be unethical. Such research was carried out in a number of other EU countries such as the Netherlands, Germany and Denmark.

Nor is there much concerning the legal system and discrimination. One important related doctoral thesis that was produced in 1999 is entitled *Group Membership and Eyewitness Testimony*.<sup>43</sup> Among other things the research investigated how an immigrant and a Swedish perpetrator of a simulated, violent crime are evaluated and remembered by "Swedish" and "immigrant" eyewitnesses. Both groups more often felt they had seen an "immigrant" perpetrator even when it was a "Swede". In regards to a simulated line-up both groups mistakenly identified an innocent immigrant more often than an innocent Swede. This research basically confirms the findings developed during the 1970s in the US and Canada concerning eyewitness perceptions of white and black perpetrators.

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<sup>41</sup> Sweden's Code of Statutes (SFS) 2002:333

<sup>42</sup> NJA 1996, page 577

<sup>43</sup> *Group Membership and Eyewitness Testimony*. Torun Lindholm. Department of Psychology, Stockholm University. 1999.



## 6.4. GAP ANALYSIS

In regard to the EC directives it is important to note that there is one clear aspect in regard to which Sweden has failed to fully comply – the education sector. The Government is thus going to quickly investigate anti-discrimination measures aimed the school system and other forms of education except higher education. Another issue still under investigation is the question of to what extent and under what circumstances private individuals should be covered by a prohibition of discrimination.<sup>44</sup>

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 the assertion that the provisions on the native peoples right to ownership of land or territories could not be met.<sup>45</sup>

Another interesting document in this context that has not been signed by Sweden is the European Convention's twelfth Protocol on discrimination. One of the reasons why Sweden has not ratified the Protocol is the claim that its wording is too general and imprecise, and it will therefore take a long time before any conclusions can be drawn in regard to its practical application. Another reason given 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>46</sup>

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<sup>44</sup> *Extended protection against discrimination*, Fact sheet, Ministry of Justice, Sweden. June 2003. <http://justitie.regeringen.se/index.htm>

<sup>45</sup> SOU 1999:25, Samerna - ett ursprungsfolk. Frågan om Sveriges anslutning till ILO:s konvention nr 169 (The Sami – a native people. The issue of Sweden's agreement to ILO Convention 169).

<sup>46</sup> Sweden's declaration on voting at the adoption of 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*

## **7. Impact of anti-discrimination legislation**

### **7.1. SPECIALISED BODIES**

#### **7.1.1. The Ombudsman against ethnic discrimination (DO)**

The government authority known as the Ombudsman against ethnic discrimination (DO) was set up in 1986. Currently the office consists of about 20 persons, mainly lawyers. As indicated above the DO's work against ethnic discrimination in working life is based on the law (1999:130) on measures against ethnic discrimination in working life. The office investigate complaints related to working life and as a final resort has the right to represent the complainant in the labour court. The DO is also supposed to ensure that employers actively strive to promote ethnic diversity in the workplace.

The DO's tasks in other areas of society are regulated in the law (1999:131) on the Ombudsman against ethnic discrimination and in the new act on discrimination. Both were examined above in Chapter 6.

While the DO has not previously had direct responsibility in relation the crime of unlawful discrimination (Penal Code 16:9), the new act covers much of the same types of claims and goes beyond the scope of the penal code as well. This will presumably add substantially to the DO's caseload.

#### **7.1.2. The Integration Board**

The Swedish Integration Board has a duty to examine ethnic discrimination at a structural level. The board does not act at the individual level. Such complaints are referred to the DO or other appropriate instances. A couple of its reports are discussed above in section 5.4. The board has also, among other things, provided support to the initial projects that have developed into local anti-discrimination bureaus.

### **7.2. DESCRIPTIVE DATA ON RECORDED COMPLAINTS**

The number of complaints filed with the DO has been steadily increasing since the adoption of the 1999 law. Although there are few cases that have ended up going to trial, the rise in the number of settlements and the quality of the settlements is an indication of the effectiveness of the law.

The increase in complaints continued in 2002.<sup>47</sup> The number of complaints within working life has increased 500 percent in 5 years. The number of complaints increased 13 percent in comparison to 2001, and 78 percent compared to 2000. Of the 307 complaints submitted in 2002, settlements were achieved in 12 percent which is about the same as

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<sup>47</sup> Information regarding the statistics concerning discrimination complaints can be found on the DO:s web site [www.do.se](http://www.do.se)

during previous years. The DO instituted lawsuits in seven cases. In December 2002 the Labour Court issued the first judgement in which an employer was determined to have violated the law against ethnic discrimination in working life (discussed below in 7.3).

The number of complaints concerning ethnic discrimination outside of working life has also increased substantially (30 percent between the years 2001 and 2002. This is quite different compared to the trend between 2000 and 2001 during which the number of complaints decreased. The largest increases concern the following fields – the labour market, insurance and social services.

Of the 400 employers requested to show how they are fulfilling the law's requirements related to active measures for ethnic diversity, a majority do not undertake any measures although many of them assert that their activities fulfil the requirements of the law. Only seven of 400 were considered by the DO to have fulfilled their legal duty.

## **7.3. CASE LAW**

### **7.3.1. Civil law**

There is little in the way of case law. In general it can be said that there are many fields in which there are few cases. This often means that the cases that are decided can take on a very important significance within Swedish society.

On 4 December 2002 the first Labour Court judgement was issued that dealt directly with the Measures against ethnic discrimination in working life act.<sup>48</sup> The act went into effect on 1 May 1999. The court concluded that the Ombudsman against ethnic discrimination (DO) was correct in the claim that the employee violated the law by placing demands that were too high in regard to the need for perfect Swedish language skills in relation to a job as a telephone interviewer. That the case was decided in favour of the complainant and that it involved language skills are both significant.

There is not much in the way of case law, so the result will presumably lend credence to the idea that the law is effective as is also indicated by the increasing number of voluntary settlements in favour of complainants.

The language issue is important in that much of the unequal treatment accorded to immigrants seems to often be hidden behind references to and assumptions concerning the poor language skills of "immigrants". Perhaps the case will serve as an indication that employers have to seriously assess the skill levels related to the job, and actually relate those to the individual job applicants they have before them.

The Ombudsman, , stated after the case that she was very satisfied with the decision. "The case is a good example of the idea that ethnic discrimination often does not involve xenophobia, but involves the placement of needlessly high demands that have not been

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<sup>48</sup> DO press release 2002-12-04.

thought through in relation to the job to be done, for example in regard to language skills”.<sup>49</sup>

The case involved a 26-year old woman with a Bosnian background. She was denied the job as an interviewer due to her accent. She had lived in Sweden since the age of 10, and has very good Swedish language skills. She is studying at a university and was not considered to have a noticeable accent. The company asserted that the job required that she have absolutely no accent at all.

Although the verdict for the complainant was positive the DO was dissatisfied with the damages awarded. The DO had asked for 120 000 SEK, while the Court awarded 40 000 SEK. The DO felt that the Court had been unduly influenced by factors that occurred after the discrimination had occurred. She had become upset by the behaviour of the employer.

### **7.3.2. Criminal law**

As to the case related to Penal Code 16:9 concerning unlawful discrimination the law seems to have had little real impact. The gap in effective implementation has been substantial. In general there are at most one to two convictions per year while the number of annual complaints can amount to more than two hundred. Almost always the convictions are based on the defendant's own admissions, in one way or another, that the action was due to a person's ethnicity. While there are suspicions that the police and prosecutors are not particularly interested in pursuing such cases, this may in part be true because of the high burden of proof required. Little more is required than that the accused deny the charges.

The courts in the case law seem to require proof not only of the act, but also full proof in terms of the motive. In part a high burden of proof is a natural result of the use of criminal law. But there is also a connection to how discrimination is looked at as a social phenomenon. Discrimination is attributed to “ideologically bad” people (particularly when this law was adopted in the 1970s), not to merchants, businessmen and government. Nor do the accused fit the normal profile of a criminal. They are part of the mainstream which presumably makes it more difficult for the prosecution to assess the crime. Dealing with ethnic discrimination as a behaviour that can be attributed to people in the mainstream is something many have yet to come to grips with. And the existence of a law with so few convictions easily leads the majority to believe that the issue is not a problem. If this is compared with gender discrimination the issue becomes more apparent.

In general in the public debate Swedish society has little problem in attributing unexplained differences in e.g. income to gender discrimination. If the same statistics show similar unexplained differences between “Swedes” and “immigrants”, very few draw the automatic conclusion that the differences are the result of ethnic discrimination. If actual cases are then placed within the criminal system, then proof becomes that much harder.

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<sup>49</sup> DO press release 2002-12-04.

It is fairly widely accepted that this law is ineffective (see e.g. the Government's Action plan against racism, xenophobia, homophobia and discrimination).<sup>50</sup> This is one reason why high expectations are related to the new civil law act. On the other hand, at least for the near future both the criminal law and the civil law will apply.

## 7.4. STUDIES AND TRENDS

Concerning trends related to discrimination complaints see above under 4.2.

Regarding the importance of discrimination as an issue in Sweden, the two reports discussed above under 5.4 produced by the Swedish Integration Board provide an important analysis. The overview of discrimination research in various fields in Sweden makes it clear that more research is needed and that discrimination is a major issue in those fields where research has been carried out.<sup>51</sup>

In *Rapport Integration 2002* various issues are brought to the forefront, some positive and some negative. In the middle of the 1990s there is a break in the nearly 30-year downward trend in the employment rate of persons born outside of Sweden. The foreign born seem to function as a reserve labour force during upward and downward swings in the economy. The general downward employment trend that occurred in 2002 has affected foreign born and Swedish born residents in about the same proportions, which is also a break with the past where the foreign born have been disproportionately affected by downward trends – for example during the beginning of the 1990s.<sup>52</sup>

Nevertheless there continue to be major differences in employment rates between the foreign born and the Swedish born. The length of a person's residence in Sweden decreases the gap, but the gap remains. The research also indicates that higher education levels result in more benefits for the Swedish born than for the foreign born. The report examines a number of theories to explain the differences in employment rates. Most of the theories have focused on "problems" with the immigrant population (e.g. language skills, education, cultural distance).

The analysis of these theories leads to the conclusion that there has been too little focus on the discriminatory behaviour by employers. Discrimination is pointed out as a major explanation. This conclusion is research done in Sweden but even based to some extent on ILO research done in other countries using the situation testing method which showed that discrimination occurred in those countries where it was used. This method basically compares the actual treatment of a foreign and a native job applicant. As a measure of the treatment, it is a better indication of actual discrimination as opposed to the feelings experienced by minority applicants or employers. It should be noted such testing has not been used in Sweden due to ethical concerns. One of the policy conclusions drawn by the

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<sup>50</sup> Skr. 2000/2001:59, *En nationell handlingsplan mot rasism, främlingsfientlighet, homofobi och diskriminering (A national action plan against racism, xenophobia, homophobia and discrimination)* – February 2001.

<sup>51</sup> *Vardagsdiskriminering och rasism i Sverige – En kunskapsöversikt (Everyday discrimination and racism in Sweden – a research overview)*. Integrationsverkets rapportserie 2002:13.

<sup>52</sup> *Rapport Integration 2002*, 37.

report is the need for an increased focus on counteracting discrimination both in the job application process as well as in working life in general.<sup>53</sup>

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<sup>53</sup> *Rapport Integration 2002*, 44-47.

## 8. Strategies, initiatives and good practices

### 8.1. COMMITTEES OF INQUIRY, ETC

#### THE COMMITTEE OF INQUIRY ON DISCRIMINATION

The Government considers that protection against discrimination has to be as similar as practically and legally possible across the various discrimination grounds. The Government has therefore appointed a parliamentary committee with the task of considering consolidated discrimination legislation covering all or most discrimination grounds and areas of society (dir. 2002:11). As part of its task the committee also has to propose provisions concerning the implementation of EC Directive's sections on age discrimination. The committee has also to consider whether existing protection for people with disabilities from disadvantage on account of inadequate accessibility should be extended from working life and higher education to other areas of society. This committee is to report its findings no later than 1 July 2005.

The government has also pointed out that there will be a quick inquiry appointed with the task of developing anti-discrimination measures aimed at the school system and other forms of education except higher education.<sup>54</sup> This is necessary to achieve full compliance with the EC anti-discrimination directives.

The government has also declared its intention to appoint an inquiry to examine structural discrimination in Sweden related to ethnicity and religion. The task of the inquiry will be to analyze and develop the research done within the field and propose measures to deal with structural discrimination.<sup>55</sup> The terms of reference should be issued in September 2003. This inquiry has been inspired, among other things, by the Stephen Lawrence Inquiry in the UK.<sup>56</sup> This latter inquiry indicated the depth of the institutional racism/structural discrimination within the legal system. This Inquiry has led to a greater awareness of the issue, decreased denial and a much higher and focused ambition level not only within the police but within the entire public sector.

### 8.2. INTEREST GROUPS

The government has made a commitment to providing some budget support to the development of local / regional anti-discrimination bureaus.<sup>57</sup> They have been initiated and are run by local NGOs or coalitions of NGOs that have decided to focus on the issue of discrimination. Part of the inspiration for the Swedish NGOs are the bureaus in the Netherlands and the UK.

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<sup>54</sup> *Extended protection against discrimination*, Fact sheet, Ministry of Justice, Sweden. June 2003.  
<http://justitie.regeringen.se/index.htm>

<sup>55</sup> See [www.regeringen.se](http://www.regeringen.se), Justice Department press release 2003-07-09.

<sup>56</sup> <http://www.cre.gov.uk/pdfs/slinqlea.pdf>

<sup>57</sup> <http://www.finans.regeringen.se/propositionermm/propositioner/bp03/pdf/uo08.pdf>

Another issue that anti-racist and immigrant NGOs have discussed for many years is the establishment of a NGO-controlled national centre against racism. During September 2003 the initial organization for the centre is to be launched. The government has examined the idea of a centre and agreed to provide some support to such a centre once it is established.<sup>58</sup>

Expo is an important actor in the field, in part as the RAXEN focal point in Sweden but also in regard to other initiatives that are undertaken in regard to counteracting racism and discrimination in the media, politics, schools and other fields of life.

### **8.3. OTHER IMPORTANT INITIATIVES AND GOOD PRACTICES**

#### **8.3.1. Contract compliance (anti-discrimination clauses in public contracts)<sup>59</sup>**

As part of their budget negotiations the Social Democratic Party, the Left Party and the Green Party have agreed in principle to introduce anti-discrimination clauses into national public contracts. Contract compliance means the use of anti-discrimination clauses in public contracts in order, among other things, to complement and ensure compliance with the anti-discrimination laws and norms of the society. Depending on the national setting, the violation of such clauses can lead to various sanctions such as cancellation of the contract, damages or a ban on participation in future contract bidding. Contract compliance as a policy is assumed to discourage discrimination and promote diversity. The idea is to convince the employer to shift his focus and awareness onto his general employment practices and patterns by raising the potential risk related to discrimination (e.g. cancellation of the contract or disqualification from future contracts) through a format (contracts as opposed to only a law) that the employer deals with daily and relates directly to the employer's direct interests (his profits as opposed to the general well-being of society (law)).

In June 2002 the parliament adopted a government bill<sup>60</sup> concerning changes in the legislation on public procurement. One of the points in the bill was a proposed change in the law that specifies that public procurement contracts can include so-called social conditions to the extent allowed by EC-law, for example, related to compliance with anti-discrimination laws. While an amendment in the law was proposed, the government

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<sup>58</sup> *Ett centrum mot rasism och andra former av intolerans (A center against racism and other forms of intolerance)* Ds 2002:26.

<sup>59</sup> *Toward the establishment of employment equity within the European Union and Sweden: The developing policies related to the use of anti-discrimination clauses in public contracts* (unpublished paper presented at the City and State Conference in Norrköping 20-22 November 2002 – Norrköping University), Paul Lappalainen. This is shorter updated English version of *Ingen diskriminering med skattemedel! (No discrimination with tax funds!)* which can be found at [www.integrationsverket.se](http://www.integrationsverket.se)

<sup>60</sup> Government bill 2001/02:142.



specified that this was a clarification that such social conditions could be included by government entities dealing with public procurement, but that this amendment “did not result in any change in the applicable legal rules and case law.”

The Board for Public Procurement has developed a model clause that does not include the right to cancel a contract (May 2002). On the other hand, the Ombudsman against ethnic discrimination, the Gender Equality Ombudsman, the Disability Ombudsman, the Sexual Orientation Ombudsman and the Swedish Integration Board have agreed on a common model which they will be implementing in their contracts. This latter clause is quite broad in its reach while not increasing the reporting burdens of the contractor. The possibility of cancellation of the contract was included. Right now it does not seem that many government authorities are using any type of clause. Presumably the government will thus be looking into other means for ensuring their use. One possibility may be the issuance of an executive order or government decree, as was done in the US, specifying that all government contracts shall include a specific clause. This would assure uniformity concerning the wording of such a clause, and demonstrate the government’s commitment.

At least at policy level the introduction of such clauses into local government contracts has received substantial support – for example in Stockholm and Malmö.

### **8.3.2. Sweden Against Racism**

Sweden against Racism is a national bank of knowledge on work against racism, xenophobia and ethnic discrimination. The authority responsible for developing the knowledge bank is the Swedish Integration Board (see 5.4). This website is one of the results of the initiatives taken by the government in its National Action Plan Against Racism.

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/>.

### **8.3.3. The Living History Forum**

The Living History Forum was set up on 1 June 2003. It is a government agency that has been commissioned by the government to promote work with democracy, tolerance and human rights with the Holocaust as a starting point. Through participation in education programs, cultural events and various arenas for debate and analysis, the Living History Forum will contribute to the strengthening of democracy and increasing concern for and the importance of the principle of equality and the equal value of all persons.

The Forum’s website is [www.levandehistoria.se](http://www.levandehistoria.se)

## 9. Analysis and conclusions

It was not until the 1990s that Sweden began to develop a more effective legislation against ethnic discrimination. More specifically the 1999 Act on measures against ethnic discrimination in working life is somewhat of a turning point. Up until then legislation against ethnic discrimination had been more a question of stating government policy in the hope that the principles stated would change or affect the attitudes of the population. The 1999 Act had a chance of actually affecting the behaviour of employers.

The unlawful discrimination provision in the penal code related to goods and services (from the 1970s) basically required a confession in order for a prosecutor to be able to obtain a conviction. This law was never really focussed on discrimination as a common social issue. This led to very restrictive focus in implementation.

In 1986, rather than banning ethnic discrimination in working life as had been done in relation to gender discrimination (in 1980), the office of the Ombudsman against ethnic discrimination (DO) was established. The DO:s power was limited to his power to convince those discriminating to do the right thing.

In 1994 a civil law banning ethnic discrimination in the workplace was adopted, but the gender equality act was not used as a model. The possibility of suing for damages was introduced, but a very high level of proof was required in regard to the motives of the employer.

It was not until the 1999 Act that the protection provided reached a level that could presumably affect behaviour as well as attitudes. The burden of proof was eased. The rules concerning damages were individualised. Indirect discrimination was banned. Active measures were required.

Since 1999 there seems to be an increasing focus on ethnic discrimination as a key issue. In fact the government recently had a symposium (2003-08-27) where discrimination, in particular structural discrimination, was placed in the centre of the agenda. This may mean an additional shift away from an overly simplified idea that the key issue is employment. The issue of equal rights and opportunities has in theory long been at the centre of government policy – in theory. But the implementation phase has been enormously difficult.

In general it has been easy to unify politicians in manifestations against racism expressed in ideological terms. Violent racists, skinheads and Nazis generate little sympathy. But in regard to everyday racism, there has been a fairly deep denial of the problem of discrimination as a key issue. There has also been a lack of recognition of the idea that counteracting discrimination is also a way of attacking even more extreme forms of racism. Quite often the more extreme racists are the product of a society that in practice does not deal with equal rights and opportunities in a realistic manner.

It is for this reason that policymakers are moving in the right direction if they focus on everyday racism as well as on ideologically driven racism. Although it is not an exact parallel, a lesson can be drawn from the women's movement where violence against

women is seen as an equality issue, as well as equality in the workplace and schools and universities.

A positive spiral can possibly be seen in the combination of a focus on discrimination, which in turn should lead to more equality and thus diversity in for example workplaces. This increased diversity should in turn lead to increased empowerment of those subject to discrimination. The added empowerment will support and sharpen the focus on discrimination. This spiral is what policymakers need to focus on.

The empowerment aspect is one reason why the human rights approach of Canada or the Netherlands may be of major interest in the long run. Article 13 of the Amsterdam Treaty, the basis for the EC anti-discrimination directives, was the result of grass roots efforts by organisations focussed on the different issues of gender, ethnicity, disability, sexual orientation and age. Without these broad-based efforts the governments would probably not have adopted Article 13. And article 13 has or will lead to increased protection for each of these interests.

The same mechanism will probably work at the national level as well. In other words, a broader human rights approach should lead to stronger anti-discrimination laws than if each interest group pushes only for its own protection. This human rights approach may even have a stronger appeal to the majority society in that the focus is lifted to broader level rather than basically a law directed to a specific interest.

There are indications that Swedish society is moving in the right direction. The new changes in the law will lead to a greater focus on changing behaviour, rather than just attitudes. Other tools like contract compliance are under development that will also lead to a focus on behaviour. Putting these tools into place is becoming even more important given the disconcerting increase in support for extremist parties at the local level.

In addition there is an increasing empowerment of those subjected to discrimination. The improved laws are partly a result as well as support for a national centre against racism and locally run anti-discrimination bureaus.

It is also important to improve the effectiveness of the work concerning racist crimes throughout the whole legal process. Even here though the measures focusing on the majority society may lead to a better focus on racist crimes. A more ethnically diverse police force, as well as other levels of the legal system should lead to more effective application of the laws in this area. The increased diversity may among other things increase the understanding for the seriousness of racist crimes that is not always understood by the majority in society. There are some indications that even though the national prosecutor's office has stated that such crimes should be given priority, the results of this assignment of priority are at best mixed.<sup>61</sup>

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<sup>61</sup> *Hate crimes, 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 [www.bra.se](http://www.bra.se)*

## Annex: Tables

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.

**Table 1. Demography in 2002 according to birth country and citizenship**

	Swedish citizen	Foreign citizen	Total
Foreign born	653 994	399 469	1 053 463 (12 %)
Born in Sweden by			
Two foreign born parents	255 984	48 767	304 751 (3%)
One foreign born parent and one native born parent	533 794	19 978	553 772 (6%)
Born in Sweden by two native born parents	7 022 917	5 885	7 028 802 (79%)
Total	8 466 689	474 099	8 940 788 (100%)

**Table 2. The Swedish population divided after birth country**

Country Region	Number
Sweden	7 887 325
The Nordic countries except Sweden	279 570
EU15 except the Nordic countries	100 673
Europe except EU15 and the Nordic countries	243 109
Africa	59 507
North America	25 450
South America	53 315
Asia	280 916
The Pacific	3 285
The Soviet Union	7 285
Unknown	353

Table 3. The five major groups foreign-born according to birth country

Country	Number
Finland	191 515
Yugoslavia	74 418
Iraq	62 751
Bosnia-Herzegovina	52 948
Iran	52 721

Table 4. The five major groups according to citizenship

Country	Number
Finland	96 306
Iraq	40 146
Norway	34 672
Denmark	28 091
Yugoslavia	20 087

Table 5. Permanent residence permits 2001-2002<sup>62</sup>

	2001	%	2002	%
Refugees and others	6 852	20	7 451	17
Quota refugees	1 089	3	1 042	2
Relatives	24 445	50	22 247	50
Other	79		99	
Labour market grounds	442	1	403	1
Guest students	3 989	7	4 585	10
Adopted	758	2	869	2
<b>EEA-agreem.</b>	6 851	16	7 968	18
Labour market	2 352	1	3 074	2 501
Students	952			
<b>Total</b>	<b>44 505</b>	<b>100</b>	<b>44 664</b>	<b>100</b>

<sup>62</sup> Swedish Migration Board, Table 5, 2002, available on [www.migrationsverket.se](http://www.migrationsverket.se).