

REPORT
on the Free Movement of Workers
in Sweden in 2004

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General Remarks

This report concerning Sweden and the free movement of workers in the European Union (EU) during the year 2004 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 39.¹ For the coming years there is especially the Directive 2004/38 to be observed concerning the development of national law (see below chapter 1 *Entry...*).²

Further, there are comments concerning the right to free movement of services, the right to establishment, discrimination, equal treatment etc. and some aspects of the application of Council Regulation 1408/71 on social security and more.³ There are also comments on the *Collins* case, pensions etc.

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 2004 are listed.⁴ (However, Government's proposition, reports from public investigations etc. are mentioned in footnotes and in the reference list.)

Special attention will be paid to the enlargement issue even though the Swedish Riksdag did not approve any certain regulations putting restrictions on the right to free movement for citizens from the new Member States. Further, I will particularly comment on the access to employment in the public sector.

Concerning *procedural matters* it is the Migration Board that is dealing with residence permits etc. An appeal against the decision taken by the Migration Board will be handed in to the Aliens Board (Utlänningsnämnden, UN). In the future these kind of matters should be dealt with in the ordinary courts and the Aliens Board will cease to exist. In 2004 a public investigation was appointed in order to elaborate the details on the matter.⁵ The aim is that the Aliens Board should be replaced by December 31, 2005. Later on in 2005 a new Aliens Act (2005:716; *Utlänningslag*) has been taken by the *Riksdag*. The new Act will come into force in March 31, 2006, replacing the former Aliens Act (1989: 529).

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 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. (Text with EEA relevance.) The directive should be implemented in national law in April 30, 2006, at the latest.

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

4 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.

5 Committee directions Kommittedirektiv 2004:149 Förberedelser för en ny instans- och processordning för utlännings- och medborgarskapsärenden samt avveckling av Utlänningsnämnden.

Sweden

As regards the Commission's comments on the Swedish report: Amendments have been made in order to take away references to previous reports, and on the matters concerned information on the law in force have been inserted if that is necessary.

Chapter I

Residence and departure

There are only minor amendments to report on concerning entry, residence and departure. The Government's proposition in 2003 concerning carriers' responsibility previously reported on, has been approved by the Riksdag. Concerning Directive 2004/38 a public investigation has been appointed in order to prepare the implementation.

Texts in force

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

Regarding the implementation of Directive 2004/38 the public investigation shall present the result and its suggestions not later than May 31, 2005.⁶ Main issues to be considered by the committee are the registration of union citizens, the residence cards, amendments in law or ordinance and – regarding EU citizens – if the regulations should be placed in a certain law or if the regulation shall continue to be a part of the general law/ordinance concerning foreigners.

Concerning third-country nationals and regulations for the implementation of Council Directives, see also the national report concerning Sweden 2002–2003.⁷ (Further, see Chapter 4 *Members of the family* regarding the implementation on Council Directive 2003/86/EC on the right to family reunification.)

Entry

In 2004 the Aliens Ordinance ch. 1 § 3 has been amended concerning demands for more specific information about which authority that has issued a document (passport or identification card). Further, the document must be valid for a return to the country which has issued the document.⁸

The Aliens Act ch. 10 § 2a has been amended. The punishment for smuggling persons to enter Sweden or the illegal passing through to another Member State (or Norway or Iceland) has been sharpened. (See also ch. 10 § 3a.) Through the amendments it is explicitly stipulated that the regulations apply to smuggling into the EU and other EEA countries.⁹

6 Committee directions Kommittedirektiv 2004:127 Unionsmedborgares och deras familjemedlemmars rätt att fritt röra sig och uppehålla sig inom medlemsstaternas territorier.

7 Edström. Ö., National report on free movement of workers within the European Union 2002 and 2003 (Sweden), in *Report for the European Commission on the implementation of EU free movement law in 15 Member States in 2002–2003 from the European Observatory on the Free Movement of Workers in the European Union*, Nijmegen 2004, pp. 559–594. (In the following referred to as Edström 2004.)

8 Swedish statute-book SFS 2004:286.

9 Government proposition 2003/04:35 Människosmuggling och tidsbegränsat uppehållstillstånd för målsägande och vittnen m.m. The amendment is referring to Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.

In 2004 the Swedish Government presented a proposition regarding carriers' responsibility referring to Directive 2001/51/EC.¹⁰ Carriers should be responsible for controlling the identity of foreigners and to check that the foreigners – not travelling from another Schengen country – can show the required permits. Carriers not fulfilling their duties should pay a fee for each foreigner should the foreigner not granted be a residence permit (the maximum fee is 46,000 SEK; the Aliens Act ch. 10 § 10). Further, the foreigner should have money for a return travel. The amendment, which was in force on July 1, was made in the Aliens Act ch. 5 § 2a.¹¹

Residence

The Aliens Ordinance ch. 3 § 5a concerning resident permits for EEA citizens has been amended with a sentence stipulating that workers that are employed for a period exceeding three months but less than 12 months, should be granted residence permit for the employment period.¹² Before this amendment made in 2004 the Ordinance stipulated that a worker that could show a certificate on employment should be granted a residence permit for five years.

Departure

In connection with the amendment mentioned concerning passport or identification card (see above *Entry*) it is stated in the Aliens Ordinance ch. 1 § 3 that the issued document must be valid for a return to the country which has issued the document. (SFS 2004:286.)

Concerning carriers' responsibility to transport a foreigner out of Sweden when the carrier has not fulfilled his responsibilities, amendments have been made in the Aliens Act ch. 8 § 6 and ch. 9 § 2 concerning the carrier's responsibility to receive a person and to compensate the State for expenses.¹³

A Government proposition has been approved by the Riksdag on amendments of the Aliens Act concerning third-country nationals' right to make another application for a residence permit after the point of time when a decision on expulsion should be exercised.¹⁴ According to the amendment a decision on expulsion should not be accomplished if there are medical or otherwise particular reasons for not doing so. Further, such an application should be dealt with by the Migration Board and not the Aliens Board.

10 Government proposition 2003/04:50 Åtgärder för att klarlägga asylsökandes identitet m.m. (SFS 2004:407.) See also the Riksdag's social insurance committee Socialförsäkringsutskottets betänkande 2003/04:11 and Official report Ds 2001:74 Transportörsansvaret i utlänningslagen.

11 Until December 2004 the Migration Board has made reductions in the economic compensation to 70 foreigners who did not cooperate when their identity should be appointed. See Government's communication Regeringens skrivelse 2004/05:47 Migration och asylpolitik.

12 SFS 2004:286.

13 Government's proposition 2003/04:50 Åtgärder för att klarlägga asylsökandes identitet m.m. (SFS 2004:407.)

14 Government's proposition 2003/04:59 Prövning av verkställighetshinder i utlänningsärenden.

Miscellaneous

Concerning third-country nationals and the reception of *asylum seekers*, a public investigation was appointed in 2004.¹⁵ In accordance with the committee directions the committee shall consider the terms used in Swedish law for the definition of people in need for protection. Among other matters to consider is the fact that the term “otherwise in need for protection” (“skyddsbehövande i övrigt”) in Swedish law does not fully correspond to the term used in the Directive on the matter. Further, a public investigation was appointed in order to investigate on how to beguile the time for dealing with applications on residence permits.¹⁶

15 Committee directions Kommittédirektiv 2004:114 Skyddsgrunder och rättigheter för flyktingar och alternativt skyddsbehövande. Compare Edström, Ö., Sweden: Comparative legal study on subsidiary protection, i Daphné Boutillet-Paquet, *Subsidiary Protection of Refugees in the European Union, Complementing the Geneva Convention?* Bruylant, Bruxelles 2002, pp. 755–785.

16 Committee directions Kommittédirektiv 2004:112 Ansökan och utredning om uppehållstillstånd på grund av anknytning.

Chapter II Equality of treatment

In 2004 there are amendments in discrimination law to report on. Further, I will comment on pensions and taxation, the EU Agreements with third countries and some other matters.

Texts in force

- Regeringsformen (1974:152), (the Instrument of Government).
- Lag (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, (the Act on measures to counteract ethnic discrimination in working life).
- Lag (1999:132) om förbud mot diskriminering i arbetslivet av personer med funktionshinder, (the Act on discrimination of people with handicap).
- Lag (1999:133) om förbud mot diskriminering i arbetslivet på grund av sexuell läggning, (the 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).

Most amendments in discrimination law in the light of EC law have been made before the year 2004.¹⁷ However, in 2004 a public investigation presented a report from an ongoing public investigation concerning amendments referring to Directive 76/207/EC on equal treatment and Directive 2000/43.¹⁸ According to the committee sex will be introduced as a category that could be the base for discrimination that is forbidden in all areas that are embraced by Directive 2000/43. Hence, sex discrimination will also be explicitly forbidden also in sectors of society outside working life (public service, health care, occupational practice, membership entitlements in trade unions etc.)¹⁹ For the coming work the committee will also consider to make all the different discrimination laws into one law against discrimination. Further, the committee deals with age discrimination and equal treatment

17 See Edström 2004.

18 Official report SOU 2004:55 Ett utvidgat skydd mot könsdiskriminering. See Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

19 The amendment suggested will embrace the Equal opportunities Act 1991:433, the Act 2001:1286 on equal treatment of students in higher education and the Act 2003:307 on ban on discrimination.

(compare Directive 2000/78²⁰). The committee's suggestions shall be presented on July 1, 2005, at the latest.²¹

A public investigation has been appointed in 2004 in order to consider the regulations concerning the possibilities for nationals from third countries to be employed on the Swedish labour market.²² A starting point is that the third-country nationals should have the right to equal treatment (see also chapter 7 *EU enlargement*).

Pensions and taxation. In the *Ekman* case (RÅ 2004 ref 84, September 17, 2004) the Swedish Administrative Supreme Court dealt with taxation matters regarding a private life insurance signed by a life insurance company situated in another Member State (the UK). The customer, Jeanette Ekman, had asked the tax authority for a preliminary ruling concerning the right to make tax deduction in Sweden. The authority stated that the life insurance in fact was an endowment assurance (*kapitalförsäkring*), which means that the premium could not be subject to tax deduction in accordance with Swedish income tax law. However, with reference to the EC Treaty article 49, the European Court of Justice (ECJ) Case C-204/90 *Bachmann* and Case C-136/00 *Danner* the tax authority stated that the life insurance signed in the UK should be considered as a private pension insurance.²³ The Swedish National Tax Board (Skatteverket) appealed against the decision at the Administrative Supreme Court which appointed the first decision.

Following the *Ekman* case the regulations in Swedish law have been amended in some respects concerning the earnings tax (*avkastningsskatt*) and capital tax (*förmögenhetsskatt*). However, regarding the income tax law there still is no equal treatment between life insurances signed in Sweden and life insurances signed in another Member State. Hence, in accordance with the law a premium paid for a life insurance in another Member State is not subject to tax deduction. At the same time the Government in the proposition before the Riksdag admits employers to be granted tax deduction for a premium for an insurance (such a situation was dealt with in the ECJ *Skandia* Case C-442-01 and the Swedish Supreme Administrative Court *Case RÅ 2004 ref. 28*).²⁴

In the *Skandia* case 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. Following the *Skandia* case the Swedish earnings tax law (1990:661) has been amended. The earnings from an insurance should be embraced by a lower tax (15 percent) if the insurance would have been considered as a pension insurance had the signing insurance company been situated in Sweden. The amendment embrace insurances signed within the EEA area.²⁵

20 Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

21 Committee directions Kommitteredirektiv 2002:11 En sammanhållen diskrimineringslagstiftning.

22 Committee directions Kommitteredirektiv 2004:21 Översyn av regelverket för arbetskraftsinvandring.

23 Case C-204/90 Hanns-Martin Bachmann v Belgian State and Case C-136/00 Rolf Dieter Danner.

24 Government's proposition 2004/05:31 Sänkt avkastningsskatt för vissa livförsäkringar, m.m., p. 8. See also Official report SOU 2004:101 Genomförande av tjänstepensionsdirektivet, on the implementation of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (tjänstepensionsdirektivet). The Directive should be implemented in September 23, 2005, at the latest.

25 Nielsen, J. & Forsberg, J., *Sverige – pensionsförsäkringar*, in *Svensk Skattetidning* no. 1/2005, p. 68.

*Agreements between the EU and third countries.*²⁶ The following agreements between EU and third countries have been followed up in legal amendments as well as in administrative and judicial practice:

- The agreement with Switzerland.
- The Agreement with Turkey (the Ankara Agreement in 1963).
- The Agreement with Bulgaria and Romania.
- The Agreements with the Mediterranean countries (Algeria, Morocco, Tunisia and more²⁷).
- The new agreement with the countries on the Balkan Peninsula in 2004 (Macedonia and more²⁸).

Regarding the agreement with *Switzerland* the amendments – mostly technical following the agreement – have been made.²⁹

Concerning the *Turkey* agreement there are no certain problems to report on from a legal point of view.³⁰ However, officials at the Migration Board report that a situation the Board in some cases has dealt with, is a Turkish male immigrant who makes an acquaintance with a Swedish woman and for that reason he moves to Sweden and marry. If the relationship comes to an end, the man applies for a residence permit referring to his former connection and that he has been working in Sweden.

An example is a case in the year 2000 (decision 2000-12-11). The applicant for residence permit had had a connection to Sweden through marriage, but there had been a divorce. The Board noticed that there was no reason to grant a residence permit referring to the former connection, but a residence permit was granted referring to the agreement with Turkey. The applicant had been employed for more than one year by the same employer. Hence, he was entitled to a prolongation of the residence permit. Further, the Board noticed that the work was a factual and a real work.

The official policy on the application of the Turkey agreement is expressed in the Migration Board's handbook for dealing with applications for residence permits referring to a connection. The Board has made comments on two decisions on the application of the agreement. In both cases the work permits were prolonged for one year and there was no restriction made to a certain profession or a certain employer.

In another case before the Aliens Board (UN decision 2003-07-02), which is relevant for the application of the Turkey agreement, a Polish citizen had applied for residence permit referring to article 37.1 section IV in (the former) the agreement between EU and Poland. He claimed that the agreement "normally" should give him the same entitlements as citizens from EU Member States. The application was rejected. In the same case the Aliens Board noticed that the former Polish agreement was more restricted than the agreement with

26 See Fritz, M., Tredjlandsmedborgares rättigheter vid arbete inom EU, in *Ny Juridik 3:04*, s. 16–51.

27 See Government's communication Regeringens skrivelse 2003/04:60 Berättelse om verksamheten i Europeiska unionen under 2003, p. 99.

28 For an overview, see Government's communication Regeringens skrivelse 2003/04:60 Berättelse om verksamheten i Europeiska unionen under 2003, p. 94 ff.

29 Edström 2004.

30 The Agreement with Turkey (the Ankara Agreement in 1963) was also mentioned in general words in the Government's communication accounting for the activity within the EU in 1997. See Government's communication Regeringens skrivelse 1997/98:60 Berättelse om verksamheten i Europeiska unionen under 1997 (chapter 32.7).

Turkey. The Board stated that the Turkey agreement gave a Turkish citizen certain rights after one year of employment, and that a Turkish citizen in such circumstances had a right to be granted a prolonged residence permit for continued employment.

Regarding the other agreements on the list above no problems, judicial practice etc. can be reported. However, worth noticing is that there is no information at the Migration Board's official website concerning the agreements between EU and third-countries. Further, on the website there are no printed matters or information on the issue, which could be expected. Concerning the rights, procedures for the application of a residence permit etc. for non EU citizens, there is only information available in connection with the EEA Agreement.

Equal treatment and free movement on the maritime sector. From the Swedish labour market and shipping companies there is nothing to report on this matter.

Recent legal literature

- Fritz, M., Tredjelandsmedborgares rättigheter vid arbete inom EU, in *Ny Juridik* 3:04, s. 16-51. (A general survey on EC law concerning third-country nationals and the right to work in the EU.)
- Fritz, M., Unionsmedborgarskapet och arbetskraftens fria rörlighet, in *Ny Juridik* 2:04, s. 57-93. (A general survey on EC law concerning the union citizenship and entitlements attached thereto.)
- Bruun, N. & Lindström, H., Åldersdiskriminering, pensionspolitik och lagen om anställningsskydd, in *Juridisk Tidskrift* 2003-04, pp. 696-708.
- Mutén, L., SINK underkänd i EGD, in *Svensk Skattetidning* nr 6-7/2004, pp. 438-441.
- Nielsen, J. & Forsberg, J., Sverige – pensionsförsäkringar, in *Svensk Skattetidning* no. 1/2005, pp. 68 f.
- Schmid, N., Pensionsbeskattning och EU – en uppföljning, in *Svensk Skattetidning* 2005, pp. 27-39.
- Schmid, N., Rättsutvecklingen inom EU och Sverige på pensionsbeskattningsområdet, in *Svensk Skattetidning* 2004, pp. 375-397.

Chapter III

Employment in the public sector

I will deal with nationality conditions for employment, the recognition of diplomas for access to employment and matters referring to the Burbaud case.

Texts in force

- Regeringsformen (1974:152), (the Instrument of Government).
- Lagen (1994:260) om offentlig anställning, (the Act on public employment).
- Other regulations (see footnotes for examples).

Concerning *nationality condition for access to employment in the public sector* there are some basic regulations (which have been reported on in previous reports). 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 in the exercising authority.³¹ Hence, citizenship is prescribed as a condition for certain employments in the Swedish State.

A consequence of the demand for Swedish citizenship for certain positions is that foreigners are excluded from particular employments in the public 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, for instance head of authority that is directly under the Riksdag and the Government offices directly under the Government can be mentioned.

Restrictions meaning demands for Swedish citizenship are founded in the Constitution ch. 11 § 9. Further, requirements are regulated in the Act on public employment as well as in different Ordinances giving instructions concerning courts and public authorities.

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; the 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 my report for 2002–2003 I gave an account of an Official report presented in the year 2000. The investigation committee had laid proposals of breaking up the restrictions concerning foreigners' right to employment (and public functions).³² The guiding principle should be the right to equal right and liabilities for persons residing in Sweden irrespective of citizenship.

The judgement made by the investigation committee was that Swedish citizenship should be required when the motivation is State security and Sweden's relations to other countries.

31 See Nyström, *EU och arbetsrätten*, tredje upplagan, Stockholm 2002, p. 162 f.

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

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).

There has been certain breaking up from the requirements on Swedish citizenship. However, there are still (in March 2005) many demands on Swedish citizenship, for instance concerning employments as law clerks at the district courts (tingsrätter).³³

Also at the Swedish enforcement service (kronofogdemyndigheten) there is still (in March 2005) a demand for Swedish citizenship for the access to many positions such as Head of the enforcement district (kronofogde), Inspector at the enforcement service and Assistant at the enforcement service.³⁴

Further, for many positions a Swedish lawyers exam still (in March 2005) is required, but for instance at the enforcement service an exam from any other of the Nordic countries will be sufficient for employment.³⁵ 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.³⁶)

To sum up, a schematic look at the positions for which there are demands for citizenship shows that such requirements are most frequent for positions in the public sector in the following areas:

- The Riksdag (for instance positions as the head of offices in the Riksdag, the Riksdag's accountants etc.);
- The courts (for instance judges, prosecutors etc.);
- The police force (most positions as policemen and leading positions);
- The military force;
- The enforcement service (many positions);
- Other (leading positions in the Electricity security board; Elsäkerhetsverket).³⁷

33 See Ordinance (1996:381) med tingsrättsinstruktion § 44. ("Endast den som är svensk medborgare får inneha eller utöva en anställning som tingsnotarie.")

34 See Ordinance (1988:784) med instruktion för exekutionsväsendet § 20. ("Endast den som är svensk medborgare får anställas som regionkronodirektör, chefskronofogde, kronofogde, biträdande kronofogde, kronofogdeaspirant, kronokommissarie, kronoinspektör eller kronoassistent.")

35 See Ordinance (1988:784) med instruktion för exekutionsväsendet § 21.2.

36 In 2002 the Swedish Code of procedure ch. 8 § 2 was amended and the demand for Swedish citizenship was taken away (Government's proposition 2001/02:92 Avskaffande av medborgarskapskrav för advokater m.fl.). 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. (Government's proposition 1998/99:108 Advokaters etableringsrätt). Further, at the same time some other requirements for Swedish citizenship discussed in the Official report mentioned above have been abolished. Government proposition 1998/99:108 Advokaters etableringsrätt. The amendments were in the following laws: lagen (1919:426) om flottning i allmän flottled (dealing with members of floating boards), lagen (1952:166) om häradssällmänningar samt allmänningsstyrelser och ekonominämnder enligt lagen (1952:167) om allmänningsskogar i Norrland och Dalarna tas bort (dealing with members in boards for common land forests in Northern Sweden).

37 Another example that might not be controversial is the demand for Swedish citizenship in accordance with 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

A detailed overview was presented in the public investigation concerning demands for citizenship.³⁸ (See attached schematic paper in Appendix IV; only attached in paper version.)

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 of such regulations concerning the medical services.

For employment in the public medical service in a regulated profession a person must fulfil certain requirements. For professions in the medical services these kind of matters are generally regulated in the Act (1998:531) on professional activities in the medical services, concerning the qualifications required for professional activities in the medical services.³⁹ For example a medical doctor or a nurse must prove that they have an exam for the profession specified. 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”⁴⁰

Regarding the medical service further specifications are promulgated by the Government and the National Board for Health and Welfare (Socialstyrelsen). The Board’s regulation SOSFS 2003:4 § 5 provides further regulations on the recognition on diplomas.⁴¹ For instance, if the professional education from the other State is shorter than the correspondent education in Sweden, the foreign exam should be recognised if a competent authority in the other State certifies that the foreign exam is equivalent to the Swedish exam, and if the foreign exam is recognised for practising that profession in the other State. Hence, in these respects the regulation expresses a generous attitude when diplomas from foreign EEA countries should be evaluated.

However, in accordance with SOSFS 2003:4 § 5.2 the education in question should *in the main* have been gone through in an EEA country. If a diploma is issued in a third country – but it is recognised by a competent authority in another EEA country – the applicant must show a certificate certifying at least three years professional experience from the EEA country. Concerning this matter, the regulation could be subject for further analysis.

Firstly, the regulation in SOSFS 2003:4 § 5 could be questioned referring to Case C-110/01 *Malika Tennah-Durez*.⁴² An Algerian woman with an Algerian medical diploma, who became a Belgian citizen and made complementary studies in medicine (two years in Belgium), was refused entry as a member in the French association for the medical profession. The reason was that her exam was not on the list of Belgian exams recognized in France. The ECJ stated that the education not mainly must have been gone through in a Member State (compare the Swedish regulation). Secondly the Swedish regulation could be

holder of a position that is classified as subject to certain security in the public sector (the state, local authority or county council) must be a Swedish citizen (29 §). The Government is in charge of 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. Further, in individual cases the Government may admit an exception to the rule on Swedish citizenship (29 §).

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

39 Lagen (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område.

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

41 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).

42 Case C-110/01 *Malika Tennah-Durez v Conseil national de l'ordre des médecins* ECR 2003 I-6239.

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questioned referring to Case C-238/98 *Hocsman*⁴³ where the ECJ stated that if an exam was recognized in a Member State, another Member State must examine the diploma. Hence, it is not in accordance with EC-law to automatically make a request for at least three years of professional experience from the first Member State.

Access to training and afterwards to a post. In Case 285/01 *Burbaud*⁴⁴ an applicant for a position as administrator in the French health care service had to go through a test for the admission to an education even though the person, who was a citizen from another Member State, could show a certificate from a corresponding education from that State.

With the (possible) exemption of certain professions – where there is a demand for Swedish citizenship (for instance prosecutors) – there is no such positions in Sweden where “concur systems” are used for recruitment. Concerning the Swedish policy it can be noticed that in the *Burbaud* case the Commission, France, Italy, Sweden and the applicant made comments on the case before the final decision taken by the ECJ. The Swedish State argued that the French position on the matter was contrary to EC law.⁴⁵

Concerning the *recognition of professional experience and seniority acquired in another Member State*, see above! Otherwise there are no problems to report.

Recent legal literature

Andersson, A, Bejstam, L., Edström, Ö. and Zanderin, L., *Arbetsrätten i staten*, second revised edition, Studentlitteratur, Lund 2004.

43 Case C-238/98 Hugo Fernando Hocsman v Ministre de l'Emploi et de la Solidarité.

44 Case C-285/01 Isabel Burbaud v Ministère de l'Emploi et de la Solidarité. Reference for a preliminary ruling: Cour administrative d'appel de Douai - France.

45 See also Government's communication Regeringens skrivelse 2003/04:60 Berättelse om verksamheten i Europeiska unionen under 2003, p. 308.

Chapter IV Members of the Family

There are only very minor events to report on concerning the free movement of workers and members of the family. In short I will focus on third-country nationals who are members of the family.

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).⁴⁶ 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.⁴⁷ The permit should be granted for the same period as it is for the worker etc. to whom the foreigner is connected.⁴⁸ 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.⁴⁹ Regarding third-country nationals who are members of the family such a person is embraced by the regulations mentioned if the person has a connection to an EU citizen (Aliens Ordinance ch. 3 § 5b).

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. The regulation also applies to third-country nationals who are relatives.

Third-country nationals who are members of the family to an EU citizen, do not need to apply for a work permit (Aliens Ordinance ch. 4 § 1).

46 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.)

47 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 were 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).

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

49 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).

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.⁵⁰

An ongoing public investigation deals with the implementation of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.⁵¹ The Directive applies to relatives to third-country nationals having a residence permit for at least one year and having great possibilities to get a permanent residence permit. In June 2005 the investigator shall present a proposal for the implementation of the Directive in Swedish law.

However, already on March 17, 2005, the investigation presented a report concerning some parts of the work (family unification and free movement for third-country nationals).⁵² In accordance with the committee's suggestions the Aliens Act should be amended. A third-country national who are permanent residing in Sweden should have the right to family reunification a husband or spouse, a registered partner, a cohabitant and children not more than 18 years old. Further, amendments in the Aliens Act are suggested. Third-country nationals living in Sweden for at least five years should be granted a status as a permanent resident.

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

51 Committee directions Kommittédirektiv 2003:181 Familjeåterförening and Committee directions Kommittédirektiv 2004:9 Tilläggsdirektiv till utredningen om uppehållstillstånd för familjeåterförening (UD 2004:01).

52 Official report SOU 2005:15 Familjeåterförening och fri rörlighet för tredjelandsmedborgare. The investigation also deals with the implementation of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents.

Chapter V

Follow-up of Recent Judgments from the ECJ

A comment on a case concerning equal treatment and taxation is made. Further comments are made in other chapters.

In a case before the Supreme Administrative Court (Regeringsrätten Case no. 5496-02 *RA* 2004 *ref. 86*) the court took a final decision on the equal treatment and taxation. A person living in Sweden and liable to taxation in Sweden but working in Denmark, had been refused tax deduction for paying the fee to a Danish unemployment benefit fund. The Supreme Administrative Court stated that this was contrary to EC law referring to article 39 of the EC Treaty and the ECJ Case C-18/95 *F.C. Terhoeve mot Inspecteur van de Belastingdienst Particulieren*, ECR 1999, p. I-345, Case C-302/98 *Manfred Seherer mot Bundesknappschaft*, ECR 2000, p. I-4585 and Case C-385/00 *F.W.L. de Groot mot Staatssecretaris van Financiën*, ECR 2002, p. I-11819.

Concerning

- Cases C-204/90 *Bachmann* and C-136/00 *Danner*, see chapter 2 Equality of treatment. (Taxation and private pension insurances dealt with in the Swedish Ekman case with reference to the ECJ.)
- Case C-442-01 *Skandia*, see chapter 2 Equality of treatment. (Equal treatment regarding taxes and pension insurances.)
- Case 285/01 *Burbaud*, see chapter 3 Employment in the public sector. (The “concour system” in France and the access to a position as administrator in the French health care service.)
- Case C-456/02 *Trojani*, see chapter 9 Social security.
- Case C-138/02 *Collins*, see chapter 9 Social security. (Social entitlements and union citizenship.)
- Case C-169/03 *Wallentin*, see chapter 10 Establishment, provision of services and students. (A taxation decision and the application of the EC Treaty former Article 48.2.)
- Case C-405/01 *Colegio de Oficiales de la Marina Mercante Española*, see chapter 11 Miscellaneous. (Nationality conditions for access to the posts of captains and first officers.)
- Case C-47/02 *Albert Anker*, see chapter 11 Miscellaneous. (Nationality conditions for access to posts at fishing-boats.)

Recent legal literature

Cases from the ECJ are frequently commented on in legal periodicals.

As stated above (in a footnote) 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 & avtal*, *Arbetsmarknad och arbetsliv* and *Förvaltningsrättslig tidskrift*.

Chapter VI
Policy, Texts, Practices etc. of General Nature

See other chapters for comments on official policy texts etc.

Chapter VII EU Enlargement

The Swedish *Riksdag* did not take any transition rules in 2004. However, other measures have been taken in order to deal with immigration from the new Member States and public investigations have been appointed.

On December 17, 2003, the *Riksdag* approved the Government proposition to ratify the Treaty on the enlargement of the EU.⁵³ In a decision in April 28, 2004, the Swedish *Riksdag* did not approve the Government's proposition to introduce – for the two first years after the affiliation of the new Member States – certain transition rules for citizens from these States (with the exception for Malta and Cyprus).⁵⁴ However, it was stated that the development concerning the immigration from the new Member States should be observed.

Preliminary data presented in December 2004 show that during the period May 3 – November 7, 2004, 3,197 citizens from the new Member States applied for residence permit referring to employments. The corresponding figure for the same period in 2003 was 1,842 persons. Hence, the increase was around 74 percent.⁵⁵ However, I will not draw any far going conclusions concerning the total outcome for 2004 based on these figures.

In the Government's communication 2003/04:119 there is a list of proposals for measures that the Government argued for to be taken in order to follow up the migration from the new Member States.⁵⁶ In the Government's communication 2004/05:47⁵⁷ in December 2004 the Government accounted for the follow up measures that later on had been taken:

- The Migration Board has together with the National Tax Board worked out a formula "Proof on employment for citizens from EU/EES" (my translation) in order to collect better information on migration.
- The Migration Board and the National Tax Board have also otherwise improved their cooperation (information exchange etc.) in order to get a better control and information regarding immigration.
- A working team has been appointed by the Government in order to follow the development on the labour market after the enlargement.
- The Work Environment Board shall investigate certain work environment matters referring to the enlargement.
- The Board for Unemployment Benefit (Inspektionen för arbetslöshetsförsäkringen; IAF) shall quarterly account for the number of EU certificates concerning unemployment benefits and benefits referring to Regulation 1408/71 granted to citizens from other Member States.⁵⁸

53 Government's proposition 2003/04:25 om Europeiska unionens utvidgning 2004.

54 Government's communication Regeringens skrivelse 2003/04:119 Särskilda regler under en övergångsperiod för arbetstagare från nya medlemsstater enligt anslutningsfördraget. See also the *Riksdag's* social insurance committee Socialförsäkringsutskottets betänkande 2003/04:15 and Government's communication Regeringens skrivelse 2004/05:47 Migration och asylpolitik. Regarding the previous report, see Edström 2004.

55 Government's communication Regeringens skrivelse 2004/05:47 Migration och asylpolitik.

56 Regeringens skrivelse 2003/04:119 Särskilda regler under en övergångsperiod för arbetstagare från nya medlemsstater enligt anslutningsfördraget.

57 Government's communication Regeringens skrivelse 2004/05:47 Migration och asylpolitik.

58 The IAF official website: <http://www.iaf.se/>

- The National Tax Board shall account for how to improve the control of proofs of establishment and proofs of tax registration.

Further, before the decision not to take transitional rules was taken by the Riksdag in April 2004, the Government had appointed a public investigation in order to consider the regulations concerning the possibilities for nationals from third countries to be employed on the Swedish labour market (see also above section *10 Equality of treatment*).⁵⁹ Further, the investigation should also consider the consequences of labour immigration from the new Member States.

The debate in Sweden in 2004 and so far in 2005 concerning the enlargement and the new Member States, has been focused on the free movement of services and the posted workers' wages. Within the building trade there has been many conflicts when contractors from for instance Poland and Latvia have concluded contracts on the Swedish market. Swedish trade unions have declared industrial actions in order to prevent what they think is social dumping. A common denominator has been that the posted workers' wages have been lower – at least in average – compared with the wage level stipulated in the collective agreements on the Swedish labour market.

Swedish trade unions claim that Swedish collective agreements should apply and the trade unions have the right to take industrial action even though they have no members employed by the foreign contractor and even though the foreign contractors are bound by a collective agreement in their home country. The Swedish Co-determination Act permits such industrial action to be taken against a foreign contractor performing temporary services on the Swedish labour market. In a case before the Labour Court in 2004 (Labour Court *Case AD 2004 no. 111*) the court in a preliminary ruling confirmed that right in a conflict between a contractor from Latvia and Swedish trade unions. Among legal experts the court is expected to ask the ECJ for a preliminary ruling on the matter and if the Swedish law on these matters is consistent with EC law.

In another case before the labour court a Polish contractor – not having employees in his own activity – engaged other one-man-firms from Poland to perform work in Sweden. A Swedish trade union protested against the arrangement and the trade union also sent letters to the contractor's customers in Sweden informing them about the trade union's standpoint. The Labour Court did not find that this handling was contrary to the law (Labour Court *Case AD 2004 no. 99*; preliminary ruling). Referring to the EC Treaty and the free movement of services the contractor claims that the ECJ should be asked for a preliminary ruling on the matter.

The kind of problems that have been observed in the two cases from the Swedish Labour Court referred to above, has to do with the way the Swedish labour market is regulated. Trade unions are free to take industrial action in order to conclude a collective agreement with a company that is not bound to a collective agreement and is performing work to which Swedish law does not apply. The general policy expressed by law is that the State should not interfere in these kind of matters, regulating wages etc. Hence, there is no *erga omnes* institute in Sweden in the way there are in many other Member States. However, with reference to that fact, the crucial issue is if the Swedish law that permits trade unions to take industrial action against foreign contractors is contrary to EC law and the free movement of services.

⁵⁹ Committee directions Kommittédirektiv 2004:21 Översyn av regelverket för arbetskraftsinvandring.

Sweden

In 2004 the Government appointed a committee in order to investigate how the law could be amended in order to let the trade unions have access to information concerning wages and other employment conditions in a foreign contractor's activity in Sweden.⁶⁰ This kind of measures should also be looked upon in the light of the Commission's proposal for a Directive concerning services on the internal market.⁶¹

60 Committee directions Kommittedirektiv 2004:98 Bättre möjligheter till bevakning av kollektivavtal. (Se also additional directions 2005:132.) Compare Government's communication Regeringens skrivelse 2004/05:47 Migration och asylpolitik.

61 Proposal for a Directive of the European Parliament and of the Council on services in the internal market (COM/2004/2 final).

Chapter VIII

Statistics 2004 and the first half of 2005

Statistical figures concerning 2004 will be commented on (for details, see Appendix V). Further, statistical figures regarding the period January to July 2005 are presented.⁶²

Regarding immigration *from all countries* (EU Member States and third countries) to Sweden in 2004, the following overall statistical figures are presented:

- Totally 59,144 persons were granted residence permit (compared with 57,616 persons in 2003).
- 13,517 persons were granted residence permit referring to the EEA Agreement (compared with 2003 this figure show an increase with 25 percent).
- The number of persons granted asylum as refugees in 2004 was 6,140 (3,043 of them referring to humanitarian reasons, 1,822 within the refugee quota and the rest for other reasons).
- 22,214 persons were granted residence permit referring to a connection in Sweden.
- 8,529 persons were granted residence permits referring to the labour market (among this group were granted a permanent residence permit).
- 6,021 persons were guest students (the increase compared with 2003 is 512 persons).
- 825 children were adopted from other countries.

The following table shows the statistical figures on migration from EU Member states in 2004 (Nordic countries not included). The figures show the granting of residence permit to a person for the first time.

62 Statistical figures concerning 2004 are available at http://www.migrationsverket.se/pdf/verket/statistik/statistik_4_2004.pdf
Regarding statistics concerning 2005, the figures are placed at the reporter's disposal by the Migration Board on a special request.

Sweden

Statistics on the free movement of persons from EU Member States to Sweden in 2004

	EEA Agr.	Relatives	Students	Total
Austria	297	64	1	362
Belgium	148	41	0	189
France	1037	217	0	1254
Germany	3210	862	0	4072
Greece	302	145	1	448
Ireland	127	85	0	212
Italy	485	178	1	664
Luxembourg	8	3	0	11
Netherlands	727	281	0	1008
Portugal	130	42	0	172
Spain	564	176	0	740
UK	1002	714	2	1718
Total "old" MS	8037	2808	5	10850
<i>New MS in 2004:</i>				
Czeck Republic	183	32	70	285
Estonia	319	128	7	454
Hungary	317	147	10	474
Latvia	375	106	8	489
Lithuania	870	152	45	1067
Poland	3268	876	72	4216
Slovakia	112	59	12	183
Slovenia	36	9	14	59
Total new MS	5480	1509	238	7227
TOTAL	13517	4317	243	18077

Nordic countries not included (Norway, Finland, Denmark and Iceland).
(No figures to report concerning Cyprus, Malta, Lichtenstein.)

(For further details regarding immigration from all countries (except the Nordic countries), see *Appendix V Statistics on Immigration 2004*).

Compared with 2003 there was a small decrease in the number of migrants coming from other Member States in 2004 (the corresponding figure in 2003 was 9,234 persons). However, the decrease was more than fully compensated by the migration (7,227 persons) coming from the new Member States. (Especially concerning *the enlargement*, see also chapter 7 *EU enlargement*.)

Concerning students there are good reasons to believe that the correct figure is not reported! In the official statistics from the Migration Board concerning 2005, there are no students reported from for instance Belgium, France and Germany, which probably is misleading. Approximately the correct figure in 2004 should be around 2,000 students. (Compare for instance the corresponding figures concerning the first half year of 2005.)

In *the first half year of 2005* totally 7,459 persons from the EU Member States came to Sweden referring to the EEA Agreement, as relatives or students.

Concerning self-employees it could be pointed out that from Poland 139 persons were granted residence permits (included in the column "EEA Agr." below) compared with the number of self-employees coming from Germany (44 persons), the "second country" in this respect.

Sweden

Statistics on the free movement of persons from EU Member States to Sweden in January-July 2005

	EEA Agr.	Relatives	Students	Total
Austria	54	18	50	122
Belgium	28	18	21	67
France	142	61	184	387
Germany	702	382	274	1358
Greece	88	18	21	127
Ireland	30	2	3	35
Italy	102	22	81	205
Luxembourg	0	1		1
Netherlands	146	161	74	381
Portugal	27	22	16	65
Spain	76	59	79	214
UK	226	96	35	357
Total "old" MS	1621	860	838	3319
<i>New MS in 2005 Jan-July:</i>				
Czeck Republic	49	22	53	124
Cyprus	5		1	6
Estonia	204	49	36	289
Hungary	128	77	13	218
Latvia	106	32	41	179
Lithuania	438	140	50	628
Malta	2	1		3
Polen	1755	701	134	2590
Slovakia	38	16	16	70
Slovenia	8	13	11	32
Total new MS	2733	1051	355	4139
Totalt	4354	1911	1193	7458

Nordic countries not included (Norway, Finland, Denmark and Iceland).

(No figures to report concerning Lichtenstein.)

Source: The Swedish Migration Board.

(For further details regarding immigration from EU Member States in 2005 January to July except the Nordic countries, see *Appendix VI* Statistics on Immigration 2005 January to July).

Chapter IX Social Security

I will comment on especially the *Trojani* and *Collins* cases. (Regarding pensions, see also chapter 2 Equality of treatment.)

Texts in force

- Lag (1962:381) om allmän försäkring, (The Act on public insurance).
- Socialförsäkringslag (1999:799), (the Social Security Act).
- Socialtjänstlagen (2001:453), (the Social Services Act).

The Case C-138/02 *Collins* was paid much attention to in the general debate in 2004 concerning the transitional rules.⁶³ It was also discussed in the Riksdag's social insurance committee (socialförsäkringsutskottet) in 2004 when the committee had a debate on the transitional rules.⁶⁴ The committee noticed that a person in accordance with the case referred to could be entitled to social benefits as a European citizen.

Regarding the *Collins* case no amendments in law have been made in 2004. (The general law concerning social security matters is the Social Security Act 1999:799 and the Social Services Act 2001:453.) However, both the Aliens Act and other Acts concerning foreigners as well as social welfare legislation are subject to public investigation.

Concerning the *Trojani* case the situation is similar to the situation in the *Collins* case in the comments above.⁶⁵ In *Trojani* the ECJ stated that a union citizen could refer to the EC Treaty, Article 12, and the principle on equal treatment in order to have the right to social assistance up to a subsistence level (minimex) in Belgium. A precondition is that the person has been granted a residence permit or otherwise is legally staying in the country.⁶⁶

In 2004 the Swedish Government appointed a committee concerning the implementation of Directive 2004/38 which might touch upon also social security, although the *Collins* case was not mentioned in the committee directions.⁶⁷ Also another public investigation was appointed by the Government in 2004.⁶⁸ The investigation should focus on the national social security system and make an analysis concerning differences between the Swedish social security system and the corresponding security systems in other Member States. A special issue to consider is the function of the social security system and different solutions for the supply of labour.

63 Case C-138/02 Brian Francis Collins v Secretary of State for Work and Pensions.

64 The Riksdag's social insurance committee Socialförsäkringsutskottets betänkande 2003/04:SFU15 Särskilda regler under en övergångsperiod för arbetstagare från EU:s nya medlemsstater.

65 Case C-456/02 Michel Trojani v Centre public d'aide sociale de Bruxelles (CPAS). For a general comment, see Paju, J., *Hit men inte längre? Om arbetstagarbegreppet och unionsmedborgarskapet i C-456/02 Trojani*, in *Europarättslig Tidskrift* 2004, p. 666–671.

66 See also Case C-85/96 Martiínez Sala ECR 1998 Page I-02691.

67 Committee directions Kommittedirektiv 2004:127 Unionsmedborgares och deras familjemedlemmars rätt att fritt röra sig och uppehålla sig inom medlemsstaternas territorier.

68 Committee directions Kommittedirektiv 2004:129 Översyn av socialförsäkringarna.

There was also a third public investigation appointed and here there was an explicit reference to the *Collins* case in the directions to the committee.⁶⁹ The intention was that the committee should investigate if it was possible to put restrictions on the right to social benefits in accordance with the Social Services Act (2001:453) for citizens from other Member States seeking job in Sweden. The restrictions should also embrace members of the family. Further, the investigation should consider the introduction of a qualification rule in order to restrict the right to social benefits for the same categories.⁷⁰ Further, a fourth public investigation that might be of interest to follow was appointed in 2005. It deals with the entrance on the labour market of persons dependent on economic benefits for their maintenance.⁷¹

However, in April 2005 the public investigation dealing with matters referring to the *Collins* and *Trojani* cases (the “third investigation” mentioned above) was presented.⁷² The committee states that basically a national from another Member State (including an EEA country) having his residence in Sweden, and if he is legally staying in Sweden, is entitled to assistance in accordance with the Social security Act ch. 4 § 1.⁷³

Further, the committee makes an analysis of the social entitlements in the light of EC law. In accordance with EC law EU citizens from other Member States fulfilling the requirements in Regulation 1612/68 are entitled to equal treatment on the same conditions as Swedish citizens and the ban on discrimination should apply. Further, the committee argues that social assistance regulated in the Social Service Act is comprised by the benefits referring to Regulation 1612/68.

The committee also claims that the term social assistance in Directive 2004/38, which was taken by the Council during the ongoing investigation by the committee, is synonymous with the term social assistance used in Regulation 1408/71. Thus it is possible to restrict this social entitlement, but only for certain categories.

Following this, concerning EU citizens (and citizens from other EEA countries) that are *not* workers or self-employees, or not a person in these categories having the right to stay after ceased activity, or not belonging to the family to a person in any of these categories, the committee suggests restrictions regarding social assistance. Hence, an EU citizen who is *not* a worker etc. should not have the right to assistance based on the Social Services Act 4 ch. 1 § during the first three months.

The restrictions suggested refer to Directive 2004/38, Article 24.2. In accordance with Article 24.2 a Member State should not be obliged to grant social assistance during the first

69 Committee directions Kommittédirektiv 2004:61 Begränsning av rätten till bistånd enligt socialtjänstlagen (2001:453) och om insatser enligt lagen (1993:387) om stöd och service till vissa funktionshindrade (LSS).

70 In my opinion, although the committee directions were in general terms, it was obvious that the investigation was appointed on account of the enlargement and the expected immigration from the new Member States.

71 Committee directions Kommittedirektiv 2005:10 Underlätta inträdet på arbetsmarknaden för personer som är beroende av socialtjänstens försörjningsstöd.

72 Official report SOU 2005:34 Socialtjänsten och den fria rörligheten referring to Committee directions Kommittédirektiv 2004:61 Begränsning av rätten till bistånd enligt socialtjänstlagen (2001:453) och om insatser enligt lagen (1993:387) om stöd och service till vissa funktionshindrade (LSS).

73 In accordance with this regulation a person who cannot provide for his/her own needs is entitled to assistance from the local Social welfare board. Further, Nordic citizens are entitled to social assistance beyond the level of the assistance other nationals from the other Member States have the right to. This higher level follows from the Nordic convention on social assistance and social services. See The Act (1995:479) the Nordic convention on social assistance and social services. Other foreigners are entitled to social assistance only in emergency cases.

three months to a citizen from another Member State who is staying in the State, or for a longer period if the EU citizen is looking for job.⁷⁴

Concerning persons *who are* workers or self-employees, or persons from any of these categories having the right to stay after ceased activity, or belonging to the family to a person in any of these categories, the committee states that EC law does not admit any restrictions on the right to social assistance in accordance with the Social Services Act ch. 4 § 1.

Concerning *job seekers* a crucial question is for how long a person could have a right to stay in Sweden searching for job? Referring to the Antonissen case in 1991 the committee advocates a sixth months rule (“or longer”) as a “rule of thumb” for a right to stay in Sweden searching for a job, even though exceptions could be made in line with the statements from the ECJ.⁷⁵

If a union citizen is a job-seeker, he or she will not be entitled to social assistance during the period he or she is looking for a job (compare Directive 2004/38, Article 24.2).⁷⁶ However, referring to the Collins case, in situations when a job seeker has a “sufficient connection” to the Swedish labour market, the committee states that the job seeker very probably can have the right to equal treatment regarding social benefits.⁷⁷ Exceptions from the rule should also be made in case of emergency.⁷⁸

The committee’s suggestions were presented in April 2005 and it is still – in September 2005 – not clear if the proposal will be accepted by the Government, and if it later on will be presented in a Government proposition before the Riksdag. Hence, there will probably be reason to deal with the matter again in a coming report concerning Sweden and the free movement of workers in 2005.

Recent legal literature

I gemenskapen. Rapport från ett forskarseminarium i Umeå den 26–27 januari 2005, Analyserar 2005:2, Försäkringskassan, Stockholm, pp. 25–36.

Swedenborg, J., A brief note on union citizenship: From Homo Economicus to citizen, in *Europarättslig Tidskrift* 2004, pp. 609–617.

Paju, J., Hit men inte längre? Om arbetstagarbegreppet och unionsmedborgarskapet i C-456/02 Trojani, in *Europarättslig Tidskrift* 2004, pp. 666–671.

74 Further, see Article 14.4b (an EU citizen and his family members should not be sent out from the host Member State after three months if the citizen is still looking for a job and it is possible that he will have a job).

75 Case C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius* ECR 1991 I-745. Further, regarding the “sixth months rule” suggested by the committee it coincides with the Migration Board’s practice concerning the period a job seeker can stay in Sweden without having a residence permit. See Official report SOU 2005:34, p. 162.

76 Official report SOU 2005:34, p. 162. An amendment is suggested as a new regulation 4 ch. 1 §a in the Social services Act (*ibid.* p. 163).

77 Official report SOU 2005:34, p. 162.

78 Nordic citizens are not suggested to be embraced by the regulation (referring to Article 24.2).

Chapter X Establishment, Provision of Services and Students

There is nothing to report on these matters for 2004 apart from a case concerning a taxes and a student. However, concerning services, see also chapter 7 EU Enlargement.

Texts in force

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

Students. A German student (Florian Wallentin) had been charged with a tax (8.724 SEK). The County Administrative Board in Luleå decided the decision that Wallentin should pay 25 percent in taxes to be contrary to the EC Treaty Article 48.2 (now 39.2). When the Supreme Administrative Court later on asked the ECJ for a preliminary ruling, Wallentin's standpoint was approved by the ECJ in Case C-169/03.⁷⁹ Hence, the Swedish tax law should be amended even though it is not clear what the result will be.⁸⁰ (The case also could be referred to in an equal treatment context.)

Recent legal literature

- Eriksson, I. O., Är vi mogna för ursprungslandsprincipen?, in *Europarättslig Tidskrift* 2004, pp. 543–547.
- Stavroulakis, M. M., Tillsynen på arbetsrättens område i händelse av ett nytt tjänstedirektiv, in *Europarättslig Tidskrift* 2004, pp. 551–557.

79 Case C-169/03 Florian W. Wallentin v Riksskatteverket.

80 Mutén, L., SINK underkänd i EGD, in *Svensk Skattetidning* no. 6–7/2004, pp. 438–441.

Chapter XI Miscellaneous

The new UEFA recommendations "Investing in the Local Training of Players". The recommendations was approved by UEFA in February 2005. The aim is to secure the development and training of young players in football clubs "in order to safeguard the future of our sport". The problem is that the football clubs do not invest in the training of young players. Instead rich clubs can recruit new already trained players from other clubs and pay the price for the recruitment. UEFA has recognised the EC law and that it is not possible to impose restrictions based on the nationality of players.

In Sweden the Swedish Football Association has observed the UEFA recommendation and the football clubs are informed.⁸¹ The UEFA proposal will be subject to discussions within the Swedish Football Association and a proposal will be put on the table at the Representative Assembly that will be held in December 2005. In order to make any new regulations binding for the clubs who are members of the football association the Representative Assembly is necessary.

Nationality conditions for access to the posts of captains and first officers of ships flying Swedish flag. In Case C-405/01 the ECJ stated that a Member State has the right to reserve a position as a captain and first officer to nationals of the Member State on certain conditions.⁸² First, a precondition is that employees in such positions in fact are exercising authority and that the dealing with such activities are regular. Secondly, these kind of assignments should not be a small part of the duties connected with the position.

In Sweden there is a nationality condition for access to posts as captains of ships in the mercantile marine or fishing boats. The texts in force regarding these matters are promulgated by the Swedish Maritime Administration (Sjöfartsverket).⁸³ The commander-in-chief should be a Swedish citizen and, further, he should be more than 20 years old (the Vessel Safety Regulation; fartygssäkerhetsförordningen 2003:438 Chapter 4 § 1). Concerning commanders on fishing-boats, the regulation could be questioned in the light of the judicial practice from the ECJ.⁸⁴

Nationality and dual nationality. The Swedish Act (2001:82) on Swedish citizenship has been in force since July 1, 2001. In accordance with the Act it is possible to have a dual citizenship. Hence, a person who applies for and is granted a Swedish citizenship may keep his or her former citizenship. Further, a Swedish citizen who acquires citizenship in another state is allowed to keep his or her citizenship in Sweden.⁸⁵ A prerequisite is that there is no requirement from the other state that the citizen must give up the citizenship in that state.

81 Official website for the Swedish Football Association: <http://www.svenskfotboll.se/t2e.asp?p=20402>

82 Case C-405/01 *Colegio de Oficiales de la Marina Mercante Española v Administración del Estado*.

83 See Sjöfartsverkets författningssamling 2000:01 Sjöfartsverkets föreskrifter och allmänna råd om utbildning och behörigheter för sjöpersonal (Swedish Maritime Administration's statute-book SJÖFS 2000:01), including amendments referring to Council Directive 94/58/EC on the minimum level of training of seafarers (and amendments following Directive 98/35/EC).

84 Case C-47/02 *Albert Anker, Klaas Ras and Albertus Snoek v Bundesrepublik Deutschland*.

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

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- Committee directions Kommittédirektiv 2003:181 Familjeåterförening.
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- Committee directions Kommittédirektiv 2004:21 Översyn av regelverket för arbetskraftsinvandring.
- Committee directions Kommittédirektiv 2004:61 Begränsning av rätten till bistånd enligt socialtjänstlagen (2001:453) om insatser enligt lagen (1993:387) om stöd och service till vissa funktionshindrade (LSS).
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- Government's proposition 2004/05:31 Sänkt avkastningsskatt för vissa livförsäkringar, m.m.
- Government proposition 2003/04:35 Människosmuggling och tidsbegränsat uppehållstillstånd för målsägande och vittnen m.m.
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