

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Sweden

ECRI wishes to point out that the analysis contained in its third report on Sweden, is dated 17 December 2004, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Sweden was subject to a confidential dialogue with the Swedish authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Swedish authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

“Observations by Sweden in respect of the third report by the European Commission against Racism and Intolerance (ECRI) on Sweden

General Observations

Some of the ECRI recommendations seem to build on information that has been “reported to ECRI”. If at all possible for ECRI, it would be very helpful in the ongoing efforts to prevent and counteract discrimination, racism and other forms of intolerance in Sweden if ECRI could describe these reports and what they, in their turn, are based on.

Specific Observations

Paragraphs 15-21, 74-75, 82-83, 101-102 and 103-104:

With regard to criminal law on combating racism Swedish criminal provisions together criminalize racist activities, including activities of racist organisations, although they do not include an explicit prohibition against racist organisations.

A person who, in a disseminated statement or communication, threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin, religious belief or sexual orientation shall be sentenced for *agitation against a national or ethnic group*. This provision covers oral expressions and dissemination through the printed word, film, sound recording and other such media, including via the Internet. Hence, it applies to i.a. racist music. According to a precedent-setting ruling the prohibition also includes the use of Nazi symbols or other expressions of racist opinions in public. Further, it covers dissemination through racist organisations as well as dissemination within racist organisations. A stiffer scale of punishment applies for serious cases of racial agitation, such as racial propaganda activities by a racist organisation. The Act on Responsibility for Electronic Bulletin Boards requires suppliers of electronic bulletin boards to delete any message, which has a content that constitutes agitation against a national or ethnic group.

Unlawful discrimination is also a criminal offence. As noted in the report civil law against discrimination is being introduced in order to make the legislation against discrimination more effective. Further, leading youth astray is an offence. This provision has been used to penalise the distribution of racist propaganda to young people through, for example, the sale of CD recordings. *Unlawful military activity* is also punishable. This provision is aimed at preventing the establishment of organisations that are beyond the reach of democratic control.

In addition, Swedish rules on complicity in crimes are far-reaching. These rules apply also to racist crimes. A person intending to commit or promote a crime can be sentenced for preparation, conspiracy or complicity. Punishment is imposed not only on the perpetrator but also on the person who furthered the crime by advice or deed. A person with the intention of committing or promoting a crime shall, in cases where specific provisions exist for the purpose, be sentenced for preparation of a crime unless he or she is guilty of a completed crime or attempt. In specially designated cases a sentence shall also be imposed for conspiracy. By conspiracy is meant that someone decides on the act in collusion with another as well as that someone undertakes or offers to execute it or seeks to incite another to do so.

Finally, in assessing penalties it shall be deemed an aggravating circumstance if the 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. This provision applies to all kinds of crimes.

Paragraph 49:

The main principle is that an appeal has suspensive effect. The responsible authorities may only reject and deport an asylum seeker immediately if his or her claim is “manifestly unfounded” or if the Dublin Regulation under EC law is applicable (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national). However the concept of “third country” is not linked to the accelerated procedure.

Paragraph 51:

Detention is not used as a way to deter persons from applying for asylum. Moreover, the principle is that asylum seekers in Sweden are not kept in “criminal detention facilities”. However, it sometimes happens when there is no other possibility. In a limited number of cases and in accordance with the Swedish Aliens Act it is possible to keep an alien detained in a criminal detention facility

- when the alien is to be expelled on grounds of having been convicted of a criminal offence,
- when the alien is being kept isolated in order to maintain order and security, or
- when there are other exceptional reasons.

Children can never be detained in criminal detention facilities.

Paragraph 54:

Sweden considers that its obligations concerning children who are legally on its territory are different from those concerning children who are not. Thus all children who have pending asylum applications and children who have received a final expulsion decision have the right to go to education. Municipalities are free to accept into their schools also children who have been de-registered by the Migration Board because they are kept in hiding, but the Government will not reimburse the municipalities for their costs of educating such children.

Paragraph 56:

The Government is seriously concerned about the increased number of asylum seekers not showing a travel document at the time of submitting an application for asylum. Today some 93 per cent of all asylum applicants are not showing a travel document, whereas the corresponding figure in 1996 was some 34 percent. There is a risk that asylum claims are submitted under incorrect names with corresponding difficulties in examining these claims, later requests for family reunification and, ultimately, applications for citizenship. Therefore a Committee of Inquiry has been looking into the possibility of only granting temporary residence permits to asylum seekers who are unwilling to assist in establishing their true identity. The Government has not yet made a decision on this matter.

Paragraph 80:

As has been pointed out to ECRI the Government and national agencies in Sweden do not see the problem of honour-related violence as a problem related to “Muslim communities”. In fact the Government has taken particular precautions to avoid that crimes committed in the name of honour be related to any specific culture or religion.

Paragraph 82:

The Government strongly denies the statement in unidentified “reports” to ECRI that the “political leadership has been less ready and vocal in identifying and condemning antisemitism than other forms of racism”.

Paragraph 92:

In December 2004 the Government decided that the question of an independent body entrusted with the investigations concerning policemen and prosecutors should be further examined. The result of the examination will be reported to the government at the end of 2005. The same month the Prosecutor-General decided that a special unit with nationwide competence (*”Riksenheten för polismål”*), consisting of prosecutors with special skills, shall handle all the investigations concerning suspected policemen as from 1 January 2005. The unit cooperates with special internal investigation units within the police force.

Paragraphs 106 and 107:

Sweden would like to underline that the fight against discrimination is in fact already very much at the heart of the integration policies. Sweden fully agrees with ECRI that measures to counteract discrimination are crucial in efforts to promote integration. Therefore integration policy focus has during later years increasingly been on anti-discrimination measures and because of this such measures have been introduced to such a large extent. It is therefore not easy to understand the recommendations of ECRI in this respect. Particularly since many of these measures are mentioned in the report by ECRI.

The measures to prevent and counteract discrimination are of course addressed to the whole population and they include for example: strengthened provisions against discrimination on the individual level that go further than the EC directives on discrimination, an awareness- raising campaign directed to a wide array of key groups on this new legislation, substantially increased allocations to the Ombudsman against ethnic discrimination, funding for a centre against racism run by NGOs, funding for local anti-discrimination bureaus, an instruction to the Board for Public Procurement to run an awareness-raising campaign on the use of anti-discrimination clauses in public procurement, commissions on discrimination on structural and institutional levels and ongoing work on examining the possibility of using situation testing as a means of assessing the extent of discrimination.”