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**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR
THE PROTECTION OF NATIONAL MINORITIES**

**COMMENTS OF THE GOVERNMENT OF SWEDEN
ON THE THIRD OPINION OF THE ADVISORY COMMITTEE ON THE
IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES
BY SWEDEN**

(received on 16 November 2012)



COMMENTS OF THE SWEDISH GOVERNMENT ON THE ADVISORY COMMITTEE'S THIRD OPINION ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Sweden welcomes the Advisory Committee's third opinion. Sweden has studied the content of the report and considers that the Advisory Committee's analysis is thorough. It is clear from the contents of the opinion that the Advisory Committee has had good contacts with relevant organisations and representatives of the national minorities in its work.

The coordinating ministry responsible for the Framework Convention, the Ministry of Employment, would like to thank the Advisory Committee for excellent collaboration and looks positively on continued dialogue and exchange of information and views.

Since the adoption of the Advisory Committee's first opinion in 2003, Sweden has continued to pay attention to the protection of national minorities and to work systematically to take measures to protect, safeguard and promote the national minorities and minority languages in Sweden.

As with the previous monitoring cycle, the Swedish Government would like to express its satisfaction with the Advisory Committee's work and is looking forward to receiving the Committee of Ministers' recommendations.

Nonetheless, Sweden would like to take this opportunity to clarify a number of issues on which misunderstandings appear to have arisen. The Swedish Government would therefore like to share the following information with the members of the Advisory Committee and its secretariat.

Clarifications

Article 4

As the Advisory Committee is aware, positive action¹ (*positiv särbehandling*) is a much-debated concept in Sweden and is not defined in Swedish legislation. Nor is there any clear definition of the

¹ Points 16 and 41

concept internationally. The Swedish Government maintains that the lack of a definition of positive action can lead to misunderstandings.

For the type of positive action consisting of more far-reaching measures there is an exemption from the prohibition against discrimination for ethnicity. This exemption, i.e. the rules that allow positive action, applies within employment policy, business and parts of the education system. Within these areas it is possible to take measures with the aim of promoting equal opportunities regardless of ethnicity.

However, it is not possible to use positive action in other areas of society. The reasons why positive discrimination cannot be used in other areas include the fact that it contravenes the principle of equal treatment, it is difficult to demarcate target groups, Sweden's views on ethnic registration, lack of clarity as to who should be included and a perceived lack of predictability of the results of the exemption.

However, there are a large number of initiatives in Sweden that can be described as outreach, promotion and reinforcement measures aiming to accelerate progress towards equal rights and opportunities for all, regardless of ethnicity. In many international contexts these measures would be seen as types of 'positive action'. They include general initiatives targeting the entire population but of particular benefit to persons belonging to under-represented groups, and targeted initiatives based on particular individual needs or requirements. There are also measures targeting newly arrived immigrants or national minorities.

Article 5

Within the Swedish legal system the courts are obliged to rule in accordance with current law. In the Supreme Court case referred to in point 56 of the third opinion, the court ruled in accordance with Section 3 of the Reindeer Husbandry Act, as did the two first court instances (district court and court of appeal), which came to the same conclusion as the Supreme Court. The legislation is therefore not unclear.

Article 9

The Advisory Committee states that nothing has happened since the Sami Parliament report², drawn up in consultation with the Swedish Tornedalian Association, was presented in September 2011. Sweden maintains that this is not true. The parliamentary committee appointed in December 2011 to review press subsidies began its work by considering the Sami Parliament report on daily newspapers in Sami and Meänkieli. The report has been used as background material

² Points 81 and 83

in the inquiry and the committee's proposals were presented in an interim report of 14 September 2012. In its work on the interim report, the inquiry has consulted the Sami Parliament and the Swedish Tornedalian Association. The interim report will be circulated for comment to organisations that represent the Sami and Tornedalian minorities.

Article 12

The Government wishes to draw the Advisory Committee's attention to the fact that revised compulsory school syllabuses entered into force on 1 July 2011. Under these new syllabuses, the national minorities are addressed in the subjects Swedish and history, not just social science as stated in the opinion³.

The curriculum for compulsory schools, preschool classes and out-of-school centres and the curriculum for upper secondary schools mention the national minorities in the overall objectives and guidelines. This means that schools are responsible for ensuring that, on completing compulsory and upper secondary education, every pupil has knowledge of the culture, language, religion and history of the Roma⁴ and the other national minorities.

The Swedish Government would like to clarify to the Advisory Committee that, under Chapter 3, Section 15 of the Discrimination Act, schools⁵ are obliged to take measures to prevent any kind of harassment dealt with in the Act, in this case harassment on grounds of ethnicity. The Education Act also contains provisions on measures to prevent degrading treatment. The responsible school entity must ensure that measures are taken to prevent and hinder children and pupils from being subjected to degrading treatment (Chapter 6, Section 7 of the Education Act). Sweden would also like to point out that the Education Act contains new provisions on the obligation to report cases of degrading treatment and the responsible school entities' obligation to investigate the circumstances surrounding degrading treatment and, where appropriate, to take any measures that might reasonably be required to prevent degrading treatment in the future.

On the matter of the supply of teachers and the measures Sweden has taken in this area, the opinion states that the Government has proposed a new programme for the validation of teachers of the national minority languages⁶. The Advisory Committee is presumably referring to the fact that the Government has made the assessment

³ Point 97

⁴ Point 106

⁵ Points 104 and 106

⁶ Point 113

that, in accordance with existing legislation⁷, it should be possible to study the national minority languages, including the relevant subject didactics, as subjects within the framework of subject teacher education, and that it should be possible to have actual expertise in the languages validated.

Sweden would also like to point out that further measures have been taken to improve access to teaching aids for Romani Chib⁸. Within the framework of its strategy for Roma inclusion, the Government has instructed the National Agency for Education (A2012/1387/DISK) to promote the development and production of books and other learning aids in all variants of Romani Chib for children, young people and adults.

Article 14

On the matter of improvements in access to mother tongue instruction in Yiddish and Finnish⁹, Sweden would also like to draw the Advisory Committee's attention to the fact that the maximum limit of seven years' tuition in Yiddish has also been removed. For bilingual instruction¹⁰, Sweden would also like to point out to the Advisory Committee that there is an Ordinance on a pilot project for bilingual tuition in compulsory schools (2011:421) that provides the possibility to offer bilingual tuition in years 7–9 in languages other than Finnish too.

Article 15

The issues raised in point 149, including co-determination and veto, concern the Sami as an indigenous people and, as such, are handled by Sweden within the legal framework of indigenous rights both nationally and internationally. The rights of indigenous people and the rights of persons belonging to a national minority are separate, and the scope of Article 15 of the Framework Convention for the protection of National Minorities does not include co-determination and veto, but rather states that parties "shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them". Sweden would like to underline that consultations of various kinds, in accordance with Article 15 of the Framework Convention and the suggestions in the explanatory report, have a long tradition in Sweden and are a fundamental feature of Swedish democracy. Consultations are therefore held on a regular basis and in a variety of ways. In this respect Sweden would like to

⁷ Chapter 6, Sections 7–8 of the Higher Education Ordinance (1993:100)

⁸ Point 115

⁹ Point 124

¹⁰ Point 134

refer in particular to the information previously provided in its second and third country reports, but also add the following.

An important part of the Swedish legislative process is the practice of circulating government reports and other documents for comment by relevant bodies. Government agencies such as the Sami Parliament, to which matters are referred for comment whenever they are a stakeholder, are obliged to give an opinion. These opinions are considered and processed within the Government Offices. As an example it can be mentioned that, as a result of this practice under present legislation including the Reindeer Husbandry Act, the Planning and Building Act and the Environmental Code, the Sami village (sameby) concerned must be asked for its opinion before any decision is taken. At regional level, there are reindeer husbandry delegations that raise land lease issues and other matters of fundamental importance concerning Sami use of land. These delegations include Sami representatives.

Article 18

Sweden is grateful for the positive encouragement made by the Advisory Committee concerning Sweden's active work, alongside Norway and Finland, to negotiate a Nordic Sami Convention. This work is a priority for Sweden. As to point 167 however, Sweden would like to make some clarifications. As reported in Sweden's previous two reports, in 2005 an expert group presented its proposal for a Nordic Sami Convention.

The proposal has subsequently been circulated for comments in each country and has also been subject to analysis in each country. Consultations, which are an important part of the democratic process, have of course been conducted, and the necessary time has been given to this important process. As a result of the process, in November 2010 the ministers responsible for Sami affairs and the Sami Parliament presidents decided to appoint national negotiation delegations and initiate negotiations based on the proposal from the expert group. The process has been given the time necessary for all parties to come to a consensus, and therefore cannot be said to have been delayed.

As the Advisory Committee has noted, a consequence of this decision was the creation of national negotiation delegations and appointment of members in March 2011. All the national negotiation delegations have the same composition i.e. the Swedish negotiating delegation consists of five members, not six, of whom two are Sami representatives chosen by the Sami Parliament and two are representatives of the Government Offices. The fifth member is the chair of the delegation and a Director from the Government Offices. The delegation's expenses are borne by the Government Offices.

Proposed correction to terms and references

In point 114, the Advisory Committee uses the term ‘teachers’ licences’ when it means ‘registered teachers’ (lärarlegitimation). Sweden proposes that the Advisory Committee use this term to avoid misunderstandings. The same point states that the system of teacher registration came into force in March 2011 – the correct date is July 2011. Sweden would also like to clarify that the ‘study’ referred to by the Advisory Committee in the same point is an inquiry with the designation (ToR 2011:85).

In points 120 and 121, Sweden proposes that the term ‘independent schools’ be used instead of ‘free schools’.

In points 125 and 134, the Advisory Committee refers to the old Compulsory School Ordinance (1994:1194). These provisions are now found in the Schools Ordinance (2011:185).