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Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

Sweden[1]

IHF FOCUS: torture, ill-treatment and police misconduct; conditions in prisons; respect of private and family life; asylum seekers and refugees; anti-terrorism measures; racial discrimination and intolerance.

During 2004, a number of UN monitoring bodies presented reports on their observations regarding human rights in Sweden. It was also a year in which the National Action Plan on human rights was up for review and the government had to face harsh criticism for its actions before and after expelling two asylum seekers to Egypt, particularly from national NGOs such as the Swedish Helsinki Committee (SHC, IHF member).

The government of Sweden also had to defend itself against a number of individual complaints to international bodies, most frequently in the UN Committee against Torture (CAT). In most cases, however, Sweden was not criticized, and, although raising some serious concerns, most monitoring bodies commended the government for its efforts to respect and improve human rights.

The 2001 expulsion of Ahmed Agiza and Mohammed El Zari from Sweden to Egypt due to national security concerns continued to raise concern – now also on the level of the media. The men had been deported to Egypt on the basis of "diplomatic assurances" from the Egyptian government that supposedly were to protect them from human rights abuses, but were upon return immediately handed over to the Egyptian security police and questioned under torture. One of the men was released in October 2003 without ever having been charged with a crime and, as of early 2005, the other was still in prison without access to a fair trial. Three years after the incident and following international criticism, Swedish authorities initiated investigations into the case. The case triggered extensive debate on the reliability of "diplomatic assurances" and the principle of *non-refoulement.*

Accountability for police misconduct remained a central problem. The former chief of police in Gothenburg, who had been charged with violating demonstrators' rights during the 2001 EU Summit, was acquitted. The police officers who were involved in the misconduct were not even charged while several demonstrators had received heavy sentences for resistance to the police. The case, once again, brought up the question of the necessity to set up an independent mechanism to investigate alleged cases of police abuse, a mechanism that had been recommended by several human rights organizations for years.

[1] Based on a report from the Swedish Helsinki Committee (SHC) to the IHF, March 2005.

New terrorism-related legislation was adopted but it hardly added anything to already existing criminal law provisions, which can be used to fight terrorism. Swedish law also provides insufficient safeguards for foreigners suspected of a crime; for example, the mere suspicion of taking part in or supporting a future terrorist crime will suffice for deportation of a suspect.

In addition, legal measures were taken to expand the use of secret surveillance methods in the investigation of less serious crimes, allowing questionable interference in the private life of individuals. At the same time, legal provisions on these issues lacked both the necessary legality and transparency.

Swedish legislation against discrimination was insufficient, and it appeared that available legislation was not always fully applied. The number of complaints to the ombudsman on ethnic discrimination continued to grow. For example, immigrants still had severe difficulties in finding work or even being accepted for an interview.

The European Court for Human Rights (ECtHR) decided against Sweden on a number of occasions in 2004. One case concerned the application of the law on highly contagious diseases (*Smittskyddslagen*) to forcefully isolate an HIV-positive man. There had been court orders for his isolation for a period of seven years. The ECtHR considered that other, less restrictive measures could and should have been imposed on the man, preferably voluntary. In a number of other cases before the ECtHR, the government reached a friendly settlement with the applicant. Characteristically, such cases often concerned alleged violations of article 6 of the ECHR concerning the right to an oral hearing before a body deciding on civil obligations or rights.

Torture, Ill-Treatment and Police Misconduct

During 2004, the Swedish government prepared to ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which aims to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, and requires that state parties set up a domestic body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

The Swedish government stated that there was no need for new legislation in order to set up a new national body, since the parliamentary ombudsman could perform the tasks assigned to such a body. The ombudsman, however, disagreed with this proposal. He found it unsuitable for his office to be assigned such a task and considered it necessary that a monitoring mechanism be established by law. Additionally, he suggested that asking the parliamentary ombudsman to perform this duty would, among other things, restrict the office's independence. By the end of 2004, the matter was yet to be resolved.

Case of Agiza and Zari

In May 2004, the parliamentary ombudsman decided to investigate the possible responsibility of Swedish police officers for the alleged torture and ill-treatment of Ahmed Agiza and Mohammed El Zari at Bromma airport in 2001. The Standing Committee on the Constitution also decided to investigate the actions by the government before and after the expulsion.

The two men are Egyptian citizens who had sought asylum in Sweden, but whose applications for permanent residence permit were rejected for national security reasons. The Swedish government decided to send the men to Egypt, their country of origin, despite the fact that there was a real risk of them being subjected to torture upon return and that such returns are prohibited also by national law. Egyptian

authorities had put out arrest warrants for the men because of their involvement in prohibited organizations labeled as terrorist groups by the Egyptian government. However, the government continued to deny that there had been any formal request from Egypt for extradition.[2]

When executing the expulsion order from the government, the Swedish security police, with the consent of the Foreign Ministry, accepted an invitation from the United States (US) to help transport the men to Egypt. At Bromma airport, however, US security agents completely took charge of the men and subjected them to various forms of ill-treatment; the men were shackled and handcuffed, their clothes were cut and they were stripped and hooded. According to the men, they were blindfolded under the hoods, and the blindfolds stayed on for almost two months with the exception of a few days when the Swedish ambassador met the men in Tora prison in Egypt. There were also credible allegations of them being drugged with tranquillizer. The ombudsman had not concluded his investigation by the end of 2004. (See also the section on asylum seekers.)

A fact that complicates the investigation of alleged abuses such as the case mentioned above is the fact that there is no explicit crime called torture in Swedish legislation, nor is there a definition of torture or ill-treatment.

The SHC stated that it should always be possible for a person at risk of being deported, extradited or expelled on charges of "international terrorism" to challenge information received by foreign security forces, in particular on the ground that it may have been illegally obtained through torture. It called for more transparency in cases or decisions concerning "national security" or "international relations," issues that are commonly cited in suspected acts of "terrorism." The SHC questioned the non-existing possibility to appeal against a decision to expel for national security reasons, in particular in cases in which there is a risk of torture or ill-treatment and unfair trials upon return. The SHC called for a prohibition of the use of "diplomatic assurances" to circumvent the *non-refoulement* principle. Until then, when "diplomatic assurances" are used, they must be known to the affected individual and he/she must be able to challenge their use.

Gothenburg Incident

The trial against former chief of police in Gothenburg, Håkan Jaldung, was concluded in 2004. He was indicted by the parliamentary ombudsman and suspected of having violated demonstrators' rights during the 2001 EU summit by confining them in a school for a long period of time and thus restricting their right to movement. The ombudsman accused Jaldung of illegal arrests and malpractice.

The former chief of police was, however, freed by both the District Court of Gothenburg as well as the Appeal's Court. In December 2004, the ombudsman decided not to try to bring forward the case to the Supreme Court since he considered it to be a lost cause. Jaldung, who had ordered the confinement and mass-arrest of hundreds of people, was thus considered to have acted according to paragraph 23 of the Police Law, whose interpretation was unclear. The parliamentary ombudsman asked the government to amend the Police Law and rid it of all uncertainties.

Improving Accountability

In November, the European Committee for the Prevention of Torture (CPT) released a report on its visit to Sweden in 2003,[3] after the government had given its permission to make it public. The CPT had

[2] For a complete background of the cases, see SHC, *Alternative Report to the Human Rights Committee*, February 2002 and July 2003.
[3] *Report to the Swedish Government on the visit to Sweden carried out by the European Committee*

concentrated its investigations on police establishments, prisons, psychiatric establishments, detention facilities for young persons and detention facilities for substance abusers.

The publication of the report coincided with some suggestions and decisions made by the government in order to improve investigations of allegations of ill-treatment by the police. The CPT had, after its previous visit to Sweden in 1998, suggested that an investigative mechanism, independent of the police, be put in place in order to look into reports of abuse by the police. In its reply, the government contended that such a unit was not necessary and that accusations against the police were already investigated in a satisfactory and effective manner.

The government's stand was reiterated in the report by a parliamentary commission, which investigated the alleged ill-treatment of protestors by police during the EU summit in Gothenburg in 2001. The commission, while not finding an external investigative unit necessary, suggested that the police board appoint two laymen able to monitor investigations. In its recent report on Sweden, the CPT did not question the recommendations of the commission, but nevertheless came to a different conclusion. After having investigated a number of cases of abuse by the police it contested that investigations of ill-treatment by the police in Sweden were not independent, effective or prompt enough. It found that in the cases it examined, the prosecutor, whose task it was to guarantee the independence of the investigation, was rarely involved in more than the initial and ending stages. Police officers charged with ill-treatment were not heard and forensic evidence was never obtained.

The SHC has on several occasions called for an independent agency to investigate all cases of alleged ill-treatment or other abuse by the police. It has pointed out that there is little or no transparency in the investigations and very few reports result in prosecutions or convictions. It noted that according to available statistics, it has been assessed that complaints from the public about ill-treatment by the police regularly result in a counter-allegation by the police about resisting arrest or violence against a law enforcement officer. These are crimes that are considered as serious and can result in very harsh punishment. Counter-complaints have led more often to convictions than original complaints.

According to the former chief parliamentary ombudsman, in cases concerning alleged police misconduct, police officers are generally considered to be more trustworthy in a court of law than plaintiffs. For a few years, the Swedish National Council for Crime Prevention (BRÅ) has compiled yearly statistics on the number of allegations of police misconduct and the number of following counter allegations. The SHC believes, however, that there are still remarkable insufficiencies in the statistics since they fail to give any specific details about what forms of misconduct have taken place. A complaint can concern a case of assault or it can merely be a case of administrative mistake, such as forgetting to lock a door. Also, national statistics do not show if complaints are successful or not; neither if an allegation leads to prosecution, nor if there is a conviction or what the sentence is.[4]

The SHC stated that, for the sake of avoiding distrust and securing confidence in the police, it is extremely important that allegations against the police are as transparent as possible, and that proscribed treatment is called by its right name. This would be true even if a new independent agency were to be established. The occurrence of mass-arrests and mass-complaints during and after the EU Summit in 2001 clearly showed that more transparency is needed. After the EU Summit, none of the police officers who were accused of

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for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003, 18 November 2004, http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.htm.

[4] When trying to obtain information about complaints against the police from each regional police department, the information was either said to be unavailable or there was a reluctance to reveal the information. Sometimes requests were clearly rejected. Some police departments did, however, consider this to be a problem.

ill-treatment were indicted for excessive use of violence, despite extremely serious allegations. However, numerous demonstrators were sentenced to serve long prison terms for violent acts such as rioting.

The CPT report and its alarming results regarding investigations of police violence confirmed the need for an independent body to investigate alleged cases of police misconduct. In late 2004, the government seemed to have changed its view on the need for a separate agency for investigating police crimes. It gave the general prosecutor the assignment to investigate the matter and to present suggestions in this direction.[5] The investigator entrusted with the task is a former chief parliamentary ombudsman, experienced in investigating malpractice by the police.

Prevention of Ill-Treatment

The CPT brought forward a number of suggestions in addition to independent investigations as safeguards against ill-treatment of detained persons. In particular this concerns three fundamental rights – "the right of detained persons to inform a close relative or another third party of their choice of their situation, to have access to a lawyer, and to have access to a doctor."[6] The CPT has, on previous occasions, unsuccessfully requested that Sweden amend its laws in order to provide these safeguards. As of the end of 2004, these fundamental rights were not effectively implemented in Sweden.

The notification of relatives at the outset of an arrest was often delayed due to the legal exception of the rule: "as it can be done without causing harm to the investigation.[7]" According to CPT, the right was circumvented by the right of the police to keep an individual detained under their own authority for 12 hours. The right of a detainee to have prompt access to a lawyer before he/she was regarded a suspect, was also not respected in Sweden. The CPT requested that the Swedish government extend the right of access to a lawyer to all categories of people being deprived of their freedom by the police and that there be a clear legal right for detainees to have access to a doctor.[8]

Conditions in Prisons

In 2004, a number of spectacular escapes from prisons took place, which were followed by a political debate about the conditions in prisons. Throughout the year, both inmates and prison staff complained about overcrowded prisons and detention centers. The director of Kronoberg detention center, Lars-Åke Pettersson, even reported himself to the police because of the conditions – he found himself in a contradictory position, since he could not refuse to accommodate remand prisoners, but, at the same time, he could not transfer already convicted persons to prisons because there were no cells available. Since the situation did not improve and began to become hazardous for both inmates and detention officers, he found no other alternative but to file a complaint against himself.
In April, the Council of Europe's Commissioner for Human Rights visited Sweden and presented his observations in a report of 8 July. [9] Among other things, the commissioner had concerns regarding restrictions being imposed on prisoners, especially those in remand custody. In particular, he noted his

[5] Directive RÅ-A 2004/0460, "Ny organisation för handläggning av de s.k. polismålen och ärenden om korruption."
[6] Para. 25 of the CPT report.
[7] Chapter 24 Section 9 of the Code of Judicial Procedure.
[8] Paragraphs 21-30 of the CPT-report. See also SHC, *Alternative Report to the Human Rights Committee 2002 concerning the right to legal counsel and interpreter,* as well as the Concluding Observations of the UN Human Rights Committee in April 2002.
[9] Council of Europe, Office of the Commissioner for Human Rights, *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to Sweden, 21-23 April 2004*, 8 July 2004, paragraph 8, http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/pdf.CommDH(2004)13_E.pdf.

concern regarding the extensive practice of keeping prisoners in isolation. In one case, the director of a detention center told the commissioner that a prisoner had been kept in isolation for three years.
In his report, the human rights commissioner commented on the situation as follows: "Traditionally the Swedish probation service has enjoyed an excellent reputation for ensuring that prison time can be spent in a constructive manner. Unfortunately this is now being challenged by the problems of overpopulation."

The use of restrictions has also been a matter of concern for the CPT for more than a decade, and in its new report released in November 2004, it concluded that there had been very little improvement in this field.

The use of restrictions during a crime investigation was decided by courts, but only on a very general level. The prosecutor did not have to describe before the court the various forms of restrictions that he was considering imposing on the suspect/remand prisoner. The court thus only decided that restrictions can be used in order to limit or completely cut off all contact with the outside world. According to the CPT, the courts did not give much attention even to a general request for restrictions. When a prisoner contested them, it rarely, if ever, resulted in restrictions being lifted or altered. It was impossible to appeal a decision by a court not to lift a restriction. By filling in a form addressed to the detention center, the prosecutor was obliged to keep a record of the restrictions, but according to the CPT, prosecutors did even follow these simple but formal rules. Instead, most orders were given orally.

Different kind of restrictions, including isolation, were imposed on a majority of remand prisoners. In some areas, restrictions were used more frequently than others, but it seemed that remand prisoners in Gothenburg were subject to restrictions more than anywhere else. In general, at least 50% of all remand prisoners were subject to restrictions. When confronted with these figures, the Justice Ministry responded that the high percentage was due to the fact that Swedish courts had a very high threshold as regards deprivation of liberty. Most decisions to detain a person were taken because of the risk of obstructing justice. According to the ministry, in those circumstances it was necessary to keep the suspects isolated or otherwise unable to be in contact with the outside world.

However, neither the CPT nor the Council of Europe human rights commissioner were convinced that restrictions were imposed only as an exceptional measure. The parliamentary ombudsman confirmed to the commissioner that the use of restrictions continued to be a general problem and that he frequently received complaints relating to this question.[10] The CPT also stressed that prolonged periods of isolation can have a number of negative effects on the mental health of the inmates concerned.[11]

Respect of Private and Family Life

In March, the parliament decided to prolong for another two years two acts regulating secret surveillance: the Act on the Use of Forced Secret Measures (1952:98) and the Act on Secret Camera Surveillance (1995:1506). Both laws were originally considered to be temporary, even though one of **them has been** prolonged on a regular bases in the past over 50 years. When describing the need for another extended period, the government referred to the current situation with the threat of international terrorism. It also declared its intention to make both acts permanent. In October, amendments to these acts extending the use of secret surveillance entered into force. The SHC expected this legislation to pass through parliament as a consequence of the ongoing war on international terrorism.

[10] Ibid.
[11] CPT report, para. 38.

The Act on Criminal Responsibilities for Terrorist Crimes that entered into force in 2003 made it possible to use secret surveillance in the early stages of a pre-trial investigation for more crimes than ever before.[12] The new legislation bans terrorist acts by adding a new purpose to acts already proscribed. This may mean that a pre-trial investigation could be initiated with the intent to indict someone for terrorism, but the person could end up facing an investigation of a less serious crime, one that could not have been subject to secret surveillance. At that time, other laws provided that secret surveillance could only be used in investigations on crimes, which carried a minimum sentence of two years imprisonment.

In late 2004, however, legislators rectified this apparent incoherence in legislation as regards the use secret investigative measures. With the above-mentioned amendments of the Act on the Use of Forced Secret Measueres and the Act on Secret Camera Surveillance, secret investigative measures such as wire-tapping or camera surveillance can be used for any crime punishable by a two-year prison sentence, with the minimum sentence being as low as a mere fine. There is reason to believe that this is only the beginning of a series of new regulations, which interfere in the right to privacy.[13]

The SHC stated that its is concerned not only because the increased use of surveillance techniques is not followed by proper evaluation about their efficiency, necessity and proportionality, but also – and more importantly – because the system still does not provide enough protection for the individual's right to privacy. Those subject to surveillance do not have the right to be informed of the prosecutor's requestor or a court's decision to grant it, not even after the investigation is over. The lack of legal remedies, such as the ability to test the legality of a decision to use secret surveillance, is, according to SHC, in violation of the ECHR.

On a more positive note, in late 2004, the government introduced a public counsel who was given the task of protecting and looking after the rights of the individual before the court when there is a request by the police to use secret wire-tapping and secret camera-surveillance. This suggestion had been put forward several times before but had been rejected by a number of establishments. The SHC considers this proposal to be only a marginal improvement, since the counsel will rely only on information from the police and prosecutor, and there is still no possibility of redress for surveillance that was uncalled for.

The SHC concluded that the authorities' right to interfere in the private life of citizens, as allowed in certain provisions of Swedish legislation, still lacked both the necessary legality and transparency in 2004.[14]

Asylum Seekers and Refugees

The SHC has demanded a rights-based asylum process in Sweden for many years. One positive step in this direction could be to let courts handle requests for asylum instead of, as the case is today, immigration authorities. It is above all necessary to improve the legal apparatus of the asylum process by, for example, giving the asylum seeker complete access to all information used by the immigration authorities in assessing the risk for persecution. Moreover, a person seeking refuge in Sweden should also be allowed to present his/her case orally before the decision-making body. Further, it would be extremely important to

[12] By including the same definition of terrorism in the Special Control of Aliens Act, this also opened up the excessive use of secret surveillance as a preventive measure.
[13] See IHF, Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003 (Events of 2002), chapter on Sweden, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322.
[14] By 1 March 2005, the government had not yet presented its report to the parliament on the use of secret camera surveillance and secret wire-tapping for 2004.

improve the individual's right to challenge a decision to expel. Under current law, an individual who has been expelled for reasons of national security or international relations does not have the right to appeal.

The parliament decided already in 2001 that the current system should be abandoned in favour of court proceedings. However, the government did not take steps in this direction, citing, among other things, financial restraints. At the end of 2004, the government announced that it had appointed a commission to propose suggestions for a new asylum process and that the budget for the following years would include a budget line for the necessary costs.

During 2004, the strict refugee policy continued to be an item thoroughly described by the media and discussed in parliament. A number of worrying events and situations occurred, particularly concerning child asylum seekers. For example, the system proved inadequate to address the needs of catatonic children, and a number of dramatic forced expulsions were carried out. The system also proved to be negligent in providing a secure environment and enough legal certainty for unaccompanied children who arrive in Sweden. Both the human rights commissioner and the UN Committee on the Rights of the Child expressed concern in this area.

Diplomatic Assurances and Non-Refoulement

Three years after the expulsion of Ahmed Agiza and Mohammed El Zari from Sweden to Egypt, and after intensive monitoring work by Swedish NGOs such as SHC, NGO Foundation for Human Rights and Swedish Amnesty, the cases were finally made known to the public through media coverage.[15] The cases came to the delayed attention of the national monitoring bodies, and the government was finally forced to comment on its actions. International NGOs also showed increased interest in the cases, in particular to the use of so-called "diplomatic assurances."[16]

The cases are significant in demonstrating the difficulties encountered by governments in the so-called war on terror and in interpreting obligations derived from the UN Security Council Resolution 1373 and its successor. In particular, the cases illustrate the obvious difficulties states have in respecting human rights of suspected terrorists.

There was no legal avenue for Agiza and El Zari to appeal the expulsion decision made by the Swedish government. The government sought and received "diplomatic assurances" supposedly guaranteeing that the men would not to be tortured or sentenced to death, and that they would be afforded new and fair trials. However, the written assurance only stated that the men would be treated according to Egyptian law and Constitution. The Swedish government accepted the "diplomatic assurances" despite the fact that Egypt's human rights record was known to be extremely poor, including well-documented cases of torture and frequent use of security and military tribunals that violate fair trial standards.

According to the SHC, there is little or no doubt that the men were tortured during questioning by the Egyptian military and police forces upon their arrival, particularly during the first 10 weeks of detention. Swedish authorities were also aware of every action regarding the men, including their treatment at Bromma airport by US agents (see the section on ill-treatment).[17] Still, the government did nothing to effectively prevent further ill-treatment and torture. The government was also aware of the risk of torture in Egypt, a fact that was not contested by the government in individual cases brought before the CAT by

[15] *The Washington Post* reported about the cases in 2003, but it was not until Swedish Channel 4 filmed a documentary with follow-ups on the cases that they made headline news.

[16] See, Human Rights Watch, *Broken Promises,* a report on the use of "diplomatic assurances." In particular, HRW was deeply involved in getting international attention to the cases during the year.

[17] The Justice Ministry ordered a report on the execution of the expulsion order early 2002 which was presented, but not made public, in April 2002.

Ahmed Agiza and his wife Hanan Attia respectively. Ahmed Agiza's case was due to be decided by the CAT in November 2004 but the committee postponed it until May 2005.

In 2004, however, the government revealed that it had not given the CAT the correct and full information regarding accusations of ill-treatment and torture that it had received directly from Ahmed Agiza, in January 2002 when the Swedish ambassador met Agiza for the first time.

Hanan Abdelhak Attia, Ahmed Agiza's wife, also risked being deported to Egypt together with the couple's five children. After the CAT decided in November 2003 that it did not believe that she would face torture upon return, the order to expel went into effect immediately. Attia went underground and asked for permission to stay for humanitarian reasons. After a second try, she and the children received permanent residence permits in June 2004.

Since early 2002, the UN Human Rights Committee has continued to monitor the cases from the point of view of the *non-refoulement* obligation[18] and the prohibition against torture in article 7 of the International Covenant on Civil and Political Rights. Particular importance has been placed on the use of "diplomatic assurances" and follow-up procedures to such assurances.[19] Discussions on "diplomatic assurances," in which the Swedish cases served as examples, as well as so-called extraordinary renditions, were high on the agenda of international monitoring bodies, in particular during the last months of the year. The UN special rapporteur on torture presented a report to the General Assembly in October 2004 in which he gave special attention to the use of "diplomatic assurances." The overarching question is, whether these assurances actually provide protection for the individual against torture or if they only circumvent the principle of *non-refoulement*. When reporting on Sweden in April 2004, the human rights commissioner of the Council of Europe expressed deep concern about the cases and the use of "diplomatic assurances" in general.

Anti-Terrorism Measures

When deciding on the expulsion of Ahmed Agiza and Mohammed El Zari, the new Act on Criminal Responsibility for Terrorist Crimes (2003:148, the Terrorist Act), was not yet in place. The expulsion decision was based on the Aliens Act (1989:529) and the powers it gave to immigration authorities to hand over to the government cases of interest for national security or international relations. The government can also use the Special Control of Aliens Act (1991:572) if it wants to expel an individual for national security reasons or for suspected future involvement in terrorist activities. The Special Control of Aliens Act was previously called Sweden's only anti-terrorism law, but is now accompanied by the new Terrorist Act.

The SHC remained concerned about the lack of legal certainty inherent in these laws. It stated that the new anti-terrorism law hardly adds anything to the provisions of the Criminal Code, which can be invoked in terrorism-related cases, despite the fact that it attaches specific purpose or intent to **the acts already** proscribed by criminal law. The new law is difficult to implement and appears to only serve the purpose of combating crimes allegedly committed by Islamic or Muslim groups. Since its entry into force, anti-terrorism legislation has been used only a few times with very little or no success.

[18] The prohibition to return an individual to a country where there is a real risk that he or she will face torture or cruel, inhuman or degrading treatment or punishment. Se e.g. decision in the European Court of Human Rights, *Soering v. United Kingdom* and *Chahal v. United Kingdom.*

[19] See concluding observations regarding Sweden by the UN Human Rights Committee, April 2002, and Follow-up report by the Swedish government in May 2003.

- In late 2004, a group of supporters of a right wing extremist group were arrested, detained and charged with planning terrorist crimes, among other things. This was the first time the new law on terrorism was used against Swedish citizens. The four individuals were arrested following extensive vandalism at a school. The prosecutor found evidence and information that he believed could be used in order to prove that the group was planning a number of attacks against community-supporting institutions. He even found a document called "Revolution in the Welfare State," which he considered to be the written plan for an organized attack against the state in order to create chaos and pave the way for neo-Nazi groups to rule the country. A district court, however, did not find the evidence to be enough to prove that they were planning to commit terrorist acts or any other organized crime and only convicted the group for vandalism and theft. The prosecutor decided not to appeal against the judgment.

- In the spring of 2004, four men of Iraqi heritage residing in Sweden were accused of having committed or taking part in terrorist activities in Iraq. The men were detained and remained in prison for several months. Finally, a court ordered the release of two of the men, as the prosecutor could not provide the court with enough evidence to show probable cause. Immediately upon release, the security police arrested one of the men on orders from the government with the intention of deporting him under the Special Control of Aliens Act. This law gives no room for weighing family interests or established ties with society (such as work, education, etc.) against national security interests. In late 2004, the decision to expel was upheld by a court. The expulsion order was, however, not carried out since it was also established that there would be a risk of ill-treatment or the death penalty on return to Iraq. Instead, the man's freedom of movement was restricted and he was not allowed to leave his town of residence. Two men, however, remained in custody and faced trial in April 2005, accused of financing terrorist acts, with the prosecutor calling for 8 to 10 years in prison.

Under the Special Control of Aliens Act, the mere suspicion of a future terrorist crime, or supporting one, suffices for a deportation even if evidence would not hold in court to prove a suspect's involvement in a terrorist crime. Recent amendments in the law also make it clear that deportation can take place even if the eventual criminal act would take place abroad.

Racial Discrimination and Intolerance

The number of complaints to the ombudsman on ethnic discrimination continued to grow from an already high figure of 741 in 2003 to 763 in 2004. Even if there were fewer complaints than in 2003 regarding suspected discrimination in the labor market (308 in 2004 and 348 in 2003), the ombudsman considered the situation to be unchanged. Immigrants still had severe difficulties in finding work or even being accepted for an interview. The ombudsman also believed that the real figures of cases of discrimination were much higher than those registered, since many were reluctant to report cases of discrimination to the authorities.

In 2003, a new law on discrimination entered into force making it possible for the ombudsman to sue for damages in flagrant cases of discrimination. However, the first subpoena was not delivered until late 2004. It concerned a Roma family who was denied entrance to the pool area in a hotel. In 2004, most complaints regarding "illegal discrimination" concerned individuals being denied entrance to restaurants and pubs because of skin-color or ethnic background. The high number of complaints made in this area (15 in 2003 and 93 in 2004) was also the main reason for the general increase in complaints to the ombudsman mentioned above. A group of university students investigating discrimination in bars and restaurants was responsible for many of the complaints and they provided the ombudsman with good documentation, since all events were documented by video camera. It was clear from the tapes that those in the group with

immigrant background were refused entrance in the restaurants while those looking Swedish were allowed to enter. A subpoena against one of the restaurant owners was delivered in February 2005.

During 2004, there were a few amendments to existing pieces of legislation concerning discrimination, in particular for reasons of gender and sexual preference. The recently extended prohibition against hate speech in the Freedom of Expression Act was put to the test in 2004.

- The prosecution and conviction of pastor Åke Green in the District Court of Kalmar generated enormous interest. The free-church reverend was prosecuted for having expressed his views on homosexuality during a sermon called "Is homosexuality biological or are evil powers playing games with people?" According to the prosecutor, the pastor was responsible for agitating against lesbian, gay, bisexual and transgender persons, to whom only recently legal protection was extended. This was the first time this amendment was tried in court. Åke Green said in his sermon that "Sexual abnormalities are a huge tumor on the body of the society. The Lord knows that sexually twisted people will even rape animals. Not even the animals are safe from the sexual needs of man and the fire that is burning within a human being." In court he stated that his religious beliefs convince him that homosexuality is a sin, but that he only rejects the behavior not the individual.

The pastor was convicted in a district court but later acquitted by a court of appeal. The court believed that the sermon and following statements by the pastor were no worse than what can be found in the Bible and that it could not be proven that he was using the quotes from the Bible to attack or encourage attacks against homosexuals. In early 2005, the general prosecutor decided to ask the Supreme Court to rule on the case.

During 2004, there were a number of ongoing parliamentarian investigations into further amendments to the law on discrimination, two of which concern institutional or structural discrimination. Legislation concerning discrimination in Sweden is not yet comprehensive and does not entail an overall prohibition. It is up to the Parliamentary Committee on Discrimination to investigate and present a suggestion for an inclusive prohibition. The committee should have presented its proposals in December 2004, but its work was prolonged and it will instead report back to the government in 2006. It should be mentioned that Sweden has not signed or ratified Optional Protocol Number 12 to the ECHR on a general prohibition against discrimination.

Swedish law did not include a prohibition against or criminalization of being member of a racist organization as is required by article 4 of the UN Convention on the Elimination of All Forms of Racial Discrimination. When the UN Committee on the Elimination of Racial Discrimination (CERD) scrutinized the state party report of Sweden in 2004, it reiterated its request that Sweden respect article 4 of the convention. In its concluding observations, CERD also expressed concern that few reported hate crimes had lead to prosecution.[20]

The SHC has on numerous occasions asked for an improvement in the application of the 1994 amendment[21] of the Criminal Code tackling racially motivated crimes. According to this legislation, if the motive of a crime is to violate a person, an ethnic group or any other such group of persons on **the basis of** their race, color, national or ethnic origin, religion or sexual preference, the court shall consider this an aggravating circumstance. The purpose of this new legislation is to clearly emphasize that courts have to pay special attention when ruling on racially motivated crimes. Sweden also considers this legislation

[20] See CERD/C/64/CO/8
[21] Criminal Code, 29:2 p 7.

(together with some other provisions) to be a sufficient substitute for an official ban on organizations that promote or incite racial hatred.

Since the courts do not have the obligation to state in a judgment if this particular law has been applied – which is the case regarding some other regulations – it has been difficult to collect relevant data for statistics and it is still not possible to give a correct picture of the application of the law. The most recent report in 2002 produced by the Swedish National Council for Crime Prevention showed that the law was insufficiently applied and that there was a lack of understanding among the police of the seriousness of the crime.

According to statistics by the police and the Swedish Federation for Lesbian Gay, Bisexual and Transgender Rights (RFSL), hate crimes targeting homosexuals were increasing in 2004. In 2004 and continuing in 2005, the Stockholm police district is paying extra attention to hate crimes and is conducting a survey interviewing victims and police officers about how they handle suspected hate **crimes.**