

**REPORT**  
**on the Free Movement of Workers**  
**in Sweden in 2002 and 2003**

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## Introduction

This report concerning Sweden and the free movement of workers in the European Union (EU) during the years 2002 and 2003 focuses on the application of Council Regulation 1612/68 and issues related to the implementation of Council Directive 68/360 within the framework of the EC Treaty, Article 39.<sup>1</sup> Further, there are comments concerning the right to free movement of services, the right to establishment, discrimination, equal treatment etc. and some aspects on the application of Council Regulation 1408/71 on social security and more.<sup>2</sup>

Amendments in Swedish national legislation and judicial practice are dealt with as well as draft legislation and judicial practice. Under each main heading I will in short give details about the texts in force, new implementation measures, initiatives and suggestions for amendments. Published literature, articles in periodicals etc. on the matters dealt with during 2002–2003 is listed.<sup>3</sup> However, to begin with I will give a short summary of the most interesting issues relevant in a free movement of workers perspective.

The most observed issue concerning the free movement of workers has been the question of the enlargement. The matter was more generally observed already in 1998 in connection with a discussion concerning the Swedish labour market and social security. A public investigation published in 1997 put the enlargement issue on the agenda for the public debate.<sup>4</sup> However, the temperature in the debate soon declined and the general opinion from leading politicians was that workers from the coming new Member States should be entitled to full social security etc.

In January 2003 the debate on the enlargement again raised after another public investigation had been published.<sup>5</sup> The enlargement was paid attention to in a TV-channel and the public opinion as well as leading politicians were beginning to reconsider the general politic regarding social security for workers and other citizens from the new Member States. However, the result from a legal point of view was – as I will touch upon later – that no special regulations concerning social security and more for citizens from the new Member States were approved by the Riksdag.

Although it has not been discussed in general the question of citizenship and employment has been dealt with referring to foreigners' rights in Sweden. The matter is part of the discussion concerning integration of foreigners in Swedish society. Public investigations have been dealing with foreigners' rights to take part in society and amendments have been made. In connection to this matter also EC law has been observed and Swed-

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1 Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community. Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

2 Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.

3 The following juridical periodicals have been examined systematically: Svensk Juristtidning (SvJT), Juridisk Tidskrift (JT), Svensk skattetidning, Skattenytt, Ny juridik, Europarättslig tidskrift, Från riksdag och departement, Lag och avtal, Arbetsmarknad och arbetsliv and Förvaltningsrättslig tidskrift.

4 Official report SOU 1997:153 Arbetskraftens fria rörlighet – trygghet och jämställdhet.

5 Official report SOU 2002:116 EU:s utvidgning och arbetskraftens fria rörlighet.

ish citizenship as a requirement for employment on certain positions in the public sector has been discussed and some amendments have been made.<sup>6</sup>

Concerning the free movement of workers no other issue beyond the enlargement was really discussed in public. The reason is, I believe, a function of the reality behind the statistical figures concerning immigration. Immigration from other Member States is comparatively low. For instance in 2003 around 5,600 immigrants came from EU Member States, Nordic countries not included. The same year almost 10,000 persons came from the other Nordic countries. More than 35,000 persons came to Sweden from the rest of the world as immigrants – most of them referring to a family connection to someone who already had been granted a residence permit in Sweden. Hence, immigration in Sweden is fundamentally a matter concerning the relationship to third-countries and, further, immigration is very much discussed in terms of refugee policy.

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6 See Official report SOU 2000:106 Medborgarskapskrav i svensk lagstiftning.

## Chapter I

### Entry, Residence and Departure

In 2002 and 2003 there has been some amendments made concerning Swiss citizens in accordance with the agreement between the EU and Switzerland on the free movement of persons. Further, from the end of 2002 Sweden might execute decisions on expulsion taken by another Member State concerning third-country nationals, and from 2003 new regulations concerning temporary protection is in force.

#### a) *Texts in force*

- Utlänningslagen (1989:529), (the Aliens Act).
- Passlagen (1978:302), (the Passport Act).
- Utlänningsförordningen (1989:547), (the Aliens Ordinance).

The national authority in charge of immigration matters, for instance the granting of residence permits, is the *Swedish Migration Board* (Migrationsverket).<sup>7</sup> Appeals against the Swedish Migration Board's decisions are reviewed by the Aliens Appeals Board (Utlänningsnämnden).

### A. Entry

In the Aliens Act there are general regulations on foreigners' right to enter Sweden. For instance in ch. 1 § 2 the demand on passport is expressed. However in the Aliens Ordinance ch. 1 there are exceptions from the demand on passport. Hence, in the Ordinance ch.1 § 1a it is stipulated that a citizen of a State that is part in the Schengen Convention does not have to meet the request for passport stipulated in the Aliens Act if that national is travelling from a Schengen State (amendment in 2001).<sup>8</sup>

Concerning the request for passports when entering Swedish territory, an identity card issued by another Member State or another state that is part in the EEA Agreement or Switzerland is valid as a document for entering Sweden for citizens in Member States (including countries that are parties to the EEA Agreement); (see the Aliens Ordinance ch. 1 § 6).<sup>9</sup> In accordance with ch. 1 § 10a also the temporary passport document issued by the EU should be accepted as a passport.

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7 Previously the name of the Board was the Swedish Immigration Board. Further, before this change of name of the Immigration Board, another central authority, the *Swedish Integration Board*, had been set up on June 1, 1998. The Integration Board is in charge of the overall measures taken regarding integration of foreigners in Swedish society. Concerning the Immigration Board, see also Ordinance (1988:429) med instruktion för Migrationsverket and the website: [www.migrationsverket.se](http://www.migrationsverket.se)

8 Swedish statute-book (SFS) Ordinance 2001:37. The countries that have signed the Schengen Agreement are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain and Sweden.

9 Compare Directive 68/360/EC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, Article 3.1.

Further regulations on passports are found in the Passport Act and in the Passport Ordinance (1979:664) concerning for instance an application for passport.

In 2002–2003 there have been only minor amendments to report on concerning entry to Sweden. As stated above, regarding identity cards also identity cards issued by the competent authority in Switzerland should be valid as a passport for entering Swedish territory (the Aliens Ordinance ch. 1 § 6).<sup>10</sup> Further, the regulation concerning the point of time when there should be no demand on residence permit should also embrace citizens from Switzerland (the Ordinance ch. 3 § 2a). The amendments follow from the agreement between the EU and Switzerland covering among other things the free movement of persons.

For *refugees and stateless persons* the Migration Board issues travelling documents in accordance with the Government's instructions (see the Aliens Act ch. 3 § 7). These documents are declared to be valid as passports in accordance with the Aliens Ordinance ch. 3 § 10.

Another amendment concerning entry and *third-country nationals* is connected to Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. In accordance with the Directive, the Member States should have taken the necessary measures to comply with the directive not later than 11 February 2003. Nevertheless, still in November 2003 the Swedish Riksdag had not approved any amendments of law referring to the Directive. However, already in the Aliens Act chapter 9 by that time there were regulations concerning the carrier's responsibility and obligations in connection to the transport of foreign nationals into Swedish territory. Hence, the carrier has an indirect duty to control travelling documents since the carrier must compensate the State for sending back the foreigner, including the travelling costs for accompanying guards (chapter 9 § 2). Certain regulations regarding the administrative dealing with these matters are also found in the Aliens Ordinance chapter 7.

However, in 2001 an Official report dealing with the carrier's responsibility referring to Directive 2001/51/EC, was presented by a committee at the Ministry of foreign affairs.<sup>11</sup> The committee noticed the already existing regulations in the Aliens Act. However, the committee stated referring to the Schengen Agreement and the Directive 2001/51/EC, that the existing carrier's responsibility should be completed with rules giving the State the possibility to impose economic sanctions on the carrier if the carrier should fail to comply with the regulations.

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10 Government proposition 2000/01:55 Avtalet mellan Europeiska gemenskapen och dess medlemsstater å ena sidan och Schweiz å andra sidan.

11 Official report Ds 2001:74 Transportörsansvaret i utlänningslagen. According to the committee a carrier who does not fulfil his duty to control passengers should have to pay a certain fee, if a passenger is refused entry because he or she does not have the necessary documents for entering Swedish territory. However, if there is a "reasonable reason", the committee suggested, the carrier should not have to pay the fee. Such a situation could exist if the foreigner when starting the journey could show the necessary documents for the travel. Another reason might be if the order to pay the fee was "obviously unreasonable". The committee suggested that a new paragraph should be inserted in the Act and concerning the fee, the amount should be not more than 5,000 Euros for each passenger not having showed the required documents (chapter 10 § 9).

(In 2004 the Swedish Government presented a proposition regarding carriers' responsibility implementing Directive 2001/51/EC.<sup>12</sup> The amendment will be in force 1 July, 2004, and will be further dealt with in a forthcoming report.)

Finally, concerning immigration from *Russia* there are certain problems to report on. In 2002 the number of unfounded applications for asylum from former Soviet Union was reported to increase three times in comparison with 2001. In 2002 almost 5,000 persons from the former Soviet Union applied for asylum. Almost all persons in this category cannot show any identity papers, passports, identity cards etc. Further, in this category there has been a comparably high number of persons conducting criminal activities. One problem is that Russia demands that in order to be sent to Russia a person shall agree to such a measure, and most individuals do not agree to that.<sup>13</sup>

## **B. Residence**

A crucial issue for the utilizing of the right to free movement of workers or other persons is the granting of a residence permit.<sup>14</sup> The permit is required if the stay is longer than three months if the person concerned is not a citizen from another Nordic country (the Aliens Act ch. 1 § 4).

Following Regulation 1612/68 a citizen of a Member State does not need a work permit (the Aliens Ordinance ch. 4 § 1). From 2002 this is the case if a person is a Swiss citizen in accordance with an amendment in the Aliens Ordinance ch. 4 § 1.<sup>15</sup>

The most important Swedish regulations concerning residence permits for nationals from Member States and EEA countries are found in the Aliens Ordinance (ch. 3 § 5a). A worker that has a valid certificate on employment should be granted a residence permit. The residence permit is given for five years.<sup>16</sup> If the employment period is shorter than one year, a residence permit will be granted for the period in question. A worker's residence permit cannot be withdrawn for the reason that he cannot work because of illness, accident or if he is involuntarily unemployed.

Other citizens from Member States or EEA countries shall be granted residence permit for five years, if they have sufficient means for their own living. If they are not embraced by the Swedish social security, they must show that they have a health insurance valid in Sweden.<sup>17</sup> However, concerning family members to workers, self-employees etc., see below!

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12 Government proposition 2003/04:50 Åtgärder för att klarlägga asylsökandes identitet.

13 Riksdag & Departement no. 31/2002, p. 11.

14 Compare the Council Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

15 Amendment through SFS 2002:146. See Government proposition 2000/01:55 Avtalet mellan Europeiska gemenskapen och dess medlemsstater å ena sidan och Schweiz å andra sidan.

16 Compare Directive 68/360, which admits the granting of a time limit residence permit to a worker for periods longer than three months but less than one year. Concerning judicial practice from the Aliens Board (Utlänningsnämnden; UN), see Case UN 233-94 (residence permit should be granted for five years when the worker show a passport or identity card and a proof on employment). Concerning the term worker, see Case UN 234-94.

17 Amendment in 2001, see Ordinance SFS 2001:150.

Concerning the requirement on residence permit if the stay is longer than three months and especially regarding the calculation of the time period, there was an amendment in 2001 in accordance with the Schengen Agreement (Aliens Ordinance ch. 3 § 1),<sup>18</sup> the amendment has been dealt with in a previous report.<sup>19</sup>

A residence permit can be *revoked* in accordance with the Ordinance ch. 3 § 5c if a national from another Member State or EEA country no longer is providing for himself or otherwise do not have money for his living. Further, there are conditions stipulated in the Aliens Act ch. 2 §§ 9–11 (for instance because of incorrect information provided by the foreigner etc.<sup>20</sup>). When judging if a residence permit should be revoked the foreigner's connection to society shall be considered as well as if there are other humanitarian reasons for not revoking the permit.

However, in accordance with EC regulations a worker, or a self-employed person, has the right to stay in the country even when his or her activity is finished, for instance if the person reaches the age of 65 years, or because of accident in work (the Aliens Ordinance ch. 3 § 5 a.)

In 2002 there was an amendment regarding Swiss citizens in accordance with the Commission's Ordinance 1251/70 concerning workers' right to remain on the territory of a Member State after being employed in that State.<sup>21</sup>

Finally, following from an amendment in 2002 of the Aliens Ordinance ch. 4 § 2 a work permit is not required for a *third-country national* employed for temporary work, if the foreigner has his residence in an EEA country including Switzerland and if the foreigner has a right to work in the other country and is sent to Sweden as a posted worker.<sup>22</sup>

(Concerning self-employed persons, who are entitled to residence permits for five years, providers of services and students, see below chapter 10.)

## C. Departure

According to the Swedish Passport Act (1978:302 Passlagen) a Swedish citizen has the right to a passport (§ 4). A Swedish citizen is not allowed to leave the country without a

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18 Amendment through Ordinance SFS 2001:37.

19 If the foreigner has stayed in another Schengen country for a period of six months before entering Sweden, that period should be included in the calculation of the three months period for which residence permit is not required. However, if the foreigner is a citizen of a Member State the period shall always be calculated from the point of time he or she entered Sweden (the Ordinance ch. 3 § 2a) and from 2002 this regulation also embraces Swiss citizens. Regarding the amendment concerning Swiss citizens, see SFS 2002:146, Government proposition 2000/01:55 Avtalet mellan Europeiska gemenskapen och dess medlemsstater å ena sidan och Schweiz å andra sidan.

20 See for instance Utlänningsnämnden (the Aliens Board; UN) Case UN 57-93 (a parent had presented incorrect information concerning a child).

21 Ordinance SFS 2002:146. See Government proposition 2000/01:55 Avtalet mellan Europeiska gemenskapen och dess medlemsstater å ena sidan och Schweiz å andra sidan.

22 Ordinance SFS 2002:146. See Government proposition 2000/01:55 Avtalet mellan Europeiska gemenskapen och dess medlemsstater å ena sidan och Schweiz å andra sidan. See also a corresponding amendment in the Ordinance ch. 4 § 2.6 (amendment through SFS 2002:791).



valid passport (§ 5).<sup>23</sup> But there is one important exception: passport is not required if the destination is another Nordic country.

However, if the destination is a country that is part of the Schengen Convention there is no request for passport for Swedish citizens leaving Swedish territory (previously reported amendment of the Passport Act § 5.4 in year 2000).<sup>24</sup>

*b) Miscellaneous*

*Concerning decisions on expulsion of third-country nationals.* From December 1, 2002, the Swedish authorities can execute decisions on expulsion taken by another Member State or in Norway or Iceland concerning third-country nationals. The amendments that were made in the Aliens Act ch. 2 § 10a and ch. 4 § 1.6 were referring to Directive 2001/40/EC concerning the mutual recognition of decisions on expulsion of third-country nationals.<sup>25</sup> However, in the Aliens Act ch. 8 § 1-4 there are safeguards against refolement that should be observed. In § 1 there are obstacles against the execution of a decision on expulsion, stipulating that there should be no expulsion if there is reason to believe that the person risks death-penalty, corporal punishment, torture etc. (The paragraph also includes the reasons stipulated in the European Convention on Human Rights, Article 3.) Further, if a person has been granted residence permit for more than four years there is a demand on “particular reasons” for calling back the residence permit.

A further requirement for the application of the Aliens Act ch. 2 § 10a is that the decision on expulsion in the other State is founded on a serious and present threat to public order or to national security and safety and that (1) the foreigner has been judged for an offence punishable by a penalty involving deprivation of liberty of at least one year or (2) that there is reasonable grounds for the suspicion that the foreigner has committed serious criminal offences or the existence of solid evidence of his intention to commit such offences. (The wording is close to the wording in Article 3.1.a of the Directive 2001/40/EC.)

Finally, the new regulation in paragraph 10a should not apply to a family member of a citizen from a Member State or Norway or Island, who has utilized his or her right to free movement in accordance with EC law.

*Concerning temporary protection in mass flux situations.* In January 2003 further amendments of the Aliens Act were in force and a new chapter 2a was inserted in the Act.<sup>26</sup> The amendment followed the implementation of Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States

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23 Compare Directive 68/360/EEC, Article 2.1.

24 SFS 2000:346, Government proposition 1999/2000:64 Polissamarbete m.m. med anledning av Sveriges anslutning till Schengen.

25 Government proposition 2001/02:182 Ömsesidigt erkännande av beslut om avvísning och utvisning. Compare Council Directive (2001/40/EC) of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.

26 Amendments through SFS 2002:1111. Government proposition 2001/02:185 Uppehållstillstånd med tillfälligt skydd vid massflykt.

in receiving such persons and bearing the consequences thereof. The former regulation in the Aliens Act ch. 2 § 4 was repealed and replaced by a new regulation on temporary residence permits.

Hence, from 1 January 2003 if the Council – in accordance with the Directive – takes the decision that a mass refugee situation is present, a temporary protection in Sweden can be granted in accordance with the Aliens Act ch. 2 a § 6, and if so a temporary residence permit shall be granted for one year, which automatically shall be prolonged for another year, and finally the Council can prolong the temporary protection for a third year. Further, a person granted temporary protection shall have the right to an examination if he or she shall be granted status as a refugee in accordance with the Geneva Convention.

*c) Recent legal literature*

Lindell, T. & Jonasson, J., *Problem för fri rörlighet på den interna marknaden*, in *Europarättslig tidskrift* nr 3/2003, p. 445–465. (Mainly dealing with technical standards but the free movement of workers are at least observed.)

Wikrén, G. & Sandesjö, H., *Utlänningslagen med kommentarer*. Seventh revised edition. Norstedts Juridik, Stockholm 2002. (A Swedish standard work giving comments on the application of aliens law.)

## Chapter II Equality of Treatment

In 2002 a new act concerning discrimination on part-time workers and workers in fixed-term work was approved by the Riksdag, implementing EC Directives 97/81/EC (part-time work) and 99/70/EC (fixed-term work). In 2003 a new Act on discrimination of a more general character was taken by the Riksdag partly referring to Directive 2000/43/EC. A public investigation concerning discrimination has been appointed and some aspects of the freedom of association have been tried.

### *a) Texts in force*

- Regeringsformen (1974:152), (the Instrument of Government).
- Lagen (1994:260) om offentlig anställning, (the Act on public employment).
- Jämställdhetslagen (1991:433), (the Equal opportunities Act).
- Lag (1999:130) om åtgärder mot etnisk diskriminering i arbetslivet, (Act on measures to counteract ethnic discrimination in working life).
- Lag (1999:132) om förbud mot diskriminering i arbetslivet av personer med funktionshinder, (Act on discrimination of people with handicap).
- Lag (1999:133) om förbud mot diskriminering i arbetslivet på grund av sexuell läggning, (Act on discrimination because of sexual orientation).
- Brottsbalken (The Penal Code ch. 16 § 9).
- Lagen (2001:1286) om likabehandling av studenter i högskolan (the Act on equal treatment of students in higher education).
- Lag (2002:293) om förbud mot diskriminering av deltidsarbetande arbetstagare och arbetstagare med tidsbegränsad anställning (the Act on discrimination on part-time workers and workers in fixed-term work).
- Lag (2003:307) om förbud mot diskriminering (the Act on ban on discrimination).

In accordance with EC law a person utilizing his right to free movement of persons, shall have the right to equal treatment and non-discrimination. In accordance with the EC Treaty, Article 13, all discrimination because of nationality is forbidden. According to Regulation 1612/68, Article 7, a worker who is a national of a Member State may not be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, unemployment etc. He or she shall enjoy the same social and tax advantages as national workers, have access to training in vocational schools etc. Further, regarding equal treatment and discrimination there are also directives taken referring to the EC Treaty, Article 13, to consider.

Foreigners' general right to *freedom of association* is laid down in the Instrument of Government ch. 2 § 22 part 2.1.<sup>27</sup> Trade unions as well as employers' associations have

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27 Concerning trade union and the freedom of association in an international perspective, see Herzfeld Olsson, P., *Facklig föreningsfrihet som mänsklig rättighet*, Iustus, Uppsala 2003.

a right to industrial action (ch. 2 § 17).<sup>28</sup> In ch. 2 § 22.8 it is stated that foreigners have the same right to industrial action as nationals (the amendment was introduced in 1994). Further, there are no restrictions in Swedish legislation concerning an EU citizen's right to represent Swedish trade unions in representative bodies in undertakings, which means that a national worker from another Member State can be elected to represent his trade union in such bodies.

Further, a worker who is a national from another Member State – and who is employed in the territory of another Member State – shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto (Regulation 1612/68 Article 8). There are also regulations in the European Convention for the Protection of Human Rights and Fundamental Freedoms prescribing that everybody has the right to freedom of association (Article 11.1).<sup>29</sup>

Traditionally, only the positive right to utilize the freedom of association in Swedish law has been protected (see the Joint regulation act 7 §; Medbestämmandelagen 1976:580). Hence, in some lines of businesses so called organisation clauses in collective agreements giving priority to organized workers at recruitment activities and more, have been frequently used. However, in 2003 the European Committee of Ministers adopted a resolution on the account of the use of organisational clauses in the building line of business.<sup>30</sup> In accordance with the resolution the problem with organisational clauses must be solved in June 30, 2005, at the latest, and this will bring Swedish labour market practice in correspondence with the European Convention.

Concerning discrimination of part-time workers and workers in fixed-time work a new act came into force in the year 2002. The act implemented Directives 97/81/EC and 99/70/EC in Swedish law from July 1, 2002.<sup>31</sup> The act was preceded by a public investigation that put the light on discriminatory regulations in many collective agreements.<sup>32</sup>

Referring to Directive 2000/43/EC concerning equal treatment between persons irrespective of racial or ethnic origin, a new Act (2003:307) on ban on discrimination was taken by the Riksdag.<sup>33</sup> The act came into force on July 1, 2003, and also includes a ban of discrimination because of sexual orientation or handicap. Compared to most other Swedish discrimination laws – which apply only to working life – this act also embraces the access to social services, health care and more in line with Directive 2000/43/EC.

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28 The connection between associations and the right to industrial action have been subject to considerations in the light of the European Council's Social Charter article 6.4; the right to industrial action should be an individual right basically if nothing else is agreed upon in collective agreements.

29 Since January 1, 1995, the European Convention on Human Rights should be applied as an integrated part of Swedish law. Government proposition 1993/94:117 Inkorporering av Europakonventionen och andra fri- och rättighetsfrågor.

30 Report to the Committee of Ministers, Committee of Ministers Resolution, Res Ch S (2003)1. See also Complaint No. 12/2002 made by the Confederation of Swedish Enterprise.

31 Government proposition 2001/02:97 Lag om förbud mot diskriminering av deltidssamarbetande arbetstagare och arbetstagare med tidsbegränsad anställning, m.m., implementing Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC and Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

32 Official report Ds 2001:6 Genomförande av deltids- och visstidsdirektiven (Näringsdepartementet).

33 Compare Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Further, in accordance with 8.1 § of the act, discrimination in connection with membership in trade unions and other labour market organisations should be prohibited.

*b) Draft legislation*

In the year 2000 an official investigation was appointed on account of the Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.<sup>34</sup>

In the year 2002 the result of the committee's investigation was published in an Official report.<sup>35</sup> In short the committee presented proposals for three new Acts with prohibitions against discrimination, which basically link up with the Acts in force mentioned above. The three Acts suggested should cover all natural persons, irrespective of nationality and residence. The new Acts should contain four prohibitions against discrimination, namely prohibition against direct discrimination, indirect discrimination, harassments and finally a prohibition against an order or an instruction to discriminate is embedded.

In accordance with Directive 2000/78/EC the four prohibitions suggested should apply to working life, employments offices etc., in connection with access for carrying on business operations, in connection with access for carrying on a profession, and in connection with membership of and involvement in an organisation of workers or employers, or any professional organisation.<sup>36</sup> The committee suggested that the proposals for the new Acts should enter into force on July 1, 2003.

However, already in January 2002, the Government had appointed another public investigation, which should consider a joint regulation on discrimination covering all or at least most of all types of discrimination.<sup>37</sup> Further, in accordance with the committee directions the joint regulation should cover both working life, higher education and other fields of society. Hence, also the regulation in the Penal Code ch. 16 § 9 (mentioned above – see texts in force) should be embraced by the committee's investigation. Further, the investigation shall deal with discrimination because of age (referring to Directive 2000/78/EC). The result will be presented in December 2004.

Finally, in 2003 another public investigation focusing on structural discrimination in connection with ethnic origin was appointed by the Government.<sup>38</sup> Also this investigation is referring to Directive 2000/43/EC.

*c) Miscellaneous*

Nothing to report on.

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34 See Committee directions 2000:106 Ett utvidgat skydd mot diskriminering. In January 2002 the Governemnt presented Additional Committe directions 2002:12 Tilläggsdirektiv till Diskrimineringsutredningen (2001:01).

35 Official report SOU 2002:43 Ett utvidgat skydd mot diskriminering.

36 Compare Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

37 Committee Directions 2002:11 En sammanhållen diskrimineringslagstiftning.

38 Committee Directions 2003:118 Strukturell diskriminering på grund av etnisk eller religiös tillhörighet.

*d) Recent legal literature*

Eklund, R., *The equal pay principle – promises and pitfalls*, in *Juridisk tidskrift* 2001–02, p. 542–555.

Herzfeld Olsson, P., *Facklig föreningsfrihet som mänsklig rättighet*, Iustus, Uppsala 2003. (Dissertation concerning international law and the right to association on the labour market.)

Ingmanson, S., *Likabehandling, unionsmedborgarskap och rätten till sociala förmåner*, in *Europarättslig tidskrift* 2002, p. 219–237. (The author's comment on a case from the ECJ concerning the right to social benefits referring to the union citizenship.)

Malmberg, J., *Bevisning i diskrimineringstvister*, in *Juridisk tidskrift* 2001–02, p. 804–814. (An article concerning the obligation to prove a case in discrimination disputes on the labour market.)

Further, concerning the situation for immigrants in Swedish society, on the labour market, and in the schools etc. there are reports published by the Swedish Integration Board. For the period 2002-2003 there were around 40 reports published by the Board; see <http://www.integrationsverket.se>. However, in principle all reports deal with immigrants from third-countries and in a free movement perspective there is no reason to account for these reports.

### Chapter III

#### Employment in the Public Sector

Restrictions on foreigners' right to employment in the public sector are founded in Constitutional law, in the Act on public employment and ordinances promulgated by the government. However, in an Official report presented in the year 2000 there were suggestions for breaking up the restrictions concerning workers from Member States and some amendments have been made. Further, the demand on Swedish citizenship for membership in the Swedish Bar Association has been abolished.

##### *a) Texts in force*

- Regeringsformen (1974:152), (the Instrument of Government).
- Lagen (1994:260) om offentlig anställning, (the Act on public employment).

As stated above decisions on employment matters in the public sector should be ruled by objectivity and should be taken on impartial grounds and individuals must be treated equally. However, in correspondence with Article 39.4 of the EC Treaty there is a restriction on the right to equal treatment regarding employment in the public sector, in practice when the work is on the exercising authority.<sup>39</sup> Hence, citizenship is prescribed as a condition for certain employments in the Swedish State. A consequence of this is that foreigners are excluded from particular employments in the State sector. For instance, the position as a judge within the judicial system is exclusively reserved for Swedish citizens. Among other positions under the same rules offices directly under the Government, head of authority that is directly under the Riksdag or the Government and some employments within the Government Offices can be mentioned (see the Instrument of Government ch. 11 § 9).

Constitutional law also admits restrictions in employment matters stated in ordinary law. Hence, according to the Act on public employment §§ 5 and 6 a non-Swedish citizen cannot join the police force or be employed as a prosecutor within the judicial system or be employed by the army (see also Lagen 1994:261 om fullmaktsanställning; Act on employment with letters of appointment). In addition to these regulations the Government can prescribe Swedish citizenship as a condition for employment connected to exercising authority or positions that are of significance to the security of the country. Further, there are many public functions (committees exercising public authority; not employments), which are embraced by a requirement for Swedish citizenship.

In an Official report presented in the year 2000 there were proposals of breaking up the restrictions concerning foreigners' right to employment (and public functions).<sup>40</sup> Such restrictions are founded in the Constitution ch. 11 § 9. Further, requirements are regulated in the Act on public employment §§ 5 and 6 as well as in different Ordinances giving instructions concerning courts and public authorities.

The judgment made by the investigation committee in year 2000 was that Swedish citizenship should be required when the motivation is State security and Sweden's relations

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39 See Nyström, *EU och arbetsrätten*, p. 162 f.

40 Official report SOU 2000:106 Medborgarskapskrav i svensk lagstiftning.

to other countries. Also public activities that interfere with the citizens' legal relations should still be reserved for Swedish citizens.

According to the committee's suggestions the requirement for Swedish citizenship should be taken away for certain employments, for instance law clerks (notarier), revision clerks (revisionssekreterare) and most employments at the Swedish enforcement services (kronofogdemyndigheterna), and there has been certain breaking up from the requirements on Swedish citizenship. However, there are still (in April 2004) many demands on Swedish citizenship, for instance concerning employments as law clerks at the district courts (tingsrätter).<sup>41</sup>

Also at the Swedish enforcement service (kronofogdemyndigheten) there is still (in April 2004) a demand for Swedish citizenship for the access to many positions such as Head of the enforcement district (kronofogde), Inspector at the enforcement service or as an assistant at the enforcement service.<sup>42</sup> Further, for many positions a Swedish lawyers exam is required, but for instance at the enforcement service an exam from any other of the Nordic countries will be sufficient for employment. A common denominator for these positions is that the officials are exercising authority towards the citizens.

However, for certain positions the demand for Swedish citizenship has been taken away. In 2002 the Swedish Code of procedure ch. 8 § 2 was amended and the demand for Swedish citizenship was taken away.<sup>43</sup> The amendment was in force on July 1, 2002. Already before this amendment the Code of procedure had been amended in line with the Directive 98/5/EC, and the amendment in 2002 was correcting some imperfections.<sup>44</sup> Further, at the same time some other requirements for Swedish citizenship discussed in the Official report mentioned above have been abolished.<sup>45</sup>

Finally, according to the Security protection Act (1996:627; Säkerhetsskyddslagen) employments may be subject to certain restrictions referring to the need for "security protection". Such restrictions should be founded in a need for protection against espionage, sabotage, terrorism etc. (6 §). The holder of a position that is classified as subject to certain security in the public sector must be a Swedish citizen. The Government is in charge for making the classification of a position for security reason, but the authority to classify can be delegated to authorities under the Government, and this possibility is used in many cases.

The recognition of diplomas for access to employment in the public sector or for providing services is important for many categories on the labour market. I will give an example on such regulations concerning the medical services. For employment in the public medical service in a regulated profession a person must fulfil certain requirements.

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41 See Ordinance (1996:381) med tingsrättsinstruktion § 44.

42 See Ordinance (1988:784) med instruktion för exekutionsväsendet § 20.

43 Governments proposition 2001/02:92 Avskaffande av medborgarskapskrav för advokater m.fl.

44 Directive (98/5/EC) to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. See Government proposition 1998/99:108 Advokaters etableringsrätt.

45 Government proposition 1998/99:108 Advokaters etableringsrätt. The amendments are in the following laws: lagen (1919:426) om flottning i allmän flottled (dealing with members of floating boards), lagen (1952:166) om häradsallmänningar samt allmäningsstyrelser och ekonominämnder enligt lagen (1952:167) om allmänningsskogar i Norrland och Dalarna tas bort (dealing with members in boards for common land forests in some parts of Sweden).



For example a medical doctor or a nurse must prove that they have an exam for the profession specified. For professions in the medical services this is generally regulated in an act concerning qualifications required for professional activities in the medical services.<sup>46</sup> Further specifications are promulgated by the Government and the National Board for Health and Welfare (Socialstyrelsen).<sup>47</sup> For the recognition of a diploma required for activity as a medical doctor or another regulated profession etc., the applicant must show the required certificate or diploma and there is a certain formula to be handed in to the National Board for Health and Welfare (Socialstyrelsen): “Application for a license for Swedish practise on basis of training in an EEA country other than Sweden or in Switzerland”.<sup>48</sup>

*b) Draft legislation*

(See above concerning suggestions presented in a public report that dealt with requirements on Swedish citizenship for certain positions.)

*c) Recent legal literature*

Nyström, B, *EU och arbetsrätten*. Third edition. Norstedts Juridik, Stockholm 2002. (A general text-book on EC labour law and the impact on Swedish labour law.)

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46 Lagen (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område (the Act on professional activities in the medical services; not officialy translated).

47 SOSFS 2003:4 (M) Socialstyrelsens föreskrifter om ömsesidigt erkännande av yrkesbehörighet inom hälso- och sjukvården (dealing with the mutual recognition of diplomas and competence in the medical service referring to the relevant EC directives).

48 The formula is available on the internet: <http://www.sos.se/Hs/Bu/blanketter/B45355.pdf>

## Chapter IV Family Members

Concerning members of the family there are only very minor amendments to report on concerning the free movement of workers. Concerning family reunification and third-country nationals in mass refugee situations an amendment came into force in 2003.

### *a) Texts in force*

- Utlänningslagen (1989:529), (the Aliens Act).
- Utlänningsförordningen (1989:547), (the Aliens Ordinance).
- Lag (2001:82) om svenskt medborgarskap, (the Act on Swedish citizenship).

Concerning family members' right to be granted residence permits, relatives to workers as well as relatives to self-employed persons, students, retired employees and pensioned self-employed persons can get residence permits (Aliens Ordinance ch. 3 § 5 b).<sup>49</sup> Entitled to such permits are persons who can show status as worker's spouse, children up to the age of 21 or dependant together with dependent parents.<sup>50</sup> The permit should be granted for the same period as it is for the worker etc. to whom the foreigner is connected.<sup>51</sup> In order to get a permit a relative etc. must show a valid passport or identity card and a certificate of relationship. Also in matters of dependence a certificate must be provided.

Hence, a relative to a person within the above-mentioned categories is entitled to residence permit normally for five years or for shorter periods depending on the period of work, self-employed activities or studies. The permit can be prolonged.<sup>52</sup>

According to the Aliens Ordinance ch. 3 § 7 an application for residence permit shall be handed in at the Swedish embassy or consulate in the foreigners' home country. However, if one of the criteria given above is fulfilled the foreigner can apply for residence permits even after entering Sweden.

Regarding family members, as mentioned above there was a new Act (2001:82) on Swedish citizenship in force on July 1, 2001, which also deals with citizenship for members of the family.<sup>53</sup>

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49 See also Appendix 2 to Ordinance SIVFS 1993:20 made out from the Swedish Immigration Board and the information sheet from the Board, *Upphållstillstånd i Sverige för EU/EES-medborgare*. See also the Aliens Appeals Board Case book Case UN 231. With reference to a Government decision from 1994 (Ku94/1990/MP) the Board in Case UN 299 found that the EEA Agreement could not entitle to residence permit before the earlier deportation order had been executed.

50 See Cases UN 234-94 (children up to the age of 21 should be granted residence permit), UN 343-98 (a Cuban woman and her mother was granted residence permit referring to the daughter's marriage with a Spaniard having a residence permit) and UN 346-98 (Egyptian married to a Finnish woman resident in Sweden should be granted residence permit).

51 This provision is not applicable to relatives or dependants who are from another Nordic country – see the Aliens Act ch. 1 § 4.

52 See the Swedish Supreme Administrative Court (Regeringsrätten; reg.) Case reg. 89-00 (a close relative should be granted prolonged residence permit when the primary person, a worker, was granted a permanent residence permit).

53 Government proposition 1999/2000:147 Lag om svenskt medborgarskap.

In 2002 the regulation concerning relatives to Swiss citizens was amended (the Aliens Ordinance ch. 3 § 5 b) referring to the agreement between the EU and Switzerland.<sup>54</sup>

*b) Miscellaneous*

The greater part of the number of people coming to Sweden who are granted residence permits as family members or the corresponding are third-country nationals. Mostly they have a connection to a third-country national that already has been granted residence permit.

Concerning family reunification and third-country nationals in mass refugee situations a Government proposition was presented in 2002.<sup>55</sup> If the Council has taken a decision that there is a mass refugee situation and a family has been split up and the family members are in need of temporary protection, they have the right to family reunification in accordance with an amendment in the Aliens Act ch. 2a § 4, which was in force from January 1, 2003.

*c) Recent legal literature*

Wikrén, G. & Sandesjö, H., *Utlänningslagen med kommentarer*. Seventh revised edition. Norstedts Juridik: Stockholm 2002.

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54 Ordinance SFS 2002:146. See Government proposition 2000/01:55 Avtalet mellan Europeiska gemenskapen och dess medlemsstater å ena sidan och Schweiz å andra sidan.

55 Government proposition 2001/02:185 Uppehållstillstånd med tillfälligt skydd vid massflykt. Compare Council Directive (2001/55/EC) on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. In this context there is also reason to mention the Amended proposal for a Council Directive on the right to family reunification, which is giving guidelines for third-country nationals' right to reunificate their families (COM/2002/225 final - CNS 1999/258).

## Chapter V

### Follow-up of Recent Judgments from the ECJ

In the following I will comment on a couple of judgments from the ECJ. However, also under other headings there might be reason to discuss judicial practice from the ECJ analysing the relationship between EC law and national Swedish law.

In *Case C-422-01 Skandia and Ola Ramstedt v the Swedish National Insurance Board* (dated August 27, 2003) the ECJ decided that it is contrary to Community law, Article 49 of the EC Treaty, to make special treatment regarding taxes to an employer who has signed pension insurances for the employees in other countries than Sweden. Skandia is an insurance company and Mr. Ramstedt was an employee in Skandia. The company claimed a right to make tax deduction in Sweden for the payments made to three affiliated companies situated in Denmark, Germany and United Kingdom. If the payment had been made to an insurance company in Sweden, Skandia would have been entitled to a tax deduction for the premium paid, the National insurance Board claimed. The standpoint taken by the National Insurance Board was considered to be contrary to Article 49 of the EC Treaty. Hence, in the future, Swedish law and the practice developed by the Board is expected to be amended in accordance with the judgment from the ECJ.

*Case C-385/99 V.G. Müller-Fauré and Onderlinge Waarborgmaatschappij OZ Zorgverzekeringen UA, and between E.E.M. van Riet and Onderlinge Waarborgmaatschappij ZAO Zorgverzekeringen.* The case deals with the interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC). Two citizens in the Netherlands had medical care in another Member State and were denied economic compensation for the expenses by the social insurance office in the Netherlands since they had not asked for permission in advance. The ECJ declared that it is not contrary to EC law and the free movement of services for a State to make a requirement for permission in advance, if the health care etc. is provided by a hospital in another Member State. However if the health care is not provided by a hospital such a requirement is against the free movement of services.

I will not draw an absolute parallel to the Swedish situation, but I will give a short account for the *Case 5595/99 (Jelenik) from the Swedish Supreme Administrative Court (Regeringsrätten)*. A Swedish woman received medical services in the university hospital in Kiel without asking for permission in advance regarding economic compensation. The Court stated that the problem dealt with was under the free movement of services. Further, the Court stated that Sweden does not require permission in advance (there is no such regulation in law). A crucial thing was that the health care provided was the same as the health care that would have been paid by the public health care service in Sweden. The judgment was surprising for many experts (another interpretation would have been possible) and in the discussion it has been said that Sweden should introduce a regulation on permission in advance.

In *Case C-168/98 from the ECJ* the Court stated that the *Directive concerning lawyers' right to work in another Member State* is not discriminatory towards national lawyers. In Sweden – in principle – a lawyer from another Member State can become a

member of the Swedish Bar Association faster than a Swedish lawyer. The case has been commented on in a previous report, but some further aspects will be touched upon below – see Chapter 10!

*Recent legal literature*

Summaries on case law from the ECJ are regularly presented in Swedish legal periodicals. Regarding the free movement of workers there is certain reason to refer to the periodical *Lag & Avtal*.

## Chapter VI

### Policies of a General Nature with Possible Repercussions on the Free Movement of Union Citizens

Referring to the matters that are dealt with in other parts of this report, there is nothing to report under this headline. Generally, the debate and discussion in Sweden deal with the *immigration from third-countries* and the crucial issues are asylum and integration.

*Recent literature concerning refugees, integration of third-country nationals in society etc.*

Andersson, H.E., *Flyktingpolitiken i framtidens EU*, Svenska institutet för europapolitiska studier (Sieps), rapport 2003:5 (preliminär). Stockholm 2003. (Regarding the future development of the EU refugee policy.)

Edström, *Sweden: Comparative legal study on subsidiary protection*, i Daphné Boutillet-Paquet (editor), *Subsidiary Protection of Refugees in the European Union: Complementing the Geneva Convention?* Bruylant. Bruxelles 2002, p.755–785.

Statens folkhälsoinstitut. *Födelselandets betydelse. En rapport om hälsan hos olika invandrargrupper i Sverige*. Stockholm 2002. (Concerning the health among immigrants from different countries.)

The Swedish Integration Board, *Integrationsverkets handlingsplan för arbete med barn som kommit till Sverige utan legal vårdnadshavare och som erhållit uppehållstillstånd s.k. ensamkommande barn*. Integrationsverket, Norrköping 2002. (The Integrations Board's action plan for dealing with children coming to Sweden as sole refugees or children in need of protection.)

The Swedish Integration Board, *Värdering av utländska högskoleutbildningar 1991–1998*. Rapport 2002:10. Integrationsverket, Norrköping 2002. (Concerning the validation of foreign university educations.)

The Swedish Integration Board, *Delrapport till regeringen. Förbättrad introduktion för nyanlända*. (Redovisning INT 19-02-1715.) Integrationsverket, Norrköping 2002. (Concerning improved introduction measures for foreigners coming to Sweden.)

Vogel, Hjerm and Johansson, *Integration towards Swedish Living Standards? Living Conditions of Immigrants to Sweden in the 1990s*. Living Conditions. Report 96. Statistics Sweden (SCB; project Valfärdens etniska delning), the National Institute for Working Life (ALI). Stockholm 2002. (In Swedish.)

## Chapter VII

### EU Enlargement

In 2002 the Government appointed a public investigation in order to map possible threats and possibilities that will be the consequences of a free labour immigration from the countries in Eastern Europe that were standing for a full membership in the EU.<sup>56</sup> The investigator should especially analyse the possible strain on the Swedish labour market and the social security system. The investigation was presented in January 2003 in an Official report.<sup>57</sup> In the report it was suggested that Sweden must guarantee that the social security system will not be abused. The reason for such abuse could be the great differences in the standard of living as well as concerning social security between Sweden (including Western Europe) and the candidate countries in Eastern Europe. National provisional regulations should be introduced, the report stated, referring also to the discussion and suggestions presented in other Member States. The new regulations should only apply to citizens from the coming Member States in Eastern Europe (thus, not Malta and Cyprus).

Hence, citizens from the new Member States (excluding Malta and Cyprus) should be able to provide for themselves in order to be granted residence permit, and their employment contracts should be examined by the Swedish Migration Board and other authorities in charge (for instance the Labour Market Board). Firms or companies that are considered not to be serious should be stopped from recruiting labour from the new Member States and they must show a certain certificate issued by the National Swedish Tax Board (Skatteverket). The residence permit should be granted for 12 months (compared to five years for other EU citizens) and should be renewed for further 12 months if the person is still working at the end of the first period. If the requirements are fulfilled the citizens from the new Member States should be entitled to the same social rights as other EU citizens.<sup>58</sup>

In another Official report made public in 2002, before the report concerning national provisional regulations discussed above, general trends and problems with competence maintenance on the labour market were dealt with. It was stated that there will be a great shortage of labour on the Swedish labour market (around 300,000 persons within a period of ten years) and the development on different sectors of the society was analysed.<sup>59</sup> Such analyses founded arguments against the introduction of certain restrictions in the political debate on the problems and possibilities regarding the recruitment of labour from especially Eastern Europe.<sup>60</sup>

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56 See Committee Directions 2002:1 EU:s utvidgning och arbetskraftens rörlighet.

57 Official report SOU 2002:116 EU:s utvidgning och arbetskraftens fria rörlighet.

58 Later on the Government modified these suggestions and in the end no restrictions were set up, but that is not within the period dealt with in this report, and I will come back to these considerations and the debate on the matter.

59 Official report Ds 2002:47 Kompetensförsörjning på arbetsmarknaden. (Näringsdepartementet.)

60 Regarding the EU enlargement and the debate concerning the consequences of the free movement of workers there is reason to refer to the Official report SOU 1997:153 Arbetskraftens fria rörlighet – trygghet och jämställdhet. Regarding these matters, see also Lundborg, P., *Free Immigration to Sweden from the New EU Members*, in Edström, Sweden and the Free Movement of Workers, p. 121–131.

## Chapter VII

### Statistics and Trends

In the following table the figures on immigration from Member States are presented. Since 1994 there has been a mild increasing trend in the number of immigrants and there are no dramatic changes.

Concerning immigrants from third-countries some figures could be worth mentioning. Together in 2003 there were 20,841 permits granted directly referring to a work in Sweden, and in 2002 the corresponding figure was 20,677 permits.<sup>61</sup> In 2003 around 10,200 time limited work permits were granted to citizens from third-countries by the Migration Board. In addition to that around 7,300 were granted work permits for seasonal employment. These figures regarding third-country nationals could be compared with the around 2,800 persons from EU/EEA-countries that were granted residence permit referring to a tender for work in Sweden (Nordic citizens not included).

*Table 1. Residence permits granted to persons from EU countries 1994–2001. Distribution according to activity or status (figures concerning 1994-2001 are aggregated)*

	1994-2001	2002	2003	Total
Workers	15,791	2,614	2,817	21,222
Self-employed	725	115	136	976
Prov. of services	2,828	345	350	3,523
Students	12,859	2,501	2,929	18,289
Non-economic act.	3,674	345	501	4,520
Spouse and children	10,480	1,983	2,487	14,950
Parents (to worker etc.)	49	5	10	64
Other close relatives	59	60	4	123
<b>Total</b>	<b>46,465</b>	<b>7,968</b>	<b>9,234</b>	<b>63,667</b>

Source: The Swedish Migration Board.

In order to grant third-country nationals work permits, there is a certain examination made by the County labour board which takes the decision that there is a shortage of labour and that there is a labour market need for immigration of workers from third-countries. The County labour board issues a recommendation if such a situation is judged to be present and then the Migration Board is in charge for taking the decision regarding the granting of work permits.

In an appendix further statistics concerning the number of immigrants as well as emigrants from different states, Member States as well third-countries are presented (not in electronic version).<sup>62</sup>

61 See [www.migrationsverket.se](http://www.migrationsverket.se)

62 Source: Statistiska centralbyrån (Statistics Sweden), *Migration 2003. In och utvandring och asylsökande*, (Statistiska Meddelanden BE 68 SM 0401), SCB, Stockholm 2004.



## Chapter IX Social Security

Amendments have been made concerning social benefits related to where a person has his residence or where he is working. Further, some amendments have been made referring to the agreement between EU and Switzerland. A few Cases have been decided concerning social entitlements referring to Community law. (See also above, Chapter 5, concerning judicial practice concerning economic compensation for medical services received in another Member State.)

### *a) Texts in force*

- Lag (1962:381) om allmän försäkring, (The Act on public insurance).
- Socialförsäkringslag (1999:799), (the Social Security Act).

### *The relationship between 1408/71 and 1612/68*

Traditionally, the granting of Swedish (and Nordic) social benefits has depended on where a person has his national registration address. This situation gave rise to conflicts when the social security system faced EC law and measures were taken gradually. When the amended Social Security Act (1999 no. 799) was taken in 1999, the situation was better clarified as stated in previously reports.<sup>63</sup> Hence, some social benefits or social security is now related to where a person has his residence and other social benefits are based on work.

The application of Regulation 1408/71 as well as the relationship to Regulation 1612/68 at the application of Swedish national law become clearer with the new Social Security Act in 1999. The reason is that in the act there is a marked line between social benefits based on residence or work and, further, the principle that a national from a Member State should be considered to have his residence in Sweden even if this literally is not the case, if the benefit in question is under Regulation 1408/71.

In principle, a social benefit that is not covered by Regulation 1408/71 should be granted to a worker etc. referring to Regulation 1612/68 and the principle on equal treatment, if the Regulation 1612/68 is to be applied.

In order to have the right to the following social benefits a person must have his or her *residence* in Sweden (the Social Security Act chapter 3 §§ 1 and 2):

- Health care.
- Sickness benefit (sjukersättning; not sjukpenning) and activity benefit (aktivitetsersättning) on the basic guarantee level.
- Parents' allowance (föräldrapenning), up to the basic guarantee level.
- Rehabilitation (and certain benefits granted by the social insurance office).
- State pension (survivor's pension; efterlevandepension). State pension is depending on how many years you have lived in Sweden. For a full pension the requirement is 40 years of living in Sweden. (The basic requirement is 3 years.)
- Additional pension benefit (pensionstillskott).
- Housing allowance (bostadsbidrag).

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63 Government proposition 1998/99:119 Socialförsäkringens personkrets.

- Housing supplementary allowance for pensioners (bostadstillägg för pensionärer).
- Maintenance benefits (underhållsstöd).
- Guarantee pension (garantipension).
- Prolonged child allowance (förlängt barnbidrag).
- Support for having a car (disabled people) (bilbidrag för funktionshindrade).
- Adoption allowance (adoptionsbidrag).
- Special additional pension benefit (to State pension), when taking care of a sick or disabled child (särskild tilläggs pension vid omhändertagande av sjukt barn eller barn med funktionshinder).
- Assistance allowance (assistansersättning).
- Disablement benefits (handikappersättning).
- Care allowance (vårdbidrag).

Concerning benefits based on residence some restrictions were taken in 2002. The amendment in the Social Security Act ch. 4 § 1 meant that beside the EEA-countries also Switzerland was included – in the group of countries where there should be certain restrictions regarding the granting of benefits based on residence.<sup>64</sup> However, in accordance with § 2 most benefits may be granted if the stay in a country (that is not a Member State, EEA country or Switzerland) lasts not longer than six months, but referring to § 3 public employees and some other categories are not embraced by such a restriction.

In order to be entitled to the following social benefits, which also are related to a person's income, the requirement is that the person is *working* in Sweden and (the Social Security Act chapter 3 § 4):

- Sickness benefit (sjukpenning).
- Maternity allowance (havandeskapspenning).
- Parents' allowance (föräldrapenning), beyond the basic guarantee level.
- Temporary parents' allowance (for instance if the child is sick) (tillfällig föräldrapenning).
- Sickness benefit (sjukersättning) and activity benefit (aktivitetsersättning), both related to income.
- Rehabilitation and rehabilitation benefit (for industrial injury) (rehabilitering och rehabiliteringsersättning).

A completion of the list in 2001 was the sickness benefit and activity benefit related to income (inkomstrelaterad sjukersättning and inkomstrelaterat aktivitetsstöd). Further, in 2001 the previous benefit retirement pension (förtidspension) was decided to be discarded from the list (ch. 3 § 4) and replaced by sickness benefit (sjukersättning).<sup>65</sup> The amendment came into force in January 1, 2003.

Further, a person working in Sweden is also – in accordance with ch. 3 § 5 – comprised by

- The industrial injury insurance (arbetsskadeförsäkring).

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64 Amendment through law SFS 2001 no. 66. Government proposition 2000/01:55 Avtalet mellan Europeiska gemenskapen och dess medlemsstater å ena sidan och Schweiz å andra sidan.

65 Government proposition 2000/01:96 Sjukersättning och aktivitetsersättning i stället för förtidspension.

- Compensation for taking care of a member of the family (närståendevård).
- Income based old-age pension (inkomstgrundad ålderspension).
- Survivor's pension (efterlevandepension) and support to survivor's children (completed by the Riksdag's decision in 2001).<sup>66</sup>

For *workers* the benefits in accordance with ch. 3 §§ 4 and 5 should be granted from the first day of employment and will cease after three months if the work is finished, but regarding sickness benefit and activity benefit related to income, the benefit will cease to be paid after one year (§ 6). Hence, the benefits will be paid for a period of three months. If a person starts working in another country the insurance will cease, if the person is embraced by the social insurance in the other country or if there are specific reasons.<sup>67</sup>

Further, one must also consider the different *qualification periods* that are required for the access to many social benefits. For instance, in order to have a State pension you must have lived in Sweden for at least three years.

(According to the Social Security Act, chapter 3 § 11; if there is a requirement for work permit or a residence permit having a corresponding effect, a person is not entitled to social benefits following from § 4.)

Concerning elderly – 65 years or older – a new *allowance for elderly* was suggested by the Government in May 2001. This implies a minimum level of economic standard of living and the new allowance will depend on the person's income.<sup>68</sup>

Finally, according to the *Social Services Act* the local authorities must provide for all persons living in Sweden as to their personal needs. This implies something like a minimum level of the standard of living, even if it shall be individualized.

### *Pension schemes*

In 1998 a new statutory old age pension system was adopted.<sup>69</sup> Hence, the Swedish national pension system consists of

- The “pay-as-you-earn” pension (PAYE-pension)
- Premium reserve pension (PR-pension)
- Guaranteed pension (in some cases).

Further, a person might have *additional pensions* as a union member (collective), *professional pension* and *private pension savings*. The collective systems for occupational pensions are based on collective agreements on the central national level. Practically all

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66 Amendment through SFS 2001 no. 497. Government proposition 2000/01:96 Sjukersättning och aktivitetsersättning i stället för förtidspension.

67 Amendment through SFS 2001 no. 497.

68 Government proposition 2000/01:36 Äldreförsörjningsstöd.

69 Government proposition 1997/98:151 Inkomstgrundad ålderspension, m.m. For an account of the new pension system see also Christensen, A., *Retirement Pensions – National Schemes, Social Insurance and Private Funds*. Report to the XVI Worlds Congress of Labour Law and Social Security, Jerusalem, September, 2000, and Försäkringskassan och Premiépensionsmyndigheten, *Den nya allmänna pensionen*.

employees are covered by one of these collective pension systems and that is why there are almost no special company schemes.<sup>70</sup>

In the pension system from 2001 the most important part is the earning-based PAYE-pension based on the individual's lifelong average earnings and there is no guaranteed level of compensation. Instead the level of compensation is linked to an earnings index reflecting the general earnings trends. The longer you work the higher pension you will have.<sup>71</sup> Individuals born in 1954 or later will have their entire pension from the new system. People born in 1938-1953 will have their pension partly from the old general additional pension (ATP) system.

In addition to the pension entitlements for regular income there are also extra pension allowances under some circumstances: if you have children, for the child years during the first four years of your child's life (only one parent for a single year), for study periods and for obligatory military service.

The guarantee pension is awarded only to those who have not obtained an earning-based pension that amounts to the guaranteed level. The PR-pension is the portion of your pension that you can place yourself.

A national from another Member State living in Sweden can be entitled to the guaranteed pension even though he or she has been living in Sweden for one year only prior to the retirement (compared to three years as in the main regulation concerning nationals from non-Member States). Further, if a person receives a basic pension and annuity from another Member State, the guaranteed pension in Sweden will not be reduced because of the foreign pension.<sup>72</sup> However, the guaranteed pension will be less if you have not been living in Sweden for at least 40 years.

If a person moves abroad he is still entitled to Swedish PAYE-pension and PR-pension. If he is a citizen of a Member State he may also bring the guaranteed pension, but only if he moves to another country in the European Union (or to a EEA country).

### *c) Judicial practice*

During the period 2002–2003 the Swedish Supreme Administrative Court (Regeringsrätten) has taken one final decision in connection to Regulation 1408/71/EC concerning temporary parent's allowance (tillfällig föräldrapenning). In *Case 2918-01, RÅ 2003 ref. 65* (2003-10-08), the *Supreme Administrative Court* decided that the social benefit temporary parent's allowance (tillfällig föräldrapenning) should be considered as a family benefit in accordance with Regulation 1408/71/EC, article 4.1 h. Hence, a person living and working in Sweden was entitled to this temporary parent's allowance when taking care of a child in Finland, disregarding the demand for having residence in Sweden for that period.<sup>73</sup>

Concerning *unemployment benefits* the Swedish Supreme Administrative Court (Regeringsrätten) has taken two final decisions in connection to Regulation 1408/71/EC for

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70 Concerning the collective pensions systems it may be pointed out that there are no corresponding collective systems for self-employed persons.

71 Compare the former rule of "the 15 best years" of income as a base for the pension.

72 For nationals from non-Member States the guaranteed pension may be reduced if the individual receive a basic pension and annuity from another country.

73 Compare the Kuusijärvi case (Case C-275/96) at the ECJ.

the period 2002–2003. In *Case 5176-99, RÅ 2002 ref. 72* (2002-11-05) the *Supreme Administrative Court* decided that a person who moves to another Member State should keep his or her right to unemployment benefits even for the days when the person had been paid temporary parent's allowance, when the person is available for the Employment office as a person in search for work.

*In Case 2553-02, RÅ 2003 ref. 96* (2003-12-30) the *Supreme Administrative Court* decided that a person was entitled to unemployment benefit after the person had stay in another Member State in order to look for a job. The person in search for work had returned to Sweden within the period three months that was stipulated in Regulation 1408/71.

*d) Recent legal literature*

Vahlne Westerhäll, L., *Tillstånd till och ersättning för sjukvård utomlands*, in *Europarättslig tidskrift* 2003, p. 323–336. (Concerning permission for the financing of health care abroad.)

## Chapter X

### Establishment, Provision of Services and Students

Minor amendments have been made concerning students referring to the agreement between EU and Switzerland.<sup>74</sup>

#### a) Texts in force

- Utlänningsförordningen (1989:547), (the Aliens Ordinance).
- Rättegångsbalken (the Code of procedure; concerning lawyers).

The Swedish legislation gives nationals from other Member States the possibility to *establish* themselves as self-employed persons and to act as businessmen. Like a worker a *self-employed* person that can show his status should be granted a residence permit (Aliens Ordinance ch. 3 s. 5a). Self-employed persons must present a certificate of incorporation for their company in order to get a permit. The certificate is made out by the County Administrative Board or the Swedish Patent and Registration Office (Patent och registreringsverket, PRV). A residence permit should be granted for a period of five years and the document can be renewed.<sup>75</sup>

After ceased activity the self-employed person – as well as a worker – has the right to stay in the country on the conditions specified in ch. 3 § 5a.

A *provider of services* must show a certificate confirming his activity within the framework of Articles 59 and 60 of the EC Treaty. A residence permit should be issued covering the period when the service is agreed to be performed (Aliens Ordinance ch. 3 s. 5a).<sup>76</sup>

In 1999 an amendment was made in the Code of procedure. The amendment follows from Directive 98/5/EC and came into force on January 1, 2000.<sup>77</sup> The aim was to facilitate the establishment of *lawyers* from other Member States in Sweden. An authorized lawyer from another Member State must register himself at the Swedish Bar Association when he permanently practises his profession in Sweden. After three years of regular practice, which for most part shall include Swedish law, he is entitled to membership in the Bar Association.

In a letter to the Swedish Bar Association a number of Swedish jurists have claimed that Swedish lawyers have disadvantages when they provide services in other Member States.<sup>78</sup> In accordance with Directive 98/5/EC a registration of a lawyer from one Mem-

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74 Ordinance SFS 2002:146. See Government proposition 2000/01:55 Avtalet mellan Europeiska gemenskapen och dess medlemsstater å ena sidan och Schweiz å andra sidan.

75 See Case UN 230-94 (a self-employed person showing a proof of registration should be granted a residence permit for five years).

76 Regarding these matters, see also the instructions SIVFS 1993:20, Appendix 2, from the Swedish Immigration Board.

77 Directive (98/5/EC) to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. Government proposition 1998/99:108 Advokaters etableringsrätt.

78 Letter to the Swedish Bar Association from a number of Swedish jurists, dated April 7, 2004, signed by Carolina Dackö and more Swedish lawyers, many of them working in other Member States than Sweden.

ber State in another Member State requires a certain title.<sup>79</sup> According to the jurists who have signed the letter the problem is that Swedish lawyers having a Swedish jurist exam do not have the formal title “advokat”. This title is assigned to lawyers by the Bar Association on certain conditions. In Sweden a jurist have to practice for five years in order to be qualified for membership in the Bar Association and that is said to be a higher demand for qualification compared to most other Member States. Hence, Swedish jurists cannot claim to be registered at or members of the Bar Association in another Member State and so they have a disadvantage when it comes to providing legal services on the EU market.

*Students* from Member States and EEA countries should be granted residence permits for the period of their studies (Aliens Ordinance 3 ch. s. 5a). If the period is longer than one year the permit should be renewed every year during the study period. In order to have a residence permit students must be enrolled at a recognised educational institution. If the student is not or will not be covered by Swedish social welfare insurance, he must have a health insurance valid in Sweden. Students must also “solemnly declare” that they are able to provide for themselves during the educational period with a certain amount per month.<sup>80</sup> However, students are also allowed to work during their period of studies and an income will of course make it easier for the student to fulfil the requirement of being self-supporting.

Recruiting efforts should be made in order to increase the number of foreign students at Swedish universities. In accordance with an Official report in the year 2000 around 13,000 foreigners were studying in Sweden.<sup>81</sup> In the Official report it was suggested that for the coming five-year period the number of foreign students should increase by 5,000. Further, the investigation discussed the possibility of a study fee for the foreign students. One reason for this was that Swedish students often must pay a fee when studying abroad, but at the same time the today system with no fees could make it easier to recruit foreign students.

According to the previous Swedish system for study allowances, based on the former Act (1973:349) on study allowances, the study loan borrower’s yearly obligation to repay should be 1/20 of the total study loan amount or at least 15 percent of the amount mentioned, if he or she had his or her residence in another country. This state of things could be compared to a study loan borrower resident in Sweden. He or she could have a reduction of the yearly payment referring to a low income from work in Sweden. The reason for the regulation concerning a study loan borrower resident in another country was that the repayment could not be linked to an income from work in Sweden. The consequence for a person resident in another country could be a disadvantage compared to a borrower living and working in Sweden. Further, this could be considered as an obstacle to the free movement of workers.<sup>82</sup>

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79 See Article 1.2 (a) of Directive (98/5/EC) to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

80 See also the instruction SIVFS 1993:20, Appendix 2, from the Swedish Immigration Board.

81 Official report SOU 2000:92 Advantage Sweden – Insatser för ökad rekrytering av utländska studenter till Sverige.

82 In some cases there were exceptions to the rule that a borrower living in another country was disfavoured. For instance if there were double taxation agreements regarding people who were resident in

As stated in a previous report, in the new *Study allowances act (1999:1395)* the problem with a study loan borrower's obligation to repay was dealt with.<sup>83</sup> In accordance with the new Act a borrower who, for any reason, is not a resident in Sweden should repay his or her study loan in accordance with the same rules as a study loan borrower residing in Sweden. Further, if a study loan borrower living in another country makes a request for a reduction of his or her repayment duties, the Government (or the authority appointed by the Government) shall issue directions for the calculation of the person's income.

Concerning discrimination and students, a new Act (2001:1286) on equal treatment of students in higher education has been approved by the Riksdag.<sup>84</sup> (See above, Chapter 2!)

*d) Recent legal literature*

Calissendorff, A., *Replik om reglerna om antagning av ledamöter i Sveriges Advokatsamfund*, in *Juridisk tidskrift* 2001–02, p. 213–216. (Debate concerning the Swedish Bar Association and the rules on the admission of lawyers as member of the Bar Association.)

Sandberg, J., *Advokatsamfundets antagningsregler hämmar svenska juristers möjligheter inom EU – därmed också dessas åtnjutande av det nya Advokatdirektivet*, in *Juridisk tidskrift* 2000–01, p. 997–1000. (Debate concerning the Swedish Bar Association and the rules on the admission of lawyers as member of the Bar Association.)

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Sweden but working in another Nordic country the yearly pay back could be reduced. Another group was persons employed by the EU administration who were resident in Sweden but should pay their taxes in accordance with certain EC regulations on the matter. Government proposition 1999/2000:10 Ett reformerat studiestödssystem, p. 119.

83 Government proposition 1999/2000:10 Ett reformerat studiestödssystem, the Riksdag's educational committee 1999/2000:Ubu7.

84 Government proposition 2001/02:27 Likabehandling av studenter i högskolan.



**Chapter XI**  
**Miscellaneous**

Nothing to report on.

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