Sweden[1]

IHF FOCUS: legislation; rule of law and fair trial; ill-treatment and police misconduct; right to privacy; intolerance, xenophobia, racial discrimination and hate speech; asylum seekers and migrants.

Sweden is generally regarded as having a good human rights record. However throughout the last decade there have been several violations of international human rights instruments and of the national Swedish legislation which implements rights protection.

In 2002 the fight against terrorism remained high on the international community's agenda and Sweden adopted new legislation aimed at implementing the EU Framework Decision on Combating Terrorism. There was widespread concern that the proposed measures would encroach significantly on human rights and fundamental freedoms.

The Swedish courts dealt with the aftermath of the 2001 Gothenburg Riots, which took place in connection with the EU Gothenburg summit. Sixty-six civilians were tried for offences in connection with these events, in which massive demonstrations led to violent confrontations between demonstrators and the police.

In 2002, Sweden was one of the largest producers of White Power music and racist and xenophobic web sites. Due to difficulties in dealing with racist crimes on the internet, in 2002 the Swedish government revised the Fundamental Law on the Freedom of Expression. Problems could arise, as the new legislation did not take into account the need to retain a balance between the freedom of expression and e.g. hate speech.

The Swedish police continued to engage in different kinds of secret surveillance, although this practice inherently involved serious violations of the right to personal integrity.

The rights of immigrants remained under threat in Sweden in 2002, after Swedish extradition policy was sharpened following the events of September 11, 2001. Although the UN Committee Against Torture (CAT) and the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) criticized Swedish legislation and practice in this area, the Swedish government did not take steps in 2002 to modify or amend it.

Legislation

Anti-Terrorism Legislation

On June 13, the Council of the European Union adopted the Framework Decision on the Combating Terrorism. Later that summer the Swedish government issued an official report proposing national legislative measures, aimed at implementing the EU decision.[2]

[1] Based on the *Annual Report 2002* of the Swedish Helsinki Committee.
[2] Ds 2002:35.

The proposed legislation classifies certain crimes as terrorism, such as murder or kidnapping, when they are intentionally committed by an individual against one or more countries, their institutions, or their citizens, with the aim of intimidation and seriously altering or destroying political, economic, or social structures.

According to the EU Framework Decision, the promotion of, support of, or participation in a terrorist group, in anyway, is also punishable. This broad definition is not fully transcribed by the Swedish government who instead proposed that liability for complicity in terrorist activities would fall under section 23 of the Swedish Penal Code, which meant that persons assisting the perpetrator of terrorist acts can also be held accountable.

The proposed legislation involves strict punishments for those indicted and convicted under its provisions. Crimes such as arson, hijacking and unlawful deprivation of freedom would, under the proposed legislation, always result in heavy prison sentences, if the crimes were found to have been committed with "terrorist" intent.

The Swedish Helsinki Committee (SHC) addressed an appeal to the Swedish government in which it raised its concerns regarding the proposed legislation. It noted that the EU Framework Decision on Combating Terrorism must be read in connection with the Framework Decision on European Arrest Warrants. The SHC considered that, in certain instances, this would result in the repeal of the principle of double criminality, as no member state could deny the extradition of a person who had allegedly committed certain crimes in another member state.

The SHC also noted that the definition of terrorist crimes provided for in the proposed legislation was questionable. The question of how to draw the line between politically motivated violence and terrorism was not addressed by the EU Framework Decision or by the proposed Swedish legislation.

The Rule of Law and Fair Trial

A few weeks after the September 11 attacks on the United States (US), the UN Security Council adopted a resolution calling on UN member states to freeze the financial assets of persons suspected of terrorism. On November 9, 2001, the UN Security Council Committee on Afghanistan presented a list of persons and organizations believed to be associated with Osama Bin Laden or the Al-Qaida terrorist network. The EU presented a similar list in December 2001. Three Swedish citizens were mentioned on this list and only a few days after the list had been presented, the Swedish authorities took measures to freeze their bank assets. The list of terrorism suspects was compiled on the basis of US government information, which was not publicly available. After the list had been made public, the Swedish citizens in question strongly denied any connection with Bin Laden or Al-Qaida.

The SHC concluded that in freezing the assets of the three men, the Swedish government acted in violation of basic human rights as protected by Swedish law as well by international instruments. The three men were named and penalized without an opportunity to be heard, without a chance to defend themselves or their reputations and in effect without having

committed a crime, because alleged association with a terrorist organization did not qualify as a criminal offense under Swedish law.

Initially, the men were denied legal aid, despite the fact that after their assets were frozen they did not have any economic resources at their disposal. The SHC stressed that the Swedish government could have complied with the UN Security Council resolution in a manner, which simultaneously safeguarded the rights of the three men while upholding the fundamental legal principles of democratic society based on the rule of law. The SHC also emphasized that all states have an unconditional obligation to protect their citizens from third party abuses – even when the third party in question is another state or an international organization.

In July 2002, two of the three Swedish citizens were deleted from the list of terrorists, but only after submitting to the US demands to answer a questionnaire and give fingerprints. The third man was still listed as a terrorist at the end of 2002, without knowing why and without any response from the US to his requests that they release evidence of his guilt.

Ill-Treatment and Police Misconduct

In June 2001, the European Council held a summit in the Swedish city of Gothenburg. After the events that had taken place in connection with similar summits in Seattle, Prague, Nice and Genoa, the Swedish authorities were expecting lawful and unlawful mass demonstrations. The Swedish police began planning the event in October 2000 and almost 2,500 police officers were scheduled to work on the summit. Due to lack of information and dialogue, the demonstrations in Gothenburg erupted into clashes between civilians and police officers and between individual groups of civilians. To some extent, the violence was a result of lack of appropriately trained police officers.

Sixty-six civilians had at the end of 2002 been tried in relation to the Gothenburg riots, eight have been declared innocent. Most of the convictions were for violent rioting and fell under section 16:2 of the Swedish Penal Code. In total, 530 civilians were apprehended for crimes in association with the riots, while 182 reports were posted against police officers for misconduct. In 2002, only five of the complaints regarding police conduct led to prosecution. Four Swedish police officers were indicted for official misconduct, however they were subsequently acquitted. One police officer was charged with perjury, but the charges against him were dropped.[3]

In addition to the above-mentioned arrests, 385 civilians were taken into custody under paragraph 13 of the Swedish Police Act. This provision allowed the police to remove, or in some instances take into to custody, someone who disturbed public order or was suspected of being about to commit a crime. Under the provision, the decision to detain or remove people was to be taken on a case-to-case basis. In general the provision had been used by Swedish police in order to isolate and round up large gatherings of people, who had then been removed by bus to various locations and from there sent home.[4] The provision's aim was to maintain or restore public order, not to secure a later conviction for any offence.

[3] SOU 2002:122 s 665 f.
[4] Decision by the Swedish Parliamentary Ombudsman (JO) 1995/10/10

On many occasions, it was contended that when acting under this provision the Swedish police acted in breach of the Swedish Instrument of Government as well as in contravention of International human rights law.

- The majority of the police apprehensions made during the 2001 EU Summit in Gothenburg were carried out in connection to a police search of Hvitfeldtska Upper Secondary School. During the summit the school accommodated almost 500 persons, who had traveled to Gothenburg in order to participate in the demonstrations. In searching the premises the Swedish police acted on reports that the sabotage of the summit was being planned at Hvitfeldtska. On the evening of June 13, the state prosecutor ordered the police to carry out a search of the buildings. On June 14, the police built a wall of about 150 containers around the school. Their aim was to search the civilians leaving the premises, under paragraph 19 of the Swedish Police Act. Many of the civilians staying in the school refused to be searched. After many hours of negotiations between the police and civilians, the police decided to take the school by force. Almost 70 of the civilians reacted to this by throwing stones at the police and thereby starting a riot.[5] At this point, 459 civilians were apprehended on suspicion of instigating a violent riot and 11 were taken in to custody for disturbing order. Only one of those arrested was charged with violent rioting, but was later acquitted by the District Court.[6]

The Swedish parliamentary ombudsman decided to investigate the events at Hvitfeldtska and in 2002 a preliminary investigation began, aimed at ascertaining whether or not police officers should be charged with official misconduct. The events at Hvitfeldtska were subsequently acknowledged as the point at which the riots, which occurred throughout the summit, began.[7]

- In November 2002, the Swedish Supreme Court sentenced eight young people to prison terms, ranging from four months to one year and nine months, for complicity in violent riots. The primary evidence against those convicted comprised of SMS messages, which the defendants sent to one another, and to friends, when the police surrounded the Hvitfeldtska school. The court heard evidence that the messages were intended to help friends inside the school break through the police barriers. The eight defendants were considered to have established a properly functioning liaison center.[8] The judgment against the defendants was questionable in that the court did not establish at any point which of the eight who physically sent the SMS messages. Despite this, all eight were found guilty of complicity in violent riots.

- On June 15, 2001, an illegal demonstration, carried out by the autonomous left wing network, known as "Reclaim the City" took place at Vasaplatsen in the center of

[5] SOU 2002:122, s 667 and Gothenburg District Court, case no B6695-01.
[6] District Court of Gothenburg, case no B6695-01.
[7] Swedish Supreme Court Judgement, case No. B4580-01.
[8] The District Court originally sentenced the eight to between three and four years' imprisonment for incitement to violent riot.

Gothenburg. A group of right wing activists tried to disturb the demonstration, which caused the demonstration to degenerate into violent clashes, at first between left wing and right wing activists, and then between the left wing activists and the police. Stone throwing and other forms of aggression occurred. Later in the afternoon, the police shot, and seriously injured, a young man while he was approaching them on his own and throwing a few smaller stones. A photo journalist caught the event on video. The footage, which was later broadcasted on Swedish television, showed that the shooting was excessive and that other forms of less violent intervention should have been used. Despite this, a preliminary investigation into the shooting concluded that the police officer was acting correctly and charges against him were dropped. A few months later, the preliminary investigation was reopened and charges were dropped again. However, in November 2002, the Prosecutor General decided to reopen the investigation and at the end of 2002 it remained pending.

In December 2001, the SHC decided to carry out an investigation into the breaches of International Human Rights Law, which may have occurred during the Gothenburg riots. The report, entitled *The Gothenburg Riots and the Law – Remarks from a Human Rights Perspective* raised concerns that serious human rights violations had taken place.

In 2002 the Swedish legislative provisions concerning rioting and violent rioting were the only ones in the Swedish Penal Code where the collective intent of a congregation of people, rather than action taken, was the basis for liability. According to Swedish law, a person could be found guilty of rioting without having taken any direct action. These laws have not been amended since they were enacted in 1948, and until 2002 the legislation was seldom referred to in the Swedish courts. The provisions were in contradiction to the underlying premise of Swedish criminal law, which did not criminalize neglect. Another worrying fact noted by the SHC was that the sentences handed down in the Gothenburg riot cases were far stricter than earlier judgments. According to statistics, the average sentence for violent rioting between 1995 and 2000 was 5.3 months imprisonment.[9] Sentences after Gothenburg reached up to four years imprisonment. The SHC noted its concern in relation to this trend change. This was amplified by the questionable legal status of the offences for which those tried in connection with the Gothenburg riots were convicted.

In its report the SHC also noted its opinion that paragraph 13 of the Swedish Police Act was in breach of article 5 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The Swedish provision provided that someone who disturbs public order without actually breaking the law, can be taken into temporary custody for six hours. The Swedish government had previously expressly stated, that the six-hour detention provided for in the Police Act should not be considered as constituting a deprivation of freedom.[10] However, the European Court for Human Rights found that a similar type of detention, which lasted only two hours, constituted a deprivation of the detainee's freedom.[11] According to paragraph 13 of the Swedish Police Act it was possible to hold a person in temporary custody up to six hours on other grounds than the one's specified in article 5 (1) of the ECHR, which are exhaustive. Also, no

[9] Statistics from the Swedish National Council for Crime Prevention.
[10] Government Bill 1996/97:175. p. 43.
[11] The European Court of Human Rights, *X and Y v. Sweden*, No. 7376/76.

legal remedies were available. This allowed the SHC to conclude that the Swedish provision was in breach of the ECHR.

In its 2002 report the SHC also raised concern about the legal basis for the state prosecutor's decision to carry out the search at the Hvitfeldtska school. The Swedish Code of Procedure, section 28:4, expressly stated that such a large search should be based on a judicial decision. However the Hvitfeldtska search was not based on such a decision. The search also deprived the civilians of their freedom, in an arbitrary manner, which constituted a breach of Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). The search and restraint measures employed also stopped civilians from exercising their right to demonstrate, which constitutes a violation of both the Swedish Instrument of Government Section 2:1 and article 21 of the ICCPR.

In its 2002 report the SHC criticized the excessive use of force by police involved in the Vasaplatsen shooting on July 15, 2001. It contended that instead of using firearms, the police should have used more lenient forms of force, if indeed force was necessary at all.

Right to Privacy

Secret Surveillance

In 2002 Swedish law allowed the police, under certain circumstances, to use secret surveillance techniques during pre-trial investigations. Methods provided for by law included secret wiretapping, wire-surveillance and camera surveillance.[12] Sometimes the Swedish police employed methods not prescribed by law, such as surveillance through the use of body microphones.[13]

The police could obtain permission to use secret surveillance from a court on the basis of a prosecutor's application. Those subject to surveillance did not have the right to be informed of the prosecutor's application and were not offered any opportunity to dispute a court's decision to grant permission, not even if it was based on false allegations. The lack of legal remedies, for example, the possibility to test the legality of a decision to use secret surveillance, contradicted the ECHR.[14]

In 2002 there were no regulations as to how information, obtained through secret surveillance, but other than that specified in the court's decision, was to be handled. The Swedish courts authorized almost all prosecutors' applications and there were only a few instances where applications were declined.

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[12] Secret wire-tapping was regulated in the Criminal Procedure Code 27:18 and was defined as secret interception of the communication (written or oral) between two or more people via a telephone or fax etc. Secret wire surveillance was regulated in the Criminal Procedure Code 27:19 and was defined as the hindrance of the use of a telephone (or fax, etc.) or secretly finding out how many messages that are produced from and to one or more specific telephone numbers and when these take place. Secret camera-surveillance was regulated in paragraph 1 of the Law of Secret Camera Surveillance and was defined as the use of hidden remotely controlled cameras in order to observe people.

[13] See The SHC report, *Buggning och Hemlig Kameraövervakning - Statliga Tvångsingrepp i Privatlivet*, 2000.

[14] See the case *Klass and others v. West Germany*, September 6, 1978, A28.

In Sweden in 2002, as in previous years, secret surveillance was most commonly used in fighting drug crime, however it was also employed to investigate serious offences such as murder and arson. Secret wire-tapping was used in 398 cases but was subsequently considered to have had no real effect on the preliminary investigation in at least 58 % of these cases. Secret body wiring was used in 414 cases but had no effect in at least 55% of these cases. Secret camera-surveillance was used in 31 cases but considered to have had no effect in at least 65 % of these cases.[15] The SHC questioned the reliability of these statistics, however, and noted that there were good reasons to believe that the real percentages were in fact a lot higher than those officially presented.

In 2002 the SHC concluded that the authorities' right to interfere in the private life of citizens, as allowed in certain instances by Swedish legislation, still lacked both the necessary legality and transparency. The SHC called for an independent assessment of the necessity and effectiveness of secret surveillance methods used in Sweden.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

According to the Swedish Instrument of Government, changes to the Swedish Constitution could only occur if the Swedish parliament decided on the issue twice with an election between decisions.[16] Before the Swedish 2002 elections, many decisions were taken regarding the revision of the rules concerning the freedom of speech on the Internet. The amendments decided upon came into force on January 1, 2003.

The old laws only granted automatic constitutional protection (in the form of a publication permit) of the right to freedom of expression to the editorial office of a printed periodical or radio program, to those involved in the professional production of technical recordings, or to news agencies transmitting on the Internet. Swedish laws only held one designated person responsible for crimes involved in mass media publication, and because of this the number of people to whom constitutionally guaranteed protection was granted was strictly limited.

The recent legislative amendments make it possible for anyone to get a publication permit, thereby ensuring the protection of their Internet site by the Fundamental Law on the Freedom of Expression.

In 2002 the SHC noted their concern regarding the effect of these amendments. They pointed out that persons with doubtful, racist or xenophobic, motives could now obtain a permit and place a "dummy" as publisher, thereby avoiding legal responsibility for the content of publications. Despite the fact that many of the organizations asked to consider the amendments advised against the change, the proposition was approved and the legislation adopted.

Asylum Seekers and Immigrants

[15] Government bill 2002/03:23.
[16] The Swedish Instrument of Government, section 8, paragraph 15.

Protection of Asylum Seekers

In the past the CAT has criticized Sweden for eight separate violations of the principle of *non-refoulment*. In 2002, CAT continued to receive new complaints related to this problem. According to CAT, the Swedish authorities often adopted an overly strict position when assessing the credibility of asylum applications. CAT also noted that the Swedish authorities lacked sufficient knowledge of how torture victims behave, and pointed out that the fact that asylum seekers changed their stories over time did not necessarily mean that they were lying, but might just as well have indicated that they were suffering from post-traumatic stress. Furthermore, CAT criticized the Swedish methods of dealing with asylum applications, noting with disappointment that much of the data the Swedish authorities used to formulate their decisions was not made available to the applicants. According to CAT this practice seriously compromised the legal protection of asylum applicants at all stages of the asylum application process, including the point of case review.

After its 1998 visit to Sweden, the CPT stressed that asylum seekers must be provided with a genuine and real consideration of their application and that all expulsion orders must be subjected to independent review before being enforced. CPT questioned the status of the Swedish Aliens Appeals Board and the fact that it was both the first and final place of appeal in cases where new information to support asylum claims was introduced. The CPT also criticized the risk assessments carried out by the Swedish authorities in cases where there was a risk of *refoulment*, and argued that the assessments were flawed. The ECPT requested information on the manner in which the government followed up decisions refusing entry or expelling asylum seekers.

In light of this, the SHC noted that no such follow-up investigation had taken place by the end of 2002 – not even in those cases where asylum seekers claimed that they risked being tortured upon return. Due to the criticism directed at the Swedish procedure for handling asylum claims, the Swedish government decided to abolish the Aliens Appeals Board and instead charge specific county courts with the review of asylum cases. However, as of the end of the 2002, it has not yet been decided when this reform will take effect.

Swedish legislation concerning the expulsion or deportation of foreign citizens explicitly forbid the enforcement of deportation decisions where the individual would be under risk of torture or capital punishment in the state to which they were returned. However, after the events of September 11, 2001, Sweden's image as a resolute opponent of capital punishment changed somewhat. A short time after the terrorist attacks on the US, the Swedish government stated that Sweden might revise its legislation making it possible for individuals to be expelled or deported to countries where they could be sentenced to death. The government voiced the opinion that Sweden, instead of advocating an unconditional ban, might demand guarantees that the death penalty would not be carried out if extradition was granted.

Early in 2002, the Swedish government demonstrated that it was indeed prepared to alter its usual practice in this area – even without legislative amendments.

- The Swedish government ordered that two Egyptian men seeking asylum in Sweden and one woman with five children be refused entry to Sweden. The two men were sent back to Egyptdespite the fact that they faced torture there. The men had been convicted of terrorism by an Egyptian military court and in their absence sentenced to 25 years in prison. Th ewoman with the children were not deported, pending decision by CAT.

On a number of occasions prior to September 11, Sweden had come under criticism from the Egyptian government for refusing to extradite suspected terrorists. Prior to September 11, Sweden had always cited the principle of *non-refoulment* in support of its actions.

The decision in 2002 to return the eight Egyptians violated both Swedish law as well as international law. The cases were treated as asylum cases – which brought them under the Aliens Act section 7:11 which allowed the Swedish government to legitimately turn someone away if the case was "deemed to be of importance for the safety of the realm or for public safety in other respects, or for the country's relations with a foreign power or international organization."

Under the Aliens Act, the initial decision on an asylum application lay with the Migration Board, which took the decision as to whether or not an asylum seeker was entitled to refugee status or had other grounds for remaining in Sweden. The matter was only referable to the Swedish government in cases where asylum would have been granted except for the fact that there was reason to suspect that the person concerned could constitute a threat to the realm or to public safety.

The Migration Board decided that the two men qualified for refugee status, but on the basis of confidential information from the Swedish Security Police, the Swedish government nevertheless decided that both were to be deported in pursuance of the Aliens Act section 7:11. The men were not considered a threat to national security or public safety in Sweden and the decision seems to have been based on the aim of protecting "the nation's relations with a foreign power." Explaining its decision the Swedish government referred to UN resolution No. 1373 which urged states to join together in the fight against terrorism and not to provide safe havens for terrorists. The two men denied all accusations of terrorism.

The SHC noted their concern that the Swedish government's actions in respect of the Egyptian asylum seekers did not constitute a single isolated incident but instead set a precedent for Sweden's handling of similar subsequent cases. Noting the decision and the governments reference to UN resolution No. 1373 the SHC claimed that in this instance the Swedish government did not live up to its obligations under Swedish and international law and expressed its fear that the Swedish government was prepared to violate the most basic human rights principles if the victims were suspected, potential or convicted terrorists.

Immigrants

According to the Swedish Aliens Act Section 1:10, a person whose partner was resident in Sweden had the right to apply for, and receive, a resident permit. The general requirement was that the applicant was involved in a permanent relationship with his/her partner and that he or she was able to prove that the relationship had developed before the applicant's immigration to

Sweden.[17] It was also possible for a person to apply for a Swedish residence permit if he/she was going to marry or co-habit with a permanent resident of Sweden. However, in both of these cases, a residence permit was only granted for a limited period of time. Only after two years in Sweden could the applicants receive a permanent residence permit, and they were usually required to demonstrate that they were still involved in the same relationship.

This so-called two-year rule was problematic for women with abusive partners. As a rule, non-Swedish women who left their partners before the expiry of the two-year period were not allowed to stay in the country. The Swedish Aliens Act provided scope for exceptions from this general rule, however the prerequisites were hard to meet, with the applicant needing to prove that they were subject to frequent abuse by their partners while at the same time demonstrating that the relationship had been sincere. The fulfillment of this requirement was particularly difficult for women who were not married to, but instead co-habiting with, their partners.

[17] Married, unmarried as well as homosexual partners qualified under this provision.